

**FUNDAMENTAL RIGHTS AND DEMOCRATIC CITIZENSHIP IN MULTICULTURAL
SOCIETIES (DERECHOS FUNDAMENTALES Y LIBERTADES PÚBLICAS – GRUPO EN
INGLÉS)
UNIVERSITY OF OVIEDO
LAW FACULTY
WINTER TERM 2009/2010**

COURSE TOPICS AND SUBTOPICS (LESSONS)

PART 0: INTRODUCTION

§0.- Necessary tools for approaching the course

- a) Is my competence in oral and written English enough or should I improve?
- b) How to write a paper
- c) What do I know about citizenship, rights and multiculturalism?

PART I: FUNDAMENTAL RIGHTS, NATIONALITY AND CITIZENSHIP

§ 1.- The link between the exercise of fundamental rights and the development of a democratic citizenship

- a) From subjectship to constitutional citizenship: nationality, citizenship and constitutional rights
- b) Democracy and citizenship
- c) Citizenship, constitutional rights and the new immigration challenges for multiculturalism

§ 2.- The two faces of citizenship: Nationality and citizenship

- a) Historical roots of Nationality and Citizenship
- b) The nation-state linkage between nationality and citizenship
- c) Functional differentiation of nationality and citizenship in the postnational state
- d) Denationalising citizenship and civilising nationality

§ 3.- Ethno-cultural shape of nationality

- a) Allocation of citizenship by birth: ius sanguinis and ius soli in the context of scarce migration
- b) Cultural or political assimilation requirements for naturalisation: language knowledge and loyalty oaths
- c) Open or closed borders? The asymmetry between entering and exiting the nation-state: the fundamental right of nationals to enter the nation-state

§ 4.- Progressive civilization of nationality

- a) Decoupling nationality and citizenship
- b) A more cultural-open building of nationality through democratic constitutionalism
- d) Some changes in the allocation of nationality by birth: adding the ius domicili
- e) Progressive softening of some cultural/political assimilation requirements for naturalization

**PART II.- DEMOCRATIZATION AND DENATIONALIZATION OF CITIZENSHIP. FUNDAMENTAL RIGHTS AND
MULTICULTURAL CITIZENSHIP**

§ 5.- Fundamental rights of nationals and aliens as citizens

- a) Human rights, citizens rights, aliens rights
- b) Grouping rights on behalf of the constitutional relevance of possessing nationality
- c) Nationals and aliens as citizens with different degrees of belonging according to their different degree of subjectship

§ 6.- Redefinition of the linkage between democracy and citizenship

- a) Democracy and citizenship defined as much more than political participation
- b) People's sovereignty and democratic citizenship: fundamental rights and different levels of belonging to a political community

c) Different territorial scope of rights: national, subnational, transnational and supranational citizenship

§ 7.- Multicultural challenges to democratic citizenship

- a) Internal and external multiculturalism
- b) Democratic law and multiculturalism: from cultural assimilation to multicultural accommodation
- c) Deculturalising citizenship: multicultural exercise of fundamental rights
- d) Democratic limits to the multicultural exercise of fundamental rights: democratic citizenship

§ 8.- Mastering multiculturalism through exercise of fundamental rights

- a) Deliberative democracies: the right to education as the central core of democratic citizenship and the best way to protect democracy
- b) Combatant democracies: democratic values as a limit to multicultural exercise of fundamental rights
- c) Constitutional adjudication and adequate constitutional theory
- d) Equality and difference: fundamental rights policies

READINGS AND BIBLIOGRAPHY

Compulsory Literature for Part I

Matthias Bös, The legal construction of membership: Nationality. Law in Germany and the United States, Working Paper Series, Center for European Studies, Vo. 5, 2000

Kim Rubenstein, "Globalisation and Citizenship and Nationality" . Jurisprudence for an interconnected globe, Catherine Dauvergne, ed., Ashgate 2003

William Rogers Brubaker, Immigration, citizenship, and the nation-state in France and Germany: a comparative historical analysis, International Sociology 1990, Vo. 5, Nº 4

Linda Bosniak, Citizenship denationalized, *Indiana Journal of Global Law Studies*, Vol. 7, p. 447, 2000

Rainer Bauböck, Political Boundaries in a Multilevel Democracy, in Benhabib, S. and Shapiro, I (eds.) *Identities, Affiliations and Allegiances*, Cambridge University Press, 2007

Compulsory Literature for Part II

Linda Bosniak, Constitutional Citizenship Through the Prism of Alienage, *Ohio State Law Journal*, 2002, Vol. 63, pp. 1286

David Earnest, Noncitizen Voting Rights: A Survey of an Emerging Democratic Norm Paper presented at the annual meeting of the American Political Science Association, Philadelphia Marriott Hotel, Philadelphia, PA, Aug 27, 2003

Will Kymlicka, Immigration, citizenship, multiculturalism: exploring the links, *The Political Quarterly*, Vol. 74, Nr.1, p. 195, 2003

Jürgen Habermas, Citizenship and National Identity: Some Reflections on the Future of Europe, *Praxis International*, vol. 12, n. 1, p. 1

Claus Offe, Homogeneity and Constitutional Democracy: Coping with Identity Conflicts through Group Rights, *Journal of Political Philosophy*, Volume 6, Number 2, June 1998, pp. 113-141

Michel Rosenfeld, Equality and the Dialectic Between Identity and Difference, *Cardozo Legal Studies Research Paper No. 133*, 2005

ON-LINE CONSTITUTIONAL AND LEGAL TEXTS AND CASE LAW FROM DIFFERENT COUNTRIES AS WELL AS OTHER MATERIALS PROVIDED THROUGH THE VIRTUAL CAMPUS (<https://www.innova.uniovi.es/innova/aulanet/aulanet.php>) OR OCW (<http://ocw.uniovi.es>).

CONSTITUTIONAL AND LEGAL TEXTS AND CASE LAW

Spanish Constitution of 1978

European Union law and Case-law

Commented Spanish Constitution of 1978 (in Spanish)

German Basic Law 1949

French Constitution 1958

Italian Constitution 1947

Constitutions of the world

European Human Rights Court Decisions

European Court of Justice Decisions

Spanish Constitutional Court Decisions

U.S. Supreme Court Decisions

Immigration in Spain (Stand 2005)

Immigration in Europe (Stand 2006)

Citizenship Laws of the World (Stand 2001)

European Convention on Nationality (1997)

TEACHING

The main aim of this course is to get deeper into one issue related to the general theory of human rights: the limits imposed by the democratic citizenship over a multicultural exercise of fundamental rights. This course will explore the challenges of multiculturalism within democratic constitutional systems, like Spain. To which extent can ethnic groups, national minorities, sexual minorities, and other groups demand recognition for their cultural differences on behalf of the individual or collective exercise of their fundamental rights? To which extent can or even should democratic states grant differentiated rights -special representation rights, language rights, or limited self-government rights- to different types of groups? This course will examine how different democratic legal systems can manage this pluralism with the help of their own constitutional understanding of democratic citizenship.

The course will consist of lectures explaining basic topics, followed by seminars discussing the proposed literature which Students must have read in advance. The lectures and seminars will also be interactive, "Socratic" and dialogical. Some of these interactive lectures could be taught by guest lecturers who are specialized in a particular field. The course will be taught completely in English. Although mistakes and difficulties could be excused, students are expected to have a minimum knowledge of English as to understand, to express themselves and to write papers in English.

ASSESSMENT

Students can receive 4.5 ECTS credits in the June call through continuous assessment by presenting in fixed monthly dates two papers of 2500-3000 words commenting different texts provided by the Professor in the lectures or in the course website. They are also expected to participate actively in the lectures and to fulfill online tasks (like film or text comments, forums or chats, etc...). Participation in the lecture and tasks fulfillment will represent 50% of the mark, and the last 50% will be assigned to the two papers. All assessment activities will be evaluated from 0 to 10, so that 0-4.99 points will mean "failed" (F); 5-6.99 points will mean "satisfactory" (D); 7-8.99 points will mean "good" (C); 9-9.99 points will mean "very good" (B); and 10 points will mean "outstanding" (A). The final mark will consist of an average assessment of the classroom and on-line activities on the one side, and the two papers on the other side. Whatever the case, a minimum of 5 points in both kinds of assessments (activities and papers) is required to pass the course. Students failing the continuous assessment can retake the assessment in the June, September and February calls by writing and introducing orally an 8000 words paper commenting a given topic related to the texts and issues discussed in the course. All the assessment activities will be evaluated taking into account the conceptual understanding of the issues dealt with, the ability to make a critical and rational analysis of the matter, a good structured development of the issue and the clarity and precision of the legal terms used.