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Solidarity as a Social Norm and as a Constitutional Norm

I. THE CONCEPT OF SOLIDARITY

I will use the term "solidarity" in a broad sense. By acting in solidarity I mean the voluntary transfer of goods or services to another individual or to a group of individuals whenever this transfer is not the object of an explicit contract. A transfer of this kind is *unconditional* in the sense that it is *not* contingent on the enforceable duty of the beneficiary to provide a specified equivalent for the gains he or she obtains. Acting in solidarity with a single individual means to contribute voluntarily and unconditionally to an *individual* good. Acting in solidarity with a group of individuals means to contribute voluntarily and unconditionally to a *public* good.¹ If we analyze the empirical conditions which promote or impede solidarity in the sense of voluntarily and unconditionally contributing to individual or public goods we can identify three main empirical constellations. Let us begin with the constellations in regard to solidarity in favor of public goods.

II. SOLIDARITY IN FAVOR OF PUBLIC GOODS

A. Individual Benefits are Dependent on Individual Contributions: Correspondence between Individual and Collective Interests

In the first constellation, the social and natural situation is structured in such a way that the benefits a person receives out of his or her contributions to a public good exceed the costs of those contributions. The individual benefits are then dependent on the individual contributions in the sense that, in balance, a person does better by contributing actively to the public good in question. Therefore, the contributions could be solely founded on the expectation of gains.

One possible reason for this is that the individual contribution *itself* has a significant importance for the general provision of the public good or enhances its value considerably. Examples of this are the difference a third man makes in carrying a cupboard which cannot be carried by two men alone,

or the additional strength a strong ally represents in successfully repelling a mutual enemy. Another possible reason is that the individual contribution is *indirectly* important for the general provision of the public good or for a considerable enhancement of its value. This is the case when it has a significant influence on the behavior of other potential contributors. A beach can be spoiled if one visitor starts throwing away waste, a line of defense can break down if one of the defenders leaves the front, one brave man can start an uprising.

Under circumstances like this a person has strong incentives to contribute to a public good even when there are no contracts and institutionalized constraints which ensure that the other members of a group will contribute as well. That means that there are strong incentives to act in *solidarity*. One can speak of "strong" incentives because under such circumstances a person is motivated on grounds of rational utility maximization alone to promote a public good. The pursuit of self-interest is in accordance with the securing of the common interests of the group as a whole. In this constellation a correspondence between individual and collective interests exists. Acting in solidarity to promote a public good in this case is *solidarity out of self-interest*.

Empirical constellations like this, as a rule, are only possible in small, close-knit groups or in groups with considerable differences between "strong" and "weak" members. In small groups it is possible that every single person counts when public goods need to be provided and that the behavior of each member of the group has a direct impact on the behavior of the others. In groups with large differences between strong and weak members, it is often completely dependent on the behavior of the strong members whether a public good is supplied or not.

*B. Individual Benefits are Independent of Individual Contributions:
Individual Interests Dominate Collective Interests*

In the second constellation, the overall benefits a person receives through the existence of a public good still exceed the costs of his or her contributions, but this no longer holds true for the special benefits which are based *in particular on the personal contribution itself* (cf. Coleman, 1990, pp. 241ff.). For example, the benefits of stable democratic institutions are of much greater value to the individual citizen than the costs of participating in a democratic election. Nevertheless, his/her personal participation in an election will have no noticeable effect on the stability of these institutions.² For such circumstances, the personal contribution to a public good is neither essential for the general provision of the good, nor does it enhance its value to such an extent

that the enhancement outweighs the costs of the contribution. In this case we can say that the individual benefits from a public good are independent of the individual contributions, because, in balance, a person does *no* better by contributing actively to the public good in question. By contributing to a public good, one would worsen one's position. The contributions to a public good cannot then be solely founded on the expectation of gains.

At least under the living conditions in a modern society this constellation is typical of the kind of problems which emerge in providing public goods. It is a situation which generates a temptation to *free-riding*, which is a temptation to gain an advantage at other people's expense. In situations like this someone can try to profit from other people's attendance to the polls, their efforts to keep the environment clean, their bravery in fighting an enemy, or their tax payments to enable the state to manage public matters. In view of such prospects a person has *no* strong incentives to act in solidarity. If the individual benefits from the personal contributions to a public good do not exceed the costs of those contributions, a person cannot be motivated on grounds of rational utility-maximization alone to promote this good – even when it is in the interest of each member of a group that the good is provided. In this constellation the pursuit of self-interest is not in accordance with the securing of common interests. There is no correspondence between individual and collective interests but rather individual interests *dominate* and *undermine* collective interests.

The well-known dilemma emerges that persons who act solely with the aim of maximizing their own utility will produce a result which is in sharp contrast to their interests (cf. Luce and Raiffa, 1957; Rapoport and Chammah, 1965; Ullmann-Margalit, 1977; Voss, 1985; Diekmann and Mitter, 1986): instead of making a profit out of the solidarity of others, the public good which would be an advantage to everyone will not be provided at all. Because everyone wishes that only the *others* should act in solidarity, in the end *nobody* will act in solidarity. Although everyone would prefer a general solidarity among the members of a group, each one has an incentive not to join the others. Solidarity in such situations is not *self-enforcing* although all the members of a group *wish* that there would be solidarity in providing a public good.

Acting in solidarity under conditions of this kind can only occur if people do not act according to a principle of utility maximization but according to a principle of *universalization*: if they act only in such a way they could wish all others would act as well (cf. Kliemt, 1986; Hegselmann, 1996). A principle of universalization forbids placing the burdens of mutually desired goods only on the shoulders of others. Acting in solidarity to promote a public good under such conditions, therefore, is *solidarity out of fairness*.

Constellations where there are no strong, interest-based incentives to act voluntarily in favor of public goods are typical of large, anonymous groups and of groups in which the differences between strong and weak members are diminished (cf. Olson, 1965). In large groups with many members and in groups with few differences between strong and weak members it is often the case that the behavior of a single person is totally insignificant for provision of a public good. The "problem of large numbers" and the "achievement of social leveling" are of course phenomena which are typical of the modern societies in which we live. Therefore it is typical of such societies as well that they engender unfavorable conditions for the provision of public goods. In this case there is no "invisible hand" which ensures a harmony between individual and collective interests.

*C. Individual Contributions are Independent of Individual Benefits:
Collective Interests Dominate Individual Interests*

The third constellation is characterized by the fact that the costs of a person's contributions to a public good *generally* exceed the benefits the person receives through the existence of this good. In this case we can say that the individual contributions to a public good are independent of the individual benefits, because on no account can the costs of these contributions be outweighed by the benefits. The contributions to a public good cannot then, in principle, be founded on the expectation of gains. Under these conditions one neither does better by contributing actively to a public good oneself, nor would one have an overall advantage if all others participate as well. In both cases a person's situation would not be improved but worsened. Advantages would only fall to other people.

There are everyday as well as dramatic examples of this: to enable a village to preserve an old church I can donate a large amount of money even if I myself only have a moderate interest in old churches. But it is also possible to abandon a professional career to help the poor in the world or voluntarily join a risky and life-threatening mission as a soldier or a freedom fighter. In cases like this it is not a question of taking over one's "fair" share in providing a good which is advantageous to all, but of making a *sacrifice* for the community. Here the collective interests of the beneficiaries of a public good dominate the individual interests of the contributors.

It obviously follows that in such circumstances, too, a person can have no strong incentives to act in solidarity. The voluntary transfer of goods or services cannot be grounded on expedient calculation if only other people can profit from these transfers. If this holds true, then from the standpoint of self-

interest one can only wish that the public good should be provided exclusively by other persons. But neither can acting according to a principle of universalization lead to solidarity in this constellation. Because even if all others contributed to the public good in question this would not alter the fundamental point that the costs for the contributor will be higher than the benefits. In this case it would be better for him or her if *nobody* contributed to a public good rather than a situation in which *all* contribute. For the soldier who participates in a suicide mission it would undoubtedly be worse if the other participants of this mission did not act in solidarity during combat. But their solidarity will not change the fact that it would be better for him in the first place if nobody was obliged to take part in a suicide mission. For this reason one cannot call his duty "fair". What is asked for is a one-sided sacrifice. If he is willing to do this voluntarily, he is not acting in solidarity out of fairness but *out of self-sacrifice*.

The dissonance between individual and collective interests in this case has a different structure and its "solution" has other consequences than in the foregoing constellation. There, the dilemma emerged that the predominance of individual interests harms these interests themselves and a strengthening of collective interests would be an advantage from the standpoint of individual interests, too. Now there is no dilemma at all. The prevalence of collective interests is clearly to the disadvantage of the individual interests of those who show solidarity.

Constellations like this are not dependent on the size and the social structure of a group. A person's self-sacrifice can be a benefit in small as well as in large groups. But in a large group maybe more members have to be willing to make a sacrifice before a noticeable effect for the group as a whole can be established. And significant differences between strong and weak members would enhance the risk for the strong members to have obligations imposed on them: strong members of a group will have more frequent opportunities to produce a considerable advantage for a group as a whole.

III. SOLIDARITY IN FAVOR OF PUBLIC GOODS AND THE PROBLEM OF SOCIAL ORDER

The three constellations analyzed embody increasing restraints for the provision of public goods. If the individual benefits from a public good are dependent on the individual contributions, each member of a group has incentives to contribute to the good on the grounds of rational pursuit of self-interest alone. The contributions could be founded directly on the expectations of gains. If the individual benefits are independent of the individual contribu-

tions, as it is the case in the second constellation, each member of a group has a temptation to behave as a free-rider. Solidarity here can only be solidarity out of fairness. Nevertheless it is better for each member of a group if *all* act in solidarity rather than a situation in which *nobody* acts in solidarity. So the contributions to a public good could still be *indirectly* founded on the expectations of gains – among other reasons, because the members of a group will have incentives to create an institutionalized guarantee of contributions. But if, finally, the individual contributions to a public good are independent of the individual benefits, then it is not in the self-interest of a person either to make an individual contribution to a public good or that everyone acts in solidarity in the sense that everyone's contributions are secured by institutions. In this case the contributions to a public good can neither be directly nor indirectly founded on the expectations of gains. Solidarity can only be a solidarity out of self-sacrifice.

Given this order of things, it is not by chance that acting in solidarity under conditions which prevail in the second and third constellation has become an object of moral norms: that is, ways of acting that people would not choose of their own accord in the pursuit of their self-interest but which are in the interest of other people become as a rule the content of moral norms. It is clear that those norms in the third case are more demanding than in the second. A call for acting in solidarity out of self-sacrifice means to expect a kind of behavior from individuals that is solely in favor of other people, whereas a call for acting in solidarity out of fairness only means to expect that individuals take part in the costs of a good which is, all in all, advantageous to themselves as well. Solidarity out of self-sacrifice, for example, is part of a utilitarian ethic in cases when the "sum of happiness" could be enlarged by such a way of acting. Solidarity out of fairness, in contrast, can be part of a contractarian ethic which advocates that moral norms should improve the position of all concerned.

But the normative aspects which are associated with the different kinds of solidarity are not the object of discussion here. The focus is on an empirical question: what kinds of solidarity are important or even necessary for the existence of social order?

Let us begin answering this question with regard to solidarity out of self-sacrifice. There can be barely any doubt that for a community as a whole it can be an advantage if all or some of their members are willing to sacrifice their personal interests for the sake of the common welfare. But is such a willingness to self-sacrifice also *necessary* for the survival or the stable duration of a community? One cannot rule out definitely that a community may sometimes confront a situation in which it is dependent on the willingness of its members to sacrifice their personal interests in favor of the survival

of the group (MacIntyre, 1984). Perhaps Texas would never have reached independence if its heroes had not given their lives at the Alamo. But there is a convincing indication that the willingness to subordinate one's personal well-being to the welfare of the group is *not* a necessary condition for the survival and the stable existence of each society. It is characteristic of free and liberal societies that they do *not* demand from their members that they sacrifice themselves for collective needs. Living in such a society means that the individuals do not have to accept that their personal disadvantages are compensated by the advantages of the majority. The guarantee of subjective rights as a distinguishing feature of free societies means exactly that fundamental individual interests need not be given up for the common interests of the group. On the contrary, the individual is explicitly protected against such claims. The constitution of a liberal society is not embedded in a "collectivist" ethic of a utilitarian kind or any other kind. But contrary to the writing on the wall by many "communitarians", it does not seem to be the case that the extinction of such societies soon lies ahead.

How do things look with regard to solidarity out of fairness? This kind of solidarity would only be dispensable if at least one of the following two conditions could always be satisfied:

1. Relevant public goods are provided by solidarity out of self-interest.
2. Relevant public goods are provided by institutions.

If it could be really guaranteed that at least one of these two conditions is always fulfilled, a society would not seem to be dependent on persons who act according to a principle of universalization and show solidarity even when such behavior does not serve the purpose of self-interest. A society would become more independent of "morality" and "moral motivation", scarce and valuable resources.

Clearly the first condition is not always fulfilled. As already mentioned, this definitely applies to the living conditions in modern market societies. A large number of members, a high anonymity in social relations and an increasing geographical, political, and social mobility of people result in structures in which the behavior of the single individual, in most cases, has no influence on whether a public good is provided or not, or to what extent it is provided. Opportunities and therefore incentives to behave as a free-rider are ubiquitous in today's mass-societies. In such societies one cannot find a "structural solution" for *all* important public goods. One cannot expect that there is always an "invisible hand" which transforms the "vice" of rational utility-maximization into the virtue of solidarity.

But one cannot expect *either* that the second condition can always be fulfilled if the first condition fails and that, therefore, a solidarity out of fairness would be generally superfluous. The proposal to fall back on

institutions as instruments to produce public goods if such a production fails on the individual level because of the predominance of self-interest, goes back to Thomas Hobbes and since then has been offered time and again as a way out. And at first sight the assumption that in this way the program of "economizing on virtue" can be consequently pushed forward and one can do without the risky hope of solidarity out of fairness seems to be quite plausible (cf. Baurmann and Kliemt, 1995). Although contributing individually to a public good under the given circumstances does not foster the purpose of self-interest, it seems nevertheless to be in accordance with the self-interest of the persons concerned if an institution generally enforces the contributions to the good in question. So even if providing public goods in a direct way is doomed to fail because of the predominance of self-interest, it seems that this predominance must not make the provision of these goods impossible in an indirect way, too.

On closer inspection, however, this widely shared assumption does not prove conclusive. It just makes use of the kind of preconditions which are in need of explanation. The crucial point is: institutions which produce and maintain public goods are public goods themselves! Similar to other public goods, they are provided not by an external instance but by society itself. But because of that these institutions are susceptible to the same sorts of problems as the public goods whose problems they are trying to solve (cf. Buchanan, 1977; Vanberg, 1982, p. 153; Kliemt, 1986, pp. 194ff.; Kliemt, 1988). If the provision of a public good in a direct way fails because there are too many free-riders in a community, why then should the provision of this good in an indirect way by producing *another* public good *not* fail because of the free-riders? If we can only count on solidarity out of self-interest to produce public goods and, at the same time, a situation exists in which this kind of solidarity is not sufficient for this purpose, it does not seem very plausible that a public good will be available which can effectively replace solidarity out of self-interest.

Even if we concede that in the case of institutions which are designed to supply public goods the difficulties of public goods will not recur in just the same way – because, for example, the number of contributors can be smaller (cf. Coleman, 1990, pp. 270ff., 821ff.) – it would nevertheless look like a typical ad hoc assumption that a social group which suffers from a lack of willingness among their members to contribute voluntarily to public goods will always have the ability to come up with an institution as a substitution for this willingness, without facing the problem that there must also be a willingness to contribute voluntarily to *this* public good. After all, an institution to produce public goods must be built *under the same framework of conditions* as the public goods it should provide. Already from this aspect it is not very

convincing that the difficulties in both cases will be fundamentally different. It actually turns out like this especially in regard to law. It is far from the truth that law is a universally applicable instrument to enforce contributions to any public goods. On the contrary, a legal system itself is essentially dependent on sufficient people making voluntary contributions to its existence. This is definitely true for legal systems which are public *goods* and not public harms (cf. Hart, 1961, pp. 77ff.; Baurmann, 1996a, pp. 220ff.).

All in all, at least under the living conditions in a modern society, one cannot assume that solidarity out of self-interest alone will be sufficient to provide those public goods which are essential for social order and are in the common interest of the members of a society. Institutions which are needed in circumstances in which one cannot expect solidarity out of self-interest are themselves dependent on people who act in solidarity. The problem of lacking solidarity cannot be solved entirely by institutions because the building and maintaining of such institutions is only possible if this problem has, in principle, already been solved. It follows that solidarity out of fairness is indeed indispensable if – as is the case under the living conditions today – there are not enough incentives for acting in solidarity out of self-interest. Solidarity out of fairness cannot be substituted at will by institutions. Without a sufficient number of people willing to act according to a principle of universalization and able to withstand the temptation to free-ride, the “problem of social order” – at least in modern societies – is irresolvable.

IV. SOLIDARITY IN FAVOR OF INDIVIDUAL GOODS

A. Getting is Dependent on Giving:

Correspondence between Giver's Interest and Taker's Interest

The first constellation which is relevant for acting in solidarity in favor of individual goods is characterized by the fact that persons can expect to become beneficiaries of voluntary and unconditional transfers of goods or services only if they themselves carry out such transfers to other individuals, that is, only if they themselves are willing to act in solidarity in favor of individual goods. To get something under such conditions is dependent on giving something: only a person who helps and supports others can hope for help in trouble or support in solving a problem. As long as the utility of the transfers by others exceeds the value of the transfers by oneself, acting in solidarity in favor of individual goods serves the self-interest of a person. A person does better if he or she acts in solidarity instead of acting “selfishly”.

The empirical precondition for solidarity out of self-interest in this case is the functioning of a "mechanism of reciprocity".³ Such a mechanism can include forms of "direct" and "indirect" reciprocity. Direct reciprocity means that one receives transfers from a person to whom one gave transfers in the past. Indirect reciprocity means that one receives transfers from a person because one makes or has made such transfers to *other* persons. An example of direct reciprocity occurs when a neighbor helps me dig my garden because I have helped him paint his fence. An example of indirect reciprocity occurs when a neighbor helps me dig my garden because I have helped *another* neighbor paint his fence.

If a mechanism of reciprocity works, a person has strong incentives to support the individual good of other persons even when there are no contractual obligations or institutionalized constraints to ensure that acts of this sort will be rewarded or compensated. A mechanism of reciprocity motivates people to act in solidarity on grounds of rational utility maximization alone. A correspondence of giver's and taker's interests exists: both parties improve their situation by showing solidarity. Acting in solidarity in favor of individual goods in this case is *solidarity out of self-interest*.

A mechanism of reciprocity is dependent on social structures in which persons act in continuous relations. These relations must be durable enough for investments in the future solidarity of other persons to pay off and they have to be transparent enough to provide sufficient information on the behavior of the persons concerned. Only under these conditions are reciprocal reactions to the acts of others both possible and rewarding. It also holds true, therefore, that a mechanism of reciprocity will be effective only in small and close-knit communities.

B. Getting is Independent of Giving: Giver's Interest Dominates Taker's Interest

In the second constellation, the possible transfers one can expect because of the solidarity of others still exceed the costs one has to bear for one's own acts of solidarity, but the transfers of others no longer are necessarily connected with one's own transfers: a person can possibly hope for help in trouble or support in solving a problem even if this person does not help and support others, and a person may end up with nothing despite regularly showing solidarity. Getting under such conditions is independent of giving insofar as becoming a beneficiary of solidarity cannot be brought about by one's own behavior. Acting in solidarity worsens a person's position, because, as an

investment, it is either ineffective or superfluous. Whatever the others do, it is always better for oneself not to practice solidarity.

Such a disconnection between giving and taking emerges when a mechanism of reciprocity does not function any longer. This can take place if a group is marked by anonymous social relations in which the participants have no or insufficient information about their partners of interaction, or if the mobility in a society increases and therefore the durability of social contacts decreases. Whether individuals get the benefits of the solidarity of their fellow human beings, or have to suffer from their lack of solidarity under such conditions, is not a result of their own behavior. If social contacts are short-term or limited, if certain acts remain unknown or cannot be ascribed to somebody, acts of solidarity and their counterparts cannot be sanctioned appropriately by others. As is the corresponding constellation in regard to public goods, this constellation is typical of the living conditions in modern societies.

Under such conditions there are no strong, interest-based incentives for a person to act in solidarity in favor of individual goods. If the receipt of transfers is no longer dependent on one's own transfers, then from a standpoint of rational utility maximization one cannot be motivated to make these transfers. The giver's interest is not in accordance with the taker's interest but dominates it: as a consequence, solidarity in favor of individual goods will not occur. But still it is true that all persons concerned would profit from mutual solidarity more than from mutual lack of concern. The dilemma emerges in this case, too, that persons who are strictly oriented towards maximizing their own utility will produce a result which is opposed to their interests. If everybody shows solidarity, each one will do better than if no one shows solidarity. But, again, it holds true that mutual solidarity would only arise if the persons concerned acted according to a principle of universalization instead of according to a principle of utility maximization. That means: if they acted in *solidarity out of fairness*.

*C. Giving is Independent of Getting:
Taker's Interest dominates Giver's Interest*

In the last constellation, a situation exists in which acting in solidarity can only be motivated by the laudable maxim that it is more blessed to give than to receive. To this category belong transfers of goods and services in regard to which the giver knows that, *in principle*, the returns which could be given to him by the beneficiary cannot amount to, or exceed, his own achievements. Giving is then independent of getting in the sense that the solidarity of the

taker can never outweigh the solidarity of the giver: even if the taker also shows solidarity, the situation of the giver will be worse than before his own act of solidarity. In each case a one-sided advantage for the taker is the consequence. His interests dominate the interests of the giver. Seen from the standpoint of the giver it is neither profitable for him to act in solidarity individually, nor is it profitable for him if mutual solidarity would be ensured. In contrast to the foregoing constellation, his situation would not change fundamentally even if his own solidarity *did* result in mutual solidarity between giver and taker. If everybody acted in solidarity, it would not be better for him than if nobody acted in solidarity.

In this context, too, examples can be of an everyday as well as dramatic kind: alms to a beggar, donations to accommodation for the homeless, or famine relief in the Third World are acts of solidarity for which one cannot reckon on equivalent returns, as in the case of a kidney donation or risking one's life in a rescue operation. To act in solidarity in favor of the individual good of another person under these circumstances cannot be solidarity out of self-interest and neither can it be solidarity out of fairness. Because even if the giver can count on the solidarity of the taker, he will suffer a loss. An orientation towards a principle of universalization does not lead to solidarity if the costs surpass the benefits, even if *everyone* shows solidarity. Also in regard to the promotion of individual goods it is, therefore, the case that in the constellation at issue solidarity can only be solidarity out of self-sacrifice.

V. SOLIDARITY IN FAVOR OF INDIVIDUAL GOODS AND THE PROBLEM OF SOCIAL ORDER

As in the case of solidarity in favor of public goods, in the case of solidarity in favor of individual goods, the three constellations analyzed constitute increasing restraints on the manifestation of solidarity. If getting transfers from other persons is dependent on one's own transfers, one has incentives to act in solidarity on the grounds of a rational pursuit of self-interest alone. If getting transfers from other persons is independent of one's own achievements, as it is in the second constellation, acting in solidarity can only be acting out of fairness, even if the mutual solidarity of givers and takers would be in the interest of both. If, finally, the value of one's own transfers exceeds the value of the possible transfers of the takers, then, neither from a standpoint of self-interest nor under the aspect of fairness does one have reason to perform individual acts of solidarity or to promote mutual solidarity of givers and takers with the help of institutions. Solidarity can only be a solidarity out of self-sacrifice.

This holds true for solidarity in favor of other individuals, too; solidarity becomes an object of moral norms particularly when it opposes immediate self-interests, that is, when it is possible only on grounds of fairness or self-sacrifice. So a contractarian ethic demands acting in solidarity in favor of individual goods if mutual solidarity would improve the situation of all persons concerned, and a utilitarian ethic demands that the relatively wealthy should make sacrifices in favor of the less wealthy in order to enlarge the total sum of individual utility.

But how important is solidarity in favor of individual goods for the existence of social order? Are there also forms of solidarity in this case which are crucial or even indispensable to stable social conditions? The answers to these questions are not as clear-cut as in the case of solidarity in favor of public goods. Undoubtedly it would be *desirable* for *all* members of society if solidarity out of fairness to promote individual goods were common practice, because everyone would profit from such a situation. Also, undoubtedly, it would be desirable for *some* members of society if solidarity out of sacrifice were common practice. And finally, there is almost no doubt that, as in the case of solidarity in favor of public goods, one cannot expect that solidarity in favor of individual goods in a modern society can be motivated on grounds of self-interest alone.

It follows that if solidarity in favor of individual goods came about only when acting in solidarity is in a person's self-interest, a great many people's wishes would remain unfulfilled. A lack of solidarity out of self-sacrifice disappoints the wishes of those who would profit if the wealthy transferred a part of their wealth to them. A lack of solidarity out of fairness disappoints everyone, because everybody would profit if it were common practice to act according to the principle of universalization. But if the wishes of many or even all members of a society were disappointed all the time, this would present a danger for the stability of social order.

A lack of solidarity out of fairness would thereby hold special gravity. If such a lack persists, a situation arises in which the wishes of practically all members of a polity are contradicted, including very important wishes. Domains in which mutual help and support are in the interest of all persons concerned are not only domains of minor matters or "luxury goods". Also at stake are basic needs including covering normal risks in life such as illnesses, accidents, unemployment, and securing a subsistence wage. If a society is not capable of providing these fundamental securities, one has to expect considerable dissatisfaction and a grave "crisis of legitimation". If, on the other hand, a community is successful in making provisions for such general risks, then the need for additional solidarity out of self-sacrifice would also decline

because those who are in a real personal predicament would be protected from the harshest consequences of their situation.

Now it is, of course, true for solidarity in favor of individual goods, too, that one can possibly do without such behavior and a corresponding "moral" motivation if one creates appropriate institutions of social security as substitutes for solidarity on the individual level. The desired exchange of help and support can then be secured by explicit contractual agreements and/or by institutionalized force. There are obviously many examples of institutions of this kind. Today's "social states" seem to be almost characterized by the fact that they have successfully substituted an individually based solidarity with the collective "unified community". An extensive system of welfare institutions and numerous public and private insurance options seem to have effectively solved the problem of a possibly unsatisfactory solidarity based on "spontaneous" forces supported by means of collective instruments.

However, similar to the provision of public goods by institutions, the problem of solidarity returns to the level of the institutions themselves. First, institutions of social security and welfare, again, are public goods and therefore produce the already discussed demand for solidarity in favor of public goods. But even if we set this problem aside, such institutions are, in addition, specifically dependent on solidarity in favor of individual goods.

Institutions of this kind provide special transfers in case of need: medical care in the case of illness, pension in the case of age or infirmity, financial support in the case of unemployment or poverty. Now, as a rule, such benefits are not simply independent of the achievements of the beneficiary. Mostly they are bound to voluntary or enforced contributions. Nevertheless, they are *partly* independent of the achievements of the beneficiary, in as far as one acquires through one's contributions an entitlement to benefits whose extent is measured largely by the asserted need and not by the level of contributions made. Seen from the point of view of the single individual, the payment in contributions does not automatically equal the value of the received transfers.

For these reasons, one strategy of utility maximization is to make use of the benefits of the social security and welfare institutions as often as possible – even when there is no justified need. Possibilities for such an opportunistic exploitation of communal institutions can hardly be prevented. In the context of the highly complex organizations of the social state there normally are manifold chances to gain an advantage at other people's expense. In any case, to take effective measures against such behavior would swallow up a huge amount of additional costs. Experience shows that, in the long run, the institutions of the welfare state can hardly cope with a consequent and widespread "moral hazard". Systems of collective security would become continually more expensive, which would eventually lead to their increasing

erosion and collapse. At the very least, such a development would give rise to an extremely "unfair" situation in which the honest contributors would be exploited by the unscrupulous opportunists (cf. Jasay, 1989, pp. 125ff.). In the end, prohibitively high costs might arise for the honest contributors, and they in fact would have to show solidarity out of self-sacrifice to preserve the institutions of the social state – which would of course not be a distinctively promising precondition for success.

It follows that to maintain stability under realistic constraints, those social institutions which are created to secure and promote individual goods are also necessarily dependent on solidarity out of fairness. They are dependent on individuals who make use of their rights in regard to those institutions in a way they could wish all others would do as well. This constellation is very similar to the situation on the individual level in which getting is independent of giving: acting in solidarity does not serve the purpose of self-interest. The system of the welfare state, therefore, cannot substitute solidarity out of fairness at will, but is dependent on this kind of solidarity itself. Only if the individual beneficiary of this system is acting according to a principle of universalization instead of a principle of utility maximization will he refrain from unduly straining the system's institutions.

Just as in the case of solidarity in favor of public goods, one has to assume that in regard to solidarity in favor of individual goods, at least under the living conditions of modern societies, solidarity out of fairness plays a key role. This kind of solidarity seems to be practically indispensable for the existence of social order. But even if one has doubts concerning this "functional thesis", there can be no doubt that solidarity out of fairness can claim a special role insofar as it meets important needs of all members of society. So, by any conceivable normative criterion, solidarity out of fairness seems to be highly preferable. Without the willingness of people to show solidarity, even when it would be expedient for them to hope only for the solidarity of others, a community cannot do justice to the elementary interests of its members. Acting in self-sacrifice may be highly laudable, but it does not seem to be absolutely necessary and – at least in regard to public goods – may even be normatively questionable.

It is remarkable in this context that there is a compelling urgency for a "morally" motivated kind of solidarity, as it is embodied in solidarity out of fairness, *especially* in the modern, anonymous, and mobile market society. Only here does one *inevitably* have to rely on such a "morally demanding" form of behavior, because in the traditional society with its firmly established social structures and its close-knit personal relationships, acting in solidarity in most cases can be motivated by self-interest alone. The moral forms of solidarity and the moral claim for solidarity therefore are genuine *modern*

phenomena (cf. Hondrich and Koch-Arzberger, 1992). From this point of view, one misses central aspects of the problem if one, as is quite common today, complains that solidarity is being undermined by the destructive qualities of modern society. But this overlooks the fact that the phenomenon *and* the problem of solidarity in a certain way could only emerge at all in the modern, individualistic society.

In the following we deal with the question, by what empirical forces could a solidarity out of fairness, in fact, be achieved in modern societies? It is of importance that acting in solidarity in favor of public goods is closely associated with acting in solidarity in favor of individual goods. That means that persons who are motivated by reasons of fairness to contribute voluntarily to public goods, as a rule, will be motivated, too, by reasons of fairness to act in solidarity in favor of other individuals. This coincidence is based on the fact that, in both cases, the willingness to act in solidarity out of fairness embodies acting according to a principle of universalization and can also be directly motivated by an orientation towards this principle. And in both cases the persons act in a way they could wish that all others should act as well. What both kinds of behavior have in common is not to act at the expense of others. There is quite a bit of evidence that this fundamental attitude is decisive for acting in solidarity in favor of public as well as individual goods.

VI. PRODUCTION OF SOLIDARITY

A. Solidarity as an Object of Norms

If the foregoing reflections are correct, the modern market society in particular is dependent on solidarity out of fairness. Given this society's anonymity and mobility, one cannot expect that acting in solidarity could be motivated to a sufficient degree by self-interest alone. But how is it possible to motivate people to show solidarity if such behavior contradicts self-interest? As acting according to a principle of universalization or generally altruistic behavior are hardly traits of human nature, acting in solidarity out of fairness can only be a "social product". But producing this kind of solidarity in a market society seems to be like trying to square the circle. As everyone knows, such a society is permanently accused by its critics of systematically causing people to focus exclusively on their own interests. They claim that a liberal market society would not reward solidarity but, on the contrary, egoism.⁴ According to this, those societies which are especially dependent on solidarity would then at the same time be societies which make it impossible to meet this demand.

If one cannot reckon with people acting out of self-interest in a way one wishes them to act, one can proclaim a *norm* that they *should* act in the desired way. I have already mentioned that, from this point of view, it is not astonishing that the demand for solidarity is the object of varying moral norms. But, of course, it is not sufficient only to formulate and to proclaim a norm. One has to see to it that the norm also becomes *effective*, which means that it is observed by its addressees as reliably as possible. For this reason one has to concede that establishing norms is not a universal remedy to make people act in solidarity. A norm which demands solidarity out of fairness is an instrument to bring about an improvement for all persons concerned. So an effective "norm of solidarity" is also a public good, and he who contributes to the effectiveness of this norm contributes to a public good. If this is true, it seems that the establishment of a norm of solidarity is also in danger of failure, since it requires the same kind of solidarity that it should bring about. Why should persons who are not willing to contribute to public or individual goods in a direct way be willing to contribute to these goods in an indirect way by causing other persons to obey a norm of solidarity? If one hopes that a norm of solidarity can produce mutual solidarity, because such behavior would not be practiced without such a norm, how can one hope that the necessary activities to establish the norm itself will be carried out? A norm of solidarity does not seem possible without solidarity.

Apparently worried by a similar skepticism and a corresponding mistrust in the "healing powers" of spontaneous social forces, the proposal was made in the course of the "reunification" of Germany to include in the *constitution* the norm: "Everybody is called on to show benevolence and public spirit". ("Jedermann ist zu Mitmenschlichkeit und Gemeinsinn aufgerufen".) It goes without saying that this norm should be understood as an appeal to solidarity in favor of individual and public goods. Obviously, this proposal was motivated by the hope that the "authority" of the constitution would give such an appeal more force than it would have as an informal act.

B. Solidarity as an Object of a Constitutional Norm

It can be and has been rightly pointed out that the proposal to include an appeal to solidarity in the constitution reveals a questionable understanding of the function of a constitution. The sense of a constitution in a free and liberal society would not only be changed marginally by such a norm. From a liberal point of view the norms of a constitution are primarily directed towards the state organs with respect to their administrators. They authorize the latter to carry out certain actions, draw the lines of power, and stipulate substantially

how they have to use the delegated authority. But first and foremost the norms of such a constitution guarantee fundamental rights for the citizens of a polity which protect them in certain areas from interference by state power. Addressees of constitutional norms are in the first place the rulers, and the average citizen is their beneficiary. The credo of liberalism is a constitution that functions as a bulwark of the citizen against the state.

The incorporation of the norm "Everybody is called on to show benevolence and public spirit" would affect this understanding of a constitution to its core. The addressee of such a norm would be mainly the average citizen and *not* the administrator of state power. The constitution would develop from an instrument of the citizen used to control the state into an instrument of the state used to educate the citizen and, thereby, to an institution which can be put into action *against* the citizen. Constitutional norms which are aimed at the citizen provide good reasons to use state power to enforce these norms. If a constitution proclaims that its aim is to provide solidarity, one has every right to refer to the constitution to extend state power to promote this aim. If the claims of a constitution remain unheard, who other than state authorities can be charged with making them heard? The danger arises that a liberal understanding of a constitution as an instrument to tame state power would be increasingly replaced by an authoritarian and paternalistic understanding, according to which the constitution authorizes state organs to force the citizen to engage in "communally responsible" behavior.

But the dangers for a liberal understanding of a constitution and, consequently, for a liberal society as a whole which are connected to the proposal to include a norm of solidarity in a constitution are not to be discussed here. It is possible that those risks would be acceptable if, on the other side, there were the success of effectively contributing to an urgently needed solidarity – in a society in which, if its critics are right, we may otherwise be confronted with an inexorable decline of benevolence and public spirit.

So let's look at the question whether it is realistic to hope that, by means of a constitutional norm, we can effectively contribute to those kinds of solidarity which are essential for society. To answer this question an answer must be found to the foregoing question: can the fact that a norm is proclaimed in a constitution be the decisive factor for the addressees to follow this norm?

Obviously, we are working on the assumption that it can, because otherwise we could save ourselves the effort of quarreling fiercely over the content of constitutions and of taking such great pains over the right formulation. It seems, in fact, to be a certain truth that the incorporation of a norm in a constitution in a well-ordered society leads to a norm-conforming behavior of most of its addressees: the Supreme Court judge reaches his decisions according to the principles of the constitution, the parliamentarian enacts laws

according to the constitutional regulations, the policeman in the course of his investigations respects the constitutional rights of the persons concerned.

Furthermore, it is hardly disputable that constitutional norms can entail considerable obligations which are not always in concordance with the interests of the addressees: the investigations of a policeman would be more successful if he ignored the constitutional rights of a suspect, the government would reach its goal faster if it evaded parliamentary rules of procedure, a Supreme Court judge could realize his own opinions better if he did not commit himself to the guidelines of the constitution. Also, in regard to constitutional norms, it holds true that it is the very discrepancy which one has to expect between a desired behavior of persons and their factual motives and aims which makes norms necessary and useful in the first place. If the addressees of a constitution do what a constitution demands of their own accord in any case, we can do without a constitution.

Seen from this point of view, the proposal to incorporate a norm of solidarity in a constitution seems quite sensible. Why should one not be able to achieve with such a norm what is evidently achievable with other constitutional norms: to bring about a kind of behavior which in the concrete case is against the self-interest of the addressee? Why should it not be possible, by means of a constitutional norm, to motivate the citizens to show solidarity and, by this, to overcome the dilemma that their own lack of solidarity produces a situation which is against their own preferences?

But one cannot lump together a constitutional norm which appeals to solidarity with other kinds of constitutional norms. It becomes clear that such an equation would be misguided if one looks for a sociological explanation of the efficacy of constitutional norms. The "classical" explanation goes back to Max Weber: according to his theory, the willingness to obey the norms of a constitution is primarily founded on a "faith in the legitimacy" of the constitution in question (cf. Weber, 1922, p. 16). We can reformulate this assumption for our purposes by saying that an addressee of a constitution must have the conviction that the existence of this constitution is a *good* in order to be motivated to obey its norms.

Now, for those who consider a constitution to be a good, this constitution is a *public* good. If a constitution is effectively established, it will inevitably be of benefit to all those people who live in its scope. For example, nobody can be excluded from the advantages which derive from the validity of liberal rights. A contribution to the establishment and maintenance of a "legitimate" constitution, therefore, is a contribution to a public good. In this regard it is unimportant whether such a contribution consists in formulating the text of a constitution, propagating its quality, or obeying its norms and principles.

For these reasons, the existence of a constitution is principally dependent on the same kind of preconditions that exist for other public goods. The conviction that a constitution possesses legitimacy and, therefore, embodies a public good, is only a *necessary* prerequisite for a factual commitment and an active effort in favor of this special public good. As in the case of other public goods as well, there must be, beyond this, the concrete willingness to participate personally in the costs of providing and maintaining this good. Most importantly, citizens must display the willingness to obey the norms of the constitution and to demonstrate an active constitutional loyalty.

It would be best for the stability of a constitution if it were always in the self-interest of the members of a polity to obey the constitutional norms. In fact, a solidarity out of self-interest can play a certain role. Statesmen can be in such an influential position that a breach of the constitution by them would shake the constitution as a whole. The same may apply to Supreme Court judges. It may hold true for members of these groups that individual and collective interests coincide insofar as the benefits derived from the existing constitution are dependent on their individual contributions. Under these conditions, there would be no incentive for them to disobey the constitutional norms.

But the outstanding position of statesmen or Supreme Court judges is itself based on the activity of countless "unnamed" citizens and civil servants who provide, by *their* loyalty to the constitution, the cement of the constitutional order and, thereby, the empirical foundation to grant special authority to exercise state power to those who are legitimated by the constitution. In regard to these average citizens and officials, one can barely assume that conformity with constitutional norms will always be an expedient choice for them (cf. Baurmann, 1996a, pp. 78ff., 259ff.). Rather, what applies to many other public goods will apply here as well: the individual benefits from a public good will often be independent of the individual contributions to this good. Individual interests will dominate collective interests in the case of a constitution, too. Even if the overwhelming majority of citizens and members of the state machinery find the existing constitution to be a good worth obtaining, they will be tempted to behave as free-riders at the expense of others' loyalty. They could rightly presume that their individual contribution will not be crucial for the overall stability of the constitution.

For this reason, one can only expect the average citizen and official to reliably conform to the constitution when they are acting in solidarity out of fairness and, therefore, conforming to the constitution even when it is contrary to their interests. In order for faith in the legitimacy of a constitution to guarantee conformity with that constitution, a sense of duty toward a principle

of universalization and responsibility to provide a public good to others must accompany that faith.

And it is true – and true *in particular* – for the public good of a constitution, too, that solidarity in favor of its maintenance can only be substituted by institutional measures to a very limited extent. A constitution must be self-enforcing in the sense that its existence cannot be based on institutionally produced incentives alone. The reason for that is not only the now well-known fact that appropriate institutions themselves would, again, have to be public goods. Above all, it is imperative that a constitution be the “basis-institution” of a society on which all other formal institutions, such as the system of law, are based. The existence of a constitution is the precondition for those institutions which in certain areas should, and can be, surrogates for a “spontaneous” production of public goods. For these reasons a constitution itself must exist in an “institution-free” space backed by independent social forces.

It is true that institutionalized sanctions play a role in enforcing conformity with constitutional norms. But not *every* act of conformity with the constitution can be motivated by the expectation of sanctions. Somebody must impose sanctions for reasons other than a fear of sanctions. The system of controlling the controllers inevitably has to end on *some* level. It can only be grounded in the willingness to contribute voluntarily to its maintenance and functioning.

So, finally, it is firmly established that at least under the living conditions in a modern large-scale society, solidarity out of fairness is indispensable to maintaining a constitution as a public good. A sufficient number of persons must contribute to the efficacy of a constitution by obeying its norms even if in the concrete case a different mode of behavior would be advantageous for them. As H. L. A. Hart has pointed out, an “internal point of view” towards the norms and rules of a system of law is necessary for its existence (cf. Hart, 1961, pp. 77ff.).

Given these insights, however, it is futile and senseless to include an appeal to benevolence and public spirit in a constitution. This appeal should become effective essentially in situations in which a lack of concern for others and for public goods is noticeable – a relevant concern in view of the (insinuated) fact that the citizens of a polity only act insufficiently according to a principle of universalization and, instead, behave as free-riders and opportunistic maximizers. But the mere fact that a norm is written down in a constitution can only give rise to a motivation to obey this norm if the addressee not only considers this constitution to be legitimate and, therefore, a public good, but also *already has* a motivation to contribute voluntarily to public goods. Only then can the mere fact that a norm is part of a constitution be a sensible reason for him to follow this norm, even in situations when this is not in his interest

– namely when having to do his “fair” share in upholding the constitution as a whole. Nor will strict maximizers, for whom a principle of universalization and, therefore, the “fairness” of behavior is no independent reason to act be impressed by the fact that a norm of solidarity is included in a constitution. They will not feel obliged to obey the demands of the constitution if this is contrary to their individual interests.

Either the willingness to act in solidarity out of fairness already exists (making a norm of solidarity in a constitution superfluous); or this willingness is lacking (making a norm of solidarity in a constitution ineffective). In either case, taking the risks which are connected to undermining the functions of a liberal constitution would be fruitless.

The elementary mistake the advocates of such a proposal make is to fail to appreciate that a free constitutional state is only possible at all if “benevolence and public spirit” are already flourishing to a sufficient degree in a society. Solidarity and fairness are resources which are produced solely by social forces. A constitution would be nothing more than a piece of paper if there were not enough citizens already willing to act in solidarity in favor of the basic institutions of their polity. The kind of behavior that is really fundamental to social order cannot be produced by regulations. Those who propagate the discussed proposal not only reveal their questionable understanding of a constitution for a free society, but also reveal their ignorance in regard to the social forces which make it at all possible for a constitution to create motivation and commitment. However, it is good that their instructions cannot produce acceptance of their authority. What may at first sight look like a regrettable weakness of a constitution is in reality a strength, because if one cannot order its acceptance and observance, the citizen is protected against indoctrination and manipulation.

C. Solidarity as an Object of a Social Norm

If the achievements of solidarity that are necessary for the survival of social order could not be provided by contractual agreement and institutional precautions nor by a constitutional norm, how, then, could they be provided? Let us finally, at least tentatively, examine the possibility that solidarity could be produced by a *social* norm, that is, by a norm which must be established and sustained *informally*.⁵

It should, however, be clear already that a lack of solidarity out of fairness could not be remedied even by a social norm without producing problems. Such a norm, too, is a public good which *prima facie* is faced with the same constraints as the public good it should promote. Obeying and enforcing a

norm of solidarity to make contributions to a public good must be subject to problematic incentives as well if the framework of conditions remains unchanged. The problems which occurred in connection with a constitutional norm of solidarity seem to repeat themselves, only the other way around. Either one can explain that a social norm of solidarity can be successfully established, in which case such a norm seems to be superfluous because the persons concerned have proved their willingness to contribute to public goods anyway. Or the persons concerned reveal no willingness to contribute to public goods, in which case one can neither explain how a norm that could serve the purpose of motivating people to make such contributions should become effective.

The conclusions to be drawn are generally known: the above-mentioned problems would only show that in an "individualistic" society which heavily promotes self-interest, a "true" solidarity between people is impossible. Or one complains about the anonymity and mobility of modern large-scale societies which have allegedly destroyed social communities and close bonds between people and in which mutual solidarity could have once flourished. But both assumptions are as widespread as misguided in their generality. Neither is it true that the realization of self-interest *per se* is incompatible with solidarity out of fairness, nor do the modern large-scale societies only consist of an amorphous mass of isolated individuals who only meet each other as exchange partners on the market place. If one corrects these assumptions, we recognize that even in an individualistic, anonymous and mobile market society a solidarity out of fairness is not simply unthinkable.

First, it is only a half truth that persons who consistently focus on realizing their own interests are necessarily hostile towards solidarity out of fairness: regardless of how much a "rational egoist" has to strive to save the costs of solidarity as an actor, every "rational egoist" must be still interested in *other* persons acting in solidarity in *his or her* favor. The role as an addressee of a norm of solidarity and the role as a beneficiary of such a norm differ principally. While the self-interest of the addressee is initially in conflict with acting in solidarity out of fairness, the self-interest of the beneficiary harmonizes with such acts by the addressee. This more or less trivial insight already considerably changes the picture of a society in which self-interest dominates. Because from the start there are not only people who share a disapproval of acting in solidarity, but also people who at least wish that their partners would act in solidarity. The kind of mutual behavior that will, in the end, arise from this constellation is no longer obvious.

Second, even the often bemoaned "anonymous mass-society" in reality consists of an intricate and highly complex structure of groups and communities of all varieties and sizes (cf. Granovetter, 1985). Exchange transactions

on the market place are in no way the only kind of social relationships people in a market society enter into. Even in their economic activities, people do not always act as isolated individuals but often as parts of a collective, namely as members or owners of firms. This is especially true outside the economic sphere, where people are embedded in manifold "social networks" and are members of innumerable "artificial" and "natural" groups with materialistic and non-materialistic purposes. The liberal society not only brought the freedom of trade and enterprise but also the freedom of association. The people of a liberal society enjoy the right to form communities and groups voluntarily and according to their own preferences. As well as competition between competitors, cooperation between partners is an essential trait of such a society.

So, the undue generalizations about the principal incompatibility of self-interest and solidarity out of fairness as well as about the thoroughly anonymous character of today's societies are replaced by two qualified assertions. 1. It is in everyone's self-interest that their fellow human beings act in solidarity. 2. In modern large-scale societies a structure of small groups exists.

On the basis of these modified premises, the chances for a solidarity out of fairness with respect to a social norm of solidarity look considerably better. It is certain that under these conditions the contributions to a social norm of solidarity must no longer inevitably mean contributions to a public good in favor of the society as a whole. As long as this is the case, one cannot explain why people should feel motivated to enforce a norm of solidarity if, at the same time, they are not motivated to act in solidarity themselves.

The situation changes when we consider the behavior of people on the assumption that their interests in solidarity are, first of all, directed towards the behavior of others, *and* that they are acting not only as members of an anonymous large-scale society but, at the same time, as members of small-scale social groups and communities. Just as they would wish for the other members of the society as a whole to act in solidarity, they would certainly wish for the other members of their particular social groups, too, to contribute to the public goods relevant to those groups and be helpful and cooperative in the context of these groups.

At the same time, they must be aware of the fact that even in relatively small groups and communities the empirical preconditions for solidarity out of self-interest are not always fulfilled. On the contrary, one has to expect that, as a rule, rather small groups will also provide members plenty of opportunities to free-ride at the expense of the other group members. The social relationships will not always be translucent enough to guarantee that reciprocity mechanisms will function undisturbed. The success of a joint venture is often highly dependent on the achievement-orientation of its members and

their dedication to the common aim. But achievement-orientation and dedication as subjective attitudes are hardly measurable by objective means. The incentives to behave as a free-rider, therefore, can hardly be solved principally by controlling and monitoring (cf. North, 1981; Baker *et al.*, 1988; Frank, 1988).

So, even as members of small-scale groups, people who are interested in the aims and the successful cooperation of their groups must have an interest in creating an effective norm of solidarity in these groups. However, a wish is not sufficient to change the world. One has to actively ensure that the wish will come true. And so the same problems as in the context of a large-scale group threatens to turn up again: the demand for solidarity out of fairness indicates a situation in which there are no strong, interest-based incentives for the persons concerned to act voluntarily in favor of public or individual goods. How, then, could the required norm of solidarity be provided without relying on people who are already willing to act in solidarity out of fairness? It seems to apply to a small-scale group, too, that under these conditions establishing a norm of solidarity can only succeed if enough members of the group are already motivated to contribute to public goods, even when in the concrete case it is not in their self-interest to do so.

By taking a further consideration into account, one obtains another result. For the beneficiaries of a norm, two strategies are principally available to achieve the objective that a norm is obeyed by its addressees. On one hand, they can impose sanctions whenever a norm is broken, *that is*, not observed by its addressees. This strategy makes it necessary to monitor the adherence to a norm more or less in each concrete case. Under the supposed conditions, such a strategy must fail because of its costs for the norm-beneficiaries: we have assumed that a situation exists in which a "reciprocal" behavior of single individuals will have no significant impact on the behavior of the group members as a whole – otherwise solidarity out of self-interest would exist anyhow.

On the other hand, the beneficiaries of a norm of solidarity can ensure a norm-abiding behavior in their group by only uniting with the kind of people who follow a norm of solidarity, even when there is *no permanent threat of sanctions*. The norm-beneficiaries can try to choose persons as group members and partners for cooperation who can not only be motivated to act in solidarity "extrinsically" by the expectation of positive or negative consequences of their acting, but who are also "*intrinsically*" motivated (cf. Frey, 1992; Frey, 1993a; Frey, 1993b; Frey and Bohnet, 1994) to act according to a norm of solidarity even when external incentives for such behavior are missing. Such persons would possess a *disposition* to act in solidarity out of fairness; they would in their behavior reveal a *commitment* to a principle of universalization.

This means, at the same time, that the norm-beneficiaries will try to avoid persons by expelling them from their group who, as opportunists, would only obey a norm of solidarity when this behavior would be the maximizing alternative. The "social environment" of relatively small groups would thereby give the norm-beneficiaries the opportunity to gain more or less reliable insights into the "character" and the "intrinsic motivation" of other persons, and thereby have a good chance of cooperating selectively only with those who, in fact, have the appropriate "virtues".⁶

Now, *such* a strategy of norm-enforcement itself must *not* be based on the willingness of the beneficiaries of a norm of solidarity to adhere to a principle of universalization and fairness themselves. While it can be hopeless or too costly for the beneficiaries of a norm of solidarity to try to enforce such a norm in their community by monitoring and sanctioning each single act of the addressees, it could be a rewarding strategy for them to cooperate and unite only with such persons who can be expected to be intrinsically motivated to act according to a principle of universalization in respect to a norm of solidarity. Such a strategy of selective cooperation is not dependent on *continuous* investments in norm-enforcing. In other words: in the case of this strategy of norm-enforcement, the benefits that individuals receive as norm-beneficiaries due to their contributions to the public good of a norm of solidarity will exceed the costs of those contributions. Their individual benefits are dependent on their individual contributions, therefore the latter could be solely founded on the expectation of gains.

But one may argue that all this does not alter the fact that this "solution" to the problem of solidarity is as substantially deficient as its predecessors were. Even if it holds true that norm-beneficiaries need not reveal a willingness to act in solidarity out of fairness, one has obviously to make this a prerequisite for norm-addressees. If the norm-beneficiaries can successfully choose persons as partners who are intrinsically motivated to act according to a principle of universalization, there must be people available who *already* act in solidarity out of fairness. Otherwise there would be nothing from which to choose.

Closer inspection, however, reveals that our explanation cannot avoid addressing this precondition because the above consideration also includes a theory how the addressees' intrinsic motivation, with respect to the disposition to act in solidarity out of fairness, could develop in the first place. One has to acknowledge the fact that it may not only be in the interest of people to *act* in a certain way, but also to have a *disposition* to act in a certain way (cf. Gauthier, 1986; Hegselmann *et al.*, 1986; Hirshleifer, 1987; Vanberg, 1987; Vanberg, 1988; Vanberg, 1993; Frank, 1988; Vanberg and Congleton, 1992; Kliemt, 1993; Güth and Kliemt, 1993; Güth and Kliemt, 1994; Baurmann and

Kliemt, 1995; Baumann, 1996a, pp. 283ff.). This holds true under the discussed conditions for the addressees of a norm of solidarity: if their chances to participate in cooperative relationships and joint ventures are dependent on their dispositions to act according to a principle of universalization, then under appropriate circumstances they will do far better in developing such a disposition than if they were to remain strict maximizers.

So, on one hand, we can explain the strategy of the beneficiaries of a norm of solidarity on the grounds of their interests, and on the other hand, how it comes about as a result of that very strategy that the norm-addressees acting according to a principle of universalization benefit, too. That means – if we also assume that dispositions can develop as a result of interest-based incentives (cf. Scott, 1971; Mueller, 1986; Mueller, 1992; Baumann, 1996b) – that we have at least a sketch of a model in which we can explain the norm-enforcing *and* the norm-obeying behavior of the beneficiaries as well as of the addressees of a norm of solidarity without making it prerequisite that commitments to a principle of universalization and fairness already exist. And because each beneficiary of a norm of solidarity is also an addressee, *mutual* solidarity will be the result. Finally, we can explain how acting in solidarity out of fairness can be a real “social product”.

In regard to our initial problem, we can now show how promoting solidarity in favor of a particular group can turn into the promotion of solidarity in favor of the society as a whole. In view of the given conditions, it cannot be rational for persons to contribute directly to the enforcement of a generally valid norm of solidarity; it can, however, be rational for them to require those who are directly important for their aims to obey such norms. And as one not only requires obedience to the norm in specific cases but are intrinsically committed to it, one *unintentionally* promotes a public good for the society as a whole. Persons who are intrinsically committed to a norm of solidarity will also follow this norm when they are not under the social control of members of their communities. Because cooperation with people with such virtues will be more successful, promoting intrinsic motivation in others produces a “spill-over-effect” from which a society as a whole will profit. An equilibrium can ensue in which a large number of people as “would-be-altruists” practice solidarity out of fairness and consequently best serve their own interest.

There is no reason to assume that such a “social production” of solidarity in the modern market society is really endangered as long as freedom of association is not endangered in such a society. Somehow the opposite is true. The mobility in an “anonymous” market society and the corresponding openness of groups ensure that people will have no advantages from limiting solidarity to the particular interests of their own groups (cf. Baumann, 1996c).

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NOTES

1. A public good is defined by "nonconservation" and "nonexcludability", cf. Samuelson, 1954. Regarding the problems of providing public goods in general cf. Olson, 1965; Hardin, 1971; Hardin, 1982; Jasay, 1989.
2. Dilemmas in connection with democracy are discussed in Downs, 1957; Weede, 1990; Brennan and Lomasky, 1993.
3. A mechanism of reciprocity is analyzed in Gouldner, 1961; Trivers, 1971; Trivers, 1985, pp. 361ff.; Vanberg, 1975, pp. 54ff.; Vanberg, 1982, pp. 123ff.; Axelrod, 1981; Axelrod, 1984; Axelrod, 1986; Voss, 1985, pp. 173ff.; Kliemt, 1986, pp. 59ff.; Alexander, 1987, pp. 208ff.; Vanberg and Buchanan, 1988; Binmore, 1992, pp. 347ff.; Baurmann, 1996a, pp. 130ff.
4. One example for many: "The social morality ... has been a legacy of the precapitalist and preindustrial past. This legacy has diminished with time and with the corrosive contact of the active capitalist values As individual behavior has been increasingly directed to individual advantage, habits and instincts based on communal attitudes and objectives have lost out" (Hirsch, 1976, pp. 117ff.).
5. The concept of a norm is analyzed in Hoerster, 1986; Hoerster, 1989; Coleman, 1990, pp. 45ff., 241ff.; Baurmann, 1993; Baurmann, 1996a.
6. The problems of identifying trustworthy persons are discussed in Frank, 1988; Baurmann, 1996a, pp. 409ff.

BIBLIOGRAPHY

- Alexander, R. D.: 1987, *The Biology of Moral Systems*, New York.
- Axelrod, R.: 1981, 'The emergence of cooperation among egoists', *American Political Science Review* 75, 306-318.
- Axelrod, R.: 1984, *The Evolution of Cooperation*, Basic Books, New York.
- Axelrod, R.: 1986, 'An evolutionary approach to norms', *American Political Science Review* 80, 1095-1111.
- Baker, G. P., Jensen M. C. and Murphy, K. J.: 1988, 'Compensation and incentives: practice versus theory', *Journal of Finance* 43, 593-616.
- Baurmann, M. 1993, 'Rechte und Normen als soziale Tatsachen. Zu James S. Colemans Grundlegung der Sozialtheorie', *Analyse und Kritik* 15, 36-61.
- Baurmann, M.: 1996a, *Der Markt der Tugend. Recht und Moral in der liberalen Gesellschaft*, Mohr, Tübingen.
- Baurmann, M.: 1996b, 'Kann Homo oeconomicus tugendhaft sein?', *Homo oeconomicus* 13, 1-24.
- Baurmann, M.: 1996c, 'Universalisierung und Partikularisierung der Moral. Ein individualistisches Erklärungsmodell', in R. Hegselmann and H. Kliemt (eds.), *Moral und Interesse*, München. [in print]
- Baurmann, M., and Kliemt, H.: 1995, 'Zur Ökonomie der Tugend', in: P. Weise (ed.), *Ökonomie und Gesellschaft*, Jahrbuch 11, pp. 13-44.
- Binmore, K.: 1992, *Fun and Games. A Text on Game Theory*, Heath, Lexington-Toronto, Mass.

- Brennan, G., and Lomasky, L.: 1993, *Democracy and Decision. The Pure Theory of Electoral Preference*, Cambridge University Press, Cambridge and New York.
- Buchanan, J. M.: 1977, 'Ethics, expected values, and large numbers', in *Freedom in Constitutional Contract*, Texas A and M University Press, College Station, pp. 151-168.
- Coleman, J. S.: 1990, *Foundations of Social Theory*, Belknap Press, Cambridge, Mass. et al.
- Diekmann, A., and Mitter, P. (eds.): 1986, *Paradoxical Effects of Social Behaviour*, Physica, Heidelberg.
- Downs, A.: 1957, *An Economic Theory of Democracy*, Harper, New York.
- Frank, R. H.: 1988, *Passions Within Reason. The Strategic Role of the Emotions*, Norton, New York.
- Frey, B. S.: 1992, 'Tertium datur: Pricing, Regulating and Intrinsic Motivation', *Kyklos* 45, 161-184.
- Frey, B. S.: 1993a, 'Motivation as a limit to pricing', *Journal of Economic Psychology* 14, 635-664.
- Frey, B. S.: 1993b, 'Shirking or work morale?', *European Economic Review* 37, 1523-1532.
- Frey, B. S., and Bohnet, I.: 1994, 'Die Ökonomie zwischen extrinsischer und intrinsischer Motivation', *Homo oeconomicus* 11, 1-19.
- Gauthier, D.: 1986, *Morals by Agreement*, Clarendon Press, Oxford.
- Gouldner, A. W.: 1961, 'The norm of reciprocity', *American Sociological Review* 25, 161-189.
- Granovetter, M.: 1985, 'Economic action and social structure: the problem of embeddedness', *American Journal of Sociology* 85, 481-510.
- Güth, W. and Kliemt, H.: 1993, 'Menschliche Kooperation basierend auf Vorleistungen und Vertrauen', in *Jahrbuch für Politische Ökonomie* 12, pp. 145-173.
- Güth, W. and Kliemt, H.: 1994, 'Competition or co-operation: on the evolutionary economics of trust, exploitation and moral attitudes', *Metroeconomica* 45, 155-187.
- Hardin, R.: 1971, 'Collective action as an agreeable n-prisoners' dilemma', *Behavioral Science*, 472-481.
- Hardin, R.: 1982, *Collective Action*, Johns Hopkins Press, Baltimore.
- Hart, H. L. A.: 1961, *The Concept of Law*, Clarendon Press, Oxford.
- Hegselmann, R.: 1996, 'Was könnte dazu motivieren, moralisch zu sein? Überlegungen zum Verhältnis von Moralität und Klugheit', R. Hegselmann and H. Kliemt (eds.), *Moral und Interesse*, München. [in print]
- Hegselmann, R., Raub, W. and Voss, T.: 1986, 'Zur Entstehung der Moral aus natürlichen Neigungen. Eine spieltheoretische Spekulation', *Analyse und Kritik* 8, 150-177.
- Hirsch, F.: 1976, *Social Limits to Growth*, Harvard University Press, Cambridge.
- Hirshleifer, J.: 1987, 'On the emotions as guarantors of threats and promises', in J. Dupré (ed.), *The Latest on the Best: Essays in Evolution and Optimality*, MIT Press, Cambridge, pp. 307-326.
- Hoerster, N.: 1986, 'Kritischer Vergleich der Theorien der Rechtsgeltung von Hans Kelsen und H. L. A. Hart', in S. L. Paulson and R. Walter (eds.), *Untersuchungen zur Reinen Rechtslehre*, Manz, Wien, pp. 1-19.
- Hoerster, N.: 1989, 'Norm', in: *Handlexikon zur Wissenschaftstheorie*, H. Seiffert and G. Radnitzky (ed.), Ehrenwirth, München, p. 272.
- Hondrich, K.-O., and Koch-Arzberger, C.: 1992, *Solidarität in der modernen Gesellschaft*, Fischer, Frankfurt/Main.
- Jasay, A. de: 1989, *Social Contract, Free Ride. A Study of the Public Goods Problem*, Clarendon Press, Oxford, England.
- Kliemt, H.: 1986, *Antagonistische Kooperation. Elementare spieltheoretische Modelle spontaner Ordnungsentstehung*, Alber, Freiburg, München.
- Kliemt, H.: 1988, 'Thomas Hobbes, David Hume und die Bedingungen der Möglichkeit eines Staates', in *Akten des 12. Internationalen Wittgenstein Symposiums*, Wien, pp. 152-160.

- Kliemt, H.: 1993, 'Constitutional commitments', in P. Herder-Domeich *et al.* (eds.), *Jahrbuch für Politische Ökonomie* 12, pp. 145-173.
- Luce, D. R., and Raiffa, H.: 1957, *Games and Decisions*, Wiley, New York.
- MacIntyre, A.: 1984, *Is Patriotism a Virtue?*, The Lindley Lecture, University of Kansas.
- Mueller, D. C.: 1986, 'Rational egoism versus adaptive egoism as fundamental postulate for a descriptive theory of human behavior', *Public Choice* 44, 3-23.
- Mueller, D. C.: 1992, 'On the foundations of social science research', *Analyse und Kritik* 14, 195-220.
- North, D. C.: 1981, *Structure and Change in Economic History*, Norton, New York.
- Olson, M.: 1965, *The Logic of Collective Action. Public Goods and the Theory of Groups*, Harvard, Cambridge.
- Rapoport, A. and Chammah, A. M.: 1965, *Prisoner's Dilemma*, University of Michigan Press, Ann Arbor.
- Samuelson, P. A.: 1954, 'The pure theory of public expenditures', *Review of Economics and Statistics* 36, 387-389.
- Scott, J. F.: 1971, *Internalization of Norms. A Sociological Theory of Moral Commitment*, Prentice-Hall, Englewood Cliffs.
- Trivers, R.: 1971, 'The evolution of reciprocal altruism', *The Quarterly Review of Biology*, 35-51.
- Trivers, R.: 1985, *Social Evolution*, Benjamin/Cummings Pub. Co., Menlo Park.
- Ullmann-Margalit, E.: 1977, *The Emergence of Norms*, Clarendon Press, Oxford, England.
- Vanberg, V.: 1975, *Die zwei Soziologien. Individualismus und Kollektivismus in der Sozialtheorie*, Mohr, Tübingen.
- Vanberg, V.: 1982, *Markt und Organisation. Individualistische Sozialtheorie und das Problem korporativen Handelns*, Mohr, Tübingen.
- Vanberg, V.: 1987, *Morality and Economics. De Moribus Est Disputandum*, Transaction Books, New Brunswick.
- Vanberg, V.: 1988, 'Rules and choice in economics and sociology', in *Jahrbuch für Neue Politische Ökonomie* 7, pp. 146-167.
- Vanberg, V.: 1993, 'Rational choice, rule-following and institution. an evolutionary perspective', in U. Mäki *et al.* (eds.), *Rationality, Institutions and Economic Methodology*, Routledge, London and New York, pp. 171-200.
- Vanberg, V. and Buchanan, J. M.: 1988, 'Rational choice and moral order', *Analyse und Kritik* 10, 138-160.
- Vanberg, V. and Congleton, R. D.: 1992, 'Rationality, morality, and exit', *American Political Science Review* 86, 418-431.
- Voss, T.: 1985, *Rationale Akteure und soziale Institutionen*, Oldenbourg, München.
- Weber, M.: 1922, *Wirtschaft und Gesellschaft*, reprint 1972, Mohr, Tübingen.
- Weede, E.: 1990, *Wirtschaft, Staat und Gesellschaft. Zur Soziologie der kapitalistischen Marktwirtschaft und der Demokratie*, Mohr, Tübingen.