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Can a Humean Be a Contractarian?

Abstract:

In this paper I argue, contrary to Hartmut Kliemt, that it is possible to be both a Humean and, in James Buchanan's sense, a contractarian. Hume sees principles of justice and political allegiance not as actual or hypothetical products of explicit agreement, but as conventions that have emerged spontaneously. However, it is fundamental to Hume's analysis that conventions are mutually advantageous, and hence cognate with agreements. The core idea in Buchanan's contractarianism is that the proper role of government is to implement voluntary exchanges between individuals, not to define and maximise a unified conception of social welfare. Although real politics cannot be based entirely on unanimous agreement, the voluntary exchange approach provides a valuable structure for normative economics.

1. Introduction

Early in 2008, Hartmut Kliemt and I had an e-mail discussion about the meaning of the word 'contractarian' and (coming closer to home) about whether I was being consistent when I used it to describe my own approach to economic and social philosophy. The discussion was inconclusive, but it forced me to think about why I like to call myself a contractarian, and whether I am justified in doing so. The essential question posed by Kliemt was whether it is possible to be both a Humean and a contractarian. That question is important for both of us. I am a professional economist and amateur philosopher; I hope he will accept my characterisation of him as a professional philosopher and amateur economist. As philosophers, we are both dedicated disciples of David Hume, inclined to think of ourselves as Hume's representatives on earth. As economists, we are both long-standing students of and admirers of the work of James Buchanan, who has often described his own work as contractarian. What is at issue is how far contractarianism in Buchanan's sense of the word can be reconciled with Hume's philosophy and social theory.

Kliemt's argument, if I have understood it correctly, is that a true Humean cannot also be a contractarian. Kliemt appeals to Hume's essay *Of the Original Contract* ([1748]1985) and to the passages in the *Treatise of Human Nature* ([1739–40]1978, 534–567) dealing with the origin of government and with the source, measures and objects of allegiance. In these texts, Hume deconstructs the political theory dear to English Whigs, according to which legitimate gover-

ment can be founded only on the consent of the governed. That theory, of which John Locke is a founding father, is undoubtedly a form of social contract theory; it has influenced many modern theorists, such as David Gauthier (1986), who can properly be called contractarian. Clearly, then, there is a sense of ‘contractarianism’ which makes Hume an opponent rather than a fellow-traveller.

In one of his messages, Kliemt diagnosed my position as being contractarian only in name, saying that nominal contractarianism fosters dangerous illusions about politics:

“[T]here is absolutely nothing that can be done by government that would fulfil the norm of unanimous agreement in real fact. Therefore we cannot say that the ethical basis of any of the rules of government is free agreement of each individual. The special standing of being consent-based is out of reach for any practical rule if every individual is fully respected as endowed with veto power (collectivist contractarianism) or can opt in or out (club contractarianism). Either nothing can be done or the club will not comprise all individuals. This is trivial. But it is not trivial to describe politics nevertheless contrary to the facts as if it were based on unanimous agreement (or free exchange). Politics as exchange is an ideal to aspire to but politics is not as a matter of fact fully agreement-based. It is a different animal and it is not only wrong to describe it otherwise, it is dangerous. Politics is not based on agreement but on an evolved system of coercive power.”

Kliemt argues that Hume recognised this fundamental fact of political life, while contractarians do not. So Hume is not a contractarian, even though he shares the ‘contractarian ideal’ of politics as exchange.

I agree with much of what Kliemt is saying here. Kliemt describes his first reading of *Of the Original Contract* as a road-to-Damascus moment. My first reading of Hume’s *Treatise* had the same effect on me. I had been intending to write a book on social contract theory and was struggling to formulate a position I was satisfied with, somewhere in the intellectual terrain of Thomas Hobbes, Locke, John Rawls and Buchanan. Buchanan suggested that I read the *Treatise*, and that pointed me in a new direction. What previously had been confused reservations about social contract theory took shape for me as a Humean theory of the emergence and reproduction of conventions, which I worked out in my *Economics of Rights, Cooperation and Welfare* (1986). That book analysed conventions of coordination, of property and of reciprocity. If I had not run out of time, I would have added a chapter on conventions of ‘leadership’, in the spirit of Hume’s analysis of allegiance. So, like Kliemt, I accept Hume’s critique of Lockean social contract theory. But I shall argue that it is possible to be both a Humean and a contractarian.

2. Hume's Conventionalism

Hume deviates from traditional social contract theory by analysing social institutions and moral practices as ongoing and self-reproducing conventions that have emerged from evolutionary processes, rather than as outcomes of some original agreement. In the part of the *Treatise* entitled “Of Justice and Injustice”, Hume begins with an analysis of what he calls “the three fundamental laws of nature”. These are the laws of “stability of possession”, “transference [of possession] by consent”, and “performance of promises” (Hume 1978, 526). They are laws of *nature* in the sense that they are recognised even in stateless societies. Appealing to evidence from the native societies of North America, Hume conjectures that the earliest human societies were small enough to be able to regulate their internal affairs according to the laws of justice without established governments; government—in the form of military leadership—was needed only to coordinate warfare between societies (Hume 1978, 540–541). Having analysed the laws of nature as conventions, he applies a similar analysis to government. According to this account, the obligation of allegiance to established government has essentially the same foundation as the obligation to respect the laws of property.

I shall focus on Hume's analysis of property. One reason for doing this is that, because this is the topic that Hume addresses first in the *Treatise*, it is here that the analysis is developed in greatest detail; much of that analysis is taken as given in the later discussion of government. Another reason is that, as an economist, I am more interested in what Hume has to say about property and exchange than in what he has to say about political allegiance.

Hume argues that, in contrast to ‘natural’ virtues such as benevolence, justice is an ‘artificial virtue’. In modern language, what Hume means is that the sense of justice is not hard-wired into human psychology in the way that sympathy is. In support of this hypothesis, Hume argues that actions that are naturally perceived as virtuous are ones that *immediately* induce positive affective responses, such as those linked with sympathy. In contrast, actions that are ‘artificially’ virtuous are perceived as virtuous *indirectly*, by being understood as instances of general rules; it is only by recognising the value of the relevant rule that we can recognise the value of individual instances of rule-following (Hume 1978, 477–484). Typically, rules of justice are not consciously designed: a rule of justice “arises gradually, and acquires force by a slow progression, and by our repeated experience of the inconveniences of transgressing it” (Hume 1978, 489–490). Although we come to “annex the idea of virtue to justice”, the rules of justice must be prior to the sense of their moral force (Hume 1978, 498). So the first task for a theory of justice is to explain the origin of these rules without using moral concepts.

Hume begins with the law of ‘stability of possession’, developing a theory of the origin of property rights in external goods. The content of this law is

“a convention enter’d into by all the members of the society to bestow stability on the possession of those external goods, and leave everyone in the peaceable enjoyment of what he may acquire by his fortune and industry.” (Hume 1978, 489)

But what does Hume mean by ‘convention’?

“This convention is not of the nature of a *promise*: For even promises themselves, as we shall see afterwards, arise from human conventions. It is only a general sense of common interest; which sense all the members of the society express to one another, and which induces them to regulate their conduct by certain rules. I observe, that it will be for my interest to leave another in the possession of his goods, *provided* he will act in the same manner with regard to me. He is sensible of a like interest in the regulation of his conduct. When this common interest is mutually express’d, and is known to both, it produces a suitable resolution and behaviour. And this may properly enough be call’d a convention or agreement betwixt us, tho’ without the interposition of a promise; since the actions of each of us have a reference to that of the other, and are perform’d on the supposition, that something is to be perform’d on the other part.” (Hume 1978, 490)

Notice how Hume treats ‘convention’ and ‘agreement’ as cognate concepts. When he says that the rule of stability of possession *may properly enough be called* a convention, he seems to be acknowledging that, in its linguistically proper sense, ‘convention’ implies agreement. In calling the rule a convention he is claiming that, in significant respects, it *is like* an agreement. At the same time, he is stressing that it *is not* an agreement in the usual sense of an exchange of promises. He is formulating a philosophically precise concept which has some of the content of ‘agreement’ but is more fundamental than that of an exchange of promises: according to Hume’s analysis, the institution of promising is itself a convention.

For Hume, a convention rests on a *general sense of common interest*; each member of society has this sense and is aware that the others have it too. The content of a convention is *reciprocal*: each individual constrains his own actions as part of a general practice in which other people constrain theirs. As Hume puts it:

“A single act of justice is frequently contrary to *public interest* [...]. Nor is every single act of justice, considered apart, more conducive to private interest, than to public; and ‘tis easily conceiv’d how a man may impoverish himself by a signal instance of integrity, and have reason to wish, that with regard to that single act, the laws of justice were for a moment suspended in the universe. But however single acts of justice may be contrary, either to public or private interest,

‘tis certain, that the whole plan or scheme is highly conducive, or indeed absolutely requisite, both to the support of society, and the well-being of every individual. ‘Tis impossible to separate the good from the ill. [...] And even every individual person must find himself a gainer, on ballancing the account; since, without justice, society must immediately dissolve [...].” (Hume 1978, 497)

As this passage makes clear, the idea of *mutual advantage* is an essential part of Hume’s account of a conventional practice: ‘on ballancing the account’, each individual construes the practice as a whole as beneficial *to him*. Thus, although a convention is not an exchange of promises, it *is* a form of exchange.

In this respect, Hume’s concept of convention is slightly different from that used in modern game theory. Game theorists tend to use the term ‘convention’ to describe any Nash equilibrium that is sustained in recurrent play of a game in which there are two or more such equilibria. Not all such ‘conventions’ can be construed as mutually beneficial. Consider the following example of a Hawk-Dove game of conflict over resources. Each of the two players chooses *hold out* or *back down*. If one player holds out and the other backs down, the former gets a payoff of 2 and the latter scores zero. If both back down, each scores 1. If both hold out, each scores –2. Suppose this game is played recurrently and anonymously by individuals drawn at random from a large population, but in such a way that every game is played between a man and a woman. Now consider the equilibrium defined by the rule ‘man holds out, woman backs down’. Given that this rule is generally followed by others, each individual, whether man or woman, will find it in his or her interest to follow it. Men will score 2 in every game they play; women will score zero. Even so, each woman does better by backing down than by holding out: since the men she meets will hold out, expecting her to back down, holding out would lead to a worse payoff of –2. This discriminatory equilibrium is a convention in the game-theoretic sense but not necessarily in Hume’s. A woman can recognise that it is in her interest to back down, given that men do what they recognise as being in their interests. But does this amount to a sense of *common* interest? I think not. The woman is not participating in a mutually advantageous practice of constraint: on balancing the account, she finds herself a loser.

One way of seeing this is to suppose that the practice of using the male/female asymmetry to resolve conflicts were to break down. The most natural way to model the resulting state of nature is as a recurrent game in which players do not recognise any recurring asymmetry. In the Nash equilibrium of this game, the rate at which players hold out is 1/3, and the average payoff from each strategy is 2/3. This state-of-nature equilibrium is inefficient, but women do better in it than in the discriminatory equilibrium. (This conclusion does not depend on the particular numbers I have used to represent the Hawk-Dove payoffs. In the state-of-nature equilibrium the two strategies must have equal average payoffs. It must be better to back down against an opponent who

might back down too, as in the state-of-nature equilibrium, than against one who will certainly hold out.)

What difference does it make, one might ask, whether an equilibrium is or is not associated with a sense of common interest? If each individual acts on interest, discriminatory equilibria can be just as stable as mutually advantageous ones. But Hume is concerned with stability of possession not only as a social fact, but also as a *rule of justice*, to which the idea of virtue has been ‘annexed’. His account of the ‘moral obligation’ to justice is rather brief and is open to various interpretations, but I think it depends on the assumption that the rules of justice are mutually advantageous.

The crucial passage in the *Treatise* is:

“To the imposition then, and observance of these rules, both in general, and in every particular instance, they are at first mov’d only by a regard to interest; and this motive, on the first formation of society, is sufficiently strong and forcible. But when society has become numerous, and has encreas’d to a tribe or nation, this interest is more remote; nor do men so readily perceive, that disorder and confusion follow upon every breach of these rules, as in a more narrow and contracted society. But tho’ in our own actions we may frequently lose sight of that interest, which we have in maintaining order, and may follow a lesser and more present interest, we never fail to observe the prejudice we receive, either mediately or immediately, from the injustice of others; as not being in that case either blinded by passion, or byass’d by any contrary temptation. Nay when the injustice is so distant from us, as no way to affect our interest, it still displeases us; because we consider it as prejudicial to human society, and pernicious to every one that approaches the person guilty of it. We partake of their uneasiness by *sympathy* [...]. The *general rule* reaches beyond those instances, from which it arose; while at the same time we naturally *sympathize* with others in the sentiments they entertain of us. *Thus self-interest is the original motive to the establishment of justice: but a sympathy with public interest is the source of the moral approbation, which attends that virtue.*” (Hume 1978, 499–500)

This passage might be read in a utilitarian way, ‘public interest’ being interpreted as some kind of aggregate of the interests of all individuals. But, given the earlier emphasis on the sense of *common* interest, it is more natural to suppose that Hume is building some notion of common interest into what he calls ‘public interest’. Notice that, on Hume’s account, one of the steps by which people come to sympathise with public interest is their sense of the ‘prejudice’ that *they* receive from the injustice of others. This would not be possible in the case of an equilibrium that was not mutually advantageous.

For Hume, then, justice is fundamentally a matter of mutual advantage. The rules of justice emerge spontaneously from the interaction of individuals who

are pursuing their private interests. Given that these rules are in operation *and are mutually advantageous*, the sense that they are morally obligatory emerges spontaneously through the workings of natural mechanisms of human psychology. However, Hume departs from the social contract tradition in not analysing mutual advantage as explicit agreement (either actual or hypothetical) among free, equal and rational individuals.

Many modern readers (here of course I do not include true Humeans like Kliemt) find it hard to come to terms with this feature of Hume's theory. Conventions of justice, as Hume analyses them, are imprinted with the inequalities of real human life and with the non-rational properties of real human psychology. In explaining this, Hume sometimes discusses hypothetical cases of explicit bargaining among non-idealised individuals. For example, in his analysis 'Of the rules, which determine property', he asks us to imagine a group of people who have been separated from the different societies to which they formerly belonged, and have to form a new society among themselves. Having recognised the necessity of the rule of stability of possession, they must agree on an initial assignment of property rights. According to Hume, "it must immediately occur, as the most natural expedient, that every one continue to enjoy what he is at present master of, and that property or constant possession be conjoin'd to the immediate possession" (Hume 1978, 503). Notice that this solution is justified, not by appeal to any prior principles of fairness or entitlement or to any notions of rational choice, but simply as *the most natural expedient*. Using a range of ingenious examples, Hume argues that problems of this kind are typically resolved by the use of common associations of ideas; in problems involving the assignment of objects to individuals, associations of ideas that link particular objects to particular individuals—of which current possession is one—are especially salient (Hume 1978, 504–513).

For Hume, then, a convention is a kind of agreement, but the baseline for agreement is not (as it is for Locke) an idealised state of nature in which free individuals are obligated by natural law. Nor is it (as it is for Rawls) a still more idealised 'original position' populated by disembodied rational agents. The baseline is the world as it already is. We look at a set of conventions that are already in operation and perceive their continuation as mutually advantageous. Only the most general features of these conventions, for example that property rights are specified in *some* way, can be reconstructed as the content of a Lockean or Rawlsian social contract. Other systemic features, such as the role played by associations of ideas, are unavoidable features of conventions but—at least as viewed through the lenses of rational choice theory or moral philosophy—are rationally and morally arbitrary. Yet other features are socially or historically contingent. For example, in recognising current possession as the most expedient rule for defining property rights, we may bestow a kind of legitimacy on earlier acts of violence, theft and fraud.

Hume is particularly frank about this in his discussion of conventions of political allegiance. He concedes that almost all royal houses, and indeed almost all political structures, were originally founded on "usurpation and rebellion";

it is only the effects of time that make any form of government seem rightful (Hume 1978, 556). Hume enjoys the paradox that “Princes often *seem* to acquire a right from their successors, as well as from their ancestors”. Thus, William of Orange is now (that is, in 1740) perceived as having been a legitimate ruler, while Cromwell is not; but that is because of William’s good fortune to have been succeeded by three rulers on the same initially dubious title (Hume 1978, 566). In this sense, Hume accepts that (as Kliemt puts it) politics is an evolved system of coercive power. But it remains true that, for Hume, political allegiance and property rights are matters of convention—which is to say, are perceived in terms of mutual advantage.

3. Buchanan’s Contractarianism

I have argued that Hume’s account of conventions has significant features in common with social contract theory. It presents and analyses a theoretical concept, ‘convention’, which is cognate with but more fundamental than ‘agreement’. Conventions are rules that govern recurrent practices that are perceived by the participants as mutually advantageous; because of that perception, individuals take themselves to be morally obligated to follow these rules, provided others do so too. Whereas social contract theory legitimates social institutions by showing them to be the actual or potential products of explicit agreement, Hume’s analysis legitimates them (or, at least, shows how they come to be seen as legitimate) by showing them to be conventions. So it should not be surprising that someone who finds Hume’s analysis attractive is also attracted to social contract theory, or vice versa. But, one might object, that does not make Hume’s theory a form of social contract theory. If I am to justify the claim that it is possible to be both a Humean and a contractarian, it seems that I must defend an interpretation of ‘contractarian’ that is not equivalent to ‘advocate of social contract theory’. That is what I shall now try to do, drawing on the work of Buchanan.

In his early career, Buchanan was primarily a public finance economist. He was best known for his theory of public goods, set out in his *Demand and Supply of Public Goods* (1968), and in particular for his analysis of ‘clubs’ (that is, institutions through which goods that are non-rival but excludable can be supplied privately). As Buchanan has always acknowledged, his theory of public goods is a development of the voluntary exchange theory of Knut Wicksell ([1896]1958). Wicksell argued that, in principle, the appropriate criterion for a decision about the supply of a public good is unanimity within the set of people who are to share the costs; the objective should be to find a way of sharing the costs among beneficiaries so that no one ends up a net loser. For Buchanan (1968, 4–8), Wicksell’s approach provides a ‘pure theory’ of public goods ‘wholly analogous’ with the theory of perfect competition. Buchanan and Gordon Tullock became founding fathers of public choice through their

Calculus of Consent (1962), which explored the political implications of the Wicksell-Buchanan theory of public goods.

Later, particularly in *Limits of Liberty* (1975) and subsequent work, Buchanan moved more into the terrain of political theory, developing a form of social contract theory with Hobbesian overtones. In the 1970s, when I first came to know him, he usually described his intellectual approach as ‘contractarian’. Later, as he progressively gave more attention to constitutional issues, he began to characterise his work as ‘constitutional political economy’. My sense is that, for Buchanan, the primary connotation of ‘contractarian’ is voluntary exchange theory.

Buchanan’s commitment to the voluntary exchange approach is made clear in the opening pages of *Limits of Liberty*. He distinguishes between his own approach, which initially he characterises as “individualist”, and that of writers who “retain a Platonic faith that there is a ‘truth’ in politics” and who “play at being God”. The individualist acknowledges “the mutual existence of fellow men, who also have values”. For the individualist, all that can usefully be said about the good is: “A situation is judged ‘good’ to the extent that it allows individuals to get what they want, whatsoever this might be, limited only by the principle of mutual agreement.” (Buchanan 1975, 1–2) Not altogether helpfully, Buchanan declares that, “in basic values”, he is “an individualist, a constitutionalist, a contractarian, a democrat—terms that mean essentially the same thing to me” (Buchanan 1975, 7).

In a later work, Buchanan (1986, 65) makes a similar distinction between his own position and that of his (as he sees it) Platonist opponents: “The constitutionalist-contractarian paradigm interprets the political process as a *generalization of the market*. The anti-constitutionalist, truth-judgement conceptualist interprets politics as a *generalization of the jury*.” Or, in different words:

“If politics is to be interpreted in any justificatory or legitimizing sense without the introduction of supra-individual value norms, it must be modelled as a process within which individuals, with separate and potentially different interests and values, interact for the purpose of securing individually valued benefits of cooperative effort. If this presupposition about the nature of politics is accepted, the ultimate model of politics is *contractarian*. There is simply no feasible alternative.” (Buchanan 1986, 240)

Or:

“Here [i.e. in Buchanan’s analysis] the question is not one of how to find or discover ‘truth’ through politics; it is not one of determining what is the ‘best’ one from among several political options; it is not the quest for ‘the common good’. Here the question is, instead, one of using the institution of politics, or governance, as the means through which separate persons, as members of an organized political community, may jointly achieve their individually desired purposes. In

this individualistic and contractarian model for politics, that which emerges from the interaction process is, quite simply, that which emerges.” (Buchanan, 1986, 250)

The core idea in these passages is that when we think normatively about politics, we should think of it as a process, analogous with the market, in which individuals come together to make mutually advantageous exchanges. Ultimately, the criterion of mutual advantage is voluntary agreement. It is for each individual to decide for himself where his advantage lies; the function of both politics and the market is to allow individuals jointly to achieve their individual objectives, whatever those may be.

This implies an approach to normative issues that is radically different from that followed by most economists. As Buchanan has often said (and has attributed to Wicksell), when economists draw normative implications from their work, they implicitly imagine themselves as advisors to a benevolent despot (e.g. Buchanan 1986, 23). Buchanan (1954) was one of the first economists to recognise that the concept of ‘collective rationality’, as used in the social choice theory that developed from the work of Kenneth Arrow, presupposes a benevolent despot model of government. Welfare economics and social choice theory conceive of ‘government’ as an institution that acts as if directed by a single mind, and that has both the desire and the power to maximise the overall welfare of the society it oversees. On this account, the task of the normative economist is to help such a government formalise a conception of social welfare and to show how that can be maximised. In contrast, the Wicksell-Buchanan approach starts *from individuals* and asks what *they* (severally) want from institutions of collective choice.

The difference between these two approaches to normative economics has become more significant with the recent development of behavioural economics. The underlying paternalism of the conventional approach has often been partially hidden by two assumptions—that social welfare is an increasing function of each individual’s welfare, and that each individual’s welfare is (ordinally) measured by her preferences. But now that it is becoming clear that individuals often lack the coherent preferences that microeconomics has traditionally assumed and that individual decision-making is subject to cognitive limitations, the paternalistic logic of welfare economics is becoming more obvious. It is disturbing to see how unreflectingly behavioural economists have moved from the observation that individual behaviour cannot be represented as the maximisation of an objective function to the conclusion that so-called *soft paternalistic* interventions by government are legitimated and even unavoidable (Camerer et al. 2003; Bernheim and Rangel 2007; Thaler and Sunstein 2008).

In trying to resist the advance of soft paternalism, I have argued for a conception of the market as an institution that is structured by mutual advantage (Sugden 2004; 2008). I have tried to show that the market can facilitate the pursuit of mutual advantage whether or not individuals act on consistent preferences. I have advised my readers, as individuals, to ask themselves whether

they want a social planner or (to use the new euphemism) a ‘choice architect’ to steer *their* decisions in the direction that the planner thinks best for them. What we should not do (but what the rhetoric of soft paternalism invites us to do) is to imagine that we are privileged advisors to a benevolent government, designing a set of interventions that will steer people in general towards the decisions that *we* think are best *for them*. My line of argument is contractarian in Buchanan’s sense: I am appealing to a voluntary exchange conception of economics and politics, rather than to one that interprets collective choice as the maximisation of a social welfare function.

4. Integrating Contractarianism and Humeanism

I suggest that contractarianism in the Wicksell-Buchanan sense of voluntary exchange is conceptually independent of social contract theory, and compatible with Hume’s theory of conventions. Hume has little to say about the supply of public goods, but in treating ‘transference by consent’ as a fundamental law of nature, he is endorsing a voluntary exchange theory in relation to private goods. More generally, the idea of mutual advantage underlies both voluntary exchange theory and Hume’s analysis of conventions.

Any theory which uses a concept of mutual advantage has to specify a baseline from which advantage can be measured. One of Buchanan’s favourite remarks is that we start from here, and not from some place else (e.g. Buchanan 1975, 78). The suggestion is that mutual advantage must be defined relative to the current status quo, however fair or unfair that may be. Nevertheless, if the concept of voluntary agreement is to make sense, individuals must treat the status quo as embodying a set of entitlements:

“A necessary starting position for a society of free individuals, related to one another in a network of interdependence, is some agreement on a structure of rights which, in effect, defines the entities who enter negotiations.” (Buchanan 1975, 21f.)

This structure of rights is not to be understood as the outcome of a morally fair agreement. Buchanan imagines a social contract drawn up in a Hobbesian state of nature, conferring rights on individuals as part of an agreement to end the war of all against all. In the state of nature, the balance of power between individuals as predators and prey leads to a ‘natural distribution’ of goods; the inequalities of this distribution are translated into inequalities of bargaining power when the contract is being drawn up, and so into inequalities of rights (Buchanan 1975, 23–26). Even after society has been formed, individuals remain aware of the balance of power that would govern their interactions, were they to slip back into the state of nature. They may sometimes find it in their mutual interest to reassign rights, tracking changes in the underlying natural distribution: this is the process of ‘continuing contract’ (Buchanan 1974, 74–90).

Clearly, this account of the determination of the structure of rights is a form of social contract theory. Nevertheless, there are significant parallels with Hume's conventionalist account of property rights. In each theory, well-defined property rights are an essential precondition for social order. In a stable social order, individuals treat those rights as legitimate entitlements, which can be transferred between people only by mutual consent. But the distribution of rights cannot be justified as fair in terms of any abstract moral principles; it is just a generally acknowledged status quo position. I find Hume's account of property rights the more convincing, but I see no obstacle to combining this with a Wicksell-Buchanan voluntary exchange theory.

Of course, Kliemt is right to say that voluntary exchange cannot be interpreted literally as a practical criterion for legitimating action by government. Real politics cannot be based entirely on unanimous agreement. Kliemt says that voluntary exchange is "an ideal to aspire to". I would prefer to say that it is a *model* that normative economists should use. As I have explained, economists usually do normative analysis as if they were advising a benevolent despot. But they do not think that the government is *literally* a benevolent despot. Nor (I assume) do they see benevolent despotism as an ideal to aspire to. They recognise that in well-functioning democracies, the decisions of real governments are often compromises between politicians and officials with different views about the social good, that governments are constrained by electorates and parliaments, and that political actors are sometimes motivated by self-interest. The conception of government as benevolent despot is just a model, a way of structuring normative analysis. The conception of politics as voluntary exchange provides an alternative structure. It imposes the discipline that policy proposals must be addressed to citizens as individuals, and must be justified to each of them as the means by which he or she can achieve what he or she wants. I share Buchanan's conviction that this is the proper role of normative economics in a free society.

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