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Individual Choice and Institutional Constraints

*The Normative Element in Classical and Contractarian Liberalism**

Abstract: Normative individualism appears to be an obvious normative premise underlying a liberal conception of the desirable social order. The shortcomings of some common interpretations of this premise are discussed and a more consistent as well as a more workable standard for assessing the 'goodness' of alternative socio-institutional arrangements is specified. With such an interpretation of normative individualism, a contractarian conception as advocated by J.M. Buchanan can be viewed as a systematic extension of classical liberalism.

I. Introduction

At the bottom of disputes over normative judgements on the 'goodness' of social arrangements are often conflicting perceptions of social reality. And at the bottom of disputes about social theoretical views are sometimes conflicting visions of what characterizes a 'good' social order. Especially where those more comprehensive systems of social thought, like liberalism and socialism, clash, it is often very difficult to identify the actual source of expressed disagreement on particular issues, because explanatory and normative presumptions are blended in a way which tends to inhibit rational discourse.

The purpose of this paper is systematically to analyze the normative foundations of liberal social philosophy, with the aim of facilitating rational discussion on liberal conceptions of a desirable social order. More specifically, my purpose in this paper is to specify the actual content of what I take to be the basic normative premise of classical liberalism and to show that a systematic and rigorous extension of this premise leads one to an intellectual position which has been most prominently advocated by James M. Buchanan (1975; 1977; 1985), a position which I will call here contractarian liberalism. In fact, to a large extent this paper is an attempt systematically to reconstruct the normative core of Buchanan's contractarianism and to supplement or further develop his arguments at some points.

The paper takes as its starting point the common notion that liberal social philosophy is 'individualistic' in a methodological and in a normative sense. Its methodological premise is that individuals are the basic units in explanations of social phenomena, and its normative premise is that the - necessarily subjective - evaluations of the individuals concerned provide the normative standard against which the goodness of social transactions and arrangements is to be judged. It is the normative premise which is of particular interest in this paper, and normative individualism, in the sense indicated, is what is taken here as the basic normative principle of liberalism. This paper will make no effort to go behind this principle and to discuss reasons for adopting normative individualism as opposed to potential alternative normative premises. The discussion here will exclusively focus on the issue of how this principle can actually be applied in comparative normative analyses of social arrangements. In other words, instead of arguing about why one might adopt normative individualism, this paper will elaborate on the conclusions one arrives at if one accepts this normative premise.

II. Exchange, Efficiency, and Revealed Choices

A most obvious feature of liberalism is its appreciation of market arrangements and its reservations towards centralized collective arrangements, a view which is derived from certain is-assumptions about the nature of social reality and from certain more general normative criteria for the 'goodness' of social states.

As a positive, explanatory theory libertarianism is based on methodological individualism: It is guided by the general idea that social phenomena are to be explained as the aggregate outcome of the interaction of individuals pursuing their interests under various constraints. Within this general perspective, markets are viewed as exchange networks, as social arrangements that can be factored down into separate two-party-exchanges. As the single exchange transaction can be explained 'individualistically', by applying certain general propositions about human action to a situation where behavior is reciprocal, so can, by extension, market processes, that are nothing else but - sometimes rather complicated - configurations of such exchange transactions.

Methodological individualism is a general meta-theoretical device for a 'proper' explanation of social phenomena. Similarly, normative individualism is a meta-normative device for a 'proper' evaluative judgement on social states. In such context normative judgements about social states have to be derived from the judgement of the 'relevant' individuals, where "relevant" means, those individuals who are involved in the social transaction or arrangement or who make up the group or community with

reference to which an evaluation is to be made. Defining the set of relevant individuals may be a normative issue in itself, it is an issue, however, which is different from and secondary to the issue of whether evaluations of social states are to be derived from individual valuations or from some other source. Since this will be discussed in more detail later, it may suffice here to point out that an individualistic criterion of evaluation can be applied to all conceivable levels of social cooperation or organization, and that, depending on the level at which the normative interest focusses, the set of relevant individuals will have to be defined more or less inclusively. We may be interested in whether an exchange transaction is 'good' for the trading parties, whether certain organizational features are 'good' for a trade union, or whether allowing trade unions to engage in particular activities is 'good' for a more inclusive socio-political community, and in each case the set of relevant individuals is to be defined differently.

From the perspective of normative individualism social states are to be judged 'good' to the extent that the individuals concerned judge them to be good. And social states are to be judged 'better' than others if they are judged that way by the individuals concerned, i.e. if they are preferred by these individuals over potential alternatives (Buchanan 1975, 2; Mises 1957, 54). Interpreted in this way, the evaluative standard applied by normative individualism is 'hypothetical' - contingent on some supposed interests of some persons - rather than 'categorical' - claimed to be valid independently of those interests (Kliemt 1986). And it is an internal criterion; it is internal to the respective group of individuals. Hence, normative individualism is not only at variance with any evaluative approach that evokes criteria or standards of 'goodness' that are defined independently of or claimed to be superior to what any conceivable set of individuals may consider as 'good'. It is by necessity allied to subjectivism, in the sense of stressing the necessarily subjective character of individual valuations. And it is essentially at variance with paternalism - the position of an observer claiming to hold superior insight into what is 'good' for the respective set of individuals.²

There are important implications of the view that the subjective evaluations of the individuals concerned are the relevant standard against which the 'goodness' of social states is to be judged. Since an external observer cannot claim any direct access to an individual's subjective valuations, information about the 'goodness' of social states can only be obtained indirectly, from observable responses of the respective individuals, from their verbally expressed judgements and/or from their actual choices. There are various reasons for considering verbal responses a less reliable indicator of people's actual preferences over alternatives, and to the extent that one shares the economist's typical suspicion of verbally revealed preferences ("words are cheap"), it is primarily by actual choices among

alternatives that an observer can reliably judge what a person prefers (Buchanan 1966, 32; 1977, 102). That people's actual choices are considered to provide the relevant evaluative criteria against which the 'goodness' of social states is to be judged means, however, that the normative focus shifts from endstates or outcomes, as such, to the process through which these outcomes or endstates emerge. The goodness of social states is judged indirectly, dependent on whether the process by which they have been brought about can reasonably be assumed to reflect what the respective individuals prefer. To the extent that what individuals prefer can only be inferred from revealed choice behavior, normative judgements on social transactions and arrangements have, by necessity, to refer to the way the individuals concerned make their choices (Buchanan 1975, 6).

It is on the basis of these considerations that the normative criterion embodied in a liberal notion of 'efficiency' in voluntary exchange and competitive market arrangements has to be specified. By classifying the results emerging from competitive market processes as 'efficient', one is assessing the outcomes of these processes as 'good', judged against some measure of value (Knight 1935, 42). If this measure of value is to be consistent with the premises of normative individualism as sketched out above, it obviously cannot be defined independently of the subjective evaluations of the individuals concerned. A subjectivist individualist notion of efficiency, by necessity, has to refer to what the respective individuals judge as good.

When one characterizes the outcomes of voluntary exchange and of competitive market arrangements as efficient, one is, in effect, arguing that the processes by which these outcomes are brought about are 'good' in the sense that they are based on individual choices that reflect the individuals' preferences. It is, apparently, such a criterion of goodness that is implied when voluntary exchange is characterized as efficiency-increasing, or is termed a mutually beneficial or value enhancing transaction, a transaction that makes the parties to it better off (Buchanan 1977, 136; Rothbard 1970, 72). Characterizing voluntary exchange as a mutually beneficial transaction does not impute some standard that allows for judging the outcome independently of the transaction itself. Rather the implicit argument is that, by its very nature, voluntary exchange is the paradigmatic example for a 'good' transaction, since it will only be carried out if both parties agree to it and voluntarily choose to engage in it. By their voluntary choice both parties reveal that the terms of the transaction are more attractive to them than what they consider as potential behavioral alternatives. It is in this sense that voluntary exchange is said to be 'mutually beneficial', that both parties are considered better off - better off in terms of their own values and according to their own perception of potential alternatives.

It is as a natural extension of the above argument that efficiency attributes are assigned to competitive market arrangements. If the outcome of voluntary exchange can be judged as efficient, and if a market is nothing more than a "network of voluntary interpersonal exchanges" (Rothbard 1970, 77), one may conclude that market outcomes can, by inference, be characterized as efficient. The efficiency of the market arrangement is derived from the efficiency of the elementary transactions, i.e., the voluntary exchange transactions, that make up the entire arrangement.

III. Voluntary Exchange and Restricted Choice

The above reconstruction of normative individualism as the basic normative premise behind the liberal notion of market efficiency may seem to be quite straightforward, yet, upon closer examination the need for further specification becomes apparent.

The basic problem is that the subjectivist-individualistic criterion, as specified above, seems to lose any normative content as soon as attention is drawn to the fact that each and every observed choice can be said to indicate what the choosing person judges to be the better among potential alternatives, given his valuations and the constraints he faces. The notion that the market process is entirely a resultant of choices made by individuals, and that the state of the market is determined by "value judgements of these individuals and their actions as directed by these value judgements" (Mises 1949, 259) reflects no more than methodological individualism and does not carry any normative significance. A perfectly parallel argument can be made for any social arrangement - including the Gulag Archipelago.

If people's actual choices rather than, e.g., their verbal responses to hypothetical questions are taken as the relevant indicator of their preferences - and, as mentioned above, there are reasons to consider verbal responses a less reliable source of information -, ³ then any two party transaction actually carried out is necessarily 'mutually beneficial' in the sense that - given the constraints they are facing - the contracting parties prefer engaging in it to alternative courses of action that might have been taken. In this sense the 'money for life' exchange between a robber and his victim is no less 'mutually beneficial' than an exchange between buyer and seller in an ordinary market context. Of course, the victim will probably be much less satisfied with the transaction than the customer in the latter setting, but somebody who has to settle for less favourable terms than expected may be 'dissatisfied' with a market transaction as well. A person's satisfaction with the terms of the transaction will depend on his expectations which again reflect his - direct and indirect - past experiences. But as far as actual choices are concerned, it is

the potential alternatives at the time of choosing rather than some past experiences or some pre-exchange status quo that provide the relevant reference point for considering an exchange a transaction that makes both parties better off.

An obvious conclusion to be drawn from the above considerations is that, in order to be normatively contentful, the qualification of market exchange as 'efficient' has to rely on a criterion different from the one implied in the notion of a 'mutually beneficial' transaction. One obviously has to concentrate on the kind of restrictions or constraints under which individuals engaging in social transactions make their choices, and it is, apparently, the qualification of exchange and choice as voluntary that refers to these restrictions and carries the normative thrust of individualist-subjectivist value judgements.⁴ Accordingly, in order to specify what is meant by "voluntary choice" and "voluntary exchange", one has to somehow qualify the conditions under which the respective choices are made.

It is a common notion that a choice can be said to be voluntary if coercion is absent, though there seems to be less agreement on just how "absence of coercion" can be analytically defined.⁵ From the controversial comments on the issue (cf. Hayek 1960, 11 ff., 133 ff.; Hamowy 1961; Hayek 1961; Nozick 1974; Rothbard 1980; Schmidtchen 1985) some conclusions can be drawn, however, a first and fundamental one being that the notion of coercion cannot be simply based on the elementary fact that the set of potential alternatives among which individuals can choose is limited (due to physical constraints, income constraints etc.) and that their choices are subject to opportunity costs, that is, that choosing one thing means sacrificing something else. That choices are restricted in this basic sense is a pervasive and incurable fact of human life which does not allow for any normative discrimination. Another obvious conclusion is that the notion of "coercion" typically refers to restrictions that result from human action rather than from 'natural' conditions or events not subject to human control, a specification, though, which adds little discriminatory content, since the fact that people impose restrictions on the choices of others is an equally pervasive and incurable aspect of social life. Even if one excludes those restrictions that emerge as an unintended result of human action and concentrates on those restrictions that are deliberately imposed, one would still be left with a criterion of modest discriminatory power. Apart from the problem of how one can clearly distinguish between those restrictions that are deliberately imposed and those that only result unintendedly, there remains the irritating fact that, wherever one observes social interaction, one will find individuals attempting to influence other individuals' actions by manipulating, in one way or another, the conditions, constraints or restrictions under which these individuals are making their choices. Trying to influence other individuals' choices by altering the constraints they face is a pervasive strategy in all human interaction, it is not some-

thing upon which the sought for discrimination between voluntary and coerced action can be based. Rather, what seems to be required is some criterion that classifies the measures by which other peoples' choices are influenced into two categories: (1) Those measures the use of which does not invalidate voluntary choice, and (2) those measures the use of which constitutes coercion.

There is one criterion ready at hand that would seem to allow for a relatively clearcut distinction, namely, whether or not the measures taken violate a persons' rights. According to this criterion, coercion would be present if a person's choices are influenced by measures violating his rights, while being influenced by measures that do not violate his rights would not invalidate the voluntary character of his choices. The problem with such a notion of coercion becomes apparent upon a closer examination of precisely what is meant by "rights" (Schmidtchen 1983, 8 ff.). Two alternatives seem to exist. The rights that serve as the relevant standard are either thought to be defined by some set of absolute norms or rules the validity of which can be determined independently of what, *de facto*, is defined and enforced as 'rights' in particular social communities. Or they are considered to be defined by the rules and norms that are actually recognized and enforceable in some sense in a social community. From the first interpretation a general demarcation between 'voluntary' and 'coerced' choice could be derived, but, as will be argued in more detail later, recourse to such absolute rights would seem to be a somewhat dubious way of specifying the normative foundations of a subjectivist-individualistic conception.

If, on the other hand, rights are considered a matter of social recognition, they can only be specified relative to particular social settings. People can be said to have socially recognized rights only with respect to some defined social community in which these rights are respected, due to some - formal or informal - social enforcement. Those rights are essentially defined by the 'rules of the game' (the laws, social norms, conventions, etc.) that govern social interaction in a particular social community. To the extent that these rules vary from community to community, the rights persons have, and hence what is to be regarded as coercion, will also vary.

If socially recognized rights are to provide the relevant criterion, then saying that an individual is exercising coercion on someone else is equal to saying that he is using measures that violate the other person's rights or, in other terms, that violate certain rules of the respective social community. That is, a transaction would qualify as 'voluntary' as long as it is carried out in a ruleful or lawful manner, whatever the actual rules or laws of a particular social community are - including the rules of a totalitarian system - , a notion which hardly seems to reflect the normative

thrust of an individualist-subjectivist notion of voluntary choice. The obvious conclusion is that, in order to be normatively meaningful, the distinction between voluntary and coerced choice cannot be drawn by reference only to an individuals' 'rights' as actually defined by the rules of a particular social community. Instead, the rules that are - formally or informally - enforced in a social community are themselves to be considered an essential part of the restrictions that are imposed by human action, and they are to be normatively judged as such. Rather than being defined in terms of these (socially variable) rules, a normatively significant notion of voluntary choice has to be defined as a standard against which the rules themselves can be judged.⁶ A notion of voluntary choice which allows for an evaluative judgement of the rules themselves, obviously has to be the essential element in an individualistic procedural conception.

IV. Voluntary Choice and Opportunity Costs

There are basically three potential ways to specify a criterion for discriminating between voluntary and coerced choices that is independent of the prevailing sets of rules in particular social communities. As mentioned earlier, one way would be to define individual rights in some absolute sense, a notion which is notably exemplified by natural rights conceptions. The above analysis has made apparent some of the difficulties faced by an attempt to specify the normative content of the liberal notion of voluntary exchange. Given these difficulties it is not surprising that some authors in the liberal tradition have taken recourse to the notion of natural rights (e.g. Nozick 1974), a recourse, however, which raises a fundamental problem: Either the notion of natural rights implies no more than just 'empty formulas' - like "to each his own" - upon which one cannot disagree simply because, per se, they are without normative content (Topitsch 1965), but which, for the very same reason, provide no guideline for normative judgement either. Or, the natural rights notion is interpreted in a contentful way, in which case some criterion is needed for how disputes among conflicting views of what these rights are can be settled (Mises 1949, 282). The natural rights theorist seems to face the following choice when specifying such a criterion: Either he considers the judgements of the individuals in the respective social arrangement to provide the relevant criterion for what these rights are. Or he makes the claim that a valid interpretation of these rights can be derived from some source independent of and superior to the individuals' own judgements.⁷ Reasons of internal consistency seem to require a liberal natural rights theorist to choose the first alternative, since it would be an apparent contradiction in terms to start from the premise that individuals' subjective evaluations are the ultimate source from which judgements about the 'goodness' of social states are to be derived and then to specify the normative content of this premise by recourse to principles that are defined independently of

individual value judgements. If, on the other hand, the first alternative is chosen, it is hard to see how a definition of rights can be provided along any other line of argument than the individualist-procedural notion explicated in this paper. That would imply, however, abandoning the claim that rights can be defined in absolute terms, independent of actual social recognition.

A second way to specify the notion of voluntary choice independently of the rules actually governing interaction in particular communities, would be to apply the procedural individualistic criterion of 'goodness' to the rules themselves: Those interactive processes are to be judged as good that are based on good rules, and what good rules are is again to be judged against a criterion of goodness applied to the process from which these rules emerge. This line of normative reasoning, drawing the normative judgements on social processes back to the rules upon which these processes are based and to the processes from which these rules again emerge, plays a central role in contractarian liberalism (Buchanan 1977, 293). While a detailed discussion of this line of reasoning will follow in later parts of this paper, it should be noted here already that this way of specifying the normative content of an individualistic procedural criterion shares the problems inherent in all arguments that lead to an infinite regress. The logic behind a subjectivist-individualist-procedural notion is that, instead of specifying a criterion for evaluating social outcomes as such, a value judgement of the following kind is made: "To the degree that social processes are good - measured against some criterion X -, the outcomes of these processes can be judged as good." The normative content of this procedural notion is obviously dependent on how the "criterion X" is specified. The argument that a process is good to the extent that the rules upon which it is based are the outcome of a good process, is no substitute for a specification of what "criterion X" is. If, however, such a substantive criterion is specified at all, then there is no reason why it should not be applicable to all levels in the chain of procedural arguments, to intermediate and final processes no less than to initial or original ones.⁸

There is a third way of specifying the notion of voluntary choice that aims at a substantive criterion for determining what is a good process. Although it does not offer a clearcut distinction between voluntary and coerced choices, this third way seems, at least, to allow for a comparative evaluation among types of social arrangements. This third interpretation focuses on an essential argument that obviously is behind the idea that a voluntary exchange transaction reliably indicates what both parties 'prefer', while a coerced transaction does not. The argument is that the parties to voluntary exchange could easily, that is: at low costs, choose to refrain from engaging in the transaction (Buchanan 1966, 33). In contrast, a coerced transaction is seen to be characterized by the fact that avoiding

the transaction would be particularly costly to the party subject to coercion. According to this interpretation, the cost of choosing some other alternative than the one actually chosen is a crucial variable for judging the degree to which an individual's choice qualifies as voluntary. More precisely, a person's choice to engage in a particular social transaction would seem to be the more voluntary, the less the opportunity costs at which he could refrain from or withdraw from the transaction. To be sure, such a definition of voluntary choice in opportunity cost terms requires some specification. Since, as argued above, the term "coercion" is used specifically for constraints imposed by human action - rather than by 'nature', - not all choices which could only be avoided at considerably high opportunity costs are to be regarded as being coerced choices in a normatively relevant sense. If the high opportunity costs are due to constraints that are not imposed by human actions, this would not be coercion in a sense that is of interest here. In addition, "coercion" would not appear to be a proper label for a situation where an individual A induces a person B to engage in a particular transaction by making just that particular transaction far more attractive to B than potential alternatives, say, for instance, if A offers B a million dollars for polishing his shoes, as opposed to pointing a gun to B's head when asking for the same service. According to its common use we would want to reserve the term "coercion" for those situations where A increases B's opportunity costs of avoiding a particular transaction by making potential alternatives less attractive, either by erecting certain kinds of barriers or by manipulating in some other way the benefits B may expect from choosing alternative courses of action.

For the reasons mentioned as well as for other reasons which will be discussed later in this paper, the opportunity cost criterion by itself does not allow for a sufficient and unambiguous definition of what is meant by "voluntary choice". And much of the following discussion will be about the qualifications that are needed in order to place it in a normatively significant context. As an interim statement, though, it may be concluded from the above considerations that the single coherent normative premise implied in liberal individualism can be phrased as follows: The more the individual choices of which a social transaction or process is made up are voluntary and the less they are coerced (in terms of the opportunity cost interpretation outlined above), the more the transaction or process - and, by inference, its outcomes - can be judged to be good or efficient in the sense that the individuals involved are able to pursue their own purposes in ways that are mutually compatible with each other (Hayek 1978, 133).

The liberal argument for competitive market arrangements can be interpreted as a direct derivation from this premise. As a general effect, competition tends to increase the availability of alternative options and thus to lower the opportunity costs of refraining from engaging in a

particular transaction (Mises 1949, 283; Buchanan 1983, 9). To the extent the rules on which market arrangements are based encourage competition, market arrangements can be said to be based on voluntary exchange and, hence, on social transactions that are to be judged as good according to a procedural individualistic criterion.

V. Markets, Efficiency and Collective Action

Since the outcome of a voluntary exchange transaction is efficient in the subjectivist-individualist sense, and since markets are nothing else but complex networks of exchange transactions, it seems to be a quite natural conclusion, that, so long as the voluntariness of each and every exchange transaction is insured, the positive evaluation of a single voluntary exchange transaction and its outcome can be generalized to the aggregate outcomes of market processes. Hence, it might seem as if the above specification of the evaluative criteria implied in normative individualism directly leads to a preference for market arrangements, and, indeed, it seems to be the basic thrust of libertarianism that there is a direct link between normative individualism and a preference for market coordination. However, there are some arguments deserving consideration that weaken the apparent logical connection between normative individualism and a general preference for market arrangements, arguments that are familiar from discussions on externalities and public goods.

As the discussion on externalities has emphasized, the fact that a separate exchange transaction is based on voluntary choices of the two trading parties does not necessarily imply that the aggregate outcome of a market process qualifies as reflecting voluntary choices of all parties concerned. If an exchange transaction affects the wellbeing of individuals, other than the contracting parties, it imposes restrictions on these third parties' choices. This raises the issue of whether, when these third parties are considered, the outcome of voluntary exchanges still can be regarded as socially efficient, in the sense of reflecting the voluntary choices of the individuals involved.

A common line of reasoning would suggest that - in a competitive market context - third parties who feel affected would have the opportunity to modify the respective transaction by making a more attractive alternative offer to one of the trading parties (Buchanan 1975, 38). According to this argument, by not interfering a third party would indicate that it voluntarily chooses to tolerate the effects of the respective transaction. The problem with this kind of reasoning is that, notwithstanding its reference to the notion of voluntary choice, it does not carry the normative meaning it is intended to carry. As used here, the term "voluntary choice" only implies that, under the conditions given, i.e.

under the restrictions imposed by other individuals' exchanges, the third party chooses what, according to its own subjective evaluation, seems to be the best alternative. As explained above, in order to have the normative significance that the notion of voluntary choice is supposed to carry in an individualistic procedural framework, it is necessary somehow to qualify the restrictions, in the present context the restrictions imposed on persons outside the exchange relation. That is, with regard to external effects as well, there is a normative distinction to be made between two categories of restrictions, now: the restrictions imposed on C by an exchange between A and B, a distinction between those restrictions that are judged as coercive, and those that are regarded as not invalidating the voluntary nature of C's choice.

Since literally all exchange transactions - or, for that matter, all actions taken in a social setting - can be said to have some external effects on third parties (Knight 1935, 53), in any community there must be some de facto line drawn between those external effects that are judged as 'admissible' (to be tolerated) and those that are regarded as 'inadmissible' (not to be tolerated). This distinction is in effect drawn by the "rules of the game" that govern interactions in a social community (Mises 1949, 650 ff.). These rules define the dividing line between those external effects against which third parties can be expected to be protected and for which they can seek remedy, being assisted by the informal sanctions of their fellow citizens or by the state's enforcement apparatus, and those external effects that they can only privately react upon, that is, which they are supposed to tolerate if they do not choose to interfere by making a more favorable offer to one of the parties to the respective transaction. When an 'internalization' of external effects is asked for, what is actually suggested is a change in the rules, a change in the demarcation line between admissible external effects and inadmissible ones. Where this demarcation line is actually to be drawn, cannot be derived from some allegedly inherent quality of externalities - e.g. by classifying them as 'pecuniary' or 'non-pecuniary' -, it is a judgement of value (Tullock 1970, 161 ff.). And those judgements are about the comparative evaluation of alternative sets of rules rather than an evaluation of particular outcomes of market transactions. Accordingly, decisions about changes in the rules which define the demarcation line between admissible and inadmissible externalities should be based on a comparative evaluation of the expected general working properties of the alternative rule settings, not on an evaluation of particular outcomes. To take an obvious example: the appearance of a competitor will generally impose negative external effects on some actors in a particular market setting, negative effects that may well be quite 'significant'. The relevant normative issue, however, is not whether these external effects, as such, are significant, whatever the measure of significance may be. The relevant issue is, whether living under a set of

rules prohibiting such external effects would be more desirable than living under a set of rules allowing for such external effects, "more desirable" as defined by the evaluations of the individuals making up the respective social community (Buchanan 1977, 226 f.).

People's perception of what 'significant' external effects are tend to change over time and so does their judgement on where the dividing line between admissible and inadmissible external effects should be drawn. As a consequence, the rules reflecting these judgements should be expected to undergo some change over time. This has implications for the normative assessment of markets as social arrangements which, at any point in time, are defined by a specific set of rules.⁹ Since the 'rules of the game' are (logically) prior to the exchange transactions carried out under these rules, a normative evaluation of the rules themselves cannot be simply based on the notion of voluntary exchanges made under these rules. The rules define the institutional restrictions under which exchange transactions may take place and, accordingly, by voluntarily engaging in exchange transactions the participating individuals indicate their valuations of alternatives within these restrictions, rather than their valuations of potential alternative sets of rules. An individualistic procedural judgement on the efficiency of these rules has to be based, however, on the notion of a process reflecting the individuals' evaluations of the rules themselves. And since by the 'rules of the game' restrictions simultaneously are imposed on all individuals in a social community, reference to some process reflecting the valuations of these individuals is essential.

The above argument implies a distinction between choices at two levels. First, choices within a given set of rules, i.e. choices reflecting the individuals' evaluations of potential alternatives, given the constraints defined by the rules. And, second, choices at the level of the rules themselves, choices reflecting the individuals' evaluations of alternative sets of rules. From an individualistic-procedural perspective, one would have to specify some notion of a good or proper process for the second (rule-) level as well as for the first level. There are numerous ways conceivable by which rules may be generated or chosen for a group, and the issue of interest here is, what criterion an individualist-subjectivist conception can provide for normative discrimination among alternative rule-generating processes. Before addressing this issue, a look shall be taken at an issue that is closely related to the externalities issue, namely the collective good issue.

The discussion of the collective good issue has also questioned the validity of the conclusion that market outcomes generally can be judged as efficient from an individualist-procedural perspective, because they emerge from voluntary bilateral exchange transactions. The argument of relevance here is that voluntary bilateral exchange transactions cannot be regarded as be-

ing the only kind of social transactions that allow for mutual improvement, but that there are potential collective, organized arrangements that, for various reasons - e.g. due to some 'prisoners' dilemma constellation', - may be profitable to all the parties involved (Buchanan 1984, 18f.; 1977, 223). Accordingly, there may exist conditions under which a group of individuals may voluntarily choose to engage in collective, organized action rather than in separate bilateral exchange transactions. Possibilities for such mutually beneficial collective arrangements may exist at a more inclusive polity level, as notably - but, by no means, exclusively - with respect to the (re-)definition and enforcement of the rules of the game. And they may exist within the domain of a particular polity where individuals, within the confines defined by a specific set of rules, may organize for a broad variety of collective activities, in business firms, voluntary associations, etc.

As soon as it is recognized that mutual gains may be secured by collective organization, it has to be acknowledged that normative individualism, upon which liberalism is based, cannot be simply identified with the notion of voluntary bilateral exchange and competitive market processes. The basic premises implied by normative individualism must provide for a more general standard of evaluation that is applicable to market arrangements as well as to collective, organized arrangements, whether they are operating on the rule-setting and rule-enforcing level or within the confines defined by the rules of the game. Because, de facto, they have concentrated on the notions of voluntary exchange and spontaneous market order, liberal scholars traditionally have tended to evade the issue of how their basic methodological and normative premises can be consistently extended to the analysis of organized collective arrangements.¹⁰ It will be argued here that - in an explanatory as well as in a normative sense - the approach which I call contractarian liberalism provides for a systematic extension of an individualistic perspective from the analysis of market arrangements to the analysis of organized collective arrangements.

VI. Contractarianism: The Individualistic Approach to Organized, Collective Action

Like the classical liberal approach to the analysis of exchange transactions and market arrangements, the contractarian approach to the analysis of organized action and corporate arrangements is based on a systematic combination of methodological individualism and normative individualism.

As an explanatory approach contractarian liberalism is guided by the general idea that social phenomena are to be explained as the aggregate outcome of individual actions. Within this general perspective, collective organized arrangements are interpreted as networks of interpersonal

relations that are different from market exchange networks in that they cannot be factored down into separate bilateral exchange relations (Buchanan 1975, 33).¹¹ In market arrangements the interacting individuals can be thought of as being connected by a (more or less complex) set of separate, though, of course, interrelated (actual and potential) bilateral exchange relations, by (explicit or implicit) two-party contracts. The contractarian approach stresses that organized, collective arrangements - by contrast to market-exchange networks - are based on a social contract, on some (explicit or implicit) inclusive contractual relation among all participating individuals.

Organized action can be analytically looked at as joint or team use of resources contributed from several owners. Accordingly, participation in an organized, collective arrangement implies that the individuals give up the freedom separately to choose the disposition of certain resources (Wiseman 1983, 20). As a member in an organization, an individual is contributing certain of his resources which, together with resources contributed by other participants, become subject to some kind of joint disposition. The inclusive contractual relation among the individuals involved specifies the terms of their participation in the arrangement. It specifies, first, which resources participants are to contribute to the organization, second, how decisions on the way the combined resources are used are to be made, and, third, how the participants share in the benefits resulting from the joint endeavor (Vanberg 1982; 1984). In other words, the inclusive contractual relation among the participants in an organization can be regarded as a (explicit or implicit) social contract defining the rules under which the relevant community of persons can engage in organized, collective decisions and actions. These rules represent the (explicit or implicit) constitution of the respective organized group.

The rules of the game governing market interaction define specific restrictions on the way individuals are allowed to pursue their interests as market participants. In an analogous sense, the constitutional rules of an organization define specific restrictions to the way individuals are allowed to pursue their interests in their capacity as members of the organization. Just as market processes and their outcomes are to be explained individualistically, so are, in an analogous way, processes of organized collective action and their outcomes. They are to be explained individualistically as the combined results of numerous individual choices made under the specific constraints imposed by the constitutional rules.¹² Such an individualistic-constitutional perspective can be applied to collective organized arrangements of all kinds and at all levels, to business firms or political parties as well as to nation states or to supra-national organizations.

When organized collective arrangements are interpreted as being based on a social contract, in the sense, explained above, the term "social contract" obviously carries a broader meaning than its more traditional interpretation would suggest. As contrasted to the notion of a bilateral exchange contract the notion of a social contract is used in a structural sense, descriptive of all organized collective arrangements irrespective of the conditions under which they originated and irrespective of their particular current nature. In a structural sense, the notion of a bilateral exchange contract can be used to refer to the (explicit or implicit) contractual relation underlying any two-party exchange transaction, whatever the conditions under which the two parties involved entered the trade, in particular, whether their participation may be considered voluntary or not. In an analogous sense, as a structural notion the concept of a social contract can be used to refer to the (explicit or implicit) contractual relation underlying any many-party interpersonal dealing that, rather than being decomposable into separate bilateral exchange transactions, involves some inclusive organized arrangement, - whatever the conditions under which the parties involved entered and continue the arrangement, in particular, whether their participation may be considered voluntary or not.

Some clarifying remarks need to be made with respect to that one specific organized unit, the nation state, that - among other activities - defines and enforces (some of) the rules of the game which govern the interrelations among actors, individuals as well as corporate actors (such as firms, associations, etc.), within its domain. What, above, has been referred to as constitutional rules are, in case of the nation state, the rules that define the way the relevant community of individuals engages in organized, political actions. These constitutional rules define the terms of membership in the organization 'state' and they define the domain of that organization, that is, the extent to which it controls the resource endowment of its members. In other terms, the constitutional rules draw the demarcation line between those parts of their resource endowments which individuals have to allow the organization 'state' to control and those resources they are entitled to control privately. And these constitutional rules define the rights individuals have as members of this organization; that is, they define the restrictions under which they can act and pursue their interests in their capacity as citizens.

The constitutional rules are to be distinguished from what above has been referred to as the "rules of the game", in the sense of the rules of individual conduct, defining the restrictions under which individuals can act in their private capacity, using the resources they control privately. Both kinds of rules (Hayek 1973, 124 f., 131 ff.) are interrelated in that the constitutional rules define the way the relevant community, as an organized unit, engages in (re-)defining and enforcing the rules of the game. That is, the constitutional rules are an important aspect of the

process from which the (re-)definition and enforcement of the rules of the game result as outcomes.¹³ What, hence, conceptually has to be separated is the process from which the constitutional rules themselves result as outcome and the process that, governed by the constitutional rules, results - among other things - in the (re-)definition and enforcement of the rules of the game as outcome.¹⁴

As a normative approach, contractarian liberalism is based on normative individualism as a meta device for what are 'proper' evaluative judgements on social states. And what above has been argued as to the nature of the basic normative premises in classical liberalism applies with slight variations to the basic normative premises of contractarianism. In particular, contractarianism also is essentially at variance with any evaluation of social states that refers to 'external' criteria, i.e. to normative standards that are defined independently of or are claimed to be superior to the subjective evaluations of the individuals making up the relevant social setting. Contractarianism no less than classical liberalism stresses that the individuals' own evaluations are to be regarded as the relevant standard against which the efficiency or goodness of the respective social setting is to be judged. Since the individuals' own evaluations are - by necessity - their own subjective evaluations to which no outside observer can claim to have direct access, a contractarian evaluation of the goodness of social states also has to rely on indirect information about these subjective evaluations: It is only from observable responses of the individuals involved, in particular from their revealed choices that we can obtain information about their own evaluations, and, hence, can derive normative judgements on the efficiency of social states. This implies that with contractarianism, just as with classical liberalism, normative emphasis is shifted from social outcomes or social states as such to the processes from which these outcomes or states emerge: Social outcomes are to be judged as efficient or good to the extent that the process by which they emerge - as an aggregate outcome of individual choices is to be judged as efficient or good. Accordingly, for contractarianism, just as for classical liberalism, specifying a criterion against which the goodness of processes is to be judged becomes central to the whole normative exercise.

The issue of how a contractarian notion of a good process can be specified and how it relates to the liberal notion of a good process, discussed above, will be the subject of the following sections.

VII. Efficiency in Social Contract: Collective Action and the Notion of a Good Process

The normative content of a contractarian conception is dependent on its capacity to discriminate between those processes of organized collective

action that are to be judged as good or proper and those that are not. As an individualistic-subjectivist approach, contractarianism is based on the general notion that social processes are to be judged as good to the extent that the individuals involved are allowed to pursue what they want - in ways that are consistent with the presence of other individuals who are equally allowed to pursue their own interests (Buchanan 1975, 6). Extending the logic implied in the notion of efficiency in voluntary bilateral exchange to the many-party contractual setting of organized collective arrangements, a criterion for efficiency in social contract would have to be specified in the following way: Processes of organized collective action are efficient in an individualist-subjectivist sense if (or: to the degree that) they are based on voluntary agreement on part of all contracting persons, i.e. of all individuals involved in the multi-party contractual arrangement. By their very participation the individuals involved in the collective transaction indicate that they expect to benefit from doing so. In this sense voluntary collective action would qualify as a mutually beneficial transaction just as voluntary bilateral exchange does (Buchanan and Tullock 1962, 252).

In analogy to what has been said above with reference to the notion of efficiency in voluntary exchange, it can be argued that, in the case of collective arrangements, to characterize a transaction as mutually beneficial carries little normative meaning per se: If actual choices are taken as the relevant indicators for what individuals prefer, and if the potential alternatives considered at the time of choosing are taken as the relevant reference points for judging transactions to be mutually beneficial, then all observed collective arrangements can be said to make participating individuals better off - 'better' compared to what they expect from potential alternatives taken into consideration.¹⁵ In the same sense - as indicated by revealed choices - all existing organized, collective arrangements can be said to be based on agreement. That is, if the unanimity criterion refers to such de facto agreement - agreement revealed by actual choices rather than by verbal responses - it does not allow for any discrimination between efficient and in-efficient collective arrangements. And consistency seems to require, considering verbal responses of more significance in case of collective arrangements than in case of exchange transactions and applying the arguments on the 'verbal responses vs. revealed choices' issue, which are used with regard to the latter, to the former as well. If it refers to factual agreement, however, the contractarian unanimity criterion does not at all reflect 'utopian romanticism', as is sometimes charged in critiques of a contractarian perspective. Rather than defining an unrealistically ideal standard, it is without any normative content, since it is met by each and every collective arrangement that can be observed.

Just as in case of bilateral exchanges, also in case of collective arrangements, it is the notion of voluntary choice and voluntary agreement that is carrying the normative thrust of an individualist-procedural notion of efficiency (Buchanan and Tullock 1962, 250), with "voluntary" referring to the nature of the constraints under which the individuals involved choose to participate in and not to leave the contractual arrangement (Buchanan 1977, 222). And the arguments that have been made with reference to the notion of voluntary exchange basically apply to the notion of voluntary participation in collective arrangements, although there is a specific difference to be noted: The relevant individual choices in case of exchange transactions are, what one might call "single decisions", i.e. decisions either to engage or not to engage in a particular transaction, even if they are embedded in a temporal sequence of transactions among the same parties. By contrast, in case of collective organized arrangements the relevant individual choices are at two levels: There is, first, the decision to participate - or not to participate - in a specific collective arrangement, or, in other terms, the decision to be a member - or not to be a member - of a specific organization. And there are, second, the in-period choices individuals are making in their capacity as members, i.e. as parties to a collective contractual arrangement.

In specifying the notion of voluntary choice for collective arrangements one has to take into account that, when engaging in collective organization people may well have an interest in mutually imposing specific constraints on their future choice behavior - deliberately making certain potential alternatives more costly to choose and thus making them less attractive than other, mutually desired courses of action. The very benefits which people hope to realize by organized collective action may be contingent on some credible commitment entered by all parties concerning certain choices they promise to make or not to make in future periods. By choosing to become a member of an organization individuals are typically submitting to certain - explicit or implicit - constitutional rules the very function of which is to restrict in a particular way the in-period choices they are to make in their capacity as members of the organization (Buchanan 1977, 276). To the extent that the expected benefits from organized cooperation are dependent on those constitutional restrictions, the individual facing a constitutional choice has to consider the trade-off between expected advantages and expected disadvantages from jointly restricting future freedom of choice (Hayek 1979, 44 f.).

The question is how, considering the specific differences mentioned, the notion of a "voluntary transaction" can be meaningfully extended from market exchanges to the sphere of collective action. Exclusive reference to in-period choices is apt to be a misleading basis for judging the efficiency of an organized collective arrangement, since the individuals in the relevant community may have voluntarily chosen to restrict their in-period

freedom of choice because, by doing so, they expect to be able to secure certain benefits they would not be able to obtain without these restrictions. If individuals in fact voluntarily join a particular organization and voluntarily remain as members, the arrangement has to be judged as efficient even if by doing so, individuals are submitting to certain constitutional rules that impose restrictions on their in-period choices, and, in fact, any organized arrangement necessarily imposes such constitutional constraints. The overall arrangement has to be judged to be efficient in an individualist-subjectivist sense on the same grounds that voluntary exchange transactions are judged to be efficient: Because the individuals involved voluntarily agree to the terms of the trade, with here the 'terms of the trade' being described by the constitutional rules. It should be noticed that, what according to such an efficiency criterion is crucial for judging constitutional rules is the ongoing, current consent they command. That is, the relevant agreement test is not to be confined to some original consent at the stage the rules have been established (Buchanan and Tullock 1962, 26).

From an individualist-subjectivist perspective the efficiency of in-period choice processes in collective organized arrangements can only be judged indirectly: Particular in-period transactions are to be judged as efficient if they are carried out in accordance with constitutional rules that are voluntarily agreed upon by the relevant group of people. That is, the crucial individualistic-procedural criterion for efficiency in collective action is whether the individuals involved voluntarily agree to the - explicit or implicit - rules that constitute the organized arrangement (Buchanan 1984, 20). Accordingly, in order for this criterion to be normatively meaningful, it is necessary to determine how voluntary choice and voluntary agreement are to be demarcated from involuntary, coerced ones when we are dealing with individual decisions to participate in collective arrangements.

VIII. Collective Arrangements, Voluntary Agreement, and Restricted Choice

Following the argument elaborated above (Section IV) it can be concluded that in order for the notion of voluntary agreement to be normatively meaningful, one has to specify - in case of collective arrangements just as in case of exchange transactions - a criterion that will allow some normatively significant classification of the restrictions under which individuals make their respective choices. And all the arguments on the relation between voluntary choice and coercion, rights, rules, externalities etc., made above with reference to the notion of voluntary exchange apply equally to the notion of voluntary participation in collective arrangements. That is, with regard to organized, collective action it can be concluded as well that rights, as they are actually defined in particular socio-political

communities, cannot provide the only relevant standard against which constraints can be judged as coercive or not. Rather, for an individualist-procedural conception, the rules that define these rights are a crucial object of normative evaluation themselves. And, in order to provide a normative standard against which empirically observed rules can be judged, the notions of voluntary choice and voluntary agreement have to be defined independently of those observed rules.

In the above discussion on the issue it was argued that a consistent and general specification of the evaluative criteria implied in normative individualism will have to rely on a combined and simultaneous application of a purely procedural as well as a substantive, opportunity-cost criterion. This conclusion becomes particularly obvious when collective, organized arrangements are under analysis. Only applying the opportunity-cost criterion would, as already indicated, tend to be misleading since it is an essential feature of organized arrangements that they are based on certain (constitutional) rules, the very purpose of which is to impose restrictions on the in-period choices of the participating individuals. Applied as the only standard, the opportunity-cost criterion would suggest that collective arrangements are to be judged 'better', the less restrictive the constitutional rules are. Ultimately, this would imply that having no constitutional rules and, hence, no collective arrangement at all would be 'best', since any organized arrangement by necessity implies the imposition of some restrictions. Such a conclusion would be obviously in conflict with the basic normative role an individualistic-procedural approach assigns to the notion of voluntary choice. It would imply that collective arrangements in general would have to be judged negatively, independently of whether the participating individuals voluntarily choose to submit to the respective restrictions or not. If the notion of voluntary choice is, however, to be regarded as the basic evaluative criterion implied in normative individualism, then the fact that a collective arrangement is based on voluntary individual choice must be assigned the same normative significance as is assigned to the fact that a bilateral exchange is based on voluntary agreement.

A purely procedural criterion is essential as a supplement to the opportunity-cost criterion. It draws attention to the fact that a consistent, generalized application of an individualistic-procedural notion of efficiency requires not only examination of the restrictions constraining individual choices within a particular social setting, but that the question has also to be asked whether these restrictions are in accordance with rules that command the voluntary agreement of the individuals involved. On the other hand, a purely procedural criterion standing alone would not be a sufficient standard of evaluation either, because in specifying the notion of voluntary agreement in a procedural sense one again would have to refer to the restrictions under which the individuals involved choose to

submit to these rules. And in analyzing these restrictions, one again would have to refer to the rules governing the respective choice process, and so on. That is, one would end up in an infinite regress that can be avoided only in either one of two ways: Either, by introducing, at some stage in the 'process-rules-process-rules' line, a notion of voluntary choice that is defined independently of the rules actually governing the choice process at that stage, or, by assuming that the 'process-rules-process-rules' line finds a logical end by, ultimately, reaching a choice-level where no pre-existing rules can reasonably be assumed. In the absence of a rule-independent notion of voluntary choice, the second way of avoiding an infinite regress would imply that the logic of a pure, rule-oriented procedural conception is no longer applicable as the ultimate level of choice is reached. That is, at the end of the argumentative chain one would be left unable to make any normative judgement, having - by definition - no rules to which a procedural approach could refer in order to classify the choices made at that ultimate level as being voluntary or involuntary. Consequently, a purely procedural conception which takes a Hobbesian or genuine anarchy as its analytical starting point (Buchanan 1975), must be ultimately unable to generate any normative criteria for judging whatever emerges from the original situation where no preexisting rules constrain the interactive process.¹⁶ Every set of rules that emerges out of genuine anarchy can be said to command factual agreement of the parties involved. Since, in the absence of rules, a demarcation between voluntary and coerced agreement cannot rely on the notion of rights,¹⁷ it has to rely on some other way of distinguishing between voluntary and coerced choices. And the very criterion on which this distinction is based would have to carry the normative significance of the whole argument.

The purely procedural and the substantive, opportunity-cost criterion, taken separately and exclusively, apparently are not sufficient to capture the normative content of the liberal notion of voluntary choice. They are either apt to be misleading or ultimately lacking normative content. However, as is suggested here, they may well provide a workable specification of normative individualism if they are applied in combination with one another. Their combination suggests an analytical perspective that takes into account choices at different levels: Choices within defined rules, choices of rules, and choices of rules for choosing rules. The combined application of both criteria would mean that, rather than aiming at an isolated evaluation of particular social transactions, any judgement reached at one particular level is to be considered as a conjectural evaluation that can be consecutively checked against the normative evaluation at the more inclusive choice-level. The normative judgement derived from an application of the opportunity-cost criterion at one choice-level would have to be taken as a conjectural judgement that may be checked against a procedural evaluation focussing on the rules constraining choices at that particular level. And the opportunity-cost criterion may then again be applied to the

choice process from which these rules can be considered to emerge as outcomes. Such a multi-level normative analysis may seem to be subject to the same infinite regress-objection that, above, has been raised against a purely procedural criterion, but there is a significant difference. Such an approach actually allows for normative evaluations at any choice level, evaluations, certainly, which, rather than being definitive, are conjectural normative judgements that can be rationally discussed and questioned by reference to a more inclusive choice level.

To apply such a normative analytical perspective to a market (bilateral) exchange setting, for instance, would mean that an efficiency argument made with respect to exchange transactions within given institutional restrictions (defined by the existing rules of the game) would have to be regarded as a conjectural normative judgement that may be questioned when the normative focus is shifted to the rules themselves. That is to say, the fact that individuals can be observed within a market setting, defined by specific rules, voluntarily to engage in exchange transactions allows for the conjectural judgement that the respective transactions and their outcomes are efficient in the individualist-subjectivist sense. But such a judgement necessarily is conjectural rather than definitive since it might be that the individuals in the relevant community would be better off under different rules, defining different constraints. And whether there are reasons to assume that the individuals involved would actually prefer to live under different rules, if they could choose to do so, is something that should be open to rational discussion.

Analogously, to apply the same analytical perspective to collective, organized arrangements would mean that an efficiency argument based on an analysis of choices made within a defined set of constitutional rules would have to be regarded as a conjectural normative judgement that is to be checked against a normative analysis focussing on these rules themselves. That is, the same normative approach can be applied to social transactions of all sorts and at all levels, to market exchange transactions as well as to collective, organized activities (Buchanan 1977, 239). Obviously however, specific problems arise when the attempt is made to apply such a perspective to what is, for most practical purposes, the most inclusive level at which rules are chosen: the state.

In an analytical perspective, the state is an organized unit, based on certain constitutional rules that define the terms of the processes through which the community can engage in organized, political actions. These actions include the definition and redefinition of the rules that govern social interaction: The interactions individuals engage in in their private capacities (rules of the game) and their organized interactions as citizens, i.e. as members of the organization 'state' (constitutional rules). Accordingly the constitution of a state will include rules of different levels of

generality: rules for in-period choices, rules for changing these rules, and rules specifying the terms of the process by which the 'rules for changing rules' themselves may be changed. A process-oriented normative analysis of political transactions and arrangements may take the rules at each level as the relevant reference point. There must be, however, for every (explicit or implicit) constitution some ultimate level of rules. As the normative focus is shifted to that level, i.e. to the most fundamental constitutional rules of a state, reference to a rule-independent notion of voluntary choice becomes essential for a normative-individualist approach to be meaningful. By definition, these rules cannot be regarded as the outcome of a process for which a clearly defined set of rules exists.¹⁸ Without having a predefined set of rules to refer to, however, a purely procedural notion of voluntary choice does not allow an assessment of the factual agreement upon which, by necessity, each and every existing political unit is based. If such factual agreement, i.e. 'agreement' as revealed by the choice to submit to the state's constitutional rules, would be missing this would mean that the state's existence as an organized unit is in fact questioned, as, for instance, in case of civil war or revolution.

It is at the most basic or inclusive level of constitutional choice that reference to a rule-independent, opportunity-cost criterion of voluntary choice and voluntary agreements cannot be avoided if the social contract notion is to provide a normatively meaningful standard for judging the efficiency of institutional arrangements.

IX. The State in a Contractarian Perspective: Hypothetical and Implicit Contract

The notion of a social contract traditionally has been primarily applied to one specific kind of organization, the state, rather than having been elaborated as a general theoretical approach to the analysis of collective, organized arrangements of various kinds (Vanberg 1982, 39 ff.). And, correspondingly, most of the critical arguments brought forward against contractarianism primarily have been focused on a contractarian conception of the state. There are two central arguments that have been stressed by the critics of a contractarian conception. The first argument accuses contractarianism of being historically inadequate, since there is hardly any state the history of which can be traced back to some kind of genuine social contract among the relevant group of people. Rather, it is argued, conquest and oppression typically mark the origin of states. According to the second argument the contractarian notion of agreement as a standard for judging the legitimacy of governments is an entirely fictitious, idealistic criterion of no significance in analyzing reality, since no government could possibly claim to command the agreement of literally all individuals in the polity.

Both critical arguments are of little relevance to that version of contractarianism that has been outlined and discussed above. The first argument is not pertinent since, as used here, the concept of a social contract is a structural rather than a historical notion: It refers to a structural - not a historical, genetic - feature characterizing collective, organized arrangements. It refers to the fact that within organizations interaction among the relevant group of individuals is based on some kind of inclusive (explicit or implicit) contractual relation rather than on bilateral exchange contracts as in market interaction. The second argument would be of relevance for a contractarian notion only if such a notion were confined to a specific interpretation of the term "agreement". If agreement should require unanimous verbal expression of approval, or if it should require all individuals in the polity to be satisfied, then the agreement-standard would, indeed, be a too demanding, idealistic criterion. As has been pointed out earlier, however, with such a notion of agreement much of what is quite naturally classified and positively valued as voluntary exchange could not be said to be based on agreement either. We may easily think of people being dissatisfied - and saying so - because the terms of a market-transaction they engage in are less attractive than they would like them to be. That people may always think of more attractive alternatives they would prefer if they were available, can however, as stated earlier, hardly be assumed to be of normative significance - neither in case of bilateral exchange transactions nor in case of collective, organized arrangements.

If, on the other hand, actual choices - rather than verbally expressed satisfaction or dissatisfaction - are taken as the relevant indicator of agreement, the true problem with the agreement-criterion is that, rather than being too strict, it is too weak as to be normatively meaningful. The real problem a contractarian approach faces is that it has to provide a workable criterion by which mere factual agreement (that can be claimed by each and every existing state) can be classified into voluntary and non-voluntary agreement in a normatively meaningful way.

It is, obviously, this issue that is addressed in an often quoted passage from David Hume's Of the Original Contract, a passage aimed at illustrating the alleged absurdity of taking actual participation (i.e.: revealed choices) as indicating agreement to the terms of government. As Hume (1963, 462) argued: "Can we seriously say that a poor peasant or artisan has a free choice to leave his country when he knows no foreign language or manners and lives from day to day by the small wages which he acquires? We may as well assert that a man, by remaining in a vessel, freely consents to the dominion of the master, though he was carried on board while asleep and must leap into the ocean and perish the moment he leaves her." - Critics of contractarianism like to quote this passage as if it proves without question that an agreement notion relying on revealed choices cannot be of normative significance for judging the legitimacy of governments. But what

Hume's argument actually does is to draw attention to the opportunity costs that have to be considered if revealed choices are to be taken as a normatively relevant indicator of agreement. Clearly implicit in Hume's argument is the idea that if people actually should voluntarily choose to become and/or to remain citizens (members) of a particular state then their revealed choice would be of normative significance. That is, his argument can be read as implying that, to the degree actual participation can, in fact, be regarded as reflecting voluntary choice, it can be considered indicating normatively meaningful agreement and, hence, legitimizing the respective political order. Implicitly, Hume's argument is based on the assumption that the larger the costs of not-participating to an individual are, the less reason there is for an observer to interpret the individual's actual participation as being a significant indicator for voluntary agreement. Hence, what is basically questioned by David Hume is, whether being a citizen of a particular state can be considered as a matter of voluntary choice, since, as a rule, people acquire their citizenship by birth rather than by their own choice, and normally do not even consider leaving their country as a potential alternative because of the prohibitively high costs they would have to incur.

Plausible though it is, Hume's basic argument deserves some specification. To be sure, the opportunity costs for a citizen to leave his country typically are quite high compared to the opportunity costs of giving up one's membership in most other kinds of organizations (clubs, firms, trade unions, political parties, churches, etc.). And in this sense the revealed choice of being a citizen of a particular state surely tends to be a less significant indicator for voluntary agreement than the revealed choice of being a member of an organization where exit costs are comparatively low. Yet, the fact that compared to other kinds of organizations the opportunity costs of leaving are exceptionably high in case of the organization 'state' should not distract attention from the recognition that states, in a normatively meaningful manner, can be compared among each other with respect to these opportunity costs, just as any kind of organized arrangements can be compared among each other along this dimension (Coleman 1973, 2 f.). And such a comparative evaluation may very well provide significant information for judging the degree to which different governments, relative to each other, can be assumed to command the consent of their citizens. Obviously, the opportunity costs of leaving are considerably higher for some states than for others and, accordingly, the revealed choice of staying in the country is a less significant indicator of agreement to the basic constitutional rules in some states than it is in others. Thus, to mention only one aspect, where states deliberately are erecting barriers to exit, actual residence is obviously less likely to reflect voluntary choice and to indicate voluntary agreement than it is in those states where governments are not restricting emigration.

To this point only the opportunity cost of leaving has been looked at as a relevant aspect in judging the degree to which a political system can be assumed to be based on the voluntary agreement of its citizens. And it is the opportunity cost aspect of the choice 'staying or leaving' that Hume is obviously focussing on in the above cited quotation. But, to leave a political community is certainly not the only way for a citizen to respond to basic constitutional rules he disapproves of. In terms of A.O. Hirschman's (1974) familiar distinction, as a member of a state - or, for that matter, as a member of any kind of organization - the individual has a voice option as well as an exit option. And the way persons make use of both of these options tells something about their agreement or disagreement with the terms of the arrangement. That is, for a normative analysis of organized arrangements the opportunity cost of making use of the voice option has to be taken into account as well if the legitimacy of a political system is to be judged. The members of an organization - the citizens of a state - can use their voice option in order to express their disagreement with existing rules, including the most fundamental constitutional rules, and to bring about a change in these rules. And political systems can be analyzed as to their responsiveness to their citizens' judgements. In particular, they can be analyzed with respect to the opportunity costs their citizens have to incur if they choose to make use of their voice option.¹⁹

To be sure, here again one may argue on good grounds that - as we move to the 'state level' - the relevant opportunity costs in general tend to be relatively high, if only because of the large number problem: In a large number setting the single (average) individual is of marginal influence, therefore a person who refrains from trying to bring about internal structural changes can hardly be considered indicating his agreement to the terms of the arrangement. But, here again, although there is no doubt that in states the relevant opportunity costs tend to be exceptionally high compared to other kinds of organizations, attention should not be distracted from the elementary fact that states differ one from another with respect to these costs and that they can be meaningfully compared in this respect.²⁰ Different political systems can be compared in terms of their responsiveness to citizens' judgements, and such comparative analysis may provide relevant information for judging the relative legitimacy different political systems can claim because of their citizens' factual acceptance of the existing socio-political order.

The opportunity cost aspects discussed above - the opportunity costs of exit and voice - may help to specify the notion of voluntary agreement, as it is applied to the most basic choice level from which the fundamental rules of a socio-political order are considered to emerge as outcomes. To specify some normative criterion for judging these rules obviously is essential to a contractarian, procedural approach that makes all judgements on within-rules choice processes ultimately dependent on the normative

evaluation of the most encompassing, fundamental set of rules. The opportunity cost perspective provides a somewhat different approach to this crucial issue than the notion of a hypothetical contract as it has been stressed notably by J.M. Buchanan (1975, 1977) as well as J. Rawls (1971). Rawls' notion of constitutional choices made "behind the veil of ignorance" and Buchanan's notion of "conceptual agreement" (Buchanan 1977, 130) do, in fact, serve a useful heuristic function by directing attention to the question of whether - based on our general assumptions about individuals' choices - it can be plausibly assumed that some existing set of rules could have been voluntarily agreed upon by all participants at some original stage of decision.²¹ Rather than judging an existing institutional structure against some real choice process, the notion of conceptual agreement as well as that of a hypothetical contract refer to what "might have emerged from a genuine social contract", to what "might have been agreed upon in some conceptualized rule-making or constitutional stage of decision" (Buchanan 1977, 127, 129).

While providing a useful heuristic perspective, the notion of "conceptual agreement" is subject, however, to serious criticisms if the reference to some hypothetical choice process is actually claimed to provide a criterion upon which normative judgements on existing social arrangements can be based. Such a claim would face, of course, the fundamental problem that different people may well have different views of what might have emerged in some hypothetical constitutional agreement among voluntarily contracting individuals. Because of such potential disagreement, the notion of conceptual, hypothetical agreement cannot be considered by itself to provide a common criterion or standard of evaluation.

It is as a supplement to the heuristically fruitful notions of a hypothetical contract or conceptual agreement that the opportunity cost perspective may contribute to a more workable and meaningful specification of the normative content of contractarianism. If the normative thrust of a contractarian procedural conception is, in fact, not to refer "to the history of how existing rules might have emerged" but rather "to say something about the operation of that order" (Buchanan 1985, 246 f.), that is about the current working properties of an institutional structure, it seems to be a quite natural conclusion that the focus of normative evaluation has to be on actual, current choices. And it is to the constraints - exit constraints and voice constraints - under which actual, current choices are made, that the opportunity cost perspective attributes normative significance.²²

X. Voluntary Agreement and Efficiency: Liberal-Contractarian
Comparative Institutional Analysis

The aim of this paper has been to clarify the normative premise that is the basis of classical liberalism as well as contractarian liberalism: normative individualism. A strict subjectivist interpretation of normative individualism rules out the possibility of judging the 'goodness' of social transactions and social arrangements independently of how they are judged by the individuals themselves. In particular, such a subjectivist interpretation rules out any explicitly non-individualistic, collectivist criterion for judging the goodness of social states, a criterion waiting to be discovered and interpreted 'competently' by some expert-analyst. And, as should be added, it rules out, also, a kind of objectivist interpretation which - like a Benthamite utilitarian conception - pretends to offer a criterion of social goodness that is derived from individuals' welfare but can be applied without any reference to individuals' choices.²³ A strict subjectivist notion of normative individualism is essentially process-oriented. Rather than looking at the contents of individual choices themselves, it focuses on the processes by which individual choices bring about social outcomes. In particular it focuses on the social, institutional constraints under which individuals make their choices.²⁴ Sets of rules and institutional arrangements are positively judged to the degree the individuals concerned successfully can pursue their own ends -given the presence of other individuals with equal rights to pursue their own ends too.

Normatively to judge institutional settings in the way outlined above requires, of course, an analysis of the working properties of rules and institutions. And, in fact, based on our theories about the working properties of different kinds of institutional structures, comparative conjectural judgements can be made and rationally discussed as to the relative degree to which alternative institutional arrangements can be expected to allow the individuals involved successfully to pursue their interests, separately and collectively. These comparative evaluations of alternative institutional structures are inherently conjectural for two reasons: They are conjectural because they are based on our, necessarily, conjectural theories about the working properties of rules and institutions. And they are conjectural because we always have to allow for the possibility that individuals voluntarily choose to submit to institutional constraints that limit their in-period freedom of choice.

For the two reasons mentioned, our conjectural evaluations of alternative institutional arrangements are always open to challenges from two sides: They can be criticized because of an alleged inappropriateness of the theories about the working properties of institutions upon which they are based. And they can be criticized because they may fail adequately to take into account the voluntary or involuntary character of the 'constitutional

choices' which place the individuals involved into the institutional arrangement that is to be judged. But the fact that our comparative evaluations of rules and institutions are conjectural and open to criticism in the sense outlined also has another, important implication: So long as there are no serious challenges to our theories (by better alternative theories) and so long as there is no independent evidence that the individuals' own constitutional preferences indicate an evaluation of institutional structures that is inconsistent with our conjectural evaluation, then our conjectural judgements may very well be regarded as the most reasonable normative judgement that can be made from an individualistic perspective.

A conjectural comparative evaluation, in the sense outlined, can be applied to all kinds of institutional arrangements: It can be applied to rules and institutions that are the outcome of 'spontaneous evolution' no less than to rules and institutions that have been deliberately established. And it can be applied to rules of the game governing market interaction no less than to constitutional rules governing arrangements for organized collective action at all levels, from small-scale voluntary associations to nation-states and international organizations.

As has been mentioned, it is our theories about the working properties of social institutions that play an essential role in our evaluations of alternative institutional arrangements. And, because of that, social science, quite naturally, can be considered an important potential source of the kind of information upon which these comparative evaluations are based. That is, by no way, to suggest that the social scientist could claim superior insight into which institutional arrangements are - in some absolute sense - 'better' than others. According to subjectivist normative individualism, the individuals concerned are the relevant judges on the goodness of the rules and institutions under which they live. The specific competence of the social scientist is limited to providing information on what - according to the state of our theoretical knowledge - can be expected to be the impact of alternative institutional arrangements.

Because of the essential role theoretical knowledge plays in any comparative evaluation of social rules and institutions there is a considerable element of 'truth-judgement' involved in those evaluations. And one may very well be quite skeptical about the degree to which the 'ultimate judges', the individuals themselves, can be expected, in their own evaluations of alternative institutions, to be guided by well informed assumptions about the actual working properties of the institutional alternatives considered.²⁵ But that there are considerable elements of 'truth-judgement' involved does not mean that the whole exercise of comparative institutional evaluation is a matter of 'truth-judgement'. The social scientist's "comparative institutional analysis and evaluation" (Buchanan 1977, 131) can never overrule the individuals' own value judgement about

the conditions under which they want to live. That is, the analyst's comparative evaluations of institutional arrangements can never be more than conjectural, hypothetical judgements, judgements that are not only subject to criticism within the scientific community, as all conjectural propositions are, but that, above all, are subject to the ultimate test of whether they correspond to the evaluations of the individuals concerned.²⁶ And that the individuals themselves can not always or even rarely be expected to base their evaluations of alternative institutions on well informed theories about the respective working properties of these institutions, does by no means imply, that a well informed scientific elite should have the right to impose its view of a 'good' institutional order upon the less informed rest of the population. The problem of "ignorance about the working out of social rules" (Buchanan 1977, 224) can provide an argument only for institutional devices that take care of that problem as satisfactorily as possible, without interfering with the principle that the individuals concerned are the ultimate judges on the goodness of the social arrangement within which they are living. The recognition of this problem provides an argument for having rules for choosing rules that encourage a careful examination of different views and arguments in the rule choosing process and that allow for corrections to be made in the light of past experiences. Here are implications for the crucial task of the social scientist: To explore the potential set of institutional alternatives, their working properties and the potential scope for agreement, and to enable the individuals concerned to make better informed evaluations of and choices among alternative rules and institutions.

Footnotes

* I am indebted to Peter Bernholz, Cay Folkers, Hartmut Kliemt, Dieter Schmidtchen, Jack Wiseman and, particularly, to James M. Buchanan for helpful comments on earlier drafts.

1 This paper has been originally stimulated by criticisms of Buchanan's approach put forward in papers by Leland B. Yeager (1983, published version 1985) and Karen Vaughn (1984).

2 Though limitations of space prohibit a more detailed discussion here, it should at least be mentioned that different issues tend to get confused in controversies over 'paternalism'. The first issue concerns the argument that a person's evaluations of alternatives are his or her own subjective evaluations and that somebody else can hardly claim to be better informed about these evaluations than the judging person itself. A second, and different issue is whether somebody else might be in a better position than the person itself to judge the prospective consequences of alternative choices. And a related, though distinguishable, third issue is whether somebody else might be a better judge on a person's probable future evaluations of the consequences of current choices than the person itself. - The first argument is an obvious, straightforward implication of subjective normative individualism, and it is in this sense that the latter is strictly opposed to paternalism. Its

implications for the second and third issue (which are typically raised with reference to small children and mentally disabled persons) are much less straightforward and require a more detailed and differentiated analysis.

- 3 When buying a car, I might well complain about its price, but, if I go ahead with the deal, by my very action I indicate that I prefer to engage in it rather than to choose some potential alternative. That people may always think of better terms they would prefer if they were available by no means invalidates the conclusion that when people are choosing to engage in a transaction, their choice is the relevant indicator that they prefer this alternative - under the prevailing conditions and with the potential alternatives.
- 4 F.H. Knight, 1947, 49: "The essential social-ethical principle of liberalism ... is that all relations between men ought ideally to rest on mutual free consent, and not on coercion, either on the part of other individuals or on the part of 'society' as politically organized in the state."
- 5 Sometimes the absence of fraud as well as coercion is mentioned as a criterion of voluntariness. It is typically not assumed, however, that the distinction between 'voluntary' and 'defrauded' choice raises any issue substantially different from those involved in the distinction between 'voluntary' and 'coerced' choice. The following discussion will concentrate, therefore, on the latter distinction only.
- 6 The restrictions constraining individual actions in a social setting can be basically distinguished into three categories (cf. Buchanan 1977, 216): First, restrictions that are exogeneous to the respective socio-political community. Second, constraints that are imposed by the - formally or informally defined and enforced - rules of the community. And, thirdly, constraints the individuals acting under these rules impose on each other. - The first category is not relevant to the present discussion. Either these exogeneous constraints are imposed by nature (as opposed to human action) in which case they are not a proper subject of normative evaluations. Or, they are imposed by human action from outside the particular community, in which case the arguments discussed here would have to be applied to some more inclusively defined social community. It is the second and third categories of constraints that are of interest here. Judged against the second category, that is the rules, constraints of the third kind can, of course, be classified as being in accordance with or as violating the rules. But such a classification would carry normative meaning only when combined with the normative premise that transactions are to be judged as 'good' if they are carried out in accordance with the rules of the respective social community, whatever these rules are. Since, as stated above, such a normative premise would hardly seem to reflect the normative thrust of liberalism, the search for a criterion that is to be applied to the rules themselves becomes crucial.
- 7 R. Nozick (1974) evades the issue of interpersonal disagreement on what "natural rights" are by assuming "without question ... that there is some set of principles obvious enough to be accepted by all men of good will" (1974, 141). - By such an argument it is either conceded that, ultimately, rights are based on agreement among the individuals

involved, or it is claimed, that a subgroup, the "men of good will", are entitled to define what these "natural rights" are. The latter claim would raise the issue of how these "men of good will" are to be identified and how their judgement is to become effective.

- 8 As will be discussed in more detail later, the idea of some initial situation providing the ultimate starting point for a procedural reasoning is no substitute for specifying some substantive criterion for the goodness of a process. Where normative judgements are derived from such a notion (e.g. Rawls), the normative content is not inherent in the idea of an original situation per se, it is introduced via the definitional attributes that are described to the 'original situation'.
- 9 Among authors in the liberal tradition the phrase "unhampered market" is sometimes used in a way that distracts attention from the fact that neither are markets operating in an institutional vacuum nor is there an objectively identifiable, externally valid set of 'ideal' rules. There is no market as such, there only exist markets as defined by specific rules of the game.
- 10 As far as those organized collective units are concerned that operate under competitive market conditions (as private business firms), the issue of how they are structured internally seems to have found little attention mainly because of the presumption that 'the market' is basically securing their 'efficient' operation. Those organized units, on the other hand, that cannot be regarded as acting under market conditions (government, trade unions) have been primarily looked at with suspicion rather than being systematically analyzed - positively and normatively - from a generalized individualist perspective.
- 11 Referring to the "concentration of mainstream economics on two-person transactional exchange" Jack Wiseman repeatedly has pleaded for a systematic extension of the economists' individualist perspective to a general theory of choice, dealing with individuals' choices to participate in organized groups no less than their choices to engage in two-party exchange transactions. (Cf. e.g. I. Wiseman 1979 and 1983.)
- 12 When talking of constitutional rules as well as rules of the game, the notion of rules is used here in a broad sense as encompassing not only formally stated rules but also tacitly recognized rules of social behavior. In the broad sense, imputed here, all social interaction beyond genuine anarchy is governed by certain rules, and, by engaging in exchange transactions as well as in organized arrangements, individuals are always constrained by specific restrictions resulting from such rules.
- 13 To be sure, not all the 'rules of the game' are subject to organized, political (re-)definition and enforcement. In every socio-political community interaction is to some extent based on "ordered anarchy" (Buchanan 1975, 5 f.), i.e. it is governed by rules that have emerged spontaneously and that are enforced by informal sanctions. - F.A. Hayek's theory of 'cultural evolution' focuses on the spontaneous processes by which rules emerge and change, suggesting certain normative inferences concerning the 'efficiency' of spontaneously created rules. For a discussion of the Hayekian conception which will not be analyzed in the present paper cf. Vanberg 1986.

- 14 What is here simply referred to as "constitutional rules" may, of course, include rules at different levels of generality: Rules defining the 'in-period' procedure by which the relevant community of persons engages in organized, political decisions and actions, as well as rules for changing these rules.
- 15 That people might be dissatisfied, given their expectations, and that they might think of more attractive alternatives they would prefer if they were available should be of no more normative significance in case of collective arrangements than in case of bilateral exchange transactions.
- 16 A similar argument is stressed by R. Zintl (1983) in his discussion of Buchanan's contractarianism.
- 17 More precisely: It cannot rely on any notion of rights, except one wants to claim that there are natural rights to be defined independent of any social recognition. That the notion of natural rights does not provide a promising solution has been argued above (section IV).
- 18 There are, to be sure, certain rules that can be assumed to exist even beyond the 'ultimate level of rules' as defined here: certain spontaneously evolved, customary rules of human conduct, or certain rules incorporated in international law. These rules, however, can hardly be considered a sufficient reference point for a normative analysis of the 'basic constitutional choices' that are under discussion here.
- 19 In his vessel-parable, Hume not only suggests that the man in the vessel has no real exit option, since exit costs are prohibitively high, he implicitly suggests too that the man has no effective voice option, that 'the master' can not be expected to be responsive to his 'voice'. If we look at states, for which Hume's parable is supposed to be telling, we obviously find a considerable degree of variation in the opportunity costs of exit as well as in the opportunity costs of voice and in government's responsiveness to 'voice'.
- 20 An obvious general implication is that in smaller political units the voice option tends to be more effective and that federalism may help to bring down the opportunity cost of 'voice' - as it does, for that matter, with the opportunity cost of 'exit' (Buchanan 1975, 103).
- 21 The heuristic notion of a hypothetical contract is essentially at the base of G. Tullock's and J.M. Buchanan's (1962) contribution to the theory of constitutional choice.
- 22 What has been described here as "opportunity cost perspective" is similar to what K. Ballestrem (1983) describes as the "idea of an implicit contract". Ballestrem distinguishes the notion of an implicit contract from two other versions of a contractarian concept of legitimacy: the "original contract" and the "hypothetical contract" notions. According to the idea of "implicit contract" a socio-political order is legitimized if (or to the degree that) the citizens have the opportunity to use their "voice option" and their "exit option", and it, is not legitimized if (to the degree that) this opportunity is inhibited or eliminated, or if (to the degree that) citizens are actually resisting and emigrating (Ballestrem 1983, 5).

- 23 According to a Benthamite-utilitarian approach, a policy measure that can be shown to increase 'social welfare', which again is measured in terms of aggregated individual welfare, ought to be judged as good. The common criticism of such a social welfare approach has focussed on the issue of 'interpersonal comparison of utility'. From the perspective of a subjectivist contractarian approach there is another more fundamental criticism: Even if interpersonal comparisons of utility could be made and an aggregate social welfare measure could be constructed, the essential question remains whether the individuals would like to, and voluntarily choose to, live in a social community in which policy decisions are based on a Benthamite social welfare rule. The social welfare rule could only be considered to be one among various potential rules for political decision making, and - in a subjectivist contractarian perspective - it would have to be subjected to the same test as all its potential alternatives, the test of voluntary agreement on part of the individuals involved. For related objections against Benthamite utilitarianism cf. J.M. Buchanan 1966, 35 f., and J. Rawls 1971, 26 ff.
- 24 J. Wiseman 1984, 21: "The aim has to be to improve the procedure by which decisions are reached, rather than to claim to know what those decisions should be."
- 25 This problem is stressed by K.I. Vaughn (1984), who rightly points to the fact that any "agreement test" measures both, peoples preferences for and their theories about alternative institutional arrangements, in a way that does not allow for an isolation of either factor.
- 26 In his characterization of what he calls, a "truth-judgement" approach to comparative institutional analysis and evaluation L.B. Yeager (1983) seems to stop one step short of the ultimate reference to the evaluations of the individuals involved themselves, an ultimate reference that is dictated by a subjectivist interpretation of normative individualism. Cf. Yeager 1983, 27: "To an adherent of the truth-judgement approach, the most plausible criterion, broadly described, is the probable effects, including side effects, of a contemplated policy on the entire character of the society and thereby on the opportunities that people may have to make satisfying lives for themselves." - The "effects" and "side effects" have to be evaluated, and their evaluation is not a matter of pure "truth-judgement". Cf. *ibid.* 28: "Positive analysis must be accompanied by at least a grain of fundamental value judgement, namely a judgement in favor of happiness or fulfillment or whatever such value individuals may hold."

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