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Disintegration Through Law?

On the Decomposition of Citizenship in Europe

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Introductory Remarks

The argument in a nutshell



This applies to Europe, but might to some extent be relevant for other regions as well.



Introductory Remarks

Outline of the talk:

- I. Introductory Remarks
- II. Decomposition**
- III. Disintegration?**
- IV. Delegitimization?**
- V. Concluding Remarks



Decomposition – Disintegration – Delegitimization

The concept of citizenship

- a set of legal rights and duties
- depending upon membership to a community
- with or without a formalized status
- there may be different degrees of such citizenship within one community („denizenship“)
- note the potential breadth of the concept



Decomposition – Disintegration – Delegitimization

The scope of the analysis

- the analysis covers a plurality of communities, but
- focuses on the ones similar to and surrounding the nation state, i.e. it is confined...
 - in substantive terms: to political communities which are defined territorially;
 - in regional terms: to Europe (from a somewhat „Germanocentric“ perspective).
- in concrete terms, it covers the municipal, state and federal level (of Germany), the law of the European Union, of its association treaties, and of the Council of Europe (plus some international conventions)



Decomposition – Disintegration – Delegitimization

The claim in more detail

- **Version 1: „Decomposition of citizenship“**

The contents of the national full membership status have gradually been eroded over the last decades.

- **Version 2: „Deconcentration without reconcentration“**

Within the system of membership statuses, national citizenship has remained the primary one, but its relative weight has decreased considerably.



Decomposition – Disintegration – Delegitimization

The method of substantiation

Approach # 1

- compile a catalogue of membership rights and duties
- for every community
- for today and for at least one earlier point in time,
- and compare them

Approach # 2

- study the current structures of decomposition
- identify the mechanisms behind them
- draw inferences from this regarding the past (and future) dynamics of the system



Decomposition – Disintegration – Delegitimization

The findings

3 interconnected mechanisms

- (1) (increasing?) differentiation of membership within the national community, combined with migration
- (2) emergence of new communities and respective (formalized) memberships in the transnational realm
- (3) extension of former membership rights to a wider circle of beneficiaries**



Decomposition – Disintegration – Delegitimization

The findings - continued

Reach of the extensions by kind and origin

origin kind	from within	from outside
positive right	mostly universal	universal or limited, (with reach depending on concrete source)
equality norm	mostly universal	mostly limited, (with reach depending on concrete source)



Decomposition – Disintegration – Delegitimization

The findings – summary

The above may have illustrated

- how I have tried to substantiate my claim.
- what the mechanisms are that bring about the „decomposistion“, and
- that they are divergent („deconcentration“) and driven by multiple actors



Decomposition – **Disintegration** – Delegitimization

The concept of (dis-)integration

The concept...

- integration is understood here as the process of creating, widening or intensifying a community (& disintegration as the reverse),
- and a community as a perpetuated and multi-dimensional social relation (in a Weberian sense, consisting of *actions oriented* towards each other)

... and its treatment in the literature:

- an abundant literature on integration and the law,
- quite a bit on integration and citizenship
- very little on disintegration and law/citizenship
- but hardly any empirical work (in the narrow sense of the word)

➡ *this imports a speculative element into my argument as well.*



Decomposition – **Disintegration** – Delegitimization

The dimensions of “integration through citizenship”

- all are psychological effects – ultimately
- 3 different emphases in the „hope for integration“
 - (1) „liberal“: experience of shared entitlement (& duties)
 - (2) „social“: effects of solidaristic obligation
 - (3) „republican“: experience/effects of participation in collective self-government



Decomposition – **Disintegration** – Delegitimization

The disintegrative effects of the decomposition

- an overly complex task
- by way of illustration:
 - participation rights remain largely untouched, but are devaluated
 - substantive entitlements become more differentiated/universalized
 - mixed effects on solidaristic obligation
- by way of summary:
 - The individual factors, which (might) promote integration, either lose their force, or they remain intact, but become divergent.
 - The „cognitive grid“, which may have been provided or enforced by legal references to membership, becomes blurred.



Decomposition – Disintegration – **Delegitimization**

The concept of (de-)legitimization

The concept ...

- an existing order/rule is understood as legitimate if it is accepted as „just“
- legitimization is the process of establishing or promoting legitimacy (& delegitimization the reverse)

... and the related assumption:

- the law can, among others, contribute to the legitimization the existing order, and it does so substantially in modern societies.



Decomposition – Disintegration – **Delegitimization**

The modes of legitimization through law

There are three modes ...

(1) substantive:

the content of rules is accepted as just (e.g. human rights)

(2) procedural:

the generation of rules is accepted as just (e.g. democracy)

(3) structural:

the application of rules is accepted as just (e.g. consistency)

... which (can) coexist, and there are disparate views regarding their respective weight and its development over time.



Decomposition – Disintegration – **Delegitimization**

The (fading) role of communities in legal legitimization

- The prevalent versions of the 2nd & 3rd mode of legitimization, i.e. democracy and consistency, presuppose that there is a community, the confines/primacy of which are accepted.
- The decomposition and the resulting disintegration may call this premise into question and thus erode the law's legitimatory capacity.



Concluding Remarks

A novelty?

- NO, because it's just another narrative on the fading of the nation state
- NO, because it's just a gradual deplausibilization of the related fictions of unity and sovereignty
- NO, because it's just a post-modern return to pre-modern structures
- BUT – it might still be a *relative* novelty.



Concluding Remarks

A threat?

- YES, because modern constructions of legitimacy and hopes for social integration may have come to depend on a „non-decomposed citizenship“.
- NO, because the processes which bring about the decomposition, viz. internationalization and universalisation, would as such seem desirable
- So, an inherent tension within the „project of modernity“?



Concluding Remarks

A European peculiarity?

- YES, because the nation state and the related concepts may have been assigned a particularly central role in European political thought.
- YES, because in Europe, the external mechanisms driving the decomposition are exceptionally strong – or rather „advanced“?
- NO, because the other mechanisms may operate elsewhere as well, and even the external ones may develop into a similar direction.

Thank you for your attention.