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≡ The Oxford Handbook of  
**CITIZENSHIP**

## CHAPTER 35

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# CITIZENSHIP FOR SALE?

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Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men.

The Constitution of the Commonwealth  
of Massachusetts, Article VII

In a world of severe inequality like our own, millions risk their lives crossing borders without authorization in search of better life prospects, often learning all too quickly that they are unwanted and unwelcome in their ‘host’ countries. At the same time, a growing number of countries now offer tailor-made, exclusive, and

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expedited pathways for the world's super-rich to acquire citizenship 'quickly and simply, without any disruption to your life,' as a leading firm involved in the trade has succinctly put it.<sup>1</sup> Citizenship-for-sale programmes—the topic of this chapter—are booming in recent years, creating a fast-track for the rich to legally obtain citizenship in a new country in exchange for a substantial investment or 'donation.'<sup>2</sup>

A new global stratification is in the making. Across the globe, countries are promoting strategic or expedited passport grants to 'high value' migrants, offering them faster and smoother gateways to membership. In the context of a global race for talent, a growing number of governments now seek to lure and attract individuals with abundant human capital or exceptional achievements in the arts, sciences, sports and the like, with the expectation of receiving a return: bolstering their national interest or international stature.<sup>3</sup> Governments are willing to go as far as to turn their exclusive control over the allocation of membership goods—entry visas, residence permits, and ultimately, citizenship itself, into recruitment tools. Call this the *talent-for-citizenship* exchange.<sup>4</sup> These developments highlight the growing influence of the economic language of human capital accretion on the design of migration and membership priorities. Simultaneously, and even more contentiously, when it comes to attracting the world's rich and affluent—a particular subset of 'wanted and welcomed' potential entrants—policymakers increasingly rely on the size of one's wallet or bank account as a basis for swift admission, settlement, and naturalization. These new programmes allow the few—those with hefty deposits of mobile capital—an easy pass through the otherwise increasingly bolted gates of entry that make admission ever more tightly controlled for the nonwealthy many, if they are willing to dish out millions of dollars to literally purchase 'golden visas' or 'golden passports'. Witness the début of *citizenship for sale*.

From Australia's Pacific hub to America's skyscrapers, from the islands of the Caribbean to continental Europe, more than a quarter of the world's countries offer specialized entry, settlement, and passport acquisition programmes to high-net-worth individuals (HNWI, defined as those with personal *mobile* capital in excess of US\$1 million; ultra-high-net-worth individuals, or UHNWI, are those with over \$30 million of investable assets). The wealth of the total

<sup>1</sup> Henley and Partners, 'Citizenship-by-Investment', online <https://www.henleyglobal.com/citizenship-by-investment/>.

<sup>2</sup> Madeleine Sumption and Kate Hooper, *Selling Visas and Citizenship: Policy Questions from the Global Boom in Investor Immigration* (Washington: Migration Policy Institute, 2014).

<sup>3</sup> Ayelet Shachar, 'The Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes', *NYU Law Review* 81 (2006): pp. 148–206; Ayelet Shachar and Ran Hirschl, 'On Citizenship, States, and Markets', *Journal of Political Philosophy* 22 (2014): pp. 231–257. See also Triadafilos Triadafilopoulos, ed., *Wanted and Welcome? Policies for Highly Skilled Immigrants in Comparative Perspective* (New York: Springer, 2013).

<sup>4</sup> Shachar (n 3). For further discussion, see Ayelet Shachar, *Olympic Citizenship: Migration and the Global Race for Talent* (Oxford: Oxford University Press, forthcoming 2018).

population of high- and ultra-high-net-worth individuals worldwide is 'just over \$56 trillion—triple the GDP of the United States, and greater than the sum of the world's fifteen largest national economies'.<sup>5</sup> This is the global 1 percent, the target audience of the gold-plated tracks to citizenship I explore in the following pages.<sup>6</sup>

These programmes create a direct link between money transfers—in large quantities—and expedited bestowal of citizenship. In certain cases, millionaire migrants need not even set foot in the new home country.<sup>7</sup> The capital investments involved are significant, ranging from \$1 million in the United States (\$500,000 for specially designated areas) for a coveted green card, to a minimum of £2 million in the United Kingdom for a leave of remain (the greater the investment, the shorter the wait time), to €500,000 in Portugal for a golden residence permit, to 'bargain' passports in the island nations of the Caribbean and the Pacific where the price tag for citizenship hovers around the \$250,000 mark.

The spread of these new programmes is one of the most significant developments in citizenship practice in the past few decades, yet it has received only scant attention in the literature. My discussion in this chapter begins to fill the lacuna. The proliferation of citizenship-for-sale programmes tests our deepest intuitions about the meaning and attributes of the relationship between the individual and the political community to which she belongs.<sup>8</sup> While the specific details of different countries' programmes vary, they all rely on a shared premise: these schemes allow the über-rich, even those with only tenuous ties to the passport-issuing country, the opportunity to acquire citizenship based on nothing more than the heft of their wallets, bypassing standard residence, linguistic proficiency, and related requirements that states otherwise jealously enforce.<sup>9</sup> Such stratification and marketization processes recast membership in the community—for many the ultimate *nonmarket* good—as a purchasable commodity.

<sup>5</sup> Brooke Harrington, *Capital without Borders: Wealth Managers and the One Percent* (Cambridge, MA: Harvard University Press, 2016), p. 201. See also Cap-Gemini, *World Wealth Report* (Paris: Cap-Gemini, 2015).

<sup>6</sup> The programmes differ in terms of the required monetary investment for the transaction, and the speed through which applicants reach the naturalization stage. The capital transfer may take the form of non-refundable cash payments to the government, or a fixed-term investment in bonds, real estate, or other private-sector assets. In some cases, the funds are returned to the applicant-investor after a fixed number of years (in effect operating as an interest-gaining loan), while in others, the funds remain with the citizenship-offering state.

<sup>7</sup> The term millionaire migrant is drawn from David Ley, *Millionaire Migrants: Trans-Pacific Life Lines* (Malden: Wiley-Blackwell, 2010).

<sup>8</sup> It also raises significant questions about the scope of state obligations under international law vis-à-vis these passport holders, who lack affiliation with the membership-granting society but have officially purchased its citizenship, a topic that goes beyond the scope of analysis in this chapter.

<sup>9</sup> Some countries initially offer expedited admission, some permit direct access to permanent residence, whereas others turn expeditiously to issue citizenship certificates and passports.

This is a revealing conundrum. Well-off states tighten and impede passage through their cumulative gates to most categories of would-be migrants.<sup>10</sup> However, at the same time, countries are *facilitating* fast-tracked entry to the world's moneyed elite who desire to 'diversify' their passport portfolios. Laws and regulations governing such preferential access offer us a rare window through which to consider which qualities policymakers appear to value in their prospective 'high value' citizens and seek to incorporate into their political communities.<sup>11</sup> While important lessons can be learned by examining the restrictions to or denial of access to citizenship, equally revealing insights can be unearthed by focusing on *who* is given the red-carpet treatment and, especially, on *what* basis.

When a stack of cash becomes the surrogate for membership, the basic connection between the individual and the political community is unfastened, leading to a situation whereby the millionaire-turned-citizen is not required to establish any kind of tangible connection to the new home country, other than a wire transfer. These new developments challenge familiar concepts of citizenship, such as those focusing on 'identity and belonging', as well as post-Westphalian arguments that have dismissed borders and membership boundaries as relics of a bygone era that has outlived its usefulness. These entrenched perspectives can neither explain the developments recounted here, nor can they fully capture the unique mixture of state and market influences that undergirds their surge. Neither can provide answers to the puzzling transformation explored in this chapter: the re-conception of citizenship from 'sacred' bond to marketable 'commodity'.

Nothing in the conventional accounts of citizenship as a unique and reciprocal political relation, nor predictions of its demise, can explain the proliferation of these more instrumental, flexible, and market-oriented interpretations of citizenship.<sup>12</sup> Yet it is clear that developments in the world of law and policy now reflect such transformation, as governments not only permit but actively facilitate such transactions. Familiar considerations of (under)supply of and (over)demand for entry visas, growing competition for the rich and mobile, and the entry of new players into the fray do not adequately explain the depth of the current phenomenon; deeper processes are at work, meriting keen consideration, namely: the perpetual

<sup>10</sup> The reference to cumulative gates (admission, settlement, and naturalization) draws on the classic account offered by Tomas Hammar, *Democracy and the Nation State: Aliens, Denizens and Citizens in a World of International Migration* (Aldershot: Ashgate, 1990), pp. 16–18.

<sup>11</sup> This new trend brings to the fore core questions about the future of citizenship, highlighting the risks and opportunities that attach to states taking on the role of 'brokers' of paid-for citizenship grants that exacerbate inequality in global mobility and membership regimes while depleting citizenship from within.

<sup>12</sup> For illuminating ethnographic and geographical accounts of the flexible use of citizenship by transnational individuals and families, see Aihwa Ong, *Flexible Citizenship: The Cultural Logic of Transnationality* (Durham: Duke University Press, 1999); Ley (n 7). The focus of this chapter is, by contrast, on state policies that create avenues for the rich and wealthy to purchase citizenship, rather than the strategies employed by those taking advantage of these opportunities.

testing, blurring, and erosion of the state-market boundary regulating access to membership.

By drawing attention to these cash-for-passport practices, I wish to look more closely at some legal and normative problems and puzzles, while exploring the role of state action in facilitating these dramatic changes.<sup>13</sup> I refer to this new trend as the *marketization of citizenship* to highlight a dual transformation—commodifying citizenship and hollowing out the ‘status, rights and identity’ components of membership.<sup>14</sup> Marketization is never merely an economic process; it is also deeply political as it reshapes and ‘re-engineers’ the boundaries of and interactions among states and markets, voice and power, the inviolable and the mercantile.<sup>15</sup>

In what follows, I trace the surge that has taken place in cash-for-passport programmes, providing illustrative examples. Next, I turn to explore the main legal strategies adopted by a growing number of countries putting their visas and passports up ‘for sale’, selectively opening the gates of admission to those with massive billfolds while restricting access to most other categories of would-be entrants. Moving from the positive to the normative, I then elaborate the main arguments in favour of, as well as against, citizenship-for-sale. Finally, I conceive potential responses to curb these developments, although in fact the proverbial train has already left the station.

Treating citizenship as a marketable commodity represents a new frontier as well as a new challenge. My discussion stems from the belief that citizenship worthy of its name is centred on equality and promotion of the ‘common good’ (however difficult it remains to define), not the ‘profit, honor, or private interest of any one man, family, or class of men.’<sup>16</sup> Legal access to membership, not to mention the actual experience of citizenship, have never been fully immune to the influence of social class or property ownership.<sup>17</sup> However, turning the

<sup>13</sup> States are not alone in charting this new terrain. Intermediaries, both local and transnational, such as specialized law firms, wealth managers and other for-profit third parties, have also exerted influence in shaping and transplanting such programmes from one country, or region, to another. See Shachar (n 3).

<sup>14</sup> These multiple facets of citizenship are captured well by Christian Joppke, ‘Transformation of Citizenship: Status, Rights, Identity’, *Citizenship Studies* 11 (2007): pp. 37–48. For related categorization, see Bloemraad et al., ‘Citizenship and Immigration: Multiculturalism, Assimilation, and Challenges to the Nation-State’, *Annual Review of Sociology* 34 (2008): pp. 153–179.

<sup>15</sup> For a concise overview, see Marina Vujnovic, ‘Marketization’, in George Ritzer, ed., *Wiley-Blackwell Encyclopedia of Globalization* (Malden: Wiley-Blackwell, 2012), published online, DOI: 10.1002/9780470670590.wbeog368. David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005), p. 160.

<sup>16</sup> These words are drawn from the Constitution of the Commonwealth of Massachusetts, Article VII. For different articulations of the value of equality in citizenship, see Bauböck in this volume; Donaldson and Kymlicka in this volume; Honohan in this volume; Joppke in this volume; Gibney in this volume; Volpp in this volume.

<sup>17</sup> Marketization processes remind us of the long durée of history whereby the vast majority of the population was denied access to equal membership through mechanisms such as property ownership (over slaves, land, or household members) and the like.

transfer of capital, *simpliciter*, into the admissibility criterion challenges the equality principle itself—not just its imperfect implementation. Thus, of the various and multifaceted recent transformations to membership explored in this Handbook, imposing market valuation on citizenship acquisition and extending it to admission into the body politic, may prove the most corrosive over time, steadily eroding out the relational and political realm of membership definition.

## CITIZENSHIP FOR SALE: A THUMBNAIL HISTORY

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‘There are some things that money can’t buy.’ Is citizenship among them? Only a few years ago, raising such a question would have seemed out of place if not oxymoronic: placing the utmost *political* relation in our lexicon—citizenship—for *sale*? This, however, is taking place and it is a practice that requires closer scrutiny.

The term marketization has various meanings, but will be used here primarily to refer to processes through which modes of monetized transacting come to displace non-market activities and relations, opening up new ‘domains hitherto regarded off-limits.’ In the context of citizenship, marketization both tests and strains aspirational notions of citizenship as reflecting the horizon of equality and participation, regardless of which theories of state and society—liberal, civic republican, or democratic—inform them.<sup>18</sup> Instead, the size of the applicant’s wallet is the core, if not sole, criterion determining whether gates of admission will open.

A quick step back in time allows us to examine some precursors of today’s cash-for-passport programmes. Not long ago, the market catering to wealthy purchasers, seeking ‘passports of convenience’, was primarily associated with unscrupulous off-shore tax havens in micro-states in the Pacific and the Caribbean. Many such programmes, which began to emerge in the 1980s, were discredited, associated with fraud, corruption, and money laundering.<sup>19</sup> Lenient due-diligence and background review procedures made these programmes vulnerable to abuse; applicants did not need to inhabit, or even visit, the passport-issuing country. These cash-for-passport programmes offered significant tax advantages and facilitated visa-free travel;

<sup>18</sup> Margaret R. Somers, *Genealogies of Citizenship: Markets, Statelessness, and the Right to Have Rights* (Cambridge: Cambridge University Press, 2008). See Bloemraad in this volume.

<sup>19</sup> Anthony van Fossen, ‘Citizenship for Sale: Passports of Convenience from Pacific Island Tax Havens’, *Commonwealth & Comparative Politics* 45 (2007): pp. 138–163.

passport holders could also elude stricter financial record-keeping and reporting requirements in their home countries.

An important step in the process of policy legitimization occurred when the world's major immigrant-receiving countries, including Canada and the United States, adopted legislation that granted direct or conditional permanent residence (or 'green card') status following an applicant's investment in government bonds (Canada) or private businesses (the United States), waiving standard admission requirements.<sup>20</sup>

These programmes have proliferated since the early 2000s. Surprisingly, it is in Europe—the progenitor of modern statehood and the contemporary inventor and facilitator of the world's most comprehensive model of supranational citizenship—that a new generation of pecuniary-centered transactions has emerged. The most recent data reveal that about 'half of the member states have designated immigrant-investor routes'.<sup>21</sup> Of these countries, some offer investment-based entry visas, many of which allow for later application for permanent residence, while others offer easier access or direct access to permanent residence status.<sup>22</sup> Yet others have gone further, offering express access to citizenship for direct cash transfers.

Consider, for example, Malta's amendment of its Citizenship Act in 2013, establishing a new individual investor category for facilitating a Maltese passport; this category was open to high-net-worth individuals with few requirements beyond the ability to pay.<sup>23</sup> Malta, the smallest member state of the European Union, initially offered speedy naturalization in return for a non-recoverable 'donation' of €650,000; this sum was later increased to €1.15 million, opening a gilded backdoor to European citizenship.<sup>24</sup> The Maltese programme's main attraction for investors was the government's original plan to abolish *both* the residency requirements *and* the waiting periods for citizenship—Maltese and European. Such a transaction is something that none of the other EU countries, including those now offering expedited golden visa and residency permits were willing to do—namely, to completely forego requirements ensuring that applicants have 'real and effective' ties to

<sup>20</sup> Australia, New Zealand, and the United Kingdom also offer their variants of preferred admission for investment migrants.

<sup>21</sup> Sumption and Hooper (n 2), p. 2.

<sup>22</sup> Spain and Portugal are prime examples of the surge in such golden visas and residence permits. For further discussion, see Jelena Džankić, 'Investment-Based Citizenship and Residence Programmes in the EU', EUI Working Paper no. 08 (Florence: RSCAS, 2015).

<sup>23</sup> Applicants also had to establish that they had no criminal record and were subject to a due diligence review.

<sup>24</sup> European citizenship is derivative: a person who holds the nationality of an EU country automatically gains EU citizenship. See Consolidated Version of the Treaty on the Functioning of the European Union, Article 20(1). C 326/47 Official Journal of the European Union, 26 October 2012. For further discussion, see Strumia in this volume.



the political community they join.<sup>25</sup> Malta's programme initially waived residency *altogether*, just as it removed any other prerequisite that there be a 'genuine link'. So much for the International Court of Justice conclusion, in the influential *Nottebohm Case*, that real and effective ties between the individual and the state must underpin the conferral of citizenship.<sup>26</sup> This is a textbook example of what theorists, lawyers, and political economists have referred to as 'blocked exchanges' or 'prohibited transactions' that allow advantages in one social sphere or arena (the economic) to unfairly influence another (the political).<sup>27</sup>

Following a storm of criticism, culminating in a special session held in the European Parliament during which the Vice President of the European Commission declared that 'citizenship is not for sale!', Malta eventually revised its policy by including a nominal one-year residency requirement for investors.<sup>28</sup> It did not, however, back down from its bolder scheme: placing a price tag on Maltese (and European) citizenship. Other countries in Europe have since taken cues from the Maltese programme in recasting their own programmes of membership by investment.<sup>29</sup>

These examples provide concrete illustrations of the broader trend toward the marketization of citizenship. The transaction is based on turning capital investment into the *core* criterion for admission, settlement, and naturalization. These developments prompt a set of novel questions of fairness, justice, and democratic accountability. For example, in the context of supranational citizenship regimes (such as the European Union membership model), *to whom*, beyond its own citizenry, must a transacting government justify its decisions? Need a country justify itself to other member states, or the Union-wide institutions such as the European Commission, and if so, with what implications? What about justification to would-be entrants who may have a shot at admission through standard migration streams (family, employment, and humanitarian), but may be priced out, or pushed to the back of the line? Should the opinions of sedentary populations of emigrants' countries of origin and destination also be heard? Or, if an expansive all-affected-interests principle is applied, perhaps *anyone* who may be unfairly and arbitrarily impacted should have a say.<sup>30</sup> Furthermore, non-millionaire migrants already settled in passport-selling

<sup>25</sup> The 'real and effective' standard is applied in many jurisdictions, affirming a notion of citizenship as social membership; it is most famously drawn from the *Nottebohm Case*. See *Nottebohm Case (Liechtenstein v. Guatemala)* [1955] I.C.J. 1. This decision focused on the claims for diplomatic protection and recognition of citizenship by other members of the international community.

<sup>26</sup> *Nottebohm*, p. 22.

<sup>27</sup> Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), pp. 95–103; Cass R. Sunstein, 'Incommensurability and Valuation in Law', *Michigan Law Review* 92, no. 4 (1994): pp. 779–861, pp. 849–850.

<sup>28</sup> This requirement can be fulfilled by renting out an apartment for twelve months, not necessarily residing in it.

<sup>29</sup> Džankić (n 22).

<sup>30</sup> Robert Goodin, 'Enfranchising All Affected Interests, and Its Alternatives', *Philosophy and Public Affairs* 35 (2007): pp. 40–68.

countries might have an opinion about their own ineligibility for naturalization schemes that bypass knowledge or familiarity with the country's political structures, main civic institutions, history or language, especially since these requirements become increasingly stringent. If civic and cultural integration are necessary preconditions for full membership (as restrictive citizenship tests increasingly indicate), it seems unfair and incoherent to apply the mechanisms for determining integration to some and not to others.

To begin to address these questions, the following section investigates several core puzzles associated with citizenship-for-sale transactions. Before articulating arguments *against* the proliferation of these programmes, however, I briefly examine the case in their *favour*, putting forward three major arguments in their defence: taming nationality, endorsing a 'commodify everything' approach, and increasing government revenue. These claims are frequently intertwined, but for analytical purposes, I consider each rationale in turn.

## ARGUMENTS IN FAVOUR OF SELLING CITIZENSHIP

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The first theme is that *anything* that removes or at least reduces the air of chauvinism, historically associated with certain conceptions of membership in the state, is a welcome advance.<sup>31</sup> This position is implied in the work of economists who view the market as the best locale for promoting individual choice and allocative efficiency without centralized control or overarching paternalistic oversight.<sup>32</sup> The presumption is that turning citizenship into a commodity would offer a better sorting mechanism to help identify, through market transaction, which agents value citizenship most—by paying more for it. This analysis holds that for voluntary trades on the market to gravitate towards optimal results, access to membership must be recast and removed from the regulatory authority of the state. Entry visas, residency permits, and naturalization certificates must instead be freely sold and traded on the market, just like any other scarce and valuable good. In this account, trading in citizenship ensures that a correct pricing mechanism will emerge, through repeated transactions between 'purchasers' and 'sellers' on carefully regulated platforms.

<sup>31</sup> On the relationship between citizenship and nationhood, see Gans in this volume.

<sup>32</sup> There is very little literature that focuses on the idea of a market for citizenship, but these positions can be extrapolated from general pro-market liberalization arguments.

Note that no attention is paid here to background conditions of inequality that may well prohibit the vast majority of the world's population (including the less well-off segments of prosperous nations) from 'expressing'—through monetary investments that are far beyond their reach—the value that they attach to such membership goods. Nor is it clear how pure market transactions, recommended here as *the* admission ticket to citizenship, can ever fully capture and sustain the *nonmonetary* and intangible dimensions of human relations, social interactions, and political commitments that are encapsulated in citizenship, making it valuable in the first place.

Taking the transactional logic one step further, an open market or auction model for citizenship should, at least in theory, allow private individuals, not just states, to engage in the trade.<sup>33</sup> However, under current law everywhere, it is a serious offence to engage in such activity. In practice, states have *not* surrendered their monopoly over controlling access to membership—and its associated goods—and are unlikely to do so any time soon. Instead, we witness a more complex pattern emerge: governments continue to define and control the criteria for access, although the *content* they may give such criteria is more market-oriented.

Indeed, perhaps the most surprising aspect of the legal transformation of citizenship in the direction of marketization is in the willingness of governments—our political representatives and public trustees—to turn the most sacrosanct resource under their control into a tradable 'commodity'. Here, the marketization of citizenship presents a puzzle, as it defies any simple and unidirectional logic of the retreat or withdrawal of the state through deregulation or privatization. Instead, it is precisely the special character of the market in citizenship that makes it fascinating to track, explore, and explain, both empirically and normatively. For governments have created a platform for transacting citizenship that is distinctively, paradoxically, *statist*: it is created by governments and primarily implemented and monitored by them. State actors—or their authorized delegates—control core aspects of the transaction, such as the prerequisites for the sale, the review process, the conditions for and the timing of approval, and the number of available spots.<sup>34</sup>

Revisiting the debate about whether globalization leads to the demise of states' ability to control borders and boundaries, the trend explored here suggests that although a growing number of countries designate privileged entry routes for the wealthy as part of their 'managed' migration policies, states have *not* abandoned

<sup>33</sup> Those who view citizenship as a club good predict that it is unlikely that governments will cede control over defining and controlling membership, for a core characteristic of a club good is the ability to define the entry criteria and its price. For a critical account, see DeVoretz and Irastorza in this volume.

<sup>34</sup> What governments have acquiesced to, and in certain cases, encouraged, is the role played by third-party for-profit actors—including global law firms, tax planners, private-client advisors, and wealth managers—as intermediaries between those searching to buy a second or third citizenship and passport-selling countries.

their monopoly over defining who may gain access to membership, and according to what criteria. The high price of citizenship—literally, millions in investment dollars—exists precisely because of tight control over membership.<sup>35</sup>

The invention and implementation of citizenship-for-sale programmes is living proof of the persistent power and discretion still exercised by states in today's globalized world as they seek to regulate membership and mobility, in the process 'constitut[ing] the[ir] very "stateness"'.<sup>36</sup> But it also shows the intrusion of market logic into the sovereign act of defining 'who belongs'. This blurred matrix yet again reveals the collapse of old borderlines between states and markets, law and transaction, principle and interest, creating new hybrids and shifting alignments under an emerging market-for-citizenship model.<sup>37</sup>

To recapitulate the first line of argument in favour of selling citizenship: if a connection is drawn between marketization and the tamping of nationalism, reimagining citizenship in the image of a purchasable commodity is perceived as a liberating process. It removes the shackles of tradition, culture, and patria, moving citizenship forward to a new and more competitive age of high-speed transactional global contracting, where a price mechanism is an interface for circumventing cumbersome criteria and bureaucratic review processes, stages of entry that are seen as both obsolete and passé. A critic of this line of argument might point out, however, that in many countries citizenship is progressively disassociated from thick conceptions of nationhood and that civic conceptions of membership have emerged globally without reliance on commodified market mechanisms. Primary examples of such patterns of change are found in the growing acceptance of dual nationality or the rise of supranational and multilevel citizenship, among other new types of conceptualization.<sup>38</sup>

A second, closely related argument, speaks more directly to the value of commodification. Perhaps the best defence of this position is found in the work of Gary Becker, endorsing what he has labelled the 'economic approach to human behavior'.<sup>39</sup> This approach rests on tripartite assumptions of maximizing behaviour,

<sup>35</sup> I thank Irene Bloemraad for this formulation. Proponents of open borders or more liberal mobility regimes would see governments acting here as rent-seeking monopolists; political economists may counter by arguing that the value of citizenship as a club good relies on its excludability.

<sup>36</sup> John Torpey, 'Coming and Going: On the State Monopolization of the Legitimate "Means of Movement"', *Sociological Theory* 16 (1998): 235–259, at p. 240.

<sup>37</sup> Shachar and Hirschl (n 3). In small-market economies, such as the tiny island nations involved in the citizenship trade, transnational for-profit brokers can wield significant negotiation power vis-à-vis local governments, promising to promote their product worldwide in exchange for commissions for citizenship sold through the promoted investment route. This raises, yet again, further concerns about the intertwining of market forces and state actors, democratic legitimacy concerns, as well as questions of transparency and accountability.

<sup>38</sup> See Spiro in this volume; Strumia in this volume; Colleyer in this volume; Maas in this volume.

<sup>39</sup> Gary S. Becker, *The Economic Approach to Human Behavior* (Chicago: University of Chicago Press, 1976).

market equilibrium, and stable preferences. Taken together, argues Becker, these three assumptions can explain ‘all human behavior’ and should apply *regardless* of what goods are at stake.<sup>40</sup> As such, the economic approach knows no borders or boundaries. Accordingly, nothing prohibits selling United States entry permits, a proposal that Becker made public in the op-ed pages of *The Wall Street Journal* the day after he won the Nobel Prize in Economic Sciences.<sup>41</sup> Though this Beckerian line of argument will be critiqued further on, here it is important to grasp the prominence of his work in providing intellectual ammunition to various players—not just government policymakers but also third-party intermediaries, such as global law firms facilitating the transaction, tax planners, private-client advisors, and wealth managers—who have a stake in further expanding the reach of citizenship-for-sale programmes.

As studies by Vivian Zelizer and other economic sociologists have shown, the creation of an environment receptive to the commodification of institutions and aspects of life previously held ‘sacred’ and, as such, not suitable for trade, is not simply the result of rapid globalization or the rationalization and disenchantment of modern life (as Max Weber famously put it). Rather, it also requires a cultural, ideological, and conceptual reorientation that transforms the way we value certain relations and the legal structures that govern them.<sup>42</sup> Similarly, Wendy Brown employs a political theory lens to argue that the immense power of today’s neo-liberal governing rationality lies precisely in its ability to transform and construct ‘society, institutions, subjects and the very idea of democracy in market terms.’<sup>43</sup> The economic approach to human behaviour as advanced by Becker and his intellectual cadre contributes to just such a reorientation, by imposing market rationality on *all* spheres of life and domains of society.<sup>44</sup> The novelty, in the case of monetized citizenship, is that such changes dramatically reorient long-standing liberal, civic-republican, and democratic theories of how we govern our collective life and define ‘who belongs’. In this sense, it usurps the values underlying alternative conceptions of social ordering. These tendencies become particularly evident in the case of cash-for-passport programmes, which require us to reprogram deeply held cultural beliefs about the institution and ideal of membership in a political community, even while engaging in the constitutive act of *demos*-definition.

<sup>40</sup> *Ibid.*, pp. 5, 8 (emphasis added).

<sup>41</sup> Gary S. Becker, ‘An Open Door for Immigrants—The Auction’, *The Wall Street Journal*, 14 October 1992, p. A1.

<sup>42</sup> Viviana A. Zelizer, *Morals and Markets: The Development of Life Insurance in the United States* (New York: Columbia University Press, 1979). On the ‘sacred’ aspect of citizenship, see William Rogers Brubaker, ‘Immigration, Citizenship and the Nation-State in France and Germany: A Comparative Historical Analysis’, *International Sociology* 5 (1990): pp. 379–407.

<sup>43</sup> Wendy Brown, *Undoing the Demos: Neoliberalism’s Stealth Revolution* (Cambridge: MIT Press, 2015).

<sup>44</sup> For an early and still influential critical account, Margaret J. Radin, ‘Market-Inalienability’, *Harvard Law Review* 100 (1987): pp. 1849–1937.

The third defence of citizenship-for-sale programmes focuses on tangible economic benefit; this is the most common rationale offered by governments.<sup>45</sup> At first glance, it seems unquestionable that those states that are willing to put citizenship up for sale—despite public discomfort with the idea of rewarding cash payments with citizenship—reap significant economic benefit from the transaction.<sup>46</sup> As the Chairman of the UK Migration Advisory Committee (an independent non-government think tank, focusing on the economic benefits of migration) put it, there is an assertion, ‘strongly [held] by law firms, accountants and consultancies that help organize the affairs of such investors’, that selling citizenship is ‘self-evidently beneficial’.<sup>47</sup>

Counter-intuitively, however, even the purported economic benefit of such programmes is *not* as obvious as it may appear. Recent studies have shown that ‘policy-makers have often found the results disappointing’.<sup>48</sup> Data and analysis has emerged from traditional investor programs such as those in the United States, Canada, Australia, New Zealand, and the United Kingdom, countries that have tried to create some temporal distance between granting membership and monetary transactions. Even in these cases, where residence is required prior to the acquisition of citizenship, comprehensive expert consultation and comparative evidence reveal that we should be highly sceptical of the economic rewards argument.<sup>49</sup>

Two core examples are illustrative. First, in the United States, recent studies have concluded that the government ‘cannot demonstrate that the program is improving the U.S. economy and creating jobs for U.S. citizens’.<sup>50</sup> In the same vein, a comprehensive government review of Canada’s investor-visa programme, which had been in operation for years until it was abolished in 2014, was characterized by high regulatory costs and proved economically *inefficient*. The Canadian government disclosed that there is ‘little evidence that immigrant investors ... are maintaining ties to Canada or making a positive economic contribution to the country’. The longitudinal data reveal that ‘immigrant investors report employment and investment income below Canadian averages and pay significantly lower taxes over a lifetime’.<sup>51</sup> The expectation that a hypermobile global elite will make hefty deposits in the places

<sup>45</sup> Sumption and Hooper (n 2).

<sup>46</sup> Shaheen Borna and James M. Stearns, ‘The Ethics and Efficacy of Selling National Citizenship’, *Journal of Business Ethics* 37 (2002): pp. 193–207.

<sup>47</sup> Migration Advisory Committee, *The Economic Impact of the Tier 1 (Investor) Route* (London: Migration Advisory Committee, 2013), p. 1.

<sup>48</sup> Sumption and Hooper (n 2), p. 1.

<sup>49</sup> Migration Advisory Committee (n 47), pp. 1–2.

<sup>50</sup> Department of Homeland Security, Office of Inspector General, *United States Citizenship and Immigration Services’ Employment-Based Fifth Preference (EB-5) Regional Centre Program* (Washington: OIG-14-19, 2013), p. 1, online [http://www.oig.dhs.gov/assets/Mgmt/2014/OIG\\_14-19\\_Dec13.pdf](http://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-19_Dec13.pdf).

<sup>51</sup> Government of Canada, Department of Finance, *The Road to Balance: Creating Jobs and Opportunities* (F1-23/3-2014E2, 2014), p. 81, online <http://www.budget.gc.ca/2014/docs/plan/pdf/budget2014-eng.pdf>.

where they purchase their passports requires ‘*evidence* rather than assertion’ as the UK Migration Advisory Committee powerfully stated.<sup>52</sup> As the Canadian experience demonstrates, once a passport is gained, the passport-purchaser is not ‘home’ to pay taxes or report employment and investment income overtime.<sup>53</sup> Those on the market for a new passport, or maybe several, clearly gain greater mobility and other potential advantages from the transaction, otherwise they would not engage in it. But the overall economic benefit to the society that ramps up efforts to persuade high-net-worth individuals to take its passport offering is far less clear. The non-monetary cost of shifting the balance of power between states and markets is, alas, real and lasting.

Still, a proponent might argue that short-term increases in budgetary revenue justify such schemes, especially for smaller economies. Here, it is important to examine how precisely the inflows from the sale of citizenship are recorded, managed, held, and used.<sup>54</sup> Political economists would be quick to point out that such monies provide significant flexibility for discretionary use by elected officials, partly helping explain why governments are willing to embark on the process of marketization. Another common arrangement is to create a public fund that holds the investment in trust. Evidence from St. Kitts and Nevis, whose government boasts a citizenship-for-sale programme that is the ‘oldest of its kind in the world’ (launched in 1984, revamped and reformed in 2007, and yet again in 2011 and 2016) reveals that following the programme’s restructuring and extensive marketization by a global law firm specializing in ‘residence and citizenship planning’, it has indeed increased state revenue and is also credited with helping drive several luxury real estate development projects. Political pundits have argued, however, that this sudden boom is unsustainable and that the value and reputation of the country’s now-commodified citizenship may diminish quickly with steeper competition or irregularities in the issuance process. It was further revealed that the country’s public fund established to manage the proceeds has pumped millions of dollars into the hands of private developers and real estate moguls, whereas ordinary citizens saw little of these returns. This has led to public criticism of the programme.

From the perspective of democratic accountability to the home population, there are recurrent complaints about the lack of transparency of government-created funds into which the non-recoverable fees or donations are directed; as such, there is no guarantee that such monies will be used wisely or ‘trickle down’ to benefit

<sup>52</sup> Migration Advisory Committee (n 47), pp. 1–2.

<sup>53</sup> Harrington develops a related line of argument in relation to attracting the fortunes of foreign investors by facilitating capital mobility and offering them attractive destinations in which to shelter their wealth. See Harrington (n 5), pp. 239–243.

<sup>54</sup> The proceeds may be classified, for example, as non-tax revenue or as capital grants.

members of the recipient society, who remain liable to the non-fungible risks of a discredited passport or loss of reputation if a citizenship-for-sale programme runs into disrepute.

When considering the economic benefits of citizenship-for-sale, then, we must look closely not only at aggregate accounts of the monetary proceeds, but also *who* (or what set of actors, local or transnational) gain from cash-for-passport programmes. The 'lucrative' business of citizenship-for-sale, as it is often referred to, may be lucrative to intermediaries who transact in citizenship or gain from it, or, in extreme cases, government officials who become involved in corrupt behaviour, as was the case in the administration of the golden visa scheme in Portugal. It remains less clear, however, what the average citizen of a passport-selling country may gain.

Selling countries typically offer partial or full tax waiver for those who purchase membership. No similar 'discount' is offered to ordinary citizens who are expected to pay taxes, engage in civic duties such as jury service, and otherwise partake in the social and political life of the community. Those who acquire membership through a paid transaction have no share of the burdens of such non-fungible contributions. Yet it is ordinary citizens who also bear the non-monetary costs of abuse of purchased passports, for example, if they were used in the course of proscribed financial transactions or similarly prohibited acts. This has been a long-standing concern with earlier variants of such programmes, especially in micro-states, but it remains a pressing matter. In 2014, the United States Treasury published a warning that St. Kitts and Nevis had issued passports, without basic identifying details such as the passport holder's place of birth, to 'illicit actors [who were] abusing the program ... in order to mask their identity and geographic background'.<sup>55</sup> Canada soon thereafter revoked St. Kitts and Nevis citizens' visa-free travel, due to security and due diligence concerns about the country's cash-for-passport programme. This is a non-monetary sanction and suspicion that Kittitians and Nevisians who have no other passport (nor the luxury of switching allegiance with the speed of a wire transfer) must now bear.

When sapped of its neoliberal rationale and held up to scrutiny, the marketization of citizenship may be found to benefit significantly a close-knit subset of local and transnational actors, while imposing substantial risk on the whole population and contributing to new and powerful forms of stratification both within states and across borders.

<sup>55</sup> U.S. Department of Treasury, Financial Crimes Enforcement Network, FIN-2014-A004, *Advisory: Abuse of Citizenship-by-Investment Program Sponsored by the Federation of St. Kitts and Nevis* (20 May 2014), p.1, online: <https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2014-a004>.



## ARGUMENTS AGAINST CASH-FOR-PASSPORT TRANSACTIONS

It is time now to move to a normative exploration of the arguments against selling membership in a political community. Three such lines of critique will be advanced: exacerbating inequality, the intrusion of the market, and the character of citizenship.<sup>56</sup> As I develop these strands of argument, I will move beyond the immediate focus on the distributive dimension in order to speak more directly to the political relational aspect of citizenship. These are not exhaustive of the hazards associated with monetizing citizenship; rather, they provide a foray into the topic, inviting further study.

The first argument is that of *exacerbating inequality*, in its various dimensions. High levels of wealth inequality exist in our world, enabling some individuals to think nothing of paying millions for a passport, while others can barely find the means to subsist. It is clear that citizenship-for-sale programmes would only exacerbate, rather than alleviate, the impact of preexisting economic inequality on the opportunity to gain access to membership in desired destinations.<sup>57</sup> Giving preference to those who can pay hefty sums of cash-for-passport transactions adds yet another barrier to mobility for the majority of the world's non-affluent population.<sup>58</sup> In this way, these programmes contribute to perpetuating and deepening patterns of global inequality in contemporary mobility regimes and citizenship allocation. So, part of what is troubling about these citizenship-for-sale programmes is that they both reflect and exacerbate existing inequalities and, by extension (many might add), injustices.<sup>59</sup> Call this the global-inequality moral hazard of citizenship-for-sale.

There is now a flourishing discussion in political philosophy articulating the moral limits of markets, raising important concerns about queue jumping, the slippery slope, fairness and inequality, and the hollowing out of non-market values and motivations.<sup>60</sup> These accounts bypass, however, the core issue that concerns us

<sup>56</sup> These arguments partly intertwine and overlap, but for purposes of analytical clarity, I explore them separately.

<sup>57</sup> Such policies fit under the definition of discretionary migration. See Michael Blake, 'Discretionary Immigration', *Philosophical Topics* 30 (2002): pp. 273–289. States are permitted but not bound to adopt them. This is contrast with non-discretionary policies whereby states hold domestic and international obligations towards refugees, asylum seekers, and other vulnerable populations.

<sup>58</sup> Additional barriers compound this inequality in mobility. See Eric Neumayer, 'Unequal Access to Foreign Spaces: How States Use Visa Restrictions to Regulate Mobility in a Globalized World', *Transactions of the Institute of British Geographers* 31 (2006): pp. 72–84. See also Shachar and Hirschl (n 3).

<sup>59</sup> I thank Sarah Fine for helpful discussions elaborating this point.

<sup>60</sup> Major contributors to this debate include Elizabeth Anderson, Wendy Brown, Steven Lukas, Anne Phillips, Margaret Radin, Michael Sandel, and Debra Satz, among others.

here: the *legal* definition of access to citizenship—the definition of who belongs, or ought to belong—and how it, too, is being recast on the basis of pecuniary considerations and market-based valuations. Most commentators would be hard-pressed, I believe, to contest this global-inequality moral hazard of citizenship-for-sale.

The marketization of citizenship not only facilitates the intrusion of pecuniary considerations into the *demos*-sculpting sphere, it also reshapes the logic of citizenship from a membership bond that may in fact act as a *shield* against inequalities.<sup>61</sup> In the marketization of citizenship, then, concerns about inequality of access, from a global perspective, join forces with the stratification of citizenship in the domestic sphere. Placing a price tag on citizenship signifies a transformation of the criteria of membership from a political to an economic metric, contributing to broader processes of commodification that erode the promise of equality among existing members of the political community. In this, it intervenes in complex ways in debates about the rise and fall of citizenship solidarity within states, just as it illuminates processes that mar inequalities in access to membership globally.<sup>62</sup>

The second strand of critique highlights the *intrusion of the market*, and its imperialistic norms and rationale, into the sphere of the political, hitting at the heart of the sovereign act of delineating the contours of the *demos*. As much as Becker may claim the contrary, these programmes are objectionable not only because they are novel and counterintuitive, but also for deeper, more profound reasons. Citizenship as we know it (at least since Aristotle) is comprised of *political* relations; as such, it is expected to both reflect and generate notions of participation, co-governance, risk-sharing, and some measure of solidarity among those constituting the body politic.<sup>63</sup> It is difficult to imagine how these democratic and reciprocal commitments can be preserved under circumstances in which insiders and outsiders are distinguished merely by their ability to pay a certain price. The objection here is to the notion that *everything*, including political membership, is ‘commensurable’ and reducible to a dollar value. This sends a loud message that reverberates through the fields of law and social ethics about whom the contemporary market-friendly state prioritizes in the admission line and whom it most covets as future citizens. This expressive conduct and the new grammar of market-infused valuation threatens to rewrite basic

<sup>61</sup> This position is associated with the Marshallian tradition, or the ideal of social citizenship.

<sup>62</sup> On the erosion of social citizenship, see Somers (n 16). I do not address here the interests of those who stay in the country of origin, although questions of justice may arise there as well if the millionaire migrant is using the new citizenship to avert public disclosure rules or tax obligations in the home country.

<sup>63</sup> This is of course an idealized vision of citizenship. As Derek Heather observes, the ‘status of citizen was in origin and indeed for by far the greatest portion of its history essentially the mark of an elite.’ See Derek Heather, *A Brief History of Citizenship* (New York: NYU Press, 2004), p. 143. More inclusive, democratic, and national conceptions of citizenship emerge in the seventeenth century and came to the fore in the late eighteenth century’s age of revolution, but left intact many exclusionary grounds. See FitzGerald in this volume; Volpp in this volume; Sadiq in this volume.

expectations about relationship we have with fellow members of our political community once transactional views of citizenship become entrenched.

In today's era of 'market triumphalism' or 'market fundamentalism', as Michael Sandel and Joseph Stiglitz have respectively observed, the economic logic of 'buying and selling no longer applies to material goods alone'.<sup>64</sup> Alas, by imposing market rationality on citizenship and extending it to perhaps the most sensitive and charged aspect of sovereignty—defining whom to admit and include in the body politic—the state is dangerously entering a high-stakes game, which may ultimately undercut its own turf and legitimacy. The invisible hand may prove more efficient at developing mechanisms for trading or auctioning citizenship than those conceived by government lawyers and bureaucrats.<sup>65</sup> On a full marketization scenario, the state may eventually price itself out of the business of regulating membership. It is unlikely that this scenario will materialize any time soon given the keen interest governments hold in controlling and allocating membership goods, but the conceptual shift in the perception of citizenship has already begun. It is the basis for programmes upon which the red carpet is rolled out for those buying their way into the political community. At the same time, there is deep discomfort with the implications of a *market* for citizenship. Perhaps as a result of this ambivalence, we hardly, if ever, find these cash-for-passport programmes mentioned in official study-guides for citizenship tests, which occupy a symbolic standing as 'mission statements' of their admitting societies and reflect a carefully constructed vision of the process of *becoming* members.<sup>66</sup>

Another set of concerns relates to the disintegrating and 'hollowing out' impact of such transactions on citizenship as membership.<sup>67</sup> The core observation here is that such marketization processes facilitate a legal rewriting of the basic logic of emancipatory conceptions of citizenship, giving reign instead to the imperialistic idea that 'trades' and 'transactions' can cover the full terrain of human value and meaning. This reflects a worldview according to which economics trump politics, and membership in the political community—a manifold social and relational web of connections—is reduced into mere purchase-and-sale agreement.

<sup>64</sup> Michael J. Sandel, *What Money Can't Buy: The Moral Limits of Markets* (New York: Farrar, Straus and Giroux, 2012), p. 6; Joseph Stiglitz, 'Moving Beyond Market Fundamentalism to a More Balanced Economy', *Annals of Public and Cooperative Economics* 80 (2009): pp. 345–360.

<sup>65</sup> A parallel, clandestine market for smuggling people without authorization is 'a highly profitable business', as the United Nations Office on Drug and Crime recently put it. Migrant smuggling is among the most lucrative illicit trades in the world, often cited together with drugs and weapons. See United Nations Office on Drug and Crime, 'Migrant Smuggling', online <https://www.unodc.org/unodc/en/human-trafficking/smuggling-of-migrants.html>.

<sup>66</sup> Orgad in this volume; Joppke in this volume; Vink in this volume. Most observers would be at odds if asked to explain how our governments can claim coherence of these apparently conflicting messages.

<sup>67</sup> Bauböck in this volume.

As we saw earlier, transferred funds alone—completely detached from civic or any related requirements—serve as a ‘collateral’ for the issuance of a new passport. Yet a wire transfer cannot ensure that the newly minted passport will transform the citizen into a member in any recognizable way. If no ties to the new community are established, then the ‘value’ of citizenship for the purchaser is indeed self-serving and instrumental: it is good to keep when on the rise, better to dispose of when on the decline.<sup>68</sup> If pure maximization of interest undergirds the transaction, it is reasonable to assume that in times of crisis individuals who have simply bought their citizenship, but never had to establish the *relationship* of membership, will dispense themselves of their investment, or seek to recoup it as quickly as possible. Accordingly, when citizenship is no longer profitable to them, investors could simply defect, especially if certain responsibilities of citizenship are suddenly attached to them, such as paying taxes, or, at times of crisis, serving in the military.<sup>69</sup> The passport-buying citizens might then swiftly rescind their citizenship irrespective of what the consequences are (financial, political, and so on) for the country in which they had purchased membership. This is not a particularly solid foundation upon which to build or sustain a political community.

As such, a transactional variant of citizenship may erode the reciprocity and goodwill of those members who contribute to the civic fibre of their societies and habitually reside in them, through good times and bad. Globetrotting well-heeled millionaire migrants who have paid for a passport but never taken on corresponding membership responsibilities, in essence, free-ride on the governance reputation, standards, and civic commitments of the actual members habituating the society whose (purchased) membership goods the buyer seeks to enjoy without helping either to generate or to sustain it. While enjoying tax-exempt ‘membership’ and visa-free travel, their indiscretion may lead to stricter scrutiny for *all* persons travelling on that country’s passport—another non-pecuniary risk of citizenship-for-sale programmes on existing members.

The third theme builds closely on the first and second and speaks to the *character of citizenship*. Cash-for-membership programmes detach the notion of citizenship from any kind of connection—be it residence, attachment, commitment—to the political community. This creates a dissonance between the familiar idea of citizenship as a valuable bond or *relationship* with a polity and its members and a moneyed elite that can nonchalantly ‘parachute’ into membership.<sup>70</sup>

<sup>68</sup> These programmes produce ‘paper’ citizens: formal status holders who display no societal measures of membership (participation, commitment, rights and duties, and so on). My usage of the term differs here from Kamal Sadiq, who creatively shows how documentary evidence generates visibility in the eyes of the state for the status-less. See Kamal Sadiq, *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries* (Oxford: Oxford University Press, 2008).

<sup>69</sup> A similar observation is made by Ana Tanasoca, ‘Citizenship for Sale: Neomedieval, Not Just Neoliberal?’, *European Journal of Sociology* 57 (2016): pp. 169–195, p. 179.

<sup>70</sup> There is a growing body of literature on citizenship as based on social membership, place-related obligations, performative acts, or equitable grounds. See, for example, Isin in this volume; Joseph H.

While citizenship has been variously defined and has undergone many transformations, Rogers Smith observes that the ‘oldest, most basic, and most prevalent meaning [of citizenship] is a certain sort of membership in a political community’.<sup>71</sup> Although we know from the historical record that access to equal membership has never been open to all, this emancipatory and aspirational promise has gained tremendous staying power ever since the age of revolutions.<sup>72</sup> And while the scale and scope of the membership community has ranged from city-state to empire, citizenship has always been associated with *political* relations.<sup>73</sup> If we take as a baseline the view that ‘the principal end of political society [i]s the good of its members’,<sup>74</sup> whether understood as securing liberty, protecting public order, providing the conditions for a system of cooperation and shared participation, or promoting equal respect and non-domination—whatever guiding principles we adopt to organize our collective life, ‘citizenship entails more than just buying a good or a service’.<sup>75</sup> It binds members of a community together in a distinctive political and social relation with deep regulatory significance.<sup>76</sup> It is the unique and reciprocal bond between the individual and the state (or other levels of government in multi-level conceptions of membership) that distinguishes citizenship from traditional master-slave, emperor-subject, producer-consumer, or supply-demand relations of private provision. The recent experience of transition democracies offers a fresh reminder that ‘behavior based on civic virtue is required, and that markets cannot substitute for everything’.<sup>77</sup> Our government officials appear to ignore such warnings with impunity when they adopt a calculus of profitability. Even if enlarging their coffers may, as a matter of real-life experience, explain *why* some governments create these programmes (again, with the caveat that ‘healthy skepticism concerning the benefits normally asserted’ is required<sup>78</sup>), as a normative matter, this does not constitute an

Carens, *The Ethics of Immigration* (Oxford: Oxford University Press, 2013); Ayelet Shachar, ‘Earned Citizenship: Property Lessons for Immigration Reform’, *Yale Journal of Law & the Humanities* 23 (2011): pp. 110–158; Bauböck in this volume; Bosniak in this volume.

<sup>71</sup> Rogers Smith, ‘Citizenship: Political’, in Neil J. Smelser and Paul B. Baltes, eds., *International Encyclopedia of the Social & Behavioral Studies* (Oxford: Elsevier, 2001), pp. 1857–1860, at p. 1857; Bauböck in this volume.

<sup>72</sup> Unlike classical times, today, gender, race or possessing arms no longer formally define access to (or rather exclusion from) the boundaries of membership, although their lasting impacts are hard to shake off. On the ongoing struggle for expanding the boundaries of membership, see Bosniak in this volume; Donaldson and Kymlicka in this volume; FitzGerald in this volume; Isin in this volume; Volpp in this volume.

<sup>73</sup> On the changing scales of citizenship, see Diener in this volume.

<sup>74</sup> Christopher W. Morris, ‘The State’, in George Kolsko, ed., *Oxford Handbook of the History of Political Philosophy* (Oxford: Oxford University Press, 2012), pp. 544–560, pp. 544, 557.

<sup>75</sup> Bruno S. Frey, ‘Flexible Citizenship for a Global Society’, *Politics, Philosophy and Economics* 2 (2003): pp. 93–114, p. 106.

<sup>76</sup> Opinions may reasonably differ on how precisely to define or express such bonds.

<sup>77</sup> Frey (n 75), p. 106.

<sup>78</sup> Migration Advisory Committee (n 47), p. 2.

adequate justification, since this kind of exchange threatens to ‘corrupt’ and recast the good being sold.<sup>79</sup>

What changes when citizenship is put on sale is not just the price of membership, but its substantive content as well. If political relations, valued in part because they are *not* for sale, become tradable and marketable, the ramifications may prove far-reaching, affecting not only those directly engaged in the transaction, but also broader societal perceptions of how we value these relations.<sup>80</sup> Laws do not simply define categories and guide action; they also constitute that which they purport to describe.<sup>81</sup> Likewise, markets do not just allocate goods; they also ‘express and promote certain attitudes toward the goods being exchanged.’<sup>82</sup> Making the ability to pay a condition of citizenship may well erode the civic bonds and practices that allow a society to not merely survive but also thrive.

As citizenship-for-sale programmes play an increasingly important role in countries’ selective migration policies and priorities, they may also gradually reshape the greater class of those who are likely to enjoy political membership by distorting democratic mechanisms and prioritizing market choices instead. Were citizenship allocation to become reliant on a price mechanism alone, to the exclusion of other important considerations, not only would the vast majority of the world’s population be prevented from ever gaining a chance to access citizenship in well-off polities, but, taken to its logical conclusion (as *reductio*), it might also, over time lead to a dystopian world in which *anyone* included in the pool of members might have to pay to retain their membership status or risk being priced out.

Government programmes that authorize a market in purchasing and selling citizenship, turning its acquisition into a bare-bones monetized transaction, run the risk of diminishing the good itself and the norms that govern its underlying justification and purpose.<sup>83</sup> They may also end up reshaping the class of recipients and ultimately denying membership to those who cannot afford it. Turning citizenship into a paid transaction may contribute to crowding out public-minded motivations that currently provide the ‘social glue’ binding our institutions and communities.<sup>84</sup>

<sup>79</sup> The language of corruption, in the moral sense, is drawn from Sandel (n 64).

<sup>80</sup> For a relational critique of markets, see Debra Satz, *Why Some Things Should Not Be for Sale: The Moral Limits of Markets* (Oxford: Oxford University Press, 2010).

<sup>81</sup> On the expressive function of law, see Cass Sunstein, ‘On the Expressive Function of Law,’ *University of Pennsylvania Law Review* 144 (1996): pp. 2021–2053; on ‘performative’ law, see J. L. Austin, *How to Do Things with Words*, 2nd edition (Cambridge: Harvard University Press, 1975).

<sup>82</sup> Sandel (n 64), p. 9.

<sup>83</sup> *Ibid.*, pp. 110–113.

<sup>84</sup> The erosion of civic commitment has been traced in other areas of public life, whereby a previously non-commodified activity becomes monetized. Perhaps best known is Titmuss’ study of blood donation, which concludes with the following observation: ‘From our study of the private market in blood in the United States, we have concluded that the commercialization of blood and donor relationships represses the expression of altruism, erodes the sense of community.’ See Richard M. Titmuss, *The Gift Relationship: From Human Blood to Social Policy* (New York: New Press, 1970), p. 245.

For-sale programmes thus offer the legal ‘shell’ of citizenship, but empty it of membership content.

No equality-centred or *nexi*-based conception of membership would accept this recasting without perceiving the significant erosion it causes to the unique bond of citizenship.<sup>85</sup> As an early critic of the monetize-everything approach has memorably observed, ‘price and value will sometimes coincide. But often enough money fails to represent value; the translations are made, but as with good poetry, something is lost in the process.’<sup>86</sup> Although we have almost become oblivious to the manifold ways in which the language of the market now invades every corner of our lives, the realm of citizenship is—and on these accounts, ought to remain—distinct. The public domain of rights and relations that makes up our political communities and enshrines the expression, symbolic or actual, of our legal standing as equal members—the bedrock principle underlying citizenship—cannot, without undermining itself, substitute membership for money.

## CONCLUDING REMARKS AND FUTURE DIRECTIONS FOR RESEARCH

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New laws and regulations generated in the era of market citizenship allow wealth to become a golden passport. I have argued that reliance on the depth of one’s pockets as a basis for granting access to membership tests our deepest intuitions about the relationship between the individual and the political community to which she belongs. As such, it offers a rare window through which to explore underlying tensions and questions about the future of citizenship. Unless confronted head-on, the prospering transactional approach may irrevocably and irreversibly rewrite citizenship as we know it, crowding out its association with political *demos*, paradoxically replacing it with government-sponsored market-oriented rationality and valuation in determining whom, among those not born as citizens, to lawfully admit as ‘worthy’ new members.

<sup>85</sup> I have elsewhere elaborated the *jus nexi* principle, accounting for the kinds of links and ties to a political community that may serve as an equitable basis for accessing membership when no other lawful ground for membership acquisition is present. See Shachar (n 70). Related ideas refer to notions of a stakeholder society, or to the importance of social membership in determining access to citizenship. See Rainer Bauböck, ‘Expansive Citizenship—Voting beyond Territory and Membership’, *Political Science and Politics* 38 (2005): pp. 683–687; Carens (n 70).

<sup>86</sup> Walzer (n 27), p. 97.

Governments today are willing to adjust and reinterpret sovereignty and citizenship in profoundly flexible ways, making mobility more readily available in attracting ‘high-net-worth’ migrants, especially the rich and affluent, while imposing tighter restriction on other categories of would-be entrants. Our affiliation to a given state and society (even if defined primarily in legalistic rather than participatory terms), resists the idea that such membership relies on profit-maximizing considerations. Collapsing the logic of states into markets, by diluting their competing values and commitments and making personal wealth a precondition of political membership, threatens to eviscerate citizenship from within. It poisons the political ideal of a common enterprise committed to promoting equality, rights, and collective decision-making through processes of deliberation and participation. It places profit, self-interest, and personal gain, values we typically associate with the market, in a sphere to which they do not belong: membership in the polity. Accordingly, even in a world untainted by the injustice of disparities of power and influence, the principled argument would still hold that ‘there are some things that money can’t buy’.

No one is claiming that the prevailing principles for allocating access to citizenship—primarily according to morally arbitrary circumstances of where or to whom we are born (the *jus soli* and *jus sanguinis* principles, respectively), which affect the vast majority of the world’s population through the birthright lottery, and in turn, are correlated to vastly unequal life chances—are free from profound quandaries and injustices. I have devoted a whole book to arguing just that and to critically reflecting on the inadequacy of existing conditions and the urgent need to challenge and amend entrenched models of fixed, entail-like, birthright citizenship regimes.<sup>87</sup> Yet it would be deeply misguided to conclude that the best way to overcome our current predicament is to give primacy instead the vicissitudes of market forces and the ‘invisible hand’.

While it is impossible to read the tea leaves of the future of citizenship, several lessons can be drawn. First, there is nothing inevitable about the rise of a more transactional approach to citizenship. Global competitive pressures and neoliberal rationality surely push in the direction of greater marketization, but there are counter forces that may reverse or halt this trend. We might call this the ‘de-marketization’ response. Such a scenario may emerge if the marketization policy becomes too costly for policymakers to support, especially if it leads to political resistance and resentment, domestic or international. Such a scenario is not merely speculative; we have already seen it unfold in practice. Two recent examples highlight this. In 2015, Hong Kong closed down its highly successful investor migrant programme, following a growing tide of criticism that, among other concerns, this priced out the local population from necessary essentials, such as housing, a perennial issue in densely populated Hong Kong. In 2014, following a comprehensive longitudinal review,

<sup>87</sup> Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Cambridge, MA: Harvard University Press, 2009).



the Canadian government terminated the country's investment route after concluding that the programme, which was popular with the world's ultra-rich (more than 40,000 applications were backlogged when the programme closed down), had failed to fulfil the stated goals of economic growth and increased foreign investment that had provided the official justification for its adoption in the first place.

Another set of constraints may emerge at the international level. No state is an island. Even in a world system guided by the principle of respect for the sovereign prerogative of each political community to define its own citizenship laws and naturalization rules, other countries, acting alone or in concert, may impact and change the calculus of a government adopting cash-for-passport policies. Concerns about programme integrity, for example, may cause other countries to restrict visa-free travel privileges for the citizens of passport-selling countries. If we follow the logic of the transactional view of citizenship, the value of a passport is in no small part reliant on its recognition by third parties *outside* the issuing country; without such recognition the value plummets.<sup>88</sup>

In the context of regional unions or multinational organizations, the 'unscrupulous' conduct of citizenship-selling states may potentially be tamed by credible threats of removal from the club or curtailed membership. When supranational citizenship is engaged, as in the case in the EU, it is not implausible to imagine future claims of breach of solidarity (or lack of sincere cooperation) and abuse of right against member states that blatantly commodify citizenship.<sup>89</sup> As lawyers would put it, such action is not neutral with regard to other member states or the Union. As such, these parties would arguably be justified to take action to tame such rampant commodification, or at least qualify the terms of the proposed 'bill of sale'.

At least in principle, under current international law, country X may refuse to recognize beneficiaries of form-over-substance citizenship issued by country Y (a passport 'selling' country) under certain circumstances due to lack of a genuine connection. One of history's little ironies is that *Nottebohm*, the main precedential case in this field, was decided by the International Court of Justice following an early exemplar of citizenship for sale: Mr. Nottebohm bought his Lichtensteinian citizenship through a 'donation' of 37,500 Swiss Francs and a commitment to pay 1,000 Swiss Francs annually in taxes. This purchased membership was not backed up by any real or effective links to the citizenship-selling country. The International Court of Justice ruled that although each state is sovereign to determine its own citizenship and criteria for its acquisition under domestic law, on the international plane, a meaningful connection between the individual and the state must be established.<sup>90</sup>

<sup>88</sup> If the purchase of a new passport is designed primarily to allow the new 'citizen' greater mobility, e.g., by virtue of benefiting from a given country's visa-waiver programmes, then the risk of loss of value is further aggravated.

<sup>89</sup> *Rotmann* may serve a potential legal precedent in European context. Judgment of 2 March 2010, *Janko Rotmann v. Freistaat of Bayern* C-135/08, E.C.R. I-01449, EU:C:2010:104.

<sup>90</sup> This ruling referred specifically to questions of diplomatic protection.

In another recent twist, international human rights bodies, such as the United Nations Human Rights Committees, may take a stance against government-*imposed* purchase of citizenship in a third country. Such a scenario may occur when officials in a given country, call it Wealthiana, go on a shopping spree to ‘relocate’ to another country the membership claims of unwanted ethnic minority populations, potentially against their will and without their knowledge. The idea that one country will buy citizenship from another country to *disenfranchise* some of its long-term residents and avoid granting them citizenship may sound more fitting for a dystopian novel than for twenty-first-century citizenship law, but precisely such a narrative emerged when Kuwait purchased Comoros citizenship for its *bidoon* population. The UN Human Rights Committee commented on the practice in its 2016 report on Kuwait, holding explicitly that the country should ‘set aside plans to offer “Bidoon” the “economic citizenship” of another country’.

These comments speak loudly to the deeper concern at issue: once citizenship is merely determined by the transfer of cash and detached from any membership reference, nothing stands in the way of governments that may wish to disenfranchise ‘unwanted’ resident populations through the compulsory purchase of citizenship-in-another-country. This is the dark side of commodification, informed, paradoxically, by the very same logic of marketization that permits volitional citizenship-for-sale transactions between willing government and eager clients.

Even if these taming measures were in place (which is a far cry from today’s reality), it is quite possible that wallet-size-based access priorities will emerge as increasingly prevalent at the expense of other, more humanistic, pluralistic, and non-pecuniary interpretations. This will make entry, settlement, and naturalization reliant upon credit lines rather than civic ties. Echoing larger processes of stratification, the surge in privileged access to membership-for-the-rich risks aggravating inequality, accentuating already deeply stratified global mobility and migration patterns, and further contributing, as we have seen, to the ‘hollowing out’ of citizenship from within. The mismatched confluence of market values and membership privileges counters the notion that the state belongs to the people—not to a wealth oligarchy. It unravels the basic political legitimacy upon which popular sovereignty is founded, the same legitimacy that makes citizenship attractive as a *nonmarket* good.

As critics of commodification have been at pains to clarify in other contexts, it is not that €1 million is too high or too low a price, but that placing citizenship ‘for sale’, no matter what the asking price, corrodes non-market relations, unraveling the ties that bind and altering our view of what it means to belong to a political community. Just as we should be critical of granting citizenship according to nothing but the fortuitous and arbitrary circumstances of birth, we must resist, with even greater force, the notion that money can buy ‘love of country’—or secure membership in it.

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