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Structural Rationality, Democratic Citizenship and the New Europe

The breakdown of the communist regimes in Eastern Europe is at least partly due to the worldwide renaissance of democratic ideals such as self-government and individual self-determination. Systems based on an institutionalized overall paternalism have crumbled and most of the remaining anti-democratic systems will probably lose a desperate fight. Possibly there will be some exceptions under the reign of Islamic fundamentalism. But the general tendency of world policy during the last two decades of the century has been and probably will be democratization.

Obviously there is another renaissance: that of 19th century nationalism. But nation is not the only prevalent collective identity. The political development of Eastern Europe shows that presently there are two main collective identities competing: the ideal of the - ethnically and culturally homogenous - nation state and the idea of European re-integration, which for the most part is viewed as identical with westernization.

Similarly in the Western parts of Europe there has begun a discussion about the longterm perspectives of the European Community which focusses on basic questions of European citizenship: Should and can European citizenship become a supplement for national citizenship and is European citizenship in a region with a multitude of languages compatible with democracy, if one considers as minimal requirements the existence of a common public discourse and some kind of collective actor constituted by an institutionally mediated aggregation of citizen's preferences?

This paper tries to sketch a normative theory of democratic citizenship based on the idea of structural rationality which avoids the dilemmas that seem to be inherent in 'supranational' e. g. European citizenship. I will begin with some quite foundational questions of practical rationality, introducing the notion of structural rationality (section I), then I will give an account of democratic citizenship based on the notion of structural rationality (section II) and finally I will discuss some implications of this account of citizenship for the idea of the new Europe (section III).

I.

Structural Rationality

At least in the English speaking scientific community the predominant view on practical rationality is a consequentialist one. This view has two quite firm grounds: the first is the intuitive notion of being responsible for the consequences of one's actions and the notion that responsibility concerning actions is nothing else but responsibility for actual or probabilistic causal consequences of actions. The personal ascribability of behaviour as action corresponds to the responsibility for the consequences of this behaviour. To a certain extent this intuition is incorporated in the law system.

The second ground emerges from the paradigmatic core of modern decision theory¹. Modern utility theory seems to yield a neutral framework which allows to reconstruct all kinds of rational action as consequentialist. Modern utility theory is indeed neutral regarding axiological presumptions: Rational action maximizes some subjective value function, but the question whether this is to be interpreted as representing the well-being of the person acting or the well-being of other persons, or whether well-being plays a role at all can be left open.

Decision theory in the broader sense (including game theory and public choice) has developed instruments of analysis which have already advanced ethics and normative political theory and which will be of major relevance in the future. But there is a tendency to combine an inadequate, consequentialist theory of individual and collective rationality with these disciplines. Indeed there is an aspect that seems quite paradoxical: exactly those research-projects - at least implicitly - devoted to a consequentialist theory of rationality have led to results which undermine this theory. On that account the impossibility results in social choice theory not only challenge our pretheoretic conception of democracy, but can be seen as a general argument in favour of a non-consequentialist theory of rationality.

The consequentialist paradigm emphasizes acting as some way of changing the world: If a person had not acted this way the world would look different. Thus a rational person cannot act without - at least implicitly - exposing some subjective

¹ This theory core is common to the main decision theoretic conceptions, e. g. those of Savage (1954), Jeffrey (1965), Fishburn (1970).

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rank-order within the class of possible worlds. As a consequence, the ideal type of practical rationality results in a complete ordering of possible worlds and their lotteries. Philosophically though, there is a conceptual problem, because if one allows for any kind of describing these worlds, the consequentialist view becomes trivial. If e. g. I refrain from doing a because I do not want to defect from the rule to tell the truth, and if "in world x person p has lied" is one of the predicates that can be used describing worlds, then every kind of deontologically orientated behaviour can be conceptually transformed into consequentialist behaviour. But there is an intuitively clearcut difference between rule conformity as action guide and consequentialist optimizing as action guide, even if it is not easy to render this difference conceptually explicit.

Since there are many different axiological attitudes, personal motives and dispositions, there is a multitude of interpersonally different rank-orders which causes problems of coordination and cooperation in society. From a consequentialist point of view it is the task of an institutional framework to guarantee for some basic restraints in order to make these differences compatible. This is done by establishing sanctions which change the outcomes of strategies and motivate consequentialist actors in *statu civile* to change their previous (*in statu naturale*) strategies. But there is a well-known shortcoming with this kind of Hobbesian theory of democracy: it cannot explain how this structural framework can ever be stable.

I now want to introduce a conception of practical rationality which on the one hand gives an account of institutional stability and which on the other hand constitutes a conception of democratic citizenship which redefines the role of the nation-state in a way compatible with supranational e. g. European citizenship. It cannot be the task of this paper, though, to develop the theory of structural rationality in detail. The exposition of some central elements of structural rationality corresponding to some shortcomings of a purely consequentialist conception of practical rationality must suffice.

In the history of ethics there have been discussed several alternative approaches to practical rationality under which the Kantian² has become paradigmatic. Yet the

² 'Kantian' here with capital K, i. e. the theory of practical rationality which Kant developed in Kritik der praktischen Vernunft. The theory of structural rationality has indeed some characteristics which justify to call it a kantian (with little k) conception insofar as rational persons are thought to act intentionally in conformity to structural constraints (without mediation qua dispositions or sanctions

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theory of practical reason which Kant developed is not a general theory, it is confined to moral behaviour. Following the moral law and following hypothetical imperatives are two different accounts of action which are both based on the general idea of universal lawful causality, but practical reason adds the idea of laws which are chosen by the actor herself (i. e. autonomy). In the realm of moral behaviour the approach of autonomous action contains indeed an essential element for understanding moral action, but I think it is inadequate to have a twofold theory of practical rationality. The Kantian conception is not a unified theory of practical rationality, since practical reason with its categorical imperative expressing the autonomy of rational beings and maximization (with its technical and pragmatistical imperatives) are not integrated. Only morality (the good will) expresses autonomy, whereas all other motives of action reveal human beings as part of nature governed by heteronomous deterministic laws. This dichotomy of two types of action (literally even confining action to the realm of morality) is not convincing. It does not take into consideration the complex structural interrelations of universal and personal viewpoints which guide our decisions and which from my point of view should guide the decisions of the perfectly rational person as well³. There are good reasons for trying to establish a unified theory of practical rationality. In the following I will sketch some central elements which in my opinion should be part of such a theory.

To introduce the idea I use a fictitious biological example: a society of ants gradually gaining consciousness.

An ants-society is governed by a complex system of interactions and cooperations. The individual ants follow these behavioural rules non-intentionally. The general conformity to these rules is based on the genetic outfit of the ants, there is no intentionality involved.

Now let us add some fiction. Let us assume that one singular ant gains consciousness. She begins to realize what she is doing, and after a while she acquires the ability to act freely (first assumption). Now the question arises whether she will still act in conformity to the rule system, guiding the behaviour of ants. For the sake of the argument we assume that the established system of rules of behaviour is optimal for the ants society and that this fact is transparent for the

in foro interno).

³ see Der Konsequentialismus - Rekonstruktion und Kritik, München 1989.

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'conscious' ant: she knows that the established system of rules of behaviour is optimal (second assumption). We can leave it open which criteria there are for optimality in ants societies.

Adding the further quite plausible assumption that it is not always in the personal interest of the ant to follow the rules (she might sometimes prefer to rest when no other ant is watching and/or no other ant will sanction such defective behavior) it follows that the ant will not always act in conformity to the rules if she is a self-orientated maximizer⁴.

Let us suppose the conscious ant continues to conform to the rules. In this case there are different possibilities to give a 'rational account' of such a behaviour:

1. She develops a certain disposition to follow the system of rules shortly after gaining consciousness probably under the impression of the second assumption⁵. That is combining practical reason (in fostering an optimal system of rules) with constraining free choice. Having a disposition here means not to be free any more to perform an act not in conformity (to the rules of the system). There might be a certain range of free choice determining which disposition to acquire (the ant might e. g. decide to attend a school teaching moral behaviour).
2. Now let us assume the ant remains free, i. e. she can ever again freely decide whether to perform a conforming or a not conforming act. If now the ant decides to act in conformity (well aware that this is not always in her personal interest) for the reason that she takes over the structure of ant-behaviour established by the rules as optimal, then this would be an example of what I will call structural rationality.

So we get the following characteristics of structural rationality:

- 1.) 'Structurally rational' is a predicate to be applied to (individual) actions (token), i. e. to the primary objects of decision.
- 2.) An action can be structurally rational only if it is the object of free choice, i.e. it may not be dispositionally or otherwise determined.

⁴ It might be questioned whether this assumption is compatible with the second assumption, but Harsanyi's version of rule Utilitarianism shows that it is compatible, cf. Harsanyi (1979).

⁵ Gauthier's Morals by Agreement (1986) rests - at least implicitly - on the assumption that a rational person can decide to adopt a certain disposition. So we could interpret this first account as the Gauthier-solution. I discuss the relation of rationality, maximization and disposition in: *Practical*

- 3.) A positive valuation regarding the structure by the actor. 'Valuation' here is not meant necessarily in an axiological sense. The actor might foster or preserve a structure for deontological reasons, too.
- 4.) Intentionality. The act is chosen with the motivating intention to conform with the structure.

There are certainly many conceptual and philosophical problems to be solved in order to make the idea of structural rationality more explicit. To mention just some of them: the descriptive relativity of actions causes problems with the concept 'conformity'; on the other hand conformity cannot be defined for action tokens, but for action types; only in some cases it is adequate to establish a digital code of conformity, in others one needs degrees of conformity; the probabilistic aspects of structural rationality; extension of structural rationality to group decisions; and, most important, problems of under- and overdetermination. But these problems are not peculiar to the concept of structural rationality, and we will not solve them here. Instead I want to focus for a moment on the question how acting s-rationally⁶ could be motivated. Two possible attitudes seem to be plausible in the ant-example:

- (1) Solipsistic attitude: The ant regards herself as being the only person around, the other ants are perceived as a kind of functioning machines. It seems that acting s-rationally under this condition could be motivated by altruism only. Altruism in this context might result in attributing an inherent worth to the rules constituent for coordinative behaviour.
- (2) We-attitude. Despite the difference in consciousness the one conscious ant might feel to be part of an ants-society with a common good. This allows for a weak form of we-attitudes: the conscious ant might think: "The established system of rules of behaviour is good for all of us, it is collectively good, good for our society of ants⁷, so even if I am the only one to decide freely, I want to foster that common good, and so I participate in our projects conforming to the rules which constitute our collective behaviour".

We-intentions in the stricter sense though require more than one conscious actor:

Reason, *Collective Rationality and Contractarianism* (1992).

⁶ 's' for 'structural', 'structurally', etc.

⁷ Whatever criteria there are used to decide on the collective good: Kantian, Pareto, Average Utilitarian, Sum-Utilitarian, Rawlsian, Varian, etc.

A member i of a collective K we-intends to do a if and only if

- 1) i intends to do her part of a , given that she believes that every (full-fledged and adequately informed) member of K or at least that a sufficient number of them, as required for the performance of a , will (or at least probably will) do her part (their parts) of a ,
- 2) i believes that every (full-fledged and adequately informed) member of K or at least that a sufficient number of them, as required for the performance of a , will (or at least probably will) do her part (their parts) of a ,
- 3) there is a mutual belief in K to the effect that (1) and (2)⁸. We-intentions of this kind presuppose other conscious actors. So let us now assume that all ants gain consciousness.

Assumptions:

- (1) the established system of rules of behaviour is optimal on the basis of the given first-order intrinsic preferences
- (2) there is a common knowledge concerning (1)
- (3) There are we-intentions concerning different ants-projects (valuable on the basis of the ants' preferences)

If there are we-intentions of this kind, it follows that every ant has a motivation to conform with the established system of rules of behaviour, i. e. to act structurally rational.

II.

Structural rationality as constituting democratic citizenship

Let us turn to a society of human beings. Everybody knows that without some elements constraining individual optimizing many projects essential for the well-being of everybody cannot be realized and the advantage of cooperation in general is reduced. For human actors a rigid, digital system of rules, precisely governing behaviour seems to be inadequate. Structural rationality must be based on a less rigid system of constraining conditions, and this can be provided by a structural

⁸ Cf. Tuomela (1984), chap. 4.

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concept of collective rationality. To the extent such a structural concept of collective rationality is applied in the theory of democracy, it can be based on a concept well-known from the legal theory of H. L. A. Hart, the concept of secondary rules⁹.

Primary rules prohibit and command; they grant members of a legal community rights and impose duties on them. Secondary rules, on the other hand, determine which procedure is to be implemented in a legitimate generation of primary rules. The line demarcating primary rules from secondary rules is transitional. Because the law of contract determines in which way new legal obligations are generated, Hart subsumes it under the category of secondary rules. And because (continuing with this example) the generation of rules that direct the correct completion and fulfilment of contracts is itself again bound to secondary rules, it makes sense to understand the distinction between primary and secondary rules not as determination of an absolute, but rather as a formulation of a relative difference: Primary and secondary rules cannot be understood as two separate, disjunct set of rules. The difference between them can better be formulated in the following way: One specific rule (or one specific set of rules) is secondary in relation to another specific rule (or another specific set of rules), and so on. Accordingly, the rules emerging from a legal contract are secondary to a legal obligation that implies concrete contractual conditions, certain rules given by the Basic Law are secondary to the system of rules given by the legal contract, etc.

The classical version of legal positivism does not know any obligation that is more than coercion by means of sanctions. But a legal rule differs from a simple command in so far as it is normative. That means, a legal rule contains a claim towards its addressees that is valid as such, not just because of the sanctions linked up with it: Validity does not mean just being sanctioned. The validity of a legal rule can, on one hand, be based on its content, which means that it is as such accepted as a certain rule of conduct (primary validity). On the other hand, its validity can be based on the fact that it has emerged out of an already accepted set of secondary rules (secondary validity). Societies that only know primary rules do not have, in Hart's opinion, any legal system. In Hart's concept of rights secondary rules are constitutive.

To reveal the meaning and the status of this distinction, let us assume the following situation: At a given time *t* a person *P* has made another person *Q* a promise that

⁹ Cf. Hart 1961, esp. chap. V.

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obliges P to carry out a certain (generic) action a. In the meantime (at the time t') P has come to the conviction that it would be better for Q if he (P) abstained from doing a - always assuming that this would not harm any other conceivable interests: $\neg a$ would definitely (this is the firm conviction of P) have better consequences for Q. Moral intuition tells us that not in any possible case in which P could have such a conviction, he could or actually ought to abstain from doing a. Beyond this there can be even situations in which such conditions (of which P is convinced of) are fulfilled - but still P's decision for $\neg a$ would violate an individual right of Q. P's decision for $\neg a$ would even then possibly be a violation of rights, although, on the ground of having judged all those aspects, $\neg a$ could be shown to be perfectly permissible in the moral sense. Even in possible cases in which P could have good reasons to believe that in the meantime (at the time t') Q himself has come to prefer $\neg a$, it is not at all evident that P would now be allowed to decide, against the given promise at the time t, for $\neg a$. Q could say: "Even if at the time t' I really had come to prefer $\neg a$, it would still be high-handed of P to abstain from doing a without my explicit authorization for doing so." - There is, in this example, a direct conflict between the pareto-criterion on one side, and, constituted here by a given promise, individual rights and duties on the other side.

Rules of interaction - let them be institutionally supported or just be embedded in moral and conventional every-day normative patterns - generally emerge out of a long historical process. Mostly it is assumed that in a historical process rational decisions only play a subordinate role. The tradition of normative contractualist theory nevertheless persistently clings to the fiction of a rational choice of institutional structures. Yet in modern contractualism the Kantian version of the contractualist argument has become dominant¹⁰. In this version the contract constitutes a criterion of the right only, it is not a ground of obligation. The appeal of the contractualist idea for political philosophy can be explained with the specific role existing institutional or conventional regulations play in the context of the moral orientation of human action. And more or less independent from the question of how these concrete institutional and conventional regulations were developed, i. e. independent from the question whether they have more the character of human inventions or whether they rather have to be understood as having survived in the course of a long historical inter- and

¹⁰ Explicitly in Rawls (1971), but true as well for other modern contractualist theories, e. g. Gauthier

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intra-cultural process, these institutional and conventional regulations in general are - ignoring times of revolutionary changes or social situations similar to civil war - conceived as secondary rules: they constitute the ground of validity of primary rules and of first order decisions. In the example above, the 'conferring' of an individual right on a, which as a result of the promise of P belongs to Q, is a primary rule; and of course the duty of P to do a also is a primary rule. But on the other hand, and it is important to see the difference here, the institution of the promise itself possesses the status of a secondary rule: Under normal circumstances we simply are obliged to keep promises.

There are many cases in which, on the base of a decision, secondary rules can attain the character of a ground of validity. Let us first discuss an example that does not, as parliamentary proceedings of legislation do, presuppose the existence of formal institutions: Let us suppose a group of persons plans a hike through the mountains together. As they are all experienced mountaineers, they know that on such trips one always has to reckon with sudden changes in the weather and, subsequently, with dangerous situations. Planning their trip they decide that in case of such a situation one of them - let us name him John - would take over the task to decide for the whole group of them what had to be done. Later, on the trip, such a dangerous situation actually occurs. John decides that in order to get back to the valley as quickly as possible they should take the shortest route and descend off the face of a precipitous steep. Peter, another member of the group, is convinced without any doubt that this decision is the wrong one, because the implied risks are in fact much higher than those of the alternative solution which would be to take the route back slowly and cautiously on the northern side of the mountain, even while taking into account that this would cost them much more time and would not allow them to arrive at the valley until late in the night. Assuming that our group of mountaineers is solidary enough not to leave any of its members alone, Peter could succeed in forcing the whole group to follow him just by obstinately refusing to submit to the decision of John. Though, it seems that Peter has not the right to do so. There is obviously a great difference between a situation in which the members of a group have already earlier agreed on a certain collective decision-procedure, as in the one of the mountaineers, and a situation in which this is not the case. In a cultural context predominantly

(1986), Buchanan (1975), Nozick (1974); cf. Nida-Rümelin (1987,1988).

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characterized by democratic values a group of persons would, assuming they had not already earlier agreed on a different kind of a decision-procedure, apply the rule of majority vote. But this must also be regarded as a secondary rule. If in our example there was not such a secondary rule (the earlier agreement on the decision-procedure that referred the task of making the necessary decision to John), Peter would not only be morally allowed, but may be even morally obliged to evoke - by means of his refusal to submit to the decision of John and by appealing to the sympathy of the other members of the group - what in his eyes is the best collective decision. But in this case, where there is already a (commonly accepted) secondary rule, Peter in general simply is obliged to accept this as a structural constraint. Only strong and extraordinary reasons might morally allow Peter to refrain from the established secondary rule. Certainly primary rules are capable of subverting secondary rules in some restricted cases: If Peter is indeed totally convinced that the descent John prefers will inevitably lead to the death of the whole group, then he may even be obliged to torpedo the collective decision made by John - notwithstanding the fact that the torpedoed decision was based on a collective decision-rule which sprang from an earlier common and unanimous agreement.

Democratic legitimacy is a feature of collective decisions that result in accordance with certain secondary rules. It is difficult to say in abstract terms which secondary rules are constitutive for a democratic system. As comparative theory of government shows, the empirically realized variety of such secondary rules systems in parliamentary democracies is indeed wide. The family resemblances between all different kinds of democratic systems refer, on one hand, to a minimal measure of formalized control of the political decision-makers and, on the other hand, to the constitutive role of an informal normative consensus. While the first of these elements manifests itself in rules of common, fair and free citizen's elections guaranteed by constitutions and internal democratic structures within the respective system of political institutions, the second element of a democratic system is essential for the specific normative character of its political decision-procedures: The decisions made in these procedures depend on the presupposition of being at least fundamentally capable of achieving common consensual agreement. Citizen's consensus - even if never in fact realized - is indispensably *intentio recta* for primary rules issued by the legislator. Legislative projects are universalistically justified with normative arguments

like common interest, political justice, economic efficiency, etc.

Universalistic justification of primary rules is an essential element of democratic polity. The claim of universal justifiability of primary rules - a claim towards which every kind of communicative political acting in a democratic order must necessarily be orientated - does not mean a claim for a de facto common agreement on them. A dissent about primary rules that typically appears in different cognitively formulated opinions about the adequacy of specific (universalistically intended) normative criteria cannot, as a rule, be eliminated by the democratic decision-procedure. This is simply due to the fact that a democratic system is based on a common consensus of a higher order, and this common consensus itself refers to the acceptance of secondary rules. At the level of primary rules common agreement is *intentio recta*. At this level though, in general, de facto common agreement cannot be realized.

Another type of common agreement is not intentio recta, but praesumptio indirecta of a democratic system. Let us explain this with the help of an elementary example: Let us suppose that a group of persons has to decide on x or y - whatever these alternatives might be (presidential candidates, legislative drafts, decisions in foreign policy, etc.). Let us further suppose that one person of this group, the person A, prefers x. When it finally comes to the vote - evoked by application of the rule of majority vote - the group decides for y. Now this does not necessarily change A's opinion about x: she might still be perfectly convinced that x is better than y. Now let us imagine that A had the power to decide which of the two alternatives, x or y, finally was going to be realized, and let us for this case - to keep the example as simple as possible - suppose that ceteris paribus is realized in its widest sense (no other social consequences of x and y than those already inherent in their full characterization, no personal disadvantages for A, etc.). In this case there are now two possibilities: A could either decide for x, as she is still convinced that x is better than y, or she could decide for y, backed by the argument that the whole group of electors had (in a legitimate democratic decision-procedure) in fact voted for it. We cannot of course in this place go into the problems of the revealed-preference-concept. But it should be quite clear that A, if she actually decided for y on the base of the given reasons, would not in any way have to give up her conviction that x is better than y.

An election or a vote in general - ignoring cases in which it serves as a parameter in

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the process of judging possible alternatives - does not provoke any change in the individual's first order preferences. A's decision (if she decides for y) is motivated by preferences of a higher order, i.e. by criteria of structural rationality that refer to the way how individuals' first order preferences should be realized collectively.

Even a wrong collective decision not violating the structure and is insofar legitimate can be obliging, but nonetheless not every wrong but collective decision is obliging. Legal positivism of the normative type maintains that a legitimate collective decision is always obliging, either because there can be no wrong legitimate decisions because there does not exist any independent criterion of the right beyond a system of secondary rules, or because of the fact that an independent parameter in the sense of a 'relative' natural law simply cannot be obliging at all. Normative legal positivism represents one extreme on a scale whose opposing extreme consists in the idea that secondary rules are totally irrelevant. Consequentialism and existentialism unite in their mutual rejection of secondary rules - a rejection explicit in existentialism and only implicit in consequentialism, here as a logical consequence of its specific concept of rationality.

Citizenship in democratic systems is constituted by a basic social consensus concerning the structural framework of secondary rules which determine under which constraints and with which procedures individuals' first order preferences should be realized. Structural features of interaction and collective decision constrain individual optimization. Only within the structural framework which constitutes democratic citizenship there is room left for -not necessarily self- or group-orientated - optimization. Optimization is constrained by structural features of a democratic order even if optimization is itself orientated towards universalistic normative goals - e. g. political justice. Only where the democratic character of a social structure as such becomes dubious, will the obliging character of its constitutive structural traits (secondary rules) also be questioned¹¹. In this case the criterion of optimization becomes dominant, and a Hobbesian bellum omnium contra omnes (both under the auspices of conflicting interests and/or conflicting normative orientations) will only be prevented by achieving a new basic consensus on the fundamental features of the

¹¹ The right to resistance, the right to civil disobedience and to objecti-on out of conscientious reasons within the realm of a democratic (to put it with Rawls, in a 'nearly just') society cannot be an argument against this thesis, because it is actually a specific feature of civil disobedience that it does not subvert the structure. It rather takes its position explicitly within the context of the

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social structure as a whole.

Democratic citizenship should not be based - qua aggregation - on the reductionist constitution of a collective actor¹², but on structural features of interaction - constituted above all qua secondary rules including the features of democratic decision-procedures. But for the establishment of structural rationality a system of formal rules of interaction and collective decision secured by means of sanctions can never be sufficient: Structural rationality as a personal guideline of praxis is indispensable as a normative and motivationally effective element in order to constitute citizenship as the corpus politicum of a democratic order.

III.

Implications for the new Europe

For the emerging new Europe it is even more obvious than for the old that the idea of an European nation state is unfeasible. The model of the United States as melting pot forming a new nation out of different nation-pieces is not transferable to a region with its firm and old traditions, cultures and identities like Europe. And even if it were feasible one cannot wish its realization (in fact the US is not a melting pot, but it was in the past and mostly still is an integrationalist model of marginalizing cultures diverging from the predominant white Anglo-Saxon tradition). In fact the idea of an European nation-state in the traditional sense was not feasible for the EC of the six original states, all highly industrialized and with similar social and political traditions and institutions, less for the present EC of twelve states with its southern members like Spain and Greece. It is certainly not a sound model for the new Europe. The nation-state in the traditional sense presupposed the unified triade of territory, state and people, it presupposed a collective actor constituted by a common public, by a highly developed intergrational orientation and the decay of all other competing collective identities. It could be realized at an European level only if the multitude of collective identities, cultural backgrounds, languages, religious and 'weltanschauliche'

democratic system itself.

¹² The impossibility results of collective choice theory give further rea-son to refrain from any theory which identifies democracy with some kind of constituting a collective actor. This seems to me the most important in-sight of the theorems of Arrow (1963), Sen (1970) and Gibbard (1973, 1974) / Satterthwaite (1975), cf. Nida-Rümelin (1991).

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orientations could be marginalized or reduced considerably.

The competing point of view is more realistic. According to it the new Europe cannot be more than a loosely connected *foedus pacificum* in order to coordinate international relations in Europe and in order to establish a kind of multilateral economic (and possibly social) aid. The young states which recently evolved out of the Soviet Union obviously are in favour this second line of thought. Citizenship on that account is confined to the nation-state. Each nation-state is constituted by a dominant cultural tradition, a dominant official language and an identity which is at least partly constituted by the emphasis on differences from neighbouring states, peoples and cultures - the history of Europe during the last two centuries and the present developments are bloody demonstrations of this aspect.

The project of the nation-state consequently carried out in the new larger Europe will result in a long series of conflicts - wars during the formation process and internal social conflicts within the nation-states as a side-effect of establishing the people constituting the state's 'legitimate citizenship'. But there is the alternative of a new understanding of democratic citizenship which allows for combining regional and cultural identities with 'supra-national' identities like European citizenship. In theory there is an alternative to the traditional view on citizenship constituting the nation-state and constituting, qua institutional decision-procedures, the state as a collective actor. In fact this alternative at least partly does not only exist in theory.

If we understand citizenship as constituted by we-intentions of a certain kind backed up by individual rights of participation in collective projects within the framework of a legal system defining constraints which guarantee individual liberties, citizenship no longer constitutes a single collective actor (the nation-state), but instead there evolves a structural context of interaction on different levels. This interaction has two essential elements: the first element consists in a basic normative consensus on the institutional conditions and the second element consists in an orientation of individual behaviour to a certain extent towards structural rationality, preserving institutional conditions and allowing for participatory democratic citizenship.

In this sense European citizenship is compatible with a multitude of individual we-intentions ranging from little social communities like family or friendship to larger ones like associations and corporations, regionally defined communities like city or 'land',

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cultural, political, religious and 'weltanschauliche' communities. A well-developed concept of democratic citizenship, though, will always lay emphasis on an individualistically understood citizen's status: The rights qua citizen are predominantly individual rights, not rights which anybody gets qua being a member of whatever community. Citizenship is not constituted by groups, but by citizens inter-acting to a certain extent as citizens with specific we-intentions, i. e. acting on the basis of structural rationality, whereas they also act as Lockean optimizers within commonly accepted structures of interaction - including structures of conflict resolution between different collective identities in Europe.

There is something tragic in the present development in Europe, as the victory of democracy has at the same time encouraged to re-establish the by long obsolete idea of the nation-state. The new Europe has the chance to re-strain the destructive potential of the new nationalisms in establishing institutional structures as a core around which the normative underpinning of an European citizenship can develop.

References:

Arrow, Kenneth: Social Choice and Individual Values, London, Sidney (2.ed.) 1963

Buchanan, Alan: The Limits of Liberty. Between Anarchy and Leviathan, Chicago/London 1975

Fishburn, Peter: Utility Theory for Decision Making, New York 1970 Gauthier, David: Morals by Agreement, Oxford 1986

Gibbard, Alan: Manipulation and Voting Schemes: A General Result, Econometrica 41 (1973) 587-601

ibid.: A Pareto-Consistent Libertarian Claim, Journal of Economic Theory 7 (1974) 388-410

Haransyi, John C.: Bayesian Decision Theory, Rule Utilitarianism and Arrow's Impossibility Theorem, Theory and Decision 11 (1979), 289-318

Hart, Herbert L.A.: The Concept of Law, Oxford 1961

Jeffrey, Richard: The Logic of Decision, New York u .a. 1965

Nida-Rümelin, Julian: Der Vertragsgedanke in der politischen Philosophie, Zeitschrift für Politik 34 (1987) 200-207

ibid.: Plädoyer für eine kontraktualistische Philosophie der Politik. In Philosophie des Rechts, der Politik und der Gesellschaft, ed. Ota Weinberger, Wien 1988,51-57

erschienen in: Percy B. Lehning/ Albert Weale (Hrsg.). Citizenship, Democracy and Justice in the New Europe. London, New York: Routledge 1997, S.34-49.

ibid.: Zur Philosophie der Demokratie: Arrow-Theorem, Liberalität und strukturelle Normen, Analyse und Kritik 13 (1991) 184-303

ibid.: Practical Reason, Collective Rationality and Contractarianism. In Rationality, Justice and the Social Contract, ed. R. Sugden, forthcoming

Nozick, Robert: Anarchy, State and Utopia, New York 1974

Satterthwaite, Mark: Strategy-Proofness and Arrow's Conditions: Existence and Correspondence Theorems for Voting Procedures and Social Welfare Functions, Journal of Economic Theory 10 (1975) 187-217

Savage, Leonard: The Foundations of Statistics, New York 1972

Sen, Amartya: Collective Choice and Social Welfare, London, etc. 1970

Tuomela, Raimo: A Theory of Social Action, Dordrecht 1984