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Citizenship at a crossroad

Ashley Mantha-Hollands* and Liav Orgad**

Over the last decades, the institution of citizenship has been at the forefront of fierce debates. The normative meaning of citizenship, the legal rules of acquiring it and opting out, and the political consequences of citizenship structures are fundamental debates in constitutional law and political theory. This is not accidental, since citizenship rules are the gatekeepers of any political community and an organizing principle that perpetuates its character. The traditional story from the birth of modern constitutionalism has connected citizenship with a society's solidarity and unity. According to this story, a communal life is close to impossible without the existence of collective interests that are superior to those of the individual, and citizenship rules are supposed to reflect these interests.

Kochenov's book is a direct attack on the institution of citizenship. It is rich, stimulating, masterfully written—Kochenov is a maestro in writing, who puts together words and arguments as a top conductor in an orchestra—and full of “food for thought.” Whether the reader agrees or disagrees with Kochenov, s/he should be ready for an intellectual journey, spiced with fascinating historical and comparative examples. Reading the book is like watching a show—it is often enjoyable, at times outrageous, but always exciting and inspiring. *Douze pua* to Kochenov!

In Kochenov's tale, the law and practice of citizenship are totalitarian, sexist, and racist. Citizenship is totalitarian because it “is not a status based on one's wishes or choice” (at 38–9). Instead, it is randomly distributed by rules of blood and soil: “*Ius sanguinis* is as ancient as it is easy to explain: a son of a slave is a slave, a daughter of a nobleman is noble, and a son of a Belgian is Belgian. *Ius soli* is trickier . . . anyone born in the realm claimed by the English king used to be English, everyone born in the United States is still American” (at 61). Citizenship is sexist, because, until well into the twentieth century, a woman's citizenship was usually based on

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the citizenship of her husband and she could not pass her citizenship to her children ; “citizenship has traditionally been . . . a status for *men only*.” (at 89–90). Citizenship is racist because, at least until mid-twentieth century, it was used to exclude people based on “the pigmentation of the skin” (at 98). Today, Kochenov decisively states, “all of us are judged by the color of our passport . . . at any international border” (at 118). In this regard, the institution of citizenship is rooted in hypocrisy: it preserves class structures and generates social injustice yet covers it by loaded terms such as “social equality” and “universal truths.”

There is much to praise in the book, but, as any other book, it is not perfect. The first problem is that it is exceedingly one-sided. It presents *only* the dark side of citizenship. It is not surprising, as it seems that Kochenov finds no value whatsoever in citizenship. Still, citizenship has also brought some good: a framework for political participation, a sense of belonging (even if imagined), and a structure to organize societal life where individuals can prosper, be recognized, and make laws that promote their interests. No doubt, the walls of citizenship generate inequality and injustice, but they also protect—from inequality and injustice, as well as from risks to freedom, happiness, health, and safety. The one-sided story, told by Kochenov, is not only academically wrong but also politically unwise; it makes it difficult for people who generally agree with his overall claims (like us) to join his journey. Is the institution of citizenship—either in the external sense of being “a mechanism for allocating persons to states,”¹ or in the internal sense of membership in a political community²—wrong in principle? Or is it not objectionable in principle, but only in practice, due to the abuse of citizenship? If Kochenov objects to citizenship in principle, regardless of its implementation, the book is less convincing, as such a claim must balance the dark side of citizenship with its bright side. If Kochenov is only against the wrong implementation of citizenship rules, his claim is more powerful yet less novel.

The second problem with the book is its unclear methodology. First, some concepts beg a definition. For example, the book uses the word “totalitarian” forty-five times, yet with no clarification of the exact meaning. It is quite ironic that, in *The Origins of Totalitarianism*, Hannah Arendt finds the lack of citizenship as the source of evil; citizenship, as a “right to have

¹ ROGERS BRUBAKER, CITIZENSHIP AND NATIONHOOD IN FRANCE AND GERMANY 31 (1992).

² Rogers Smith, *Citizenship: Political*, in INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL AND BEHAVIORAL STUDIES 1857 (Neil J. Smelser & Paul B. Baltes eds., 2001).

rights” and to “belong to some kind of organized community,” *is* the shield against totalitarianism.³ Second, some of the claims lack a perspective and framework for the analysis. Kochenov seems to take a cosmopolitan perspective (he attacks the injustice between states brought about by citizenship), yet his claims may also be valid from a national perspective (concerning the injustice within states). The book could benefit from specifying the narrator’s theoretical framework. Third, the reader wonders whether the issues so poignantly discussed by Kochenov are problems of citizenship or broader problems of international politics and social psychology (capitalism, patriarchy, racism, etc.), which are merely reflected in the mechanisms of citizenship? Suppose citizenship is erased from the *corpus juris*, does Kochenov believe that these problems would go away, and the global system would become a place of equality and justice for all? Using citizenship as a “scapegoat” may be risky, as it undermines real problems by finding a hanger to hold them. It is humans who have created totalitarianism, racism, and sexism, not the legal construct of citizenship, which, even if poorly designed, is just an artifact. Kochenov’s target should be humanity, and not necessarily citizenship. Finally, Kochenov presents a compelling case against the design of citizenship, which, quite often, is both under- and overinclusive. Thus, for example, he is right that “[t]he fact that someone is a Norwegian or a Pakistani does not have anything to do with the character, talents, education, or aspirations of the person in question,” and that “[c]itizenship thus inhabits a legal reality, which does not necessarily overlap with the social one” (at 38). As any abstract legal concept, citizenship causes injustice in individual cases and is based on a variety of legal fictions. But here, too, it seems that Kochenov’s problem is not with the rules of citizenship, but with legal rules in general. All legal rules—for example, the mandatory age for voting, driving, or drinking—are under- and overinclusive. All legal rules, to some extent, do not necessarily overlap with social reality.

The third problem with the book is that it offers no alternative. Even if the reader ignores the untold story on the positive side of citizenship, focusing only on its dark side, and accepts all the book’s propositions and conclusions, is there an alternative? If Kochenov wants to be the Martin Luther of our time, revealing the injustice of an old institution used by the elite to perpetuate its wealth and power, he needs to offer a program of reformation. Knowing him, he might, but the current book provides none.

³ HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 297 (1951).

Still, the book reaffirms the urgent need to rethink the empirical and normative assumptions underlying the institution of citizenship, the legal rules for distributing it, and their ethical consequences. Kochenov shows that a person's citizenship is arguably *the most* significant identity category to influence his/her life opportunities—more than gender, race, ethnicity, religion, and education. He observes that “the formal status of citizenship is of overwhelming importance to everyone's life . . . [it] determines the treatment, in law and in fact, you will receive *anywhere* in the world” (at 5–6). Almost everything in life starts with our citizenship: “Can you be with the one you love? Can you decide what to believe in or will you be beheaded for apostasy? Will the medical procedure necessary to save your life be available to you? Can you have as many children as you want (or none)? Will your talent let you prosper or will it guarantee that you are impoverished? Crucial aspects of our lives overwhelmingly—and sometimes totally—depend on where we are in the world and which citizenship we hold” (at 10).

One can hardly justify why such an important identity category should be distributed so arbitrarily and governed by ancient guiding principles of blood and soil. Kochenov's book should be a wake-up call for constitutional and international theorists and practitioners to promote an agenda for redefining citizenship as well as the structures governing it.