

A Structural – Non-Identical, Multi-Level, Cooperative, Institutional – Approach to European Citizenship

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The aim of this paper is to present a philosophical account of what European – more generally supranational – citizenship could be. It seems that modern western political theory ranging from the European enlightenment till present times has not developed a conceptual frame within which supranational citizenship can be understood. The aim of this paper is to present an understanding of European citizenship that goes beyond established paradigms of political theory. This understanding makes use of my critique of consequentialist rational choice which motivated me to develop the concept of *structural rationality*¹ which is *deontological* in character, but at the same time accepts the conceptual frame of decision theory if understood in the *coherentist* and not in the consequentialist version. Therefore my contribution is a philosophical one, with all its defects lacking empirical content, being overly abstract and even worse being based on a specific theory of rationality which you probably don't know. But I will try to deal with these defects as far as it is possible within such a short presentation. In order to do this I lay more emphasis on the structure of my argument than on its details.

The status of this account of European citizenship is normative and descriptive at the same time. It is *normative* in the sense that citizenship is understood as a *frame of cooperation* and cooperation is possible only if normative reasons are accepted by the agents. It is *descriptive* in so far as European citizenship is – at least partly – an empirical phenomenon or in other

¹*Strukturelle Rationalität*. Stuttgart: Reclam 2001 and *Decision Theory and Ethics*, München 2005, pp. 381-406.

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words there factually exist forms of cooperation within Europe that can be interpreted as elements of European citizenship in the sense that I am going to explicate the term.

My argument has three parts: First I recollect three paradigms of citizenship or *status civilis*; second I shortly inquire into the question how citizenship and democracy are correlated; third I argue that citizenship and democracy should be understood as frames of cooperation and I specify this account focussing on European citizenship.

I

It can easily be seen that European citizenship is a challenge to modern western political theory. Three paradigms of the *status civilis* dominate modern western political theory: the Hobbesian, the Lockean and the Rousseauian.

The Hobbesian paradigm deduces the *status civilis* from two premises: rationality of men which is the ability to choose efficient means for their ends and three anthropological invariants: competition, diffidence and glory². Men know that peace can only be secured if all follow certain rules (*leges naturales*) including the rule to keep contracts. But this alone is no rational justification to follow these rules individually. Those who follow these rules fall short if others do not. There is an incentive not to keep to these rules in the state of nature, that means if there is no common power that keeps all citizens in awe. Peace can only be secured if such a common power is established. It is a kind of Hobbesian utopia that such a common power will be primarily concerned with securing peace. The history of twentieth century tells a different story. But there is one element of the Hobbesian civil state that is reserved in the theory of democracy. This is the idea that the state is the only agent justified to use force, that all means of force should be concentrated in one hand and this is the state. Even in the most pluralistic accounts of modern democracy this Hobbesian element is not given up. In fact democratic institutions are designed such that there is always a device to settle conflicts between different authorities within one state. The civil state is constituted by establishing an actor endowed with all power to keep the citizens in awe and hence secure peace.

The second paradigm is the Lockean³ one. It is based on two fundamental assumptions: The first assumption is that man is endowed with *individual rights* and that this is to be established

² Cf. Thomas Hobbes: *Leviathan* (1651), chap. 13

³ Cf. John Locke: *Two Treatises of Government* (1690)

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as a generally accepted normative fact. All men are equal regarding these human rights and men tend to act such that individual rights are respected. The second fundamental assumption is that men *act rationally within these constraints* posed on action by individual rights. Nevertheless the natural state is not peaceful, as there are divergent views where individual rights end and how they should be sanctioned. The resulting fights tend to escalate and threaten individual liberty and well-being. The civil state settles these conflicts and allows for competition within a property owning society without existential threats. As in the Hobbesean account the civil state is established by a constitutive consensus. And as in the Hobbesean account there is no room for divergent state action.

The third paradigm is the Rousseauian⁴ one. Contrary to the other two it is historicist in a sense. The individual liberty of the state of nature is threatened and finally destroyed as a result of the development of civilisation which had its starting point when men began to thrive for property. Natural liberty within the natural state disappeared in the continuing process of alienation from nature and growing economic dependencies.⁵ In order to restore the original liberty without returning to the state of nature it is necessary to establish a civil state that is constituted by the common will. The Rousseauian civil state is based on the existence of two forms of life. The one is that of the *private man* with his personal interests and claims (the bourgeois). The other is that of a citizen in which personal interests and aims lose their relevance. The division is secured by establishing a *method of collective decision* making, that rules out that individual interests become relevant. This is possible only if political associations of any kind, e.g. parties and lobbies, are prohibited. The state power again is a unique one.

These three paradigms are all *one-level accounts* of the civil state. At the same time, all three of them are accounts that base the civil state on *cooperation*. In essence my argument will be that if the civil state (or citizenship) is based on cooperation, the one-level account, the idea that citizenship is constituted by a collective actor and a unique state power should be given up. These two trains of thought which are constitutive for modern western philosophy, are not like two sides of one coin, on the contrary they run into opposite directions. Genuine citizenship is based on cooperation. Democratic political institutions are frames which uphold, foster and sometimes initiate social cooperation. Social cooperation is a multi-level phenomenon. It is compatible with multi-identities, regional, national und supra-national

⁴ Cf. Jean-Jacques Rousseau: *Du Contrat Social* (1762)

⁵ Cf. Jean-Jacques Rousseau: *Discours sur l'origine et les fondements de l'inégalité parmi les hommes* (1755)

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loyalties, it reinvents itself every day by the contingencies of interaction. If citizenship is to be understood as a frame of social cooperation it is qua definition non-identical and multi-level.

II

Modern citizenship is *democratic* citizenship. The Hobbesean paradigm of the civil state is not a democratic one. The Rousseauian is likewise not a democratic one although it takes a second look to verify this.⁶ The Lockean civil state however is a democratic one, and consequently John Locke was much more influential in the process of developing the constitutions of western democracies than was Jean-Jacques Rousseau or Thomas Hobbes. There are diverging points of view on what democracy is now, and these diverging points of view have some impact on the concept of citizenship. I think one can quite sharply discriminate between *four paradigms of democracy*, even if nobody assumes that established democracies are merely exemplifications of one of these paradigms, each of which defines a core element of a democratic system.

The first paradigm is based on the relation between individual agents and their preferences and institutional political decision taking. The constitutive element of democracy is the collective political actor and democracy is defined by how the decisions of this collective actor are derived from individual preferences. The *theory of collective choice* tries to make those criteria explicit that constitute democratic decision making.⁷

The second paradigm of democracy considers the *market* in the broader sense to be constitutive. It is the political market on which political goods are offered and demanded and on which different interest-groups compete and it is the bargaining process that frames political decision. Lobbies are no threats for a democratic order but its essential elements. Associations of any kind allow for a rationalisation of the bargaining process. The market paradigm of democracy implies a shift from big political decisions taken i.e. in the form of elections and legislative acts to the ongoing piecemeal step by step decisions that the executive powers take every day. The market paradigm implies so to say a micro-respective, whereas the collective choice paradigm implies a macro-respective.⁸

⁶ Cf. The role of the legislator in *Contrat Social* (1762), second book, chap. 7

⁷ Cf. K. Arrow: *Social Choice and Individual Values*, New Haven/London 1963; L. Kern & J. Nida-Rümelin: *Logik kollektiver Entscheidungen*, Wien/München 1994.

⁸ Lit. Schumpeter? ...

The third paradigm of democracy could be labelled *forum*. Different speakers develop their ideas, the public listens and makes up its mind. If a democratic decision is to be taken, the reasons that were developed in this discourse are to be weighed against each other and the project which has the best reasons in its favour gets the majority's support, in the ideal case the decision is taken unanimously. The forum-paradigm of democracy concentrates on the deliberative aspects of a democratic decision process. The deliberative paradigm of democracy has as its essential presupposition a well-established public political culture. Without public reasoning and citizens being an essential part of this public reasoning process, this paradigm of democracy would be without foundations.⁹

The fourth paradigm of democracy could be labelled *praxis*. The roots of this paradigm are twofold. One is the Aristotelean conception of *dios praktikos*, that is the idea that the good state is based on the engagement of free citizens for the good of their polis. No citizen accepts that another citizen rules over himself. Political action is not based on power relations but on friendship or cooperation. The other root is Rousseauist. In the civil state man splits into two kinds of existence: that of the private man and that of the genuine citizen. The citizen acts guided by the common will that is manifest in the decisions taken by the general assemblance including all citizens. This paradigm considers civil engagement to be constitutive for democracy. Without civil engagement no democracy. Civil engagement is the core of every democratic order. Some associate this paradigm with strong democracy¹⁰.

The relations between the paradigms of the civil state and the paradigms of democracy are quite complex and can only be sketched here for the purposes of my argument. Our sympathy for democracy may suggest that there is no citizenship without democracy. But one should keep these two concepts logically separate. Conceptually it is possible that there is genuine citizenship in a non-democratic state. It makes sense to include the most important paradigms of the civil state in the concept of citizenship. Every civil state constitutes some kind of citizenship. The Hobbesian civil state does not exclude democratic decision procedures, but neither does it require them. Hobbesian citizenship is constituted by the establishment of a common power which keeps all citizens in awe to secure peace. But even Hobbesian citizenship shows the essential element of being based on cooperation. As Hobbes tries to

⁹ Cf. Jürgen Habermas (Publikation zur Öffentlichkeit, Theorie des kommunikativen Handelns) and Richardson

¹⁰ Cf. Benjamin Barber: *Strong democracy. Participatory Politics for a New Age*. Berkeley 1984

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show, everybody has an interest in the establishment of a common power. There is no consensus regarding the method of collective decision making (which would be relevant for democratic citizenship) but there is a consensus on how to preserve peace in the civil state.

Likewise, Lockean citizenship is primarily constituted by institutions that make sure that different opinions on how to sanction violations of individual human rights do not result in violent conflicts. There is a consensus regarding the establishment of a lawful state because its establishment is in the interest of everybody, even if everybody preferred a condition in which he could freely decide while all others obey the law. Additionally, in the Lockean civil state democratic decision procedures help to solve political conflicts. Lockean citizenship is constituted primarily by a consensus on the lawful state and secondarily by a consensus on majority rule.

In Rousseau's civil state the individuals regain their original freedom by becoming genuine citizens. To be a citizen means to adopt political objectives as those of the common will. Since there is only one common will democratic decision procedures are irrelevant in the ideal Rousseauian polis. Everybody agrees with everybody about the common will. Divergencies of opinion can arise only as a result of epistemic deficiencies. Rousseauian citizenship is not a democratic one.

III

It seems to me that cooperation is essential for citizenship, that there is a conceptual link between citizenship and cooperation. The fact that all three paradigms of the civil state and its correlated citizenship are contractarian and therefore cooperative accounts does not prove the correctness of this assumption, but it is at least a good indication that this assumption might be true. Contrary to what standard rational choice theory assumes cooperative action is defined by a format of interaction that can be symbolized by the well-known Prisoner's Dilemma. To cooperate means to choose that strategy C which is dominated by another strategy, and for which it is the case that if all actors choose C (or contribute to a collective strategy which belongs to C) they all fare better than if they all choose the dominant strategy D (or: contribute to the collective strategy D). In the two persons case the matrix which represents such a situation is:

B

		C	D
A	C	3/3	1/4
	D	4/1	2/2

Standard decision theory assumes that cooperation in a one shot Prisoner's Dilemma is rationally impossible because cooperation would reveal incoherent preferences. The argument runs as follows:

The matrix above can be interpreted such that A has a first priority for a collective decision in which he himself does not cooperate whereas the other one does cooperate. The second priority is that both cooperate. The third priority is that both do not cooperate and the worst case is that he himself cooperates whereas the other one does not cooperate. If these are the preferences of A then A has a preference for not cooperating whatever the other person does. If the probability of the other person's decision is independent from what A chooses, it follows that it cannot be rational for A to cooperate, because cooperation would run against his own preferences. Put in different terms, cooperation would reveal that he at least prefers to cooperate if the other person cooperates or that he cooperates even if the other person does not cooperate because otherwise no probability whatsoever for B to cooperate would render cooperation rational. However, by establishing the matrix (or the preference relation) given above, we have assumed that this assumption does not hold.

This interpretation is indeed given the presuppositions of standard rational choice theory. One of the presuppositions is that one cannot drive a wedge between choice and preference. In interpreting the matrix by the preference relation given above we conceptually excluded such a "wedge". If, however, we discriminate between preference relations regarding consequences of choice on the one hand and preferences regarding strategies within a given structure of interaction on the other hand, then such a wedge between choice and preferences becomes conceptually possible. I have argued at length elsewhere that consequentialism fails not only in ethics but also in the theory of rational choice¹¹. The theory of rational choice should be considered as a theory of coherent preferences and coherent subjective probabilities and nothing else. The standard rational choice account, however, is consequentialist in character. It adds a specific interpretation that goes far beyond the coherentist assumptions of the utility theorem.

¹¹ Cf. *Kritik des Konsequentialismus*. München/Wien: Oldenbourg 21995

We should adopt a structuralist point of view for which it is possible to cooperate rationally even in a one shot Prisoner's Dilemma, because the structural traits of interaction can play a crucial role for the rational decision. A cooperative attitude reveals itself by driving a wedge between choice and preference in situations of the Prisoner's Dilemma type. It is a Prisoner's Dilemma insofar as the consequences of the four possible combinations of individual action are ranked the way the matrix suggests. The cooperative attitude comes into the game given this structural background of individual preferences which constitutes the Prisoner's Dilemma. The cooperative attitude reveals itself in choice C. This choice does not result in inconsistent preferences because it reveals a preference for cooperation and does not at the same time change the preferences regarding consequences. A person that is motivated by a cooperative attitude rationally chooses C although choosing C does not optimize the consequences of her decision. Not optimizing consequences does not necessarily result in inconsistent preferences or irrationality. Whether it does or not depends on the conceptual frame, and the structuralist account allows for rational choice which is not consequentialist choice.¹²

Cooperative choice can be rational. But since cooperative choice is defined as running against optimizing consequences given the personal preferences, cooperation requires a certain distanciation from my personal point of view. Even if I have no altruistic motives at all, it is my contribution as part of a collective strategy that renders cooperation rational. It is the embedding of my cooperative strategy in a collective cooperative strategy that is essential for driving the wedge between choice and preference. But distance from the personal point of view is what makes up the normative. Within the structuralist account, the difference between the Assurance Game and the Other Regarding Game can be interpreted as different degrees of cooperative attitude. *All cooperate* is one equilibrium point in the Assurance Game besides the other equilibrium point *all do not cooperate*, whereas in the Other Regarding Game *all cooperate* is the only equilibrium point. In fact one could not even understand what it means to say that in the Other Regarding Game persons can cooperate if the Prisoner's Dilemma structure does not survive in this process of transformation from Prisoner's Dilemma to Assurance Game to Other Regarding. The structuralist account allows for the Prisoner's Dilemma to survive in this process insofar as the preferences regarding consequences can still

¹² For details cf. JNR: *Strukturelle Rationalität*, Stuttgart 2001

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be unchanged even if the cooperative attitude becomes stronger from Prisoner's Dilemma to Assurance Game and from Assurance Game to Other Regarding¹³.

The cooperative attitude modelled by the Assurance Game can be described as *conditional cooperation*: The person wants to cooperate if she can expect the other person to cooperate too. But if she cannot expect the other person to cooperate she does not want to be the fool. In the Other Regarding Game, however, the person has a strong cooperative attitude because she wants to do her part no matter what she expects the other persons to do. In a way she cooperates as part of a fictitious sample of cooperative actions even if she does not expect that this preferred collective action will be realized. Kantian ethics requires to choose cooperation even if one cannot expect others to join. But Kantian ethics puts the individual choice in the broader frame of generalizeable maxims or normative laws: "To act only so that the will through its maxims could regard itself at the same time as giving universal law"¹⁴. Since it would not be reasonable to assume that all citizens of a society are Kantian agents, but merely that cooperative attitudes to a certain degree are widespread, that in other words the empirical situation is somewhere in between Prisoner's Dilemma and Assurance Game, but rarely goes beyond the Assurance Game in the direction of the Other Regarding, it follows that institutions are essential to render the expectation rational that others might as well cooperate.

Without an institutional frame which upholds, fosters and initiates social cooperation, the concrete cooperative citizens' activities would not be stable, if they rose at all. Without institutional backing social cooperation empirically limits itself to those actors closely associated with each other. This empirical result¹⁵ converges with the result of dynamic game theory which has shown that only if there is a high probability for continued interaction, cooperative strategies have a chance to survive the selection process¹⁶.

If citizenship is understood as one form of genuine cooperation, the aspects of cultural unity and diversity gain new relevance for the theory of citizenship. The multi-level approach of this structuralist perspective allows for a divergence between the personal point of view and the citizen's point of view. One might call this a rational reconstruction of the Rousseauian

¹³ For further details see my *Economic Rationality and Practical Reason*. Dordrecht/Boston/London: Kluwer 1997, chap. 8

¹⁴ *Grundlegung zur Metaphysik der Sitten*, Akademieausgabe, S. 434, resp. *Foundation of the Metaphysics of Morals*, translated with an introduction, by Louis White-Beck, New York/London (1990), p. 51

¹⁵ Cf. the international findings in Robert Putnam (Hg.): *Gesellschaft und Gemeinschaft. Sozialkapital im internationalen Vergleich*. Gütersloh: Bertelsmann 2001

¹⁶ Cf. Robert Axelrod: *The Evolution of Cooperation*. New York 1984

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paradigm of citizenship. The private person (the bourgeois) is represented by the preferences regarding consequences. These preferences are constituted by his regarding the structures of interaction. They are strictly individualistic. These individualistic preferences can represent personal economic interests but also personal cultural points of view or subjective morals. As a citizen one takes one's own personal point of view, one's personal economic interests, one's personal cultural orientation, one's personal morals into account, knowing, however, that other citizens have other personal points of view, other economic interests, other religious orientations, other private morals. As a citizen, one develops preferences regarding choice that take this structure or setting of divergent personal points of view into account. As a citizen, one distances oneself from one's personal point of view. As a citizen, you take cultural diversities, the diversities of religious orientation, diversities of economic interests, diversities of life forms seriously. As citizen we do not adopt a strategic attitude which would take diversity as a mere empirical condition for optimizing consequences. As citizen we do our part in a broader cooperative frame that constitutes citizenship.

Such cooperative frames can be established on one level only – at least in theory. But this is not at all necessary. Empirically established cooperative frames in general are *multi-level forms of cooperation*: Closer ones which are intimately connected with one's private life and its every day interactions and broader ones where cooperation rarely is face to face.

Citizenship is that part of this cooperative frame that is based on or at least related to political institutions.

III

Let us see how these quite abstract considerations help to understand European citizenship better.

- (a) European citizenship is atypical insofar as the civil state is not established on the European level. There is no common power to keep them all in awe in the words of Thomas Hobbes, and there is not even a European executive power which upholds, fosters and initiates the operation. Up to now, the civil state on the European level is guaranteed exclusively by the member nation states. Since the civil state is constitutive for any citizenship if our argument is valid, European citizenship is derivative.

- (b) All essential elements of a democratic order are already established in every member state of the European community. European democracy is complementary. It extends the democratic institutional frame on the national level in order to uphold, foster and initiate cooperation transnationally within the European community. This cooperation differs from mere economic exchange because it is backed by citizens' rights and institutional duties. It does not establish the civil state and it does not establish a citizens' status, but it extends the cooperative frame transgressing the borders of the member states.
- (c) Since citizenship is a form of cooperation backed up by political institutions, it is not confined to one level of political decision taking. Federalist democracies lay more emphasis on the aspect of cooperation whereas centralized democracies like France lay more emphasis on the process of democratic decision making on one, the national, level. Federalist systems tend to dissolve central democratic action, they tend to disperse political responsibility and as a result quick and coherent political action becomes difficult. European citizenship apparently stays in the tradition of federalism. A federalist understanding of citizenship adds a further level of cooperation backed by political institutions. From the standpoint of centralized nation states, European citizenship cannot be an extension of the national status civilis. It can either be a threat or merely a non-genuine form of citizenship. It is a threat because in this understanding there can be only one genuine citizenship constituted by central political action that is democratically legitimised. The structuralist account, which we argued for above, favours a federalist understanding of citizenship, and it seems to me that this is the more adequate understanding of European citizenship. It is able to integrate the universalist account of a common citizen's morality with communitarian elements of cultural and regional identities. The model of rational cooperation is its basis.

The proposed European constitution contains elements of such a structural account e.g. in Art. I-46 and I-47. The convention's constitution contains libertarian and cooperative elements, but the institutional parts make clear that the "United States of Europe" with the European level being constitutive for political agency is not intended. The structural cooperative design of the European political institutions backs this interpretation. European Citizenship is best understood as a structural one: non-identical, multi-level, cooperative and institutional.