

Global Citizenship

Professor Dimitry V. Kochenov (LEGS '02)

Fall term AY 2022-2023

Master's level course

Mandatory/Mandatory-Elective/ Elective course for CCL LL.M, HR LL.M, HR MA, IBL LL.M

2 US credits / 4 ECTS credits

Two-munite course intro: <https://vimeo.com/590751490>

Pre-requisites: Master's enrollment

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BRIEF INTRODUCTION:

Virtually all the population of the world is composed of citizens of one or more countries or territories. Citizenship is an assigned legal status, which the majority of us never choose or consciously think about and therefore it is prone to being taken for granted: a constant part of our life, a seemingly natural part of our world. Such status appears to correlate with the most fundamental aspects of life, such as mortality (a Somalian child is 50 times more likely not to survive the first 5 years of life than a child in Japan or Finland), mobility (a Swede can easily travel to 174 countries, while an Afghani can only manage 21, in practice none), and often contributes to a sense of belonging or pride. People are often required and not infrequently willing to die for it.

This course will focus on the many facets of the notion of citizenship approached in their contextualized evolution – from ‘a right to have rights’ to a ‘birthright lottery’. As the last overwhelmingly important resource distributed in the contemporary world in accordance with purely feudal principles of blind chance and with no regard to the personal talents, achievements, or desires, citizenship is in the middle of a global transformation, which we will trace together. We will trace the complex story of citizenship from a pre-citizenship world of classical antiquity and the Middle Ages to the (re-)birth of the idea following the French revolution and its instrumentalisation by the nation-states to the contemporary rise in cosmopolitanism, personhood and the fading away of the citizenship–rights link in the affluent constitutional democracies countries around the world. Although still crucially important, the natural development of citizenship seemingly pushes this status away from the center-stage. Access to key rights is increasingly getting disconnected from the possession of a particular legal status and the cultivation of thick identities is more and more difficult to justify in a word of professed tolerance, multiculturalism and respect for the other. Also citizenship duties are in decline. This process is significantly amplified by the birth of supranational citizenships, like the citizenship of the European Union (those interested in this particular aspect of the citizenship story are warmly invited to join my 1 US credit course on ‘Supranational Citizenship and Belonging’ this semester). I invite you to a walk through an assemblage of a number of crucial citizenship ideas and ideologies which, although they still greatly inform the functioning of the world today, are definitely (luckily, as we shall see) past their prime.

GOALS: The course's core objective is to provide a critical global engagement with the concept of citizenship.

LEARNING OUTCOMES:

- Knowledge of the basics of global citizenship law and ability of its critical evaluation;
- Critical regard of the key theories underlying the concept of citizenship and its functioning;
- Evaluation of key rules and theories in terms of internal coherence and practical outcomes;
- Skills to work with case-law from different eras and jurisdictions;
- All the natural benefits of working intensively in a small diverse intellectually engaged group: critical thinking; multicultural interpersonal skills; communication skills.

COURSE REQUIREMENTS AND FINAL ASSESSMENT:

Class attendance is required and is indispensable for following the story of citizenship in a fruitful way. Students are expected to have closely read all the materials assigned for each class and are encouraged to read broader than the obligatory assigned materials (usually in the range of 25.000 words). Further reading is provided for each class for this purpose. Having this background knowledge is crucial: students are expected to be in the position to engage critically with the readings. Every student is expected to participate fully and actively in class discussions. Participation in and preparation for our in-class conversation is a critical part of the course and will be taken into account in assessing the final grade: Prof. Kochenov will collect 300–500-words summaries of each of the obligatory readings assigned before each class. The summaries are submitted in hard copy and only signed by a student number to ensure anonymity. The summaries are graded pass/fail. Students who receive a fail or fail to submit the summaries of the required readings one time in the course of the semester are entitled to resubmit. Failure to submit suitable summaries the second time will result in a lower grade. Second resubmission will not be possible.

Final assessment: students will be expected to write a 5.000–7.000-words essay over the course of the semester. In each essay, the students are expected to critically engage with the themes of the seminar in light of the assigned readings and class discussions. The topic is selected in consultation with Prof. Kochenov, who will also be available to offer comments on the initial structure and on the draft close to completion. The grade for the essay is the final grade for this course, unless of course you failed the summaries of the obligatory readings for the second time during the semester, in which case the grade is lowered.

WEEKLY PLAN OF THE COURSE AND COMPULSORY READINGS / OTHER MATERIALS
Beyond the meetings below, there will be a public lecture by a renowned citizenship scholar/practitioner in the middle of the semester. More details on it will be provided later.

1. Introduction and welcome (20 September, 10.50am)

We establish the key elements and functions of citizenship in the global context.

Dimitry Kochenov, 'Key Elements of the Concept', in *Citizenship*, Cambridge MA, MIT Press, 2019, pp. 1–35: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3794030

Dimitry Kochenov and Justin Lindeboom, 'Part I: Laying down the Base', in Dimitry Kochenov and Justin Lindeboom (eds), *Kälin and Kochenov's Quality of Nationality Index*, Oxford: Hart Publishing 2020, pp. 9–35 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3578074

Charles Tilly, 'War Making and State Making as Organized Crime', in Peter Evans, Dietrich Rueschemeyer and Theda Skocpol (eds.), *Bringing the State Back in*, Cambridge: Cambridge University Press, 1985, pp. 169–186: <http://www.jesusradicals.com/uploads/2/6/3/8/26388433/warmaking.pdf>

To know more:

Yishai Blank, 'Why Citizenship?' 8 *Theoretical Inquiries in Law*, 2007, pp. 411–452.

Christian Joppke, *Citizenship and Immigration*, Oxford: Polity Press, 2010, chapter 1, pp. 1–33.

Aylet Shachar, *Birthright Lottery: Citizenship and Global Inequality*, Cambridge, MA: Harvard University Press, 2009, chapter 1, pp. 21–43.

Serena Forlati, 'Nationality as a Human Right', in Alessandra Annoni and Serena Forlati (eds.) *The Changing Role of Nationality in International Law*, Abingdon: Routledge, 2014, pp. 18–28.

PLEASE COME PREPARED AND DO NOT FORGET THE SUMMARIES OF OBLIGATORY READINGS: THE REQUIREMENTS OF ATTENDANCE ARE THE SAME FOR EVERY SESSION

2. Status I: acquisition, loss, recognition (27 September, 10.50am)

We start scrutinizing the legal status of citizenship and approach its key features.

Dimitry Kochenov, 'Status', in *Citizenship*, Cambridge MA, MIT Press, 2019, pp. 37–88.

And one of the following two works:

Alice Sironi, 'Nationality of Individuals in Public International Law: A Functional Approach', in Alessandra Annoni and Serena Forlati (eds.) *The Changing Role of Nationality in International Law*, Abingdon: Routledge, 2014, pp. 54–68.

or:

Peter J. Spiro, 'Dual Citizenship as Human Right', 8 *International Journal of Constitutional Law*, 2010, pp. 111–130.

To know more:

Matthew J. Gibney, 'The Right of Non-Citizens to Membership', in Caroline Sawyer and Brad K. Blitz (eds.), *Statelessness in the European Union*, Cambridge: Cambridge University Press, 2011, pp. 41–68.

Kristen Rundle, 'The Impossibility of an Exterminatory Legality: Law and the Holocaust', 59 *University of Toronto Law Journal*, 2009, 65, only pp. 69–76.

Hans Ulrich Jessurun d'Oliveira, 'Iberian Nationality Legislation and Sephardic Jews', 11 *European Constitutional Law Review*, 2015, pp. 13–29.

Christian Joppke, *Citizenship and Immigration*, Oxford: Polity Press, 2010, chapter 3, pp. 34–72.

Triadafilos Triadafilopoulos, 'Dual Citizenship and Security Norms in Historical Perspective', in Thomas Faist and Peter Kivisto (eds.), *Dual Citizenship in Global Perspective: From Unitary to Multiple Membership*, Basingstoke: Palgrave Macmillan, 2007, pp. 27–38.

Case of the week: International Court of Justice, *Liechtenstein v. Guatemala (Nottebohm)*, Judgment of 6 April 1955, Second Phase; Dissenting opinions of Judges Klæstad, Read and Judge “ad hoc” Guggenheim. Available at: <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&case=18&code=lg&p3=4>.

3. Status II: sexism and racism (4 October, 10.50am)

We delve into the sexism and racism of citizenship: crucial elements of the concept.

Dimitry Kochenov, ‘Status’, in *Citizenship*, Cambridge MA, MIT Press, 2019, pp. 88–120

And browse through one of the following two works:

Sherally Munshi, ‘Immigration, Imperialism, and the Legacies of Indian Exclusion’ 28 *Yale Journal of Law and Humanities*, 2015, pp. 51–104

<https://digitalcommons.law.yale.edu/yjlh/vol28/iss1/2/>

or:

Anthony, Lord Lester of Herne Hill QC, Lecture, East African Asians Versus the United Kingdom: The Inside Story (Oct. 23, 2003), 19 pages, available at

<http://www.blackstonechambers.com/document.rm?id=73>.

To know more:

Imogen Tyler, ‘Designed to Fail: A Biopolitics of British Citizenship’, 14 *Citizenship Studies*, 2010, pp. 61–74.

Jamie Abrams, ‘Examining Entrenched Masculinities in the Republican Government Tradition’, 114 *West Virginia Law Review*, 2011, pp. 165–208.

Betty de Hart, ‘The Morality of Maria Toet: Gender, Citizenship and the Construction of the Nation-State’, 32 *Journal of Ethnic and Migration Studies*, 2006, pp. 49–68.

James Tully, ‘Lead Essay’, in *Global Citizenship, James Tully in Dialogue*, London: Bloomsbury Academic, 2014.

Case of the week: US Supreme Court, *United States v Bhagat Singh Thind* 261 U.S. 204 (1923), available at: <https://supreme.justia.com/cases/federal/us/261/204/>

4. Rights (11 October, 10.50am)

We discuss citizenship rights and their evolution.

T.H. Marshall, ‘Citizenship and Social Class’, 1950, available at

<http://users.dickinson.edu/~mitchelk/readings/marshall-citizenship-and-social-class.pdf>.

Dimitry Kochenov, ‘Rights’, in *Citizenship*, Cambridge MA, MIT Press, 2019, pp. 121–158.

Slavoj Žižek, ‘Against Human Rights’ (2005) 34 *New Left Review* 10.

To know more:

Christian Joppke, *Citizenship and Immigration*, Oxford: Polity Press, 2010, chapter 3, first part, pp. 73–96.

Joseph H. Carens, ‘Citizenship and Civil Society: What Rights for Residents?’, in Randall Hansen and Patrick Weil (eds.), *Dual Nationality, Social Rights and Federal Citizenship in the U.S. and Europe*, New York, NY: Randall Books, 2002, pp. 100–117.

Bridget Anderson, Matthew J. Gibney and Emanuela Paoletti, ‘Citizenship, Deportation and the Boundaries of Belonging’, 15 *Citizenship Studies*, 2011, pp. 547–563.

Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford: Oxford University Press, 1995, chapter 3, pp. 34–48.

Case of the week: European Court of Human Rights, *Beldjoudi v. France*, App No. 12083/86 [1992], available at: <http://hudoc.echr.coe.int/eng?i=001-57767#%7B%22itemid%22:%5B%22001-57767%22%5D%7D>

5. Duties (18 October, 10.50am)

We focus on the totalitarian essence of citizenship duties / the 'good citizen' ideal.

Dimitry Kochenov, 'Duties', in *Citizenship*, Cambridge MA, MIT Press, 2019, pp. 159–196.

Christian Joppke, 'Liberal Citizenship is Duty-Free', in Rainer Bauböck (ed), *Debating European Citizenship*, Berlin: Springer, 2018, pp. 199–203: https://link.springer.com/chapter/10.1007/978-3-319-89905-3_35

To know more:

Michael Walzer, 'Civility and Civic Virtue in Contemporary America', 41 *Social Research*, 1974, pp. 593–611.

Douglas Husak, 'Ignorance of Law and Duties of Citizenship', 14 *Legal Studies*, 1994, pp. 105–115.

Dimitry Kochenov, 'EU Citizenship without Duties', 20 *European Law Journal*, 2014, pp. 482–498.

Richard Bellamy, 'A Duty-Free Europe? What's Wrong with Kochenov's Account of EU Citizenship Rights', 21 *European Law Journal*, 2015, pp. 558–565.

Case of the week: The Union of Soviet Socialist Republics District Court (Dzerzhinsky District, City of Leningrad) *Brodsky* [1967]. Transcript produced by Frida Vigodova, 'The Trial of Joseph Brodsky', *New England Review*, February 2014, pp. 183–207, available at:

<http://www.nereview.com/files/2014/01/NER-Vigdorova.pdf>.

6. Equality (25 October, 10.50am)

We critique the promise of equality and its prominent role in citizenship theorizing.

Branko Milanovic, 'Inequality among Countries', in *Global Inequality: A New Approach for the Age of Globalisation*, Cambridge MA: Harvard University Press, 2014, pp. 118–155.

William E. Forbath, 'Caste, Class, and Equal Citizenship', 98 *Michigan Law Review*, 1999, part C., pp. 18–23.

Joseph H. Carens, 'Aliens and Citizens: The Case for Open Borders', 49 *Review of Politics*, 1987, pp. 251–273.

To know more

Sir Isaiah Berlin, 'Equality II', 56 *Proceedings of the Aristotelian Society*, 1955–1956, 301–326.

Louis P. Pojman, 'Are Human Rights Based on Equal Human Worth?', 52 *Philosophy and Phenomenological Research*, 1992, pp. 605–622.

Christian Joppke, *Citizenship and Immigration*, Oxford: Polity Press, 2010, chapter 3, second part, pp. 96–110.

Christian Joppke, 'Why Liberal States Accept Unwanted Immigration', 50 *World Politics*, 1998, pp. 266–293.

James Q. Whitman, 'On Nazi "Honour" and the New European "Dignity"', in Christian Joerges and Navraj Singh Ghaleigh (eds.), *Darker Legacies of Law in Europe*, Oxford: Hart Publishing: 2003, pp. 243–266.

Case of the week: European Court of Human Rights, *Podkolzina v. Latvia*, App No. 46726/99 [2002] ECHR 405, available at:

<http://hudoc.echr.coe.int/eng?i=001-60417#%22itemid%22;%22001-60417%22>

7. Politics (4 November, 1.30pm)

We engage with and contextualize the political side of citizenship.

John Mueller, 'Democracy and Ralph's Pretty Good Grocery: Elections, Equality, and the Minimal Human Being', 36 *American Journal of Political Science*, 1992, pp. 983–1003.

Dimitry Kochenov, 'Politics', in *Citizenship*, Cambridge MA: MIT Press, 2019, pp. 197–238.

To know more:

Rainer Bauböck, 'Global Justice, Freedom of Movement and Democratic Citizenship', 51 *Archives européennes de sociologie*, 2009, pp. 1–29.

Heather Lardy, 'Citizenship and the Right to Vote', 17 *Oxford Journal of Legal Studies*, 1997, pp. 75–100.

Ruth Rubio-Marín, 'Transnational Politics and the Democratic Nation-State: Normative Challenges of Expatriate Voting and Nationality Retention of Emigrants', 81 *New York University Law Review*, 2006, pp. 117–147.
Engin Isin, 'Citizenship in Flux: The Figure of the Activist Citizen', 29 *Subjectivity*, 2009, 367–384.

Case of the week:

Court of Justice of the European Union, Case C-300/04 *Eman en Sevinger* [2006] ECR I-8055
ECLI:EU:C:2006:545

8. Identity (8 November, 10.50am)

We debunk the citizenship-identity tandem in the global legal context.

Peter Spiro, 'Stakeholder Theory Won't Save Citizenship', in Rainer Bauböck (ed.), *Democratic Inclusion: Rainer Bauböck in Dialogue*, Manchester: Manchester University Press, pp. 204–224
<https://www.manchesteropenhive.com/view/9781526105257/9781526105257.00014.xml>

Dimitry Kochenov, 'Mevrouw de Jong gaat eten: EU Citizenship and the Culture of Prejudice', *EUI RSCAS Working Paper* 2011/6, pp. 1 – 20:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1765983

To know more:

Christian Joppke, *Citizenship and Immigration*, Oxford: Polity Press, 2010, chapter 4, pp. 111–144.

Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford: Oxford University Press, 1995, chapter 3, pp. 10–33.

Dimitry Kochenov, Vadim Poleshchuk and Aleksejs Dimitrovs, 'Do Professional Linguistic Requirements Discriminate? A Legal Analysis: Estonia and Latvia in the Spotlight', 10 *European Yearbook of Minority Issues*, 2011, pp. 137–178.

Case of the week:

Court of Justice of the European Union: Case C-221/17 *Tjebbes and others v Minister voor buitenlandse zaken*
ECLI:EU:C:2019:189, available at:
<https://www.manchesteropenhive.com/view/9781526105257/9781526105257.00014.xml>

9. Beyond the State (15 November, 10.50am)

We decouple global citizenship from national legal systems.

Dimitry Kochenov, 'Interlegality – Citizenship – Intercitizenship', in Jan Klabbers and Gianluigi Palombella (eds), *The Challenge of Inter-Legality*, Cambridge: Cambridge University Press, 2019, pp. 133–155:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3203382

Linda Bosniak, 'Citizenship Denationalized', 7 *Indiana Journal of Global Legal Studies*, 2000, pp. 447 – 509.

To know more:

Kim Rubenstein, and Daniel Adler, 'International Citizenship: The Future of Nationality in a Globalised World', 7 *Indiana Journal of Global Legal Studies*, 2000, pp. 519–548.

Gianluigi Palombella, 'Whose Europe? After the Constitution: A Goal-Based Citizenship', 3 *International Journal of Constitutional Law*, 2005.

Dimitry, Kochenov, 'Ius Tractum of Many Faces: European Citizenship and a Difficult Relationship between Status and Rights', 15 *Columbia Journal of European Law*, 2009, pp. 169–237:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1352734

Case of the week: Court of Justice of the European Union, C-34 *Gerardo Ruiz Zambrano v. Office national de l'emploi (ONEm)* [2011] ECLI:EU:C:2011:124, available at:
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=80236&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=65396>

10. Overcoming citizenship? (29 November 10.50am)

Time to prophesize: we discuss citizenship's future.

Dimitry Kochenov, 'Ending Passport Apartheid: The Alternative to Citizenship is No Citizenship – A Reply' 18 *International Journal of Constitutional Law*, 2020, pp. 1525–1530:
<https://academic.oup.com/icon/article/18/4/1525/6169921>

Richard Falk, 'The Decline of Citizenship in an Era of Globalization', 4 *Citizenship Studies*, 2000, pp. 5–16.

To know more:

Christian Joppke, *Citizenship and Immigration*, Oxford: Polity Press, 2010, chapter 5.

Linda Bosniak, 'Persons and Citizens in Constitutional Thought', 8 *International Journal of Constitutional Law*, 2010, 9.

11. Final meeting: discussion of the paper drafts (6 December 10.50am)

We closely engage with your work and understanding.