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“Can the Social Contract Be Signed by an Invisible Hand?”—A New Debate on an Old Question*

The title of this special topic in RMM is borrowed from a paper of Hillel Steiner (1978) in which he argues against Robert Nozick’s (1974) invisible hand conception of the emergence of the state. Steiner believes that central institutions of social order such as money and government need some form of conscious endorsement by individuals to emerge and to persist over time.

The idea to take this old—but still central—theme of the debate on the origin of social order as one starting point in a new attempt to evaluate the conception of a social contract was borne when Tony de Jasay (2010) criticized Bob Sugden’s plea for a Humean version of contractarianism (2009, this journal).

To Robert Sugden it seems perfectly consistent to be a Humean and a contractarian at the same time. To be sure: as an economist in the tracks of David Hume Sugden rejects the idea of explaining or justifying the fundamental social institutions by reference to some *original contract*. From a Humean point of view these institutions are simply the outcome and manifestation of social conventions. However, the relevant conventions are of a particular kind. They are promoting the common interest and can ultimately be characterized as a specific form of mutually advantageous social exchange: I abide by the social rules in exchange for your corresponding compliance. The concept of a contract, argues Sugden, is best suited to capture this “politics-as-exchange” (Buchanan 1987) conception of basic social institutions since a contract is typically based on reciprocity as well as consent.

Anthony de Jasay responds that no alleged common interest—neither actual nor hypothetical—can ever suffice to justify what he calls “a rule of submission”. Subordinating the pursuit of individual interest to collective command is never possible in full agreement. But, no such subordination is actually required in the emergence and maintenance of the relevant conventions. Neither a global feeling of reciprocity nor any normative consent is needed as a motivational force to make conventions work. For Jasay the whole point of the Humean theory of social institutions based on convention is that enlightened self-interest combined with some awareness of actually existing behavioral regularities suffice to gen-

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erate mutual adaption to conventional rules. Commitment beyond self interest is unnecessary to explain (or justify) social order.

This raises the question of the exact role of mutual advantage and the common good in a Humean account of social order.

The opponents seem to agree that the following basic observations are in principle correct:

- (1) There is a behavioral regularity in accordance with a (system of) social rule(s).
- (2) It is by and large individually rational to act rule-compliant, provided that sufficiently many others do.
- (3) It is mutually advantageous that people act in accordance with the rules.

The primary disagreement is about the relationship between (2) and (3) and their relevance in a reasonable explanation of the emergence and maintenance of the social regularity as asserted in (1). For Jasay (2) is the only premise needed to understand why individuals comply with the rules and thus to understand how the behavioral regularities and the respective social rules may emerge. Individual interest is the core of any explanation of the emergence and maintenance of social order; no reference to a common good or mutual advantage of all is necessary. It is completely sufficient that in the evolution and maintenance of the convention all adapt locally and freely. Their consent does not relate to the rule or convention as a whole. They just do what is favoring their interests in the given situation.

Hillel Steiner came to a somewhat different conclusion more than 35 years ago. In his *'Can the social Contract Be Signed by an Invisible Hand?'* he argued that institutions like money require conscious observance of rules and their shared recognition as being mutually advantageous (see also his contribution in this special topic). Thus, they cannot be properly understood as the result of invisible hand processes. Without shared intentions and normative beliefs concerning the rules as a whole they cannot work. Simply treating the conventions as social facts that do not have some overall purpose or cannot be modeled in a teleological manner 'as if' they had does not suffice.

The idea that a mutual understanding of (3) plays a major role in the emergence of the social regularity and, thus, is crucial for explaining (1) defines for Hartmut Kliemt¹ the core of contractarianism. As Kliemt may express it: a 'global perspective' on the system of social rules is a necessary and characteristic ingredient in any contractarian explanation (and/or justification) of social order. Arguably, this is exactly, what Sugden wants to endorse in pleading for a Humean form of contractarianism. In that case he and Steiner would be on the one side of the issue and Jasay (and presumably Kliemt) on the other.

On the face of it the whole dispute may seem to be about an empirical issue. What are the proper conditions to make conventions work? It also raises a history of ideas about the correct exegesis of Hume's theory of justice. Yet, there is, of course, a much more contested *normative* issue in the background.

¹ In a commentary which will be included in this special topic.

It is true, Anthony de Jasay argues in the first place that conventions in the Humean sense form a solid ground for social order and nothing but a sufficiently sophisticated account of self-interested rational behavior is needed to understand such social co-operation. But what he really seems to be opposing is not so much some false empirical belief about the functioning of social order or the motives of social compliance. Nor is Jasay attacking a specific claim about the origin of society. The main target of his critique is rather the normative conviction that some form of mutual agreement going beyond the agreements in bilateral contracts constitutes a real and not just a fictitious obligation to conform to the social rules. This, so his fear, would legitimize subordinating individual life to all sorts of collective command.

The empirical claim that social order requires a mutual understanding of the common good is, of course, crucially related to the normative conviction that such consent may in fact justify an obligation to abide by the rules of society. It will be one issue in this special topic to get a better understanding of how this is-ought relationship is actually constituted.

Within the 35 years since the publication of Hillel Steiner's paper different advances have been made in economics and philosophy that may well shed some new light on some of the fundamental issues in the debate about a contractarian conception of social order. These make us confident that a new attempt to explore the contractarian idea is well worthwhile.

In economics a new interest in the role of norms in social co-operation and exchange arose with

- the rise of skepticism about the traditional economic model of human behavior, followed by
- enhanced research in bounded rationality, and
- a shift towards behavioral economics and the behavioral sciences as a whole.

Thus new insights into the behavioral foundations of mutual understanding and social cooperation in general were generated.

In philosophy, following the re-introduction of contractarian thought by John Rawls (1972), Robert Nozick (1974) and others (see also Gordon 1976) new perspectives on the foundations of social contract theory and its normative force were facilitated by

- new attempts to define the justifying potential of a common understanding or contract (Scanlon 1982; 1998),
- the introduction of economic analysis of problems of cooperation and coordination into normative thought in ethics and social philosophy (Gauthier 1986; Taylor 1987; Hardin 1988; Skyrms 1996; Binmore 2005), and
- a growing interest in collective intentionality (see Schweikard and Schmid 2013 for an overview).

In the light of these advancements and motivated by the debate between Robert Sugden and Anthony de Jasay RMM offers a platform with this special topic to

recap on the strengths and the weaknesses of the contractarian idea and to once more explore its potential.

Those who first motivated this project, Hillel Steiner, Anthony de Jasay, and Robert Sugden, as well as a number of other well reputed scholars confirmed to contribute to our special topic. The special topic will actually start with a previously unpublished paper by Hillel Steiner, originally written in 1986, in which he extends and elaborates on his argument about money from the 1978 paper, and with an original article by Anthony de Jasay, in which he further clarifies his worries. A response by Robert Sugden will follow.

Further contributions will discuss the matter by reference to the roots of the debate in seventeenth and eighteenth century philosophy or to recent advancements in economics, the behavioral sciences or in social philosophy. Some of the contributions confirmed are already in a very elaborated stage and ready to be published soon. They are officially announced on RMM's webpage with the launch of the 'special topic'. But—as always—the project is open ended and further contributions will continuously be added.

After some time the special topic will probably reach a stage, in which it will become possible and appropriate to survey the discussion thus far and to try to draw some first and cautious conclusions. But now, at the very start of the project, no comprehensive preview of the discussion should (and can reasonably) be given.

We experienced stunning interest and, in fact, enthusiasm by the colleagues which we could win for the project. The stimulating and thoughtful proposals of contribution that we received give us all the confidence one can have that this project will evolve into a most fruitful and exciting endeavor. We are looking forward to this adventure.

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