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Individualism, Libertarianism and Non-Cognitivism*

Abstract: This paper suggests that libertarian and (related) contractarian ideas would be less vulnerable to certain forms of criticism if they would more carefully disentangle their legal and moral standards for the assessment of institutions from empirical, methodological, and epistemological assumptions about individualism and non-cognitivism. Holding apart several meanings of individualism different issues can be treated separately. It will be shown that the justification of libertarian norms raises some problems which are not too easily solved within a non-cognitivist approach. No attempt to solve them is made subsequently but how far in principle the 'argumentation possibility frontier' might be shifted out for that purpose is outlined. In this respect the paper might be regarded as a companion to Viktor Vanberg's brilliant reconstruction of contractarian liberalism in this issue of *Analyse & Kritik* (pp. 113-149).

1. Individualism

There seem to be at least three different approaches to individualism. For convenience I will refer to them as I-1, I-2, I-3 respectively. It should be kept in mind that these abbreviations are indicating quite general views. These views contain descriptive and normative claims and usually some assumptions about an alleged 'logical' relationship between the two.

Different strands of argument should be kept apart from each other. It seems to be worthwhile to disentangle methodological norms from those moral and legal norms applicable to social institutions or, for short, from institutional norms. Norms of the first type are guidelines for the process of theory formation (i.e. meta-theoretical norms) whereas those of the second kind are standards for the evaluation of social institutions (i.e. norms which are part of a normative theory).

The norms of methodological individualism may apply to normative as well as to descriptive theories. Methodological individualism as applied to descriptive theories of human behavior for instance would require that fundamental theoretical explanations in the last resort have to be based on laws which contain only such variables which represent either human

individuals or attributes of human individuals. Ultimately variables representing classes of individuals and properties of classes of individuals are excluded. As far as normative theories, especially ethical ones, are concerned methodological individualism entails meta-theoretical norms which require that all statements of the normative theories are based on individual 'attributes' (in a very wide sense including individual judgements). From an axiological point of view, for instance, nothing but individual attributes can have intrinsic value. These normative (and axiological) theories in turn may or may not suggest institutions which are acceptable from the point of view of institutional individualism (i.e. moral or legal norms requiring a certain form of institutions which provide for certain rights of individuals).

In dealing with different approaches to 'individualism' we have to consider at least three layers of discussion: meta-theoretical norms, descriptive and normative theories about social (institutional) reality, and social (institutional) reality itself. Things seem to become quite complicated here. We must try to sort out different topics and try to treat them separately.

In an effort to outline a kind of conceptual map I will first deal with I-1 to I-3 in turn. Afterwards their relation to the problem of truth judgements in practical matters will be discussed. Finally the results of this discussion will be applied to the problem of justifying libertarianism within the limits of non-cognitivist meta-ethics.

I-1: Assumption: Only individuals and individual 'attributes' (whatever these may be including thoughts, feelings, judgements etc.) can give rise to value. There exist no such things as collective values, aims, interests etc.

Methodological norm: In an evaluation of society only individuals must be taken into account.

If we take the assumption of I-1 as 'descriptive' then it should be interpreted as a kind of self-evident truth about the 'ontology of value'. This assumption, for example, excludes that there are interests of classes of individuals which in the last resort would not be reducible to individual interests. Some of the scholars looking at I-1 as describing an 'ontological fact' tend to assume implicitly too that the methodological norm may be derived from this 'ontological premise' without further normative assumptions. As this, clearly, would imply the derivation of an 'ought' from an 'is' others try to treat the first part of I-1 as a normative precept in disguise. But, then, they simply have stipulated methodological individualism in the premise. No argument - neither valid nor invalid - to support that norm is presented.

I have no quarrel with I-1 if it is interpreted as simply stipulating a methodological norm about the adequate formation of descriptive or normative theories. But we should be quite aware that I-1 in itself does not contain a valid inference to its normative conclusion. Keeping this in mind we can safely turn to a scrutiny of what I-1 as a methodological norm entails for practical theory formation.

In the sense of I-1 classical utilitarianism clearly is an individualistic theory. For, according to this view individuals are a kind of 'measurement device'. Composing an overall or collective criterion using those 'values' that these devices provide is the aim of utilitarian theories. These theories are using the 'scales of individual devices' to measure the entries within the sum of overall happiness. Classical utilitarianism, therefore, is not an egoistic approach to ethics. This holds true regardless of the fact that in its most influential Benthamite version it was combined with an egoistic and hedonistic descriptive theory of human behavior and often, though mistakenly, has been accused to be egoistically oriented in the normative sense. Utilitarianism incorporates the feelings of all human individuals or even all sentient beings. Within this 'main sum of happiness' every individual usually counts 'for one and only one' which means that utility is a simple sum without discriminatory weights (cf. for a stimulating recent defense of utilitarianism the 'institutional' approach in Selten 1986).

The foregoing remarks about I-1 and utilitarianism nevertheless should not be read as to imply that only utilitarianism could meet the requirement of I-1. In fact I-1 does not discriminate among a broad variety of approaches which are quite different from utilitarianism in normative content.

There may well be individualistic theories in the sense of I-1 which are particularistic and individualistic at the same time. For instance, such theories might admit that all human beings are 'individuals' in a general sense. But, in assessing social states they take into account only what is (intrinsically) valuable to the individuals contained in a proper subset of the set of all individuals. This subset could be the group of, say, the Zulus of South Africa, the 'Nordic race', or what group ever. Such individualistic and particularistic theories will be indexed by a small p subsequently, e.g. "Ip-1".

On the other hand, though many theoreticians would feel that it is self-evident that I-1 is a minimal requirement of adequacy that should be met by every acceptable theory - especially if it is of the normative variety - there are some theories, not entirely absurd, which violate this condition. An example would stem from those particularistic collectivistic theories which select what is taken as the interest of a particular nation, class, or race as the ultimate criterion of right and wrong. The same would apply to a position starting from the 'interest of the human race' if and insofar as

this interest is not in the last resort 'reduced' to some 'attributes' of human individuals. The true (hedonistic) utilitarian would reject this position at the same time as too particularistic, in excluding some sentient beings, and as non-individualistic, in alluding to the human race as such.

Gradually turning to the next version of individualism it should be noted first that I-1 still allows for the possibility that an individual other than the individual whose 'attributes' give rise to value may be a better judge of value for the person concerned than this very person. This possibility is not absurd. Choices have to be made in expectation of value. They are based on predictions. The "consciousness within" the measuring device (apologies to Gilbert Ryle for using this figurative description!), may not be the most competent judge of the utility 'expected to be measured'. In short, according to I-1 only individuals are the source of value but they need not necessarily be themselves the best judges of what is or will be valuable to them.

Here, clearly, the danger arises that moral theorists might simply ascribe some value or other to individuals though these ascriptions have no warrant in individual 'attributes' or in what is valuable for the individuals themselves. Therefore I-1 is usually strengthened in two ways.

First, it is required that what is valuable to individuals may not itself be determined by moral theory but must rather stem from non-moral value. This is typical for the utilitarian approach which insists that a moral theory must be moored to something outside the theory itself. According to utilitarianism the criterion of moral right and wrong should not rely on a definition of value which is provided by the same moral theory. This would be circular. It would also be contrary to the empiristic undercurrent of utilitarianism and its main critical thrust. For, historically utilitarians tried to destroy prejudices of conventional morality by an intersubjectively and rationally controllable criterion of right and wrong in public matters.

Secondly, it is required that the individuals concerned (neither the external theoretician, nor the moralist, nor the legislator) have to assess themselves what is valuable for them. This requirement in turn can be understood in two ways:

- a) as a methodological norm stating from which kinds of data theory formation (descriptive or normative) should start
and
- b) as a substantial ethical norm telling us how to organize social interaction itself.

According to the alternative a the criterion for acceptable theories of individual or collective norms must not only be derived from individual attributes but rather from individual judgements. This methodological requirement is a specification of the one which was discussed as I-1. It will be discussed as "I-2" whereas the alternative b which directly relates to social institutions will be discussed under "I-3".

I-2: Assumption: Individuals are the best judges of their own welfare; i.e. they know best what is 'good' for them.

Methodological norm: All value judgements must be derived from individual judgements or values revealed by individual choices. In the evaluation of society only individual judgements or choices need and may be taken into account.

Roughly the same remarks as those made in the discussion of I-1 would apply to the methodological norm entailed in I-2. Therefore, in the present context I will concentrate on the assumption allegedly lending support to the methodological norm contained in I-2.

There are at least three ways to interpret the assumption of the thesis I-2:

I-2a: Definitional competence: 'Better' in terms of value simply means that an individual according to his or her own judgement or own choice regards some alternative as better than another one.

I-2b: Factual competence: As a matter of fact people always know better what is 'good' for them than any external observer could.

I-2c: Prima facie competence: In finding out what is 'good' for people there is no general method which would be as reliable as to accept the individuals' own judgements.

I-2a: Definitional competence of the individual is reached if one should stipulate that 'better' in terms of value simply means that an individual prefers some situation X to a situation Y. There are still two possibilities here: First, an individual to his or her best knowledge says (in advance) that he or she prefers something; secondly, that the preference is deduced from choices after these have taken place (which essentially seems to be Skinner's definition of 'better', cf. 1971, chap. 6, and would be close to some stances taken by economists). Both positions if taken in the definitional sense are devoid of empirical content. As definitional conventions they cannot be wrong.

Nevertheless, such conventions can be more or less adequate in the sense of being more or less fruitful, precise, similar, and simple. As the foregoing definition does neither allow for a criticism of expressed preferences nor of revealed choices in terms of better or worse it would clearly lead to an explication which would deviate inadequately from ordinary usage. Further, we would still need other words or terms to describe what we are doing in assessing our own as well as the choices of other people as better or worse for our- or themselves (cf. also recently Hirshman 1985).

Still, the economist may not be convinced. For him a 'definitional strategy' lies close at hand. One could easily argue that the Ramsey-v.Neumann-Morgenstern measure of expected utility as an 'operationally acceptable' measure of individual 'value' does not allow for anything else but the individuals' own preferences about risky choices or lotteries. This, it might be said, is what after all 'value' can and should mean as a methodologically acceptable term.

But this proposal severely restricts the theoretical perspective. For instance, it is misleading to say that somebody is acting in a certain way because he or she wants to reach a higher utility in the Ramsey-v.Neumann-Morgenstern sense. This kind of utility as such is simply not one of the reasons for action. What a person wants to get are preferred states which are merely represented by utility. Instead of this, in classical conceptions of value or utility this 'variable' was used to explain what individuals did or do. Utility was not merely a shorthand representing individual preferences for broader theoretical purposes (e.g. those of game theory) but had as such an 'emotional' quality. Utility was something and not merely a representation of something. It could be consumed and was not merely an indicator of preferred alternatives of consumption. It was a motive on its own standing and therefore could be used as a primary reason for action to recommend what individuals should do.

Contrary to that, the modern utility notion only indicates what to choose if the reasons for choice are already given. Insofar this notion of utility cannot be used to recommend or criticize choices on the primary level of motivation. (To be sure, it can be used to criticize miscalculations etc.) But, people act under the influence of their own imagination. They imagine how they would feel if certain states of affairs should be reached etc. In this context the concept of value and utility gets a twist which is very different of that of merely representational utility. As economists we all tend to forget about this fact from time to time and then we end up in a 'definitional trap' which we should try to avoid in our efforts to explain and recommend certain courses of action. The concept of value may be 'reduced' to a representing utility function only for certain but not for all purposes (cf. for the foregoing 'standard observations' the particularly clear exposition in Baumol 1972, chap. 22).

I-2b: One may also stipulate that individuals as a matter of fact always know best what is good for them. This, as well as the definitional approach does not allow for exceptions. Therefore it is welcomed too by those who want to provide a foundation for rights claims which do not allow for any exceptions. But, at the present moment we are still discussing methodological rather than institutional individualism. Thus, quite apart of its doubtful logical credentials, this attempt to justify an institutional order directly on the basis of such a claim can be neglected. We have to consider only the methodological level of argument. On this level the premise that individuals as a matter of fact always know best what is good for them can only gain some *prima facie* plausibility if the approach becomes thoroughly particularistic.

For instance, children are not and cannot be regarded as being competent in this sense. Even after growing up many people are not, at least not without exception, the most competent judges of their own welfare. Therefore I-2b must either be interpreted as a general thesis which is meant to hold only for a proper subset of individuals or - which roughly amounts to the same - the term 'individual' has to be defined in a way that would make the thesis true by definition. In the latter case only those 'entities' for which the thesis holds true are admitted to the set of individuals. Though such a 'selfselection' of applications cannot generally be excluded from scientific procedure for methodological reasons alone it should be quite clear that it should be excluded in the present case.

On the other hand, if one does not take resort to such definitional 'tricks' some rather strong empirical claims about knowledge are implied in I-2b even if we confine the thesis to a subset of individuals. These claims could become plausible only under the assumption of a kind of principally privileged access to one's own preferences which allows for no exceptions. I would not think that such a point of view in the last resort could be defended.

I-2c: Individuals are only prima facie regarded as best judges of their own welfare. According to this view there is a general theoretical presumption that the best welfare judgements available for theoretical purposes are those made by the individuals concerned. Therefore sound theory - especially normative theory - should tentatively start from what is regarded as valuable by the individuals concerned.

This argument is not without merits. Nevertheless, most individuals will enter situations in which there can be some expert who might be a better judge of value (especially future value) and who could better tell them how they should decide and how they should live than they could do themselves.

On the methodological level the difficult problem arises of how to characterize those situations which involve superior competence of the theoretician. On the level of evaluating social institutions things might be more simple. It seems to be quite plausible that there is no reliable institutional alternative to letting individuals decide themselves. Individuals should at least be entitled to choose themselves whether they want other individuals to choose for them.

In general it may be plausibly argued that on the institutional level we should stick to general rules or precepts stating that individuals are to be treated as if they were without exception the best judges of their own welfare including the decision to delegate such decisions to an agent. But, this is quite far away from the original assumption of competence allegedly supporting the normative claims in I-2. It is no normative requirement of the methodology of forming adequate (normative or descriptive) theories. Instead of this it proposes certain forms of social institutions. It is not a meta-theoretical requirement about the adequate formation of normative theories of social institutions anymore. It is itself an institutional proposal or, for that matter, a normative theory of how to form 'good' social institutions. This leads to the third kind of individualism relevant in the present context: (moral or legal) institutional individualism.

I-3: Society should treat individuals in its moral and legal institutions as having rights which may not be changed without preceding consent.

The thesis is usually specified in at least two ways:

I-3a: We should respect the value judgements of other individuals regardless of whether we think they are wrong or right. Therefore we should treat individuals as autonomous or as having the (moral and legal) right to do whatever seems fit to them as long as this does not conflict with the same institutional right of other individuals.

I-3b: Individual agreement must form the basis of any normatively justified change of institutional rights. Ultimately the only acceptable rule of changing collective institutions is unanimity. Only unanimity can guarantee that I-3a - the priority of individual autonomy - is not violated and unanimity may be suspended only unanimously in constitutional choice.

I will refer to both I-3a and I-3b as one claim I-3. This claim, though with some qualifications, forms the core of modern (contractual) libertarianism. According to this approach the idea of the autonomy of the person requires that persons choose themselves even if they choose wrongly. I-3 does neither depend on the assumption that individuals have privileged

access to their own data - which in a prima facie sense they certainly have - nor on the conviction that other individuals never could know better - they certainly can sometimes. This institutional variant of individualism requires that the decisions of other individuals - as far as they are self-regarding or stay within the individual sphere - should be respected without exception. Even if other people may know better than the decision makers themselves what a good decision would be like they are not institutionally entitled to interfere without prior consent. I-3 is simply a rights thesis.

The thesis is a normative or prescriptive requirement imposed on the choice of moral as well as on the choice of legal institutions. It informs libertarian institutional and, in particular, constitutional choice. Above all it seems to be the central normative premise of Buchanan's 'constitutional economics' (cf. on that esp. Brennan/Buchanan 1985).

If one subscribes to I-3 one should be well aware that it cannot - at least not without additional assumptions - and should not be defended by recourse to one of the theses in I-1 to I-2b. The adherent of the moral claims of institutional libertarianism would only weaken his or her position by making it conditional on such factual and methodological claims as analyzed before. (Buchanan 1975, regardless of all the other merits of his analysis, at least sometimes provokes the impression of doing just that.) The libertarian should try to convince people by boldly arguing in favor of his or her normative position. He or she should refrain from trying to seduce them to accept I-3 with suggestive but in the last resort refutable references to I-1 to I-2b.

Especially I-2 provides neither necessary nor sufficient reasons for the libertarian rights thesis. Some other reasons for I-3 must be given. This is necessary though many libertarians regard I-3 as simply self-evident. But, this, it is not. For instance, in its more radical variants it would preclude all forms of paternalism. This requirement is not easily defended if we refrain from disguising basic forms of paternalism as 'prevention of externalities' or redefine rights in a way generally allowing for some sorts of paternalism. Both strategies, in any case, would lead to a slippery slope.

At this stage of discussion adherents of I-3 quite often bring into play a new issue. This issue is related to the epistemic question of whether values can be subject to knowledge and also to the ontological one of whether there are any entities like objective values. I will refer to this issue as 'the problem of cognitivism'.

Many libertarians at least unconsciously subscribe to 'non-cognitivism'. They also assume quite frequently that there is some relation between I-3

and the epistemological position of non-cognitivism. Contrary to that, I shall argue that the problem of individualism and especially I-3 should be separated from the epistemological assumptions of non-cognitivism proper. Though there seems to be some psychological relation between individualism and non-cognitivism the latter does not 'logically' imply the former. Nevertheless, this is often suggested. - Before considering this line of argument the meta-ethical term "non-cognitivism" as used subsequently should be explicated. This usage is not confined to the discussion of modes of speech which has been characteristic for a large part of practical philosophy of recent years.

2. Non-cognitivism

According to non-cognitivism all justifications of norms have to show that the observance and/or enforcement of the norms can be expected to be instrumental to reaching given individual aims, desires, ideals etc. In this sense every 'ought' presupposes an 'is' (cf. Hazlitt 1964; Mackie 1977). All justifications of norms must be based on such means-ends relationships.

One must be careful here to distinguish the addressee of a norm and the addressee of the justification of a norm. To abide by a norm may be detrimental to the pursuit of the aims of the addressee of that norm. Nevertheless the observance and enforcement of the norm may be helpful for the addressee of the justification of the norm. The addressee of the justification may or may not be part of the community of the addressees of the norm itself.

This often neglected distinction is of the utmost importance for an understanding of non-cognitivism proper. It would merit further comments. As these would lead too far away from the main argument it should suffice to point out that looking more closely at the distinction between addressees of a norm and addressees of the justification of a norm one can easily see that actually two kinds of norms are usually involved here.

On the one hand we have norms or normative precepts to enforce norms, for instance to praise and blame certain forms of behavior, to punish them etc. These norms typically are based on factual relationships which suggest that to participate in the process of enforcing a norm would assist the enforcer in reaching his or her subjective ends. These relationships are usually pointed out in the process of justifying norms. On the other hand we have prescriptions of that kind of behavior the enforcement of which is recommended in the first type of norms. These prescriptions announce selective incentives to those individuals who are expected to abide by the norms. (Describing the process in other terms we might also

say that the enforcers in providing selective incentives - retributive actions - produce a good which is public to them.)

After all what has been said the central tenet of non-cognitivism may be rephrased in conventional Kantian meta-ethical language as stipulating that there are only "hypothetical imperatives". Justifications of these imperatives are stating a relationship between norms as means and individual aims (interests etc.) as ends. Contrary to that the cognitivist claims that besides and beyond these hypothetical imperatives and justifications there are other ways to justify norms. Knowledge of right and wrong in practical matters is not confined to the demonstration of the instrumental value of norms in reaching given aims, desires, etc.

The cognitivist claims that there are some justifications of at least some norms which in the last resort entirely stem from knowledge. They are knowledge-based in that they are not moored to some given aims, desires etc. The insights showing that these norms hold true do not reduce to insights into merely instrumental relationships. The norms are known to be correct independently from these instrumental relationships. The justifications are also not merely relative to an addressee. The ultimate justification of at least some norms does not depend on an 'is' or on the fact that some aims, desires etc. as a matter of fact are shared by the addressee(s) of the justification.

The latter norms and kinds of justification according to Kantian terminology can be called "categorical". This term should be clearly distinguished from the term "apodictic" because it is a kind of 'mere coincidence' that within the Kantian framework the categorical imperative also is supposed to be apodictically justified. As far as the problem of how to justify normative precepts as such is concerned there is no (direct) analytical relationship - neither an incompatibility nor an entailment - between apodictic and categorical on the one hand and hypothetical and non-apodictic on the other.

In summing up, cognitivism may be characterized as stating that there are some categorical norms and some categorical justifications of norms. Contrary to that genuine non-cognitivism maintains that there are no categorically justified norms but only hypothetical norms and hypothetical norm-justifications. These are two mutually exclusive existence claims either about the 'ontology of value' or the 'epistemology of value judgments'.

3. Non-Cognitivism, Individualism, and Economists

Within their science economists share the world view of non-cognitivism. Almost all of them accept that as economists they rationally can discuss

only means-ends-relationships. In a next step many of them tend to argue that institutional individualism in the sense of I-3 is a logical consequence of non-cognitivism. ("We cannot know what ultimately is right for people therefore all individuals should have the right to decide themselves.")

This could be a correct inference only if the derivation of a norm from entirely descriptive (meta-ethical) premises would be possible. Contrary to that somebody can consistently at the same time be a non-cognitivist and nevertheless reject I-3. It also cannot be true that cognitivism implies the denial of I-3; i.e. one can at the same time be a cognitivist and a normative individualist in the sense of I-3. Less formally stated these observations would roughly amount to individual convictions of the following two kinds:

a) A cognitivist may claim that she or he simply knows that I-3 is correct. Then, clearly, cognitivism and I-3 would both hold true.

That the statement a describes a logical possibility seems to be almost self-evident. Making use of the principle of universalizability this consistency-claim might even be extended. And, this extension could take place in a way which would seem very plausible to many people. If we know, they would argue, that acceptable ethical principles must be universal then we cannot have ethically justified freedom or liberty in another than a purely universal form. Therefore, Ip-3 - the restriction of I-3 to a subgroup of all individuals - is no viable alternative to I-3 for a cognitivist who assumes to know both: 1. that moral norms must be universal, and 2. that individuals should live under libertarian institutions.

The force of the last argument, of course, depends on the acceptability of cognitivism itself. From a logical point of view the non-cognitivist is free to refute it.

b) A non-cognitivist as a matter of fact may have aims, desires etc. which make it recommendable for him or her not to install I-3 - at least not for everybody. Then, non-cognitivism and non-I-3 (esp. Ip-3) go together.

This is also a quite trivial observation. It might for instance be in the interest of some individual that only he or she would have certain rights described under I-3 while other people are denied the very same rights. But, it is not trivial to agree to the moral status of the hypothetical norms showing such a person how he or she could reach this particularistic end. Many ethical theorists would maintain that norms which violate the test of universalization could not claim moral status.

The ethical theorists are mistaken. Of course, one can define or explicate the term "moral" this way. But, this would leave it as an open question whether or not such systems of norms which are exclusively based on hypothetical principles and at the same time violate the principle of universalization are viable 'functional equivalents of morality' in reality or not. This empirical or factual problem cannot be decided by a definition (cf. for a helpful discussion of related problems Singer 1973).

To be sure, even most theoretical non-cognitivists feel an inclination towards generalization most of the time they are discussing practical matters. Many defenders of I-3 amongst economists are no exception to this. At least implicitly they seem to argue that an individual i should accept I-3 - and not only that part Ip-3 of I-3 which concerns her or him or a specific group of individuals probably comprising i - as an equal right for all because i would like to have I-3 socially enforced and at the same time would know that all others share the same interest with him or her.

But, regardless of allegations to the contrary this reasoning cannot invoke the status of an analytical truth. If there is any truth in it it must be of an empirical or factual kind. This, in turn, leads to the empirical question whether somebody can accept Ip-3 and - given the laws governing social behavior of human individuals - at the same time can rationally reject its universalization to I-3.

From the point of view of a genuine non-cognitivist the justification for establishing and enforcing an equal rights system I-3 depends on both factual hypotheses and on the factual aims, desires etc. of the addressees of the justification. If individuals have the appropriate preferences, then, one will end up with the justification of a system of norms recommending the enforcement of an institutional order incorporating I-3 if not so, not.

In general to some individuals the enforcement of I-3 will seem and will indeed be justified as far as their aims, desires etc. are concerned whereas for others the enforcement of I-3 would not be justified. As long as the argument is confined to the justification of hypothetical norms one cannot do better. In particular the typical non-cognitivist 'institutional or constitutional economist' has to stay within these limits of means-ends-justifications because they are set by the basic assumptions of neo-classical economics itself (at least as they have been characterized in Robbins 1935).

4. Non-Cognitivism and the Argumentation Possibility Frontier

The last remarks should not be read as to imply that the economist sticking to hypothetical norm justifications has reached the 'argumentation possibility frontier' of his discipline. His argument about an extension of Ip-3 to I-3 has not to stop here. First, it may be repeated as a reminder that, though according to non-cognitivism the justification of norms is entirely relative to an presupposed 'is' of individual desires, aims, etc., this must not be confounded with 'egoism'. The 'is' can comprise any aims, desires, even aspirations, ideals etc. whatsoever. Therefore the interest of an individual usually will not be confined to his or her personal freedom or liberty. Secondly, it is possible if not even plausible that an individual who is interested in some liberties for him- or herself (and those who are near to the individual) may find out that it is instrumental to his or her own aims to have I-3 installed and not merely Ip-3 as a particularistic version of I-3 which would comprise only a subgroup of the population in which person *i* takes a direct interest. Ip-3 empirically - for some reason or other - may require that one participates in the enforcement of a general libertarian system I-3.

The non-cognitivist justification of I-3 could then roughly run along the following lines: If you, the addressee of the justification, want to have Ip-3 installed for your particular group then you should accept I-3. You should participate in its enforcement because this is instrumental to your own ends. I-3 is the only instrument available for reaching Ip-3.

Plausible as it may seem, this thesis, nevertheless, depends on whether certain empirical hypotheses are true or not. These, in turn, give rise to quite complicated considerations. The 'because' is not a straightforward one anymore. It depends on factual preferences and complex social relationships. - This is quite different from straightforwardly turning the thesis that there are no truth judgements in politics (and practical affairs in general) into the requirement that we 'therefore' should regard unanimous, if purely subjective, agreement as basic to the justification of political rules, norms, or institutions.

5. Shifting out the Argumentation Possibility Frontier

Many non-cognitivists feel uncomfortable with the assumption that I-3 is based on nothing but 'mere' preferences and some hypothetical or instrumental judgements which relate it to Ip-3 (and the aims, desires, etc. which are pursued by adopting Ip-3) within the non-cognitivist framework of means-ends-relationships. Therefore these theoreticians are searching for somewhat 'stronger' reasons which might demonstrate that individuals should respect the rights of other individuals. They are looking

for an argument which would be compatible with their own framework and at the same time suggest that rational individuals should strive for a system which grants the same rights to all of them. The non-cognitivists seem to expect too that this argument should be easier to grasp than the rather complicated empirical considerations about possible relationships between I-3 and Ip-3 and individual interests. They finally tend to assume that unconditional statements allowing for no exceptions would form a better and psychologically more effective foundation for libertarianism than conditional statements would.

Sometimes it is also argued that everybody if looking at his or her true interests would simply 'see' that it is in everybody's interest to have I-3 enforced by society. Those who are not willing to accept I-3 are allegedly in error as far as their own interests are concerned. But, here, one may ask how this argument would match the thesis I-2 which is often accepted by the very same theoreticians who now argue from the true interests of everybody.

Still, some of those who wish to have I-3 installed may claim to know that those who do not accept I-3 share unconsciously some aims, desires etc. which would make it their own true interest to enforce I-3. But, as a matter of fact they do not want to! They even do not feel obliged to hope that I-3 be true. They want something else. The non-cognitivist adherent of I-3 will eventually run out of arguments.

The crucial normative issue which is involved here comes up most clearly if the adherent of I-3 does presume that those who reject I-3 as a matter of fact do know best what is 'good for them'. The tolerant non-cognitivist who accepts I-3 cannot let the others have their way as far as I-3 itself is concerned. He or she also cannot treat these people as if they knew best and again let them have their way. To be tolerant in this way is not viable for the adherent of I-3. For, I-3 amounts to an institution from which nobody is to be excluded or can claim to be excluded. As an institution I-3 is a public good or bad (a point which esp. Kant made in his "Metaphysics of Morals"). Therefore, from the point of view of individual interests and of interindividual agreement the situation looks somewhat like a stalemate if a partition of society into two different sub-groups, one with the 'public good' I-3 and one without it is not possible.

For the non-cognitivist there seem to be at least two ways out. The first arises from frankly accepting the fact that in the last resort the problem will be solved in a kind of Hobbesian struggle for power. This is quite similar to Popper's remark that we must be intolerant as far as the intolerance of the intolerant is concerned. The non-cognitivist adherent of I-3 - presumably, though not necessarily, using it as an instrument towards Ip-3 - strives to get his or her way within this struggle and may

succeed or fail. But, then, the non-cognitivist adherent of the equal rights ascription I-3 should accept that he or she is exerting an externality on those who as a matter of fact do not develop preferences which coincide with what even may be their own 'true' interests.

Nevertheless these non-cognitivist libertarians still might want to shift out the 'argumentation possibility frontier' somewhat further. This will lead to a second route of escape from the stalemate. This second way out starts from the insight that for every social practice what people think about that very practice is part of the practice itself and may play a crucial role within that practice. It may be argued that the somewhat simplistic model of Hobbesian struggle for power has to be modified accordingly. It still can and has to be admitted that in the last resort Hobbesian struggle will prevail. But, by introducing human conscience and its relationship to certain modes of thinking (and thus parts of Popper's 'second' and 'third world' so to speak) we get a much richer picture. New arguments about the rational pursuit of interests become relevant because additional strategies of individually rational behavior like influencing public opinion, indoctrination, or rational argument itself are to be considered.

Even libertarianism and its 'natural twin' contractarianism can enter that picture and can possibly play an important role. A non-cognitivist libertarian could argue that it is in the interest of certain persons - for instance those who want to live under a legal order enforcing Ip-3 at least for themselves - that individuals in society would think about the legitimization of social institutions in contractarian terms. This seems to be the view which some non-cognitivist libertarians are gradually taking. They propose contractarianism as a "civic religion" (notably Brennan/Buchanan 1985, esp. chap. 9; the whole book ending on a paragraph prospecting "toward a civic religion"). I think that this approach merits further development. If certain empirical conditions prevail a contractarian civic religion indeed might influence social practice in a manner which could assist the addressees of this justification to reach their own goal Ip-3 (or, going one step further in the hierarchy of justifications, those aims, desires etc. that gave rise to Ip-3).

It might also be speculated that a conviction system like 'contractarianism' for empirical reasons might lend the strongest support possible to a libertarian constitution. Individuals who tend to think about constitutional politics in terms of a conceivable unanimous contract and who in their imagination judge policy measures according to the standard of conceivable agreement of all individuals concerned should be less prone than others to invade into the sphere of other people.

(To be sure, the traditional contractarian argument that those contracts that would be agreed on by a community of rational individuals in some

fictitious situation can directly commit real world actors to certain actions is mistaken. For, either one has to claim that without further argument it can be known that contractarianism is the correct basis for norm-justification, or, one would end up with the thesis that those commitments that fictitious actors would make in a fictitious situation would bind real world individuals. The first alternative is not viable for the non-cognitivist. The second alternative is evidently mistaken too. It seems to be completely clear that a contract can only apply to those who have been party to it. Therefore, to repeat an old argument, a fictitious contract between fictitious individuals will apply to fictitious individuals only. Taking together the discussion of the last two alternatives, under non-cognitivist premises a direct application of contractarian arguments to the justification of I-3 seems to be excluded. Further, even the application of the notion of a contract as a criterion requires justification. Why should the non-cognitivist be bound to use this criterion? Nevertheless, it may still be asked whether contractarianism might not be useful in a more indirect way.)

Looking at contractarianism this way would defend it as a public ideology which in the last resort will support the pursuit of individual interests. Whether this defence will in fact lie within the argumentation possibility frontier of non-cognitivism depends on empirical circumstances. It is an empirical question too whether there will be selective incentives which make it individually rational for a sufficient number of people to support and inculcate this kind of ideology. Here we may hope that expressive behavior in situations where it has only low opportunity costs might be gratifying in itself. But, however we will solve these problems - which, by the way, are in general characteristic for any non-cognitivist approach to practical judgements - the social contract will bear the character of a public ideology or, for that matter, a civic religion and not that of a normative argument which as such has a claim to validity.

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