

On Citizenship, States, and Markets*

AYELET SHACHAR

Law & Political Science, University of Toronto

and

RAN HIRSCHL

Political Science & Law, University of Toronto

THIS article brings to center stage the debate that is currently absent in larger discussions about citizenship and immigration: the reality that state and market forces are becoming increasingly intertwined in shaping migration selection criteria and membership-allocation priorities. The bulk of academic debate has understandably focused on the “restrictive turn” witnessed in recent years with respect to ordinary immigration and naturalization applicants, such as those who enter on the basis of a family reunification claim or for humanitarian reasons.¹ We will argue, however, that equally important lessons about the current state of citizenship can be learned by examining *who* is given the red-carpet treatment, and on *what basis*. In today’s global knowledge economy, those who can shore up the human capital reserve of the nation while bolstering its international reputation as a talent magnet are in high demand. Who is fast-tracked in the visa and citizenship line is no less revealing of the qualities we value in others and seek to incorporate into our political communities, than who is pushed to the back of the line or denied access altogether.

From the ultra rich to successful entrepreneurs to top scientists, elite athletes, and world-class artists, we increasingly find well-off countries facilitating specialized entry tracks and expedited naturalization for those “high value” migrants they seek to attract. Governments are now willing to go so far as to reconfigure the boundaries of political membership to allow faster and smoother access to citizenship for exceptionally talented individuals they covet as prized assets, often with the expectation of return—reputational or otherwise.²

*We would like to thank Bob Goodin, Jim Fishkin, Rogers Smith, Cristina Rodriguez, Craig Mullins, Eric Monkman, and the anonymous reviewers for insightful comments on earlier drafts. We also benefited significantly from the responses of the audiences at the American Society of International Law Annual Conference, the Columbia Political Theory Workshop, the Yale Legal Theory Workshop, and the Max Planck Institute for Tax and Public Financing in Munich. This study was generously supported by the Canada Research Chair Program.

¹Shamir 2005; Joppke 2007; Orgad 2010; Goodman 2012.

²With the advent of dual nationality, gaining a freshly minted passport in an affluent and rule of law society no longer extracts a potentially prohibitive cost (from the emigrant’s perspective) of severing her membership ties with the country of origin. She can hold both, simultaneously.

As the demand for the “best and brightest” (a term of art used by immigration policymakers worldwide) has intensified, a global race for talent has emerged. It has taken the form of recruitment of those with extraordinary skills and achievements—whether in the sciences, arts, or sports—as well as the intuitively more questionable practice (we return to this key point later) of permitting the ultra rich a fast-track to citizenship based on specialized cash-for-passport programs open exclusively to high-net-worth individuals. Such programs have proliferated in recent years from the United Kingdom to Australia, Portugal to Malta, France to the United States. Either way, these privileged migrants now have more destination countries from which to choose, with each country offering its own set of benefits and incentives, chief among them is an expedited access to membership in the body politic.

These developments, which we generically label *Olympic citizenship*, have received only scant attention in academic circles, despite their growing prominence in the real world of immigration policymaking and their contribution to larger processes of redrawing the boundaries of (selective) inclusion into the political community. This new trend poses major legal and ethical puzzles, telling us something significant about the fusion of market logic and national interests in the early decades of the twenty-first century.

Our discussion highlights the practice of governments “picking winners” through targeted and occasionally strategic grants of citizenship to those with extraordinary talent or conspicuous wealth, entrenching new inequalities and stratifications in the process. After identifying these dramatic yet under-theorized developments, we explore the conceptual transformation associated with the rise of Olympic citizenship, and how it may erode the ideal of citizenship as a political relation grounded in equality rather than competition.

We will further argue that, although specialized skills-based and investor-based migration programs both instantiate the rise of Olympic citizenship, from a normative perspective it is important to distinguish between recipients of citizenship who are given specialized treatment on the basis of their *human* capital from those who gain citizenship merely in exchange for a hefty bank wire transfer or a large stack of cash. Although John Rawls famously held that the distribution of natural talents and endowments is arbitrary from a moral point of view (one cannot be said to “deserve” to be born with athletic prowess or an outstanding ability in math), we here side with Charles Beitz’s position that the *choice* to develop one’s natural or raw talent—and the significant effort that goes into cultivating one’s human capital—is bound up with identity and can be said to be protected by considerations of personal liberty.³ This position is compatible with the recognition that societal conditions are crucial for allowing any one of us to refine and improve his or her human capital. Even the most brilliant athlete, scientist,

³The constitutive connection between talent development and the self is discussed in Beitz (1999, pp. 138–9).

or innovator needs a community in order to succeed; or to paraphrase a familiar proverb, it takes a village to raise an Olympian. The more significant point for the purpose of our discussion is, however, that raw talent is *not* a sufficient condition for achieving the extraordinary level of accomplishment expected of those who benefit from Olympic citizenship.

In the context of talent migration, the concern with favoring the best and brightest is not moral arbitrariness. On the contrary, Olympic citizenship provides the most elaborate model on offer of what a carefully-calibrated merit-based admission policy that falls under the discretionary migration category might look like. The normative difficulties lie elsewhere and broadly fall into three categories: 1) arguments grounded in fairness (which analytically can be broken into distinct subcategories: fairness to other would-be immigrants, to the population of the admitting country, and to those who stay in the country of origin); 2) the equation between human capital and capital per se, which we will challenge in this article; and finally 3) the concern that government-facilitated transactional visions of citizenship may ultimately erode the ties that bind and what it means to belong to a political community. Throughout the discussion, we will draw upon comparative examples from the citizenship and immigration laws and policies of core participants in the global race for talent to explore how the more instrumental logic of Olympic citizenship may irrevocably transform the ideal of political membership—as a relation grounded in equality and participation—by morphing civil and political goods into more calculated and strategic transactions.

By focusing on the highly skilled, the new breed of “desired” migrants that competitive states wish to attract and admit, we offer what we hope is a fresh perspective on the depth and direction of these legal, ideological, and institutional shifts, including their growing affinity with certain aspects of market-oriented thinking—a conceptual turn that our conventional theories of citizenship and migration have regrettably not taken up.

The discussion advances in four steps. We begin by explaining the logic and political economy of talent migration. In today’s stratified international mobility market, the focus is not on closing the gates of admission, but on opening them *selectively*. Next, we chart the main legal strategies adopted by leading countries engaged in the global race for talent, strategies that are increasingly used to set human capital criteria for selecting whom to admit. In so doing, desired destination countries are signaling their preference for a particular class of immigrants. This empirical foundation will later serve as the backdrop for our inquiry into the legitimacy of adopting skills-based criteria, and more controversially, investment-based schemes, both of which exemplify the rise of managed and selective migration regimes.

In the third part, we juxtapose the normative implications of these two related yet separate practices: recruiting the highly skilled on the basis of their human capital, and admitting the ultra rich by virtue of their temporary or permanent

financial contribution or investment in the passport-issuing country. The former grants political membership to those with extraordinary achievements as part of a selective recruitment strategy that sees skills-based migration as a mechanism for human capital accretion. This process can only succeed when talented migrants settle in the recruiting nation and generate positive externalities in their interactions with others in that community. The latter, by contrast, is based merely on the transfer of capital—in large quantities—without necessarily requiring the investor to ever set foot in the recipient country. In some cases, the capital investment—ranging from a minimum of \$1 million (\$500,000 for specially defined areas) in the United States, to at least £1 million in the United Kingdom, to \$5 million under the significant investor stream in Australia—is eventually returned back to the investor after a fixed number of years. These fast-tracked gateways offer migrant millionaires who may never reside in the country or participate in its society a share and vote in the political community in return for a portion of their wealth. The transacted monies in effect serve as a time-limited “collateral” for securing the grant of citizenship, and with it, a new passport under which to travel. It is not surprising that such cash-for-passports programs are proving popular among the world’s moneyed elite with a desire or need for global options and a backup passport. More puzzling is the willingness of governments—our public trustees and legal guardians of citizenship—to engage in processes that, in some cases, cannot be described as anything but the sale and barter of membership goods in exchange for a hefty bank wire transfer or a large stack of cash.⁴ Rapid processes of market expansionism have now reached what for many is the most sacrosanct non-market good: membership in a political community. Placing a price tag on citizenship is, we will argue, qualitatively different and ethically more disturbing than selectively focusing on the extraordinary talent and track record of those entering the country through designated skills-based, talent-for-citizenship exchanges.

We conclude by suggesting that expanding the scope of comparative citizenship debates beyond the traditional focus on those who are *excluded* to instead consider those who are given priority and fast-tracked in the immigration and naturalization line, reveals equally important yet under-studied insights about the transformation of citizenship regimes, present and future.

I. THE LEGAL FRAMING OF TALENT MIGRATION

Although some predicted that globalization would lead to the demise of state control over borders and membership boundaries, states have proven more

⁴In this increasingly commodified migration regime, not only state agencies are involved, but also various third-party intermediaries. For example, elite global law firms now discretely offer their multi-million-dollar-worth individual clients advice on “citizenship planning,” much like international tax experts explore offshore investment strategies for their wealth management portfolios.

resilient and creative than anticipated.⁵ Operating alone or in concert with other countries (and increasingly with private sector actors as well), governments and enforcement agencies at the local, national, and supranational level have not abandoned migration and citizenship control.⁶ Instead, they have launched sophisticated and multidimensional efforts to “*manage migration*”—the new catchphrase and paradigm favored by policymakers worldwide. Accepting that human mobility across borders is here to stay, and that previous zero-migration approaches have reached the end of the line, this new paradigm at its core is: “managerial, economic, and [instrumental], focusing on the potential economic and social contributions by immigrants to host societies.”⁷

The actual design and implementation of managed migration policies differs across countries and regions, but the underlying commonalities are hard to miss. On the contraction side, we find states reinventing their ability to control their membership boundaries by shifting borders, (re)introducing cultural and linguistic prerequisites to naturalization, authorizing often precarious temporary migration programs, erecting extraterritorial barriers to prevent the entry of unsolicited and “unwanted” migrants, and implementing new obstacles that make it increasingly harder for those seeking refuge and asylum to even reach the shores of what were once the promised lands of migration. On the expansion side, countries keen on recruiting the new breed of desired migrants—the highly skilled, the entrepreneurial innovators, the creative class, and in some places, the ultra rich—are engaged in a high-stakes competitive scramble to attract and retain them.

Those with an ear to the ground have not completely failed to notice these new trends. Think tanks, lawyers and human-rights advocates with an interest in migration policy and practice have reasonably focused their scarce resources on “objecting to a country’s practice of excluding outsiders” and revealing the dire human consequences of the contraction dimension of today’s managed migration control measures.⁸ Far less attention has been paid, however, to the expansion side. Here, the focus is not on closing the gates, but on opening them *selectively*,

⁵There is a rich literature on the debate between statist and globalists regarding the “demise” of borders and migration control, or the lack thereof. The full list is too long to cite. For examples of this vibrant debate, see: Sassen 1996; Andreas and Snyder 2000; Guiraudon and Lahav 2000.

⁶Government agencies are increasingly sharing, delegating, or outsourcing the authority and responsibility of regulating and controlling international human mobility to various private sector actors, from airline companies whose frontline agents regularly screen travelers’ passports and entry visas on sanction of heavy penalties if they allow unauthorized migrants to reach desired destination countries, to multinational corporations providing border control equipment and various migration management tasks, raising weighty questions about the human rights consequences and public accountability of the “migration industry.” For further discussion, see: Guiraudon and Lahav 2000; Gammeltoft-Hansen and Sørensen 2013.

⁷Menz 2008, p. 2.

⁸Wellman and Cole 2011, p. 151. With tightening regulation of borders and growing pressures to escape desperate political or economic circumstances, the line between volitional and forced migration is constantly being tested, leading to the coining of the term “survival migration” (Betts 2013). This development falls beyond the scope of this article.

especially for the *crème de la crème*—the fast-tracked recipients of Olympic citizenship on the basis of their specialized skills and talents—be they acclaimed scientists, technology wizards, innovative entrepreneurs, elite athletes, or brilliant artists. (We bracket for now the discussion of investor-based categories, which focus exclusively on attracting the ultra rich, a topic that is taken up in Part III). While at first blush the rise of selective and targeted admission routes designed to attract the best and brightest may appear to contradict the idea that states are attempting to “regain control” by restricting entry to those perceived as too different, risky, costly (or all of the above), it is, in fact, the other side of the same coin. Both contraction and expansion measures make visible the undercurrents and tensions informing the emerging narratives of who is welcome within the political community and who is not.

This makes the study of managed and selective migration regimes ever more vital. Debates about migration and globalization can no longer exclusively revolve around the dichotomy between open versus closed borders. Countries simultaneously engage in *both* opening *and* closing their borders, but they do so selectively—by indicating quite sharply who they desire to bring in (namely, those with specialized skills and talent, or, as we shall later see, deep pockets) and erecting higher and higher legal walls to block out those deemed “unwanted” or “too different.”⁹ In this stratified international mobility market, membership goods, including fast-tracked access to permanent residence and the promise of eventual citizenship, are turned into instruments for gaining a relative advantage in a competitive inter-jurisdictional scramble for “brainpower.” In this global race for talent, no country is an island, and none wants to be left behind.¹⁰

By setting human capital criteria for selecting *whom* to admit, desired destination countries are signaling their preference for a particular class of immigrants. For governments faced with growing public sentiment in favor of restrictive immigration policies, the focus on productive, highly-skilled migrants allows them to convey a message of control, while internationally signaling to those with high-demand skills and extraordinary talent that they are “wanted and welcome.”¹¹ Legal strategies to recruit the highly skilled play a vital role in this larger process of redesigning membership categories and regaining control over borders, by turning such ideational shifts into actionable plans. At the same time that would-be immigrants who seek admission on the basis of family ties or humanitarian causes are becoming subject to increased scrutiny and control, highly skilled migrants are facing more attractive admission offers than ever before. Those who fit the new category of talent migration now have more

⁹Joppke 2007; Orgad 2010.

¹⁰For a detailed discussion of the competitive dimension of the global race for talent, see Shachar (2006).

¹¹This term is drawn from a collection of essays with the same title: Triadafilopoulos (2013).

destination countries from which to choose—each country offering its own set of targeted membership and mobility benefits.

Citizenship and immigration are conventionally understood as identity-laden and domestic-centered policy arenas, steeped in questions of membership and belonging and a commitment to certain national narratives and values. In today's spiraling race for talent, however, the legal measures adopted by *other* countries influence how we shape the entry doors to our membership communities. We are witnessing a pattern of interdependent causality whereby, in developing their own strategies to attract the highly skilled, countries factor in the already-tested policies or projected responses of their major international competitors. Policymakers who specialize in targeted migration regimes routinely engage in transnational “borrowing”—or simply “importing”—of the innovations of their counterparts.¹²

This competitive emulation is not the result of a coordinated international effort to harmonize immigration or to delegate authority to technocratic global-expert bodies—as we have seen in other policy arenas, such as the regulation of international trade by the World Trade Organization. Rather, the race for talent results from *non*-cooperation by nations arising from the perception that in the knowledge-based global economy, “the resource that is in greatest scarcity is human capital.” Counter-intuitively, and under conditions of uncertainty, national immigration agencies (and increasingly local and regional officials, too) reassert themselves as significant players in the global market for the highly skilled. They do this by developing the logic of competitive immigration regimes, maintaining tight control over their power to govern legal entry, and offering membership goods to attract highly skilled migrants perceived as “assets.” The last of these is especially significant. In today's age of globalization and privatization, full membership in the political community remains the only good that even the mightiest economic conglomerate cannot offer to the skilled migrant. Only governments can allocate the legal status and prized reward of citizenship to those not born as members—and with it, they allocate not just the dignity and ability to exercise political power, but also the security and opportunity that come with full and equal membership.

It is useful to provide a brief legal “guide to the perplexed” as the backdrop to our critical analysis of the proliferation of such skills-based migration programs adopted by some of the world's most desired destination countries. There is plenty of anecdotal evidence about the *crème de la crème*, those at the top of the “talent pyramid,” who receive the red-carpet treatment. From Russian-born opera star soprano singer Anna Netrebko, who was granted fast-tracked Austrian citizenship for “her special merits as one of the world's most

¹²On policy emulation and diffusion in international political economy, see Simmons and Elkins (2004). On competition and inter-jurisdictional borrowing in the context of highly skilled migration, see Shachar (2006).

distinguished singers” (without having to pass the nationality test that most applicants are required to take); to fashion models of “distinguished merit and ability” qualifying for a special occupancy visa in the United States; to examples from Italy (the host of the Torino Winter Olympics 2006), where expedited citizenship grants were used to build up the Italian Olympic squad. No fewer than ten of Italy’s national hockey team players were Canadian hockey players who had not made the cut on their home team and held only the flimsiest ties to Italy; some of them had never visited the country nor did they speak its language. In another instance, former President Bush signed a congressional bill that included a special provision for granting citizenship to “aliens with extraordinary ability,” just in time to allow ice dancer Tanith Belbin, born and raised in Canada, to join the American squad and represent the United States in the Torino Winter Olympics, where Belbin and her partner secured an Olympic medal. Harboring similar hopes, Russia recently granted citizenship by presidential decree to Korean three-time gold medalist short-track speed skater Ahn Hyun-Soo, who competed for Russia under the name Viktor Ahn in the Sochi Winter Olympics.

But skills-based migration is far from limited to a few extraordinary cases. In Canada, home of the influential point-system selection matrix, which assesses applicants by assigning them a score based on combined factors such as level of education, professional experience in high-demand occupations, age, linguistic ability, and adaptability (with bonus points increasingly awarded for job offers as well), the skilled/economic migration stream consistently accounts for more than half of newly admitted permanent residents per annum.¹³ In Australia, this has been the case for the past few decades.¹⁴ The United Kingdom also witnessed a spike in the recruitment of talent from across the world until the recent governmental decision to reduce net migration to the country. And even there, the new Tier 1 “exceptional talent” category is explicitly designed to attract, as the official guidelines put it, “exceptionally talented individuals in the fields of science, humanities, engineering and the arts, who wish to work in the UK.” American immigration law, too, explicitly designates extraordinary achievement as a recognized admission category. The O-1 visa (often referred to as the “genius visa”) targets individuals who possess “extraordinary ability in the sciences, arts, education, business, or athletics.” In addition, the employment-based first-preference category (EB-1) offers a privileged path to a green card for those with “extraordinary ability in the sciences, arts, education, business, or athletics”

¹³In 2012, the latest year for which official statistics are available, skilled migrants (and their immediate family members) constituted sixty five percent of Canada’s annual intake of new permanent residents. See Canada 2012, p. 5.

¹⁴The proportion of skill-stream migrants to Australia in 2012 was sixty-eight percent reflecting the extraordinary emphasis placed on the selective recruitment of migrants who can integrate quickly, as part of the impetus to admit those who can provide the greatest economic and reputational returns. See Australia 2013, Table 2–1.

who can demonstrate “sustained national or international acclaim.” Evidence of such truly extraordinary ability, as explained by U.S. Citizenship and Immigration Services, includes receipt of internationally recognized prizes or awards, such as a “Pulitzer, Oscar, [or] Olympic Medal.” In the United Kingdom, the criteria for demonstrating exceptional talent include “a nomination for an Academy Award, BAFTA, Golden Globe or Emmy Award in the five years before applying.”

In 2000, European leaders reached agreement on the Lisbon Agenda, committing the European Union to the goal of becoming “the most competitive and dynamic knowledge-based economy in the world” and particularly to “the competition for people.”¹⁵ The race for talent has accelerated further in recent years in part because the more dynamic Asian economies, such as Singapore, which brands itself as a “talent capital,” as well as Hong Kong, South Korea, and Taiwan, have begun to recruit globally. China and India, the emerging economic giants, are also weighing in. India is tapping its extensive diaspora abroad and relaxing its citizenship laws at home to allow successful emigrants to hold an “overseas citizenship of India,” a status that grants them significant opportunities to maintain ties with and invest in the homeland. China, for its part, has adopted a multipronged strategy, a key feature of which is tremendous government investment in basic sciences and their commercial applications. As part of its One-Thousand-Talent program, China is aggressively using financial, taxation, and membership perks to attract high-caliber international scholars and returning Chinese citizens “to lead key laboratories, projects and disciplines in China.” These changes in policy and in attitude, along with stronger growth prospects in emerging markets, have contributed to a pattern of skills-based and entrepreneurial “return migration” from the United States and other developed countries to the rest of the world.

The inter-jurisdictional dynamics and competitiveness of the global race for talent mean that it is no longer necessarily tied to, or motivated by, cyclical domestic skills shortages and short-term economic pressures. Rather, it is about “building a future through well-managed entry and settlement of people.”¹⁶ To draw upon the terminology favored by international relations theory, the global race for talent now operates as a multiplayer, multilevel game informed by domestic and international inputs, in which immigration policymaking by competing jurisdictions reflects growing interdependence, characterized by a mixture of employer and government-led initiatives.¹⁷ At times there is much ferment and fervor as recruiting nations seek to respond to (and preferably preempt) the “offers” other countries make to secure what is perceived as a scarce and coveted resource—namely, extraordinary talent.

¹⁵Florida and Tingali 2004, p. 12.

¹⁶Australia 2011.

¹⁷Putnam 1988.

Challenging prevalent theoretical approaches that have predicted the demise or “retreat” of control over citizenship and immigration in a globalizing world, as well as those focusing almost exclusively on identity-and-difference to the exclusion of non-cultural factors, the recent changes identified here illuminate a more nuanced and complicated picture.¹⁸ By and large, globalists and postnationalists have underestimated the resilience of states and their inventiveness in “retooling” migration regulation and control. Political theorists, for their part, have focused much of their attention on identity-and-recognition claims, and have largely failed to foresee or respond to these more market-oriented variants of citizenship. Neither school of thought has established the vocabulary and analytical tools required to explain the dramatic surge in managed and selective migration regimes, with their unmistakable tendency to give preference and priority to those perceived to have the potential to contribute economically and integrate rapidly. Clearly, the extensity, intensity, and velocity of today’s multifaceted globalization processes have generated a more competitive environment for the cross-border recruitment of the highly skilled.¹⁹ The crucial point, however, is that *governments*, as they have been constantly fine-tuning and recalibrating their skilled migration streams in response to (or in preemption of) their counterparts in the global race for talent, have come to treat potential gains from highly skilled migration as an important element of new economic, innovation, and growth policies, and in the process have allowed market-based rationality and valuation to influence how they make what are arguably quintessentially social and political decisions about “who belongs,” or ought to belong, to the political community.

In this new world order, recruiting nations are willing to go as far as redrawing their membership boundaries to allow faster and smoother access to citizenship for those talented individuals they covet as prized assets, while at the same time making full and equal membership harder to secure for applicants who are perceived as a “threat” to national identity or a drain on social services and the public purse. This is the charged and fraught terrain of the new political economy of membership and mobility: it is a bifurcated regime of scrutiny and restriction on the one hand, and proactive recruitment on the other.

Scholars and human rights activists are hard at work to map the contours of the *contraction* side of these developments and are determined to explore possible responses to them, ranging from compliance to legal challenge to strategic manoeuvring to finding alternative routes of entry. But our focus here is on the

¹⁸The emphasis on identity, culture, and recognition has been criticized as potentially distracting attention from distributive concerns within the body politic. See Fraser 1997; Fraser and Honneth 2003. Scholars in other disciplines have looked at how different cultural perceptions and mobility experiences may inform individuals’ and families’ perception of citizenship as a transnational asset. See Ong 1999. Our focus is on the re-conceptualization of citizenship, not on the relationship between recognition and redistribution, whether domestically or internationally.

¹⁹Held et al. 1999, pp. 14–28.

expansion side and the market-oriented conceptual shifts associated with it. The basic thrust is this: competitive states grant skilled migrants privileged access not on the basis of a shared cultural affinity or linguistic heritage, but on the strength of their human capital, proven professional track record, and potential future achievements. Managed migration is the new policy *bon ton* and it is also seen as more palatable for voters; it is perceived as inserting into an otherwise tired and conflict-ridden debate over immigration policy more objective and selective standards. This occurs in a political climate where different streams of migration appear to be rationalized and socially constructed in strikingly different terms of discourse. Whereas the “unwanted” are pejoratively presented as exhibiting immutable differences that make them unassimilable, quintessential “Others,” skilled migration is treated functionally and technocratically as a measure to advance the country’s economic, reputational, and scientific advantage. Managed migration programs are therefore promoted as the vindication of merit, dynamism, and innovation in the face of diverging values and competing conceptions of the good.

II. SETTING HUMAN CAPITAL CRITERIA FOR SELECTING WHOM TO ADMIT

We can think of the new political economy of membership and migration as based on a “scale of attractiveness” according to which the more desired the immigrant is, the faster she will be given an opportunity to lawfully enter the country and embark on a fast-tracked path to its membership rewards. This is part of a subtle, yet potentially dramatic, recalibration of citizenship that is interconnected with the rise of a more calculated, market-oriented “value added” conception of migration and membership. This raises the question of whether it is legitimate for governments—our public trustees of citizenship—to strategically use membership goods as incentives to draw in “desired” migrants in order to boost their relative advantage in the fiercely competitive global environment. To some extent, this practice resembles the pre-modern world’s notion of patronage, whereby monarchs, dynasties, and empires of past days recruited extraordinary talent to aggrandize and cement (ideally for eternity) their legacies. However, today, unlike the past, we live in a world in which citizenship is infused with ideals of equality and participation, not of noble privilege and patronage. It is these political ideals that are now placed under pressures by the growing influence of instrumentalized, managed migration regimes, and the kind of efficiency and merchant values that undergird them.

Alas, from a national welfare perspective that is in tune with the rise of managed and selective migration regimes, things look different: the whole “business” of immigration policymaking is to determine priorities and preferences. If there is more supply than demand, then by definition not everyone will get in. Surprisingly, the political philosophy of immigration provides little

guidance here. The core debates in the field are mainly couched in terms of what equality to immigrants requires, when compared to the rights and protections afforded to those who already hold full and equal membership—namely, citizens. In such discussions, the focus is on immigrants who have already arrived and settled. Regrettably, only scant attention is paid to the core questions that concern us here: how to justify immigrant or naturalization priorities, and on what basis.²⁰ Yet these are the hardest tasks at the heart of the actual institutional design of immigration law and practice: how to define which priorities and preferences should inform the system, and which considerations could legitimately guide its design.

We can trace the outer limits, as currently defined by domestic and international law. We know, for example, that states bear a legal and moral obligation to admit refugees, and that other humanitarian causes represent a special and compelling case. States are also obliged to minimize statelessness. There is also a consensus that ascriptive factors, such as race and gender, are illegitimate considerations and are prohibited grounds for denial of admission. It is also widely agreed that there is no obligation on a political community to admit non-citizens who pose either a threat to public safety (because of a criminal record or for another reason) or to national security (however difficult it remains to define this category). These inadmissibility grounds must be subject to judicial review and fair treatment requirements, and arguably, proportionality as well, but recall that we are concerned here with would-be entrants, whom even Joseph Carens, otherwise an enthusiastic advocate of immigrants' rights, aptly describes as "*potential* immigrants who have no specific moral claim to admittance."²¹ Beyond this narrow area of consensus, significant disagreement exists as to the extent of state discretion in otherwise selecting prospective members.²²

In practice, we know that "many seek to enter and few are chosen."²³ The question of *whom* to admit therefore requires states to develop their selection criteria. We earlier saw that certain negative restrictions are placed on states, but there are no correlating guidelines defining which positive standards to adopt. Under current international law, each country is free to determine its priorities and preferences, and then arrange and implement its admission categories accordingly. Typically, admission categories include a combination of family-based, humanitarian, and employment-based migration streams.²⁴ The

²⁰A rare exception to the lack of attention paid to actual priorities in immigration policy is found in Carens (2013) and Offe (2011).

²¹Carens 2013, p. 179 (emphasis added).

²²See e.g.: Benhabib 2004; Miller 2007; Wellman and Cole 2011.

²³Carens 2013, p. 179.

²⁴As mentioned above, democratic states prohibit racial, ethnic, and other ascriptive barriers to admission, something which is taken for granted today, although it is of surprisingly recent vintage. For most of its history, immigration law and policy was steeped in racialized and gendered hierarchies and exclusions.

highly skilled squarely fall into the employment stream, but in practice they are often entitled to bring in their immediate family members (spouses and children) as prospective citizens too, effectively creating a blend of the employment and family-based categories in what is ostensibly a very difficult-to-enter, “talent only” category.

The emphasis on preferring “those with the kind of skills and attainments which make the admission advantageous to our society” (as U.S. President Lyndon D. Johnson once famously stated) dates back to the earliest major development of the current global race for talent: the United States’ overhaul of its immigration law and policy in 1965. These amendments ushered in the modern legislative architecture of favoring family ties, skills, and humanitarian considerations over considerations of race, ethnicity, and national origin.²⁵ In signing the amendments into law, President Johnson changed the course of U.S. immigration policy for the decades to follow, and articulated a vision for the future of immigration that now reads as a precursor to the rise of competitive immigration regimes: “immigrants should not be judged on their country of origin, but by what contributions they could make to the [destination country] because of their skills.”²⁶

Fast-forwarding to today, American immigration law, despite its well-known complex and often cumbersome structure, nevertheless permits those with extraordinary talent and the kind of “skills and attainments which make admission advantageous to [U.S.] society” to qualify for a green card on the strength of their achievements through specialized gateways that fast-track their admission. These include the “aliens of extraordinary ability” classification, which in the technocratic terminology of American immigration law and policy falls within the “first-preference employment-based category.” Note the language here: the system explicitly indicates preferences and priorities among potential migrants and entrants. It reserves the highest-preference, fast-track-admission category for those with the greatest potential to make a positive contribution to society. The “second-preference” employment-based category is open to talent migrants who are merely “exceptional” (rather than “extraordinary”) in their fields, and to those who fall short of the legal standard for both extraordinary and exceptional talent, but wish to apply for a “national interest waiver” in order to escape the ponderous labor certification and employer sponsorship requirement. Yet another option open to outstanding migrants is to apply for a premium designation such as that offered by the “outstanding

²⁵The 1965 modern architecture of American immigration law and policy eventually privileged family-based migration over skilled-based and humanitarian migration, and the current legislative debate in the United States is partly about rebalancing these priorities.

²⁶Despite these commitments, the vast majority of immigrants to the United States, as a percentage of that country’s overall admission priorities, enter through family-based categories, or preferences, as they are known in American immigration law and policy. In terms of absolute numbers, however, the United States receives the biggest share of skilled migrants worldwide.

professor and researcher” category, which is reserved exclusively for academics with an internationally recognized track record of exceptional merit and excellence in their academic field.

Even this brief review of the subcategories of talent migration reveals the prevalence of selective admission in the actual design of immigration law and policy and demonstrates the careful calibration informing decisions about who is fast-tracked and when to use membership goods as a competitive tool to attract the world’s best and brightest. In the global race for talent, the ease with which a migrant can gain access to permanent residency as a stepping stone to citizenship (the green card in the U.S., the landed immigrant status in Canada, and so on) has come to serve as a measure of the perceived benefit and “value” that the skilled migrant can bring to her new society.²⁷

Those occupying the upper echelons of the talent pyramid—those the law recognizes as “extraordinary,” “exceptional,” “outstanding,” and so on—are perceived by the competing nations in the global race for talent to have a choice of destination. As *savoir-faire* professionals in high demand, they hold an enviable position: they are perceived to “know where they are wanted.” For this reason, they can vote with their feet, which increases the pressure on recruiting nations to provide them with attractive settlement packages.²⁸ At this top level, the proactive recruitment of talent across borders by competitive states comes very close to resembling corporate headhunting practices, turning once-passive immigration officials (with some help from other governmental agencies and authorized private sector actors) into enterprising recruiters of talent.

III. THE TROUBLE WITH CASH-FOR-PASSPORT PROGRAMS

A close look at the emerging citizenship-by-investment market that thrives alongside the global race for talent may help us identify other branches of the rise of Olympic citizenship (beyond skills-based migration), as we seek to unpack the ethical conundrums that follow. If we think of a country’s immigration law and policy as a porous membrane that in part reflects and discloses the qualities it values in its members-to-be, then the rise of managed and selective migration regimes tells us something important about the state of citizenship today and the direction in which we may be heading. As we have just seen, in this brave new world, an instrumental understanding of “value added” underlies the political

²⁷This can be seen as a new twist on the classic Lockean labor theory, where manual or agricultural labor is replaced with sophisticated knowledge economy equivalents, and applied to the acquisition of membership status in the state rather than of property in cultivated land.

²⁸The choice of destination for these migrants is, of course, neither unlimited nor necessarily determinative. It is likely that language, networking, family ties, and post-colonial channels of migration play a role in shaping the directionality of human mobility. See Van Parijs (2000), on the unfair distribution effects of factors such as linguistic dominance in the international “market” for the highly skilled in academia.

economy of wanted-and-welcomed migration. Priority is given to those with marketable skills and employability over those with vulnerabilities and needs. And we have deliberately bracketed until now the investor categories that crudely permit the actual “purchase” of an entry visa for a hefty price (US \$1 million for conditional green card in America, €1 million in Germany, and in the UK, a minimum investment of GBP £750,000 in British stocks and the holding of additional funds of GBP £250,000). Recent years have also seen the introduction of unfettered cash-for-passport programs, where citizenship is literally offered “for sale” to the world’s moneyed elite, creating dangerous liaisons between wealth and access to political membership. The public act of naturalization—of turning a non-member into a citizen—has always borne an air of legal magic, with the result that it is the “most densely regulated and most politicized aspect of citizenship laws.”²⁹ Everybody knows that at stake is the regulation of the most important and sensitive decision that any political community faces: how to define who belongs, or ought to belong, within its circle of members. Less well known is the fact that governments are now proactively facilitating faster and smoother access to citizenship for those who can pay.

Consider the following examples. In 2012, Portugal introduced a “golden residence permit” to attract real estate and other investments by well-to-do individuals seeking a foothold in the EU. Spain recently adopted a similar plan. In Cyprus, affluent foreign investors were offered citizenship as “compensation” for their Cypriot bank account deposit losses (the value of which was set at €3M in the aftermath of the EU bailout). Malta recently approved amendments to its Citizenship Act that put in place a new individual investor legal category that will allow high-net-worth applicants to gain a “golden passport” in return for €650,000. Government officials in Malta have made clear that applicants can expect an expedited treatment, meaning that they will not have to “stand in the queue” like everyone else. Under these cash-for-passport programs, many of the requirements that ordinarily apply to those seeking naturalisation, such as language competency, extended residency periods, or renunciation of another citizenship, are waived as part of an active competition, if not an outright bidding war, to attract the ultra rich. Portugal, for example, offers a fast-track for qualified applicants that entitles them to a 5-year permanent residence permit, visa-free travel in Schengen countries, the right to bring in their immediate family members, and ultimately the right to acquire Portuguese citizenship and with it the benefits of EU citizenship. This package comes with a hefty price tag: a capital transfer investment of €1M, a real estate property purchase at a value of €500,000, or the creation of local jobs. The investment itself must remain in Portugal for the program’s duration. However, the individual who gains the golden permit bears no similar obligation. Simply spending seven days in

²⁹Bauböck and Goodman 2010, p. 1.

Portugal during the first year and fourteen days in the subsequent years is enough to fulfil the program's requirements. Malta's program goes a step further and waives residency requirements altogether, just as it removes any other "genuine link" prerequisites. Instead, it makes the grant of citizenship conditional upon the applicant's wallet size. Once the hefty fee is paid, the paper citizen obtains a Maltese passport—and access to European citizenship—immediately. So much for the conclusion of the International Court of Justice, in the 1955 *Nottebohm* decision, that "real and effective ties" between the individual and the state must undergird the grant of citizenship.

The citizenship-by-investment programs that we have just described fall into the category of brute and unfettered cash-for-passport exchanges. No "*jus nexi*" linkage or connection between the country and passport grantee is required; only the investment monies must remain in the country, either temporarily or permanently, depending on the program.³⁰ This is to be distinguished from more traditional programs, themselves the subject of perennial critique, under which multimillionaires can receive an admission visa through a designated business-investment stream, but would then have to more or less comply with standard residency and naturalisation requirements.³¹ As mentioned earlier, such programs are found in, among other places, the United States and the United Kingdom. Both kinds of program raise serious ethical quandaries, but the unfettered cash-for-passport programs are far more extreme and blatant than the traditional investment programs. They contribute to some of the most disturbing developments in 21st-century citizenship, including the emergence of new forms of inequality and stratification. Instead of retreating to the background as some theorists had forecasted, states are proactively creating and exacerbating inequalities through their selective and managed migration policies, setting up easy-pass citizenship for some, while making membership more restrictive and difficult to achieve for others. This new world order reveals tectonic pressures and introduces urgent dilemmas about the proper scale, scope, and relations of justice and mobility, citizenship and (selective) openness. These developments also have a profound impact on immigration law and policy on the ground, since they entail processes through which the boundary between state and market is constantly tested, eroded, and blurred.

Legally, the sovereign prerogative to issue a valid and recognized passport is reserved in our international system to states alone. As mentioned earlier, governments and only governments—not markets—can secure and allocate the precious legal good of membership in the political community. But what happens when the logic of capital and markets infiltrates this classic statist expression of

³⁰For a discussion of the "*jus nexi*" principle, see Shachar 2011. Others have referred to related notions of a stakeholder society, or the importance of social membership in determining access to citizenship. See Bauböck 2005; Carens 2013.

³¹For an overview of such policies and a profile of the recipients, see: Dzankic 2012; Ley 2010.

sovereignty? The proliferation of such unfettered cash-for-passport programs is a dramatic example of this pattern at work and it invites our critical scrutiny, especially since governments that use these programs often do so in the name of advancing their country's national interest and collective pride, while paradoxically setting up dangerous connections between money and access to citizenship, possibly to the detriment of basic egalitarian and democratic thrust of political membership, as we currently know it. These developments raise major quandaries. Why are states putting citizenship up for sale? And what precisely is wrong with easy-pass naturalisation along the lines of the cash-for-passport programs? Is it the queue jumping? The attachment of a price tag to citizenship? The erosion of something foundational about political membership itself? Or, perhaps, all of the above?

Surely, zealous free-marketeers will enthusiastically defend such programs as freeing us from the shackles of culture, nation, and tradition and moving citizenship forward to a new and more competitive global age of transactional contracting in which, as Nobel Prize laureate Gary Becker once put it, a price mechanism substitutes for the complicated criteria that now determine legal entry.³² As much as Becker would like to deny it, though, these programs have something of a "whiff of scandal" not only due to frequent accusations of money laundering and fraud, but also because of something deeper and more profound. Citizenship as we know it (at least since Aristotle) is comprised of *political* relations; as such, it is expected to both reflect and generate a notion of participation, co-governance, and a degree of solidarity among those included in the body politic. It is difficult to imagine how these values could be preserved under circumstances in which insiders and outsiders are distinguished merely by the 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 is what makes cash-for-passport exchanges, even if they account for only a limited stream or quota of entrants per year, deeply problematic and objectionable. The sale and barter of citizenship, even if initially reserved only for a small stream of recipients, nevertheless sends a loud message in both law and social ethics about whom the contemporary market-friendly state gives priority to in the immigration and naturalisation line and whom it covets most as future citizens. This expressive conduct and the new grammar of market-infused valuation it entails indicates the volatile state of citizenship today, and the direction in which we may be heading.

Although economists will be quick to note that cash-for-passport programs can create a hefty stream of revenue for governments, this is hardly a strong enough justification to endorse them. The desire to enlarge their coffers may, as a matter of real-life experience, *explain* why some countries offer these programs.

³²For a classic exposition, see Becker 1992.

As a normative matter, however, such an exchange threatens to corrupt the good that is put on sale: what changes when we “sell” citizenship is not just the price tag of membership, but its substantive content as well. If political relations that are 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.³³ This is because laws do not only guide action. Markets do not only allocate goods. They also “express and promote certain attitudes toward the goods being exchanged.”³⁴ Turning the ability to pay into a condition for citizenship risks undermining the very concept of political membership. It may in turn erode the civic bonds and practices that allow a democratic society not only to survive, but to thrive. As it plays a more and more important role in the countries’ immigration and naturalisation policies and priorities, citizenship-for-sale may also gradually reshape the greater class of those who are likely to enjoy political membership. Reliance on a price mechanism alone, to the exclusion of other important considerations, would not only prevent the vast majority of the world’s population from ever gaining a chance to access citizenship in well-off polities. Taken to its logical conclusion (as *reductio*) it might also lead, corrosively and over time, to a world where *anyone* included in the pool of members must pay up, or risk “falling helplessly to the wayside.”³⁵

Several scholars have taken up the task of imagining how our world might look were the market—rather than the state—to govern access to, and the acquisition of, political membership. As one study explains, “[i]f we take the basic incidents of citizenship to be protection of members and participation in modes of governance, the market for citizenship could form around offer of and demand for these services. Indeed, the offer of broader packages of citizenship services would be the basis for product differentiation.”³⁶ “Product differentiation,” it should be noted, is a euphemism for providing lesser rights and services in exchange for lower fees.³⁷ Farewell, then, to the hard-earned ideal of equal citizenship with its emancipatory thrust of inclusion of those once excluded and disenfranchised.³⁸ In its absence, auction mechanisms and supply-and-demand rules may well replace our (however imperfect) procedures for ensuring some degree of accountability and collective decision-making on what it means to belong to a political community, how to obtain a secure legal status of citizenship, and on what conditions.

³³For a relational critique of markets, see Satz 2010.

³⁴Sandel 2012, p. 9. On the expressive function of law, see Sunstein 1996.

³⁵Spiro 2008, p. 34.

³⁶Downes and Janda 1998, p. 55.

³⁷Jordan and Düvell 2003.

³⁸That the practice of citizenship does not always meet this ideal is not in itself a valid justification to depart from it.

Even staunch defenders of the market approach to citizenship understand that theirs is a hard sell. Becker, for one, admits that “people object to the sale of permits because, as they say, ‘citizenship is not to be for sale,’” and this is a moral intuition that runs deep.³⁹ The reasons are many. As just mentioned, the transactional vision of citizenship relies on the assumption that everything can be put on sale; it leaves no room for the idea that there are moral limits to markets and that certain political relations are hollowed out when “bought and sold.” Such a move prefigures the conflation of the political and ethical with the economic and calculative. It may also undermine membership bonds grounded in co-authorship and cross-subsidisation of risk, as well as cause harm to the vision of citizenship as grounded in long-term relations of trust, participation, and shared responsibility. At present, citizenship involves making collective decisions and translating those decisions into binding commitments, in the context of a political project that is far larger than oneself, and extends well beyond the lifespan of each generation of members. Such a political project will be extremely hard to sustain under a membership regime strictly guided by strategic “wealth buys citizenship” transactions. We can reasonably predict that those with the flimsiest of ties to the community (other than a purchased real-estate asset or bank account deposit box) will likely dispense with the investment or seek to recoup it and move in search of a more secure business environment in times of need or crisis. This is not a particularly solid foundation upon which to build a country or sustain a polity. By legitimizing a transactional variant of citizenship, states risk further eroding the willingness of members who habitually contribute to the civic fibre of these societies to continue to do so vigorously when others free ride on their efforts.

From a normative perspective, turning citizenship into a money-based prize also contradicts any Walzerian-like notion of complex equality according to which advantage in one sphere (here, wealth) cannot be legitimately transferred to another (in this case, membership).⁴⁰ This makes the idea of selling membership unnerving for anyone who objects to the ultimate triumph of economics over politics, the reduction of our public life and ethics into mere pecuniary transactions, or the imperialistic idea that “trades” occupy the full terrain of human value and meaning.⁴¹

There are also complex questions about *to whom* (beyond its own citizenry) the transacting government is obliged to provide justificatory reasons concerning its cash-for-passport initiatives. In the context of supranational citizenship, as in the derivative structure of European citizenship, need it justify itself to other member states? To the Commission of the European Union? To would-be entrants who might have had a shot at admission through standard migration streams (family, employment, and humanitarian) but who are priced out of the

³⁹Becker 1992. Borna and Stearns 2002, p. 197.

⁴⁰Walzer 1983.

⁴¹Radin 1987; Sunstein 1997; Sandel 2012.

advantage given to those who can afford a “golden passport”? From a global perspective, citizenship-by-investment programs clearly exacerbate pre-existing inequalities rather than alleviate them. Should the sedentary populations of the emigrants’ countries of origin, which are typically less stable or poorer than the destination countries, get to weigh in as well? Or, if an expansive all-affected-interests principle is applied, perhaps anyone at all who may be unfairly and arbitrarily affected should have a voice in these decisions.⁴² And what about migrants who are already settled in the country, but ineligible to benefit from naturalisation schemes that require no knowledge or familiarity with the political structures, main civic institutions, history or language of the country, and who are subject instead to ever more demanding civic integration requirements? If civic integration is a required precondition of bestowing full membership (as restrictive citizenship tests increasingly indicate), how can this demand only apply to some and not to others?

After all, there is no rational connection between delivering a stack of cash or sending in a bank wire transfer and establishing the kind of participation and equal standing among fellow citizens that the political bonds of membership are meant to represent and foster. From this vantage point, the very trading in citizenship, even if carefully regulated and implemented by monopolistic governments or their authorised delegates, should be prohibited. Taken to its dystopian extreme, this approach may lead to a situation whereby the size of their wallets, and nothing else, distinguishes suitable from unsuitable candidates for initial entry and eventual citizenship. This kind of transaction, as lawyers and philosophers like to put it, is value-degrading: the trading in citizenship “taints,” “degrades,” or outright “corrupts” (in the moral sense) its value as a good.⁴³ We might, in the same vein, say that these cash-for-citizenship programs detrimentally affect the “character of the goods themselves and the norms that should govern them.”⁴⁴ As critics of commodification have been at pains to clarify in other contexts, it is not that €1M is too high or too low a price, but that placing a “for sale” tag on citizenship, no matter what amount is written on it, has a corrosive effect on non-market relations, eroding the ties that bind and altering our view of what it means to belong to a political community.⁴⁵ Just as we should be critical of granting citizenship according to nothing but the fortuitous and arbitrary circumstances of station of birth, we must resist, with even greater force, the notion that money can buy “love of country”—or secure membership in it.⁴⁶

⁴²Goodin 2007.

⁴³For a distinction between fairness and corruption arguments, see Sandel (2012, pp. 111–3). For earlier discussions of “corruption” and “contagion” in the context of a normative critique of markets, see for example Lukes (2005, 303–9). For closely related ideas, see also Satz 2010.

⁴⁴Sandel 2012, p. 113.

⁴⁵On the corrosive effect on non-market relations in other contexts, see Cohen 2003.

⁴⁶For a critique of birthright citizenship, see Shachar 2009.

Turning back to highly skilled migration programs, a similar conclusion is not warranted. We have already established that the focus of such programs is on the *human* in “human capital” (not capital per se)—the unique and irreplaceable individual in which “extraordinary,” “exceptional,” or “outstanding” talent is encapsulated.⁴⁷ Skills-based selective migration programs are distinct from money-based investor categories: the latter depend on the alienability and transferability of purely fungible funds, the former focus on the distinctive skills, talents, or abilities “encapsulated” in the recruited migrant herself who moves to the new country. The individual’s human capital, the reason for granting that *particular* immigrant access to the new political community, is non-transferable and non-alienable; it is part of the self.

It is time to take stock of the argument. While categorically opposing the notion of selling citizenship for all the reasons discussed above, we wish to clarify that strict prohibition cannot be the answer to the question of whether states may legitimately select migrants on the basis of merit-centered criteria. Competitive states may, and occasionally do, expedite the citizenship applications of medal contender athletes, acclaimed artists, and world-renowned scientists, potentially causing a stir. But so long as these provisions remain exceptional and the collective interest in doing so is transparent and sufficiently convincing, these programs cannot be said to breach any prohibited grounds. Such transactions are permissible, from a normative point of view, if the recipients are expected to establish real and genuine connections to their new home country, just like any other category of migrant seeking naturalization. The problem, we believe, lies not in the selection of *some* migrants to join our political committees based on their extraordinary talent or potential to generate reputational gains and positive externalities. The different selection criteria for admitting newcomers—family based, humanitarian, and employment-based—serve different purposes and follow distinctive logics. There is no principled reason to presuppose that any of them, standing alone, can respond to the full spectrum of human motivation for mobility. The danger lies elsewhere: in the *totalizing* impact of turning talent and human capital into the make-or-break criteria for cross-border mobility, and the consequent emergence of a more stratified perception of membership goods as “Olympic laurels” to be awarded by competitive nations only to those they covet most.

These developments, which are only now beginning to gain wider scholarly recognition, are ripe for critical exploration, especially given their connection to larger transitions in and recalibrations of the ways in which countries draw their membership boundaries in a globalizing world. The effects of “picking winners” become particularly evident when we focus on those in the top echelons of the

⁴⁷The longstanding debate about what “greatness” is, how people achieve it, is beyond the scope of this article, as is a discussion of the moral obligations owed to sending countries. On the current research evidence, see for example Kaufman (2013), which explores the legal categories of talent in the context of migration. See also Beitz 1999, 138–9.

talent pyramid, where the extent of the membership goods that talent-hungry nations are willing to barter has become a clear metric for the perceived value of the recruited migrant to the admitting nation. Echoing larger processes of stratification, the surge of selective and managed migration regimes also reflects a vision of an ideal citizen who is productive and contributory, and who has been able to maximize her talent and turn herself into a “net benefit” to her new society.⁴⁸ Those without the desired traits in the global race for talent are increasingly classified as “costs.”⁴⁹

This is the context in which we find ourselves. At the dawn of the era of Olympic citizenship, managed and selective migration regimes have spread rapidly with little democratic or deliberative input by the governed. 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.”⁵⁰ Now, that logic is infiltrating the semi-sacrosanct political realm of citizenship, a realm that we might have thought of as the last bastion of the sovereignty of *non*market norms and values. Thus, the global race for talent, with Olympic citizenship at its apex, offers us a rare window to explore the most foundational tensions and questions about the future of citizenship in a world marked by mounting pressures of competitive global markets and blatant commercialization. It tests our deepest intuitions about the meaning and content of the relationship between the individual and the political community to which she belongs. It compels us to take a hard look at how these more calculated and strategic migration priorities are becoming ever-more-aligned with market-oriented value-enhancing criteria of success, and how these new forms of valuation may turn membership bonds into far more instrumental bargains.

It is important to acknowledge, however, that Olympic citizenship is *not* adverse to membership. Rather, it offers fast-tracked, privileged access to the social and political goods of citizenship, goods which *both* states *and* immigrants clearly perceive as highly valuable. Emigrants from poorer and less stable countries regard the promise of citizenship, or the grant of a predictable path to achieve it, as a major draw.⁵¹ And we saw earlier that even the ultra rich are willing to dish out significant sums to obtain the benefits that flow from the acquisition of citizenship and a freshly-minted passport. No less puzzling is the realization that a core motivation for competitive states to engage in the global race for talent, and to do so with the zeal and fervor they have exhibited to date, is to *enhance* their national interest and position relative to their

⁴⁸For staunch critiques of these internal transformations of social citizenship and the imbalances of power in the American economic and political system, see e.g.: Sommers 2008; Hacker and Pierson 2012.

⁴⁹Jordan and Düvell 2003, pp. 91–5.

⁵⁰Sandel 2012, p. 6; Stiglitz 2003.

⁵¹This assertion is based on naturalization data collected in Canada and the United States.

counterparts. There is therefore a great paradox at work: government officials are willing to expedite citizenship for certain migrants in order to enhance the collective pride, international reputation, and competitive standing of the political community—but that community is tied together by the very membership bonds that Olympic citizenship may unwittingly erode.

This is a delicate and complex (and perhaps unrealistic) equilibrium that recruiting nations are trying to achieve. Such government-initiated “flexibilization” and “mercantilization” of the concept of political membership may advance the short-term interests of states and may indeed grant them a competitive advantage. In the long term, however, it may erode something deeper—citizenship itself—by reshaping the defining characteristics required to establish a *political* (here understood as deontological and not merely functional or utilitarian) bond between the individual and her political community. This is what makes the study of Olympic citizenship so urgent and captivating. It is high time to explore the core ethical and distributive ramifications that it portends.

IV. CONCLUSION

As we have seen, human capital is the new mobility currency. For the millionaire migrant, it is the commensurability of money and its stealth impact in realms of public life once thought to be sheltered from direct commodification that have opened up new pathways to literally purchase citizenship. The emphasis on skills and talent is certainly preferable to using the size of applicants’ wallets to determine who to bring in and who to keep out. Still, human capital—especially the refined and rarefied kind of talent that recruiting nations seek—is not possessed equally by all. Indeed, it is a perception of scarcity—of exuberant demand and systemic under-supply—that is fuelling the flames of the global race for talent.

Importantly, Olympic citizenship and the various admission categories that flow from it are officially and unapologetically blind to color, race, gender, and national origin. This is no minor point given the long and troubling history of discrimination and exclusion in citizenship and immigration worldwide. Although formally open to anyone, anywhere, so long as they exhibit the requisite “extraordinary,” “exceptional,” or “outstanding” talent to unlock the golden gates of admission, this emerging political economy of mobility and membership is anything but stratification-free. In Olympic citizenship we thus find a unique blurring of state and market influences, of allegiance and interest, and, perhaps most puzzling of all, of national pride and neoclassical economic principles that treat human capital as a factor of production able to generate tangible and reputational gains for the recruiting nation relative to its competitors, with traceable impact on the global stage.

Curiously resembling the space race before it, Olympic citizenship—today’s fast-paced race to recruit the world’s most creative and brightest

minds—represents the frontier of a new era: the upsurge of a more calculated approach to citizenship grounded in a desire to be great and to make a lasting mark: a desire as old as recorded human history. Today, greatness is no longer measured only by the size of a nation's armed forces, the height of its pyramids, the luxury of its palaces, or even the wealth of its natural resources. Governments in high-income countries and emerging economies have come to subscribe to the view that in order to secure a position in the pantheon of excellence, something else is required: it is the ability to draw human capital, to become an "IQ magnet," that counts.

This desire for greatness, in the context of the global race for talent, privileges those who have perfected and honed their skills. It does not reward raw talent per se (which is morally arbitrary), but instead captures elements of "cultivation" of such talent in a social context that rewards determination, hard work, and adaptability: traits that some countries' highly-skilled point-system selection matrix explicitly values.⁵² This model does not stand in tension with perfectionist conceptions of citizenship, but it may pose serious moral hazards to liberal-democratic and egalitarian notions which at least formally assign membership to individuals *irrespective* of how innovative, talented, or accomplished they are (although the latter suffer from the other ills, such as scrambling to legitimately justify bounded membership in the first place, or to provide persuasive reasons for blindly perpetuating birthright privilege in the automatic assignment of citizenship according to nothing but station of birth).⁵³

Set as they are against the backdrop of a growing public sentiment against multiculturalism and immigration, the investment-based and merit-based admission categories and fine-grained selective migration regimes that we have discussed in the previous sections are unlikely to go away any time soon. It is precisely the reliance on the language of efficiency, voluntary exchange, and innovation that allows talent or investment to seem neutral and unobjectionable as criteria for selection. For this reason, the study of Olympic citizenship can help us identify and critically evaluate some of the most foundational and pressing challenges to membership and mobility that are taking place in the world around us, but that our established approaches have failed to adequately register.

The ideal of equal citizenship has been inflicted with many wounds over the past decades, especially as the rollback of the welfare state has picked up over the past decades. It has always been more of an aspiration than a reality. However,

⁵²To establish the level of "talent" required by recruiting nations' point system selection matrix and other specialized immigration categories, an applicant must demonstrate the kind of qualifications (specialized training, education, and the like) and accomplishments for which an individual is arguably responsible and in this sense are not a matter of "thin luck" or "brute luck" (Hurley 2003; Dworkin 1981; Cohen 1989), but closer to "option luck" and what economists would define as the investments that lead to increased human capital.

⁵³For further discussion, see: Shachar and Hirschl 2007; Shachar 2009.

the danger of increasingly frequent links between wealth and privileged access to political membership threatens not only the implementation of the ideal, but the ideal itself.

REFERENCES

- Andreas, Peter and Timothy Snyder, eds. 2000. *The Wall Around the West: State Borders and Immigration Controls in Europe and North America*. 2nd edn. London: Rowman and Littlefield.
- Australia, Department of Immigration and Citizenship. 2013. *Australia's Migration Trends, 2011–2012*. Available at <www.immi.gov.au>.
- Australia, Joint Standing Committee on Migration. 2011. *Inquiry into Multiculturalism in Australia*. DIAC: Submission no. 150.
- Bauböck, Rainer. 2005. Expansive citizenship: voting beyond territory and membership. *Political Science and Politics*, 38, 683–7.
- Bauböck, Rainer and Sara Wallace Goodman. 2010. *Naturalisation*. Florence: European University Institute Robert Schuman Centre for Advanced Study. EUDO Citizenship Policy Brief No. 2.
- Becker, Gary. 1992. An open door for immigrants—the auction. *Wall Street Journal*, Oct. 14, 1992, A1.
- Beitz, Charles R. 1999. *Political Theory and International Relations*. Rev. edn. Princeton: Princeton University Press; originally published 1979.
- Benhabib, Seyla. 2004. *The Rights of Others: Aliens, Residents and Citizens*. Cambridge: Cambridge University Press.
- Betts, Alexander. 2013. *Survival Migration: Failed Governance and the Crisis of Displacement*. Ithaca: Cornell University Press.
- Borna, Shaheen and James M. Stearns. 2002. The ethics and efficacy of selling national citizenship. *Journal of Business Ethics*, 37, 193–207.
- Canada, Citizenship and Immigration Canada. 2012. *Canada Facts and Figures 2012: Immigration Overview, Permanent and Temporary Residents*. Available at <www.cic.gc.ca>.
- Carens, Joseph H. 2013. *The Ethics of Migration*. Oxford: Oxford University Press.
- Cohen, G. A. 1989. The currency of egalitarian justice. *Ethics*, 99, 906–44.
- Cohen, I. Glenn. 2003. The price of everything, the value of nothing: reframing the commodification debate. *Harvard Law Review*, 117, 689–710.
- Downes, Daniel M. and Richard Janda. 1998. Virtual citizenship. *Canadian Journal of Law and Society*, 13, 27–61.
- Dworkin, Ronald. 1981. What is equality? Part two: equality of resources. *Philosophy and Public Affairs*, 10, 285–345.
- Dzankic, Jelena. 2012. The pros and cons of *ius pecuniae*: investor citizenship in comparative perspective. *EUI Working Papers*, RSCAS 2012/14. Florence: European University Institute.
- Florida, Richard and Irene Tingali. 2004. *Europe in the Creative Age*. London: Demos.
- Fraser, Nancy. 1997. *Justice Interruptus*. London: Routledge.
- Fraser, Nancy and Axel Honneth. 2003. *Redistribution or Recognition?* London: Verso.
- Gammeltoft-Hansen, Thomas and Ninna Nyberg Sørensen, eds. 2013. *The Migration Industry and the Commercialization of International Migration*. London: Routledge.
- Goodin, Robert E. 2007. Enfranchising all affected interests, and its alternatives. *Philosophy and Public Affairs*, 35, 40–68.
- Goodman, Sara Wallace. 2012. Fortifying citizenship: policy strategies for civic integration in Western Europe. *World Politics*, 64, 659–98.
- Guiraudon, Virginie and Gallya Lahav. 2000. A reappraisal of the state sovereignty debate: the case of migration control. *Comparative Political Studies*, 33, 163–95.

- Hacker, Jacob S. and Paul Pierson. 2012. *Winner-Take-All Politics*. New York: Simon & Schuster.
- Held, David; Anthony G. McGrew; David Goldblatt; and Jonathan Perraton. 1999. *Global Transformations*. Stanford, CA: Stanford University Press.
- Hurley, Susan. 2003. *Justice, Luck, and Knowledge*. Cambridge, MA: Harvard University Press.
- Kaufman, Scott Barry, ed. 2013. *The Complexity of Greatness: Beyond Talent or Practice*. Oxford: Oxford University Press.
- Joppke, Christian. 2007. Beyond national models: civic integration policies for immigrants in Western Europe. *West European Politics*, 30, 1–22.
- Jordan, Bill and Franck Düvell. 2003. *Migration: The Boundaries of Equality and Justice*. Cambridge: Polity.
- Ley, David. 2010. *Millionaire Migrants: Trans-Pacific Life Lines*. Wiley-Blackwell.
- Lukes, Steven. 2005. Invasions of the market. Pp. 298–321 in Max Miller (ed.), *Worlds of Capitalism*. London: Routledge.
- Menz, Georg. 2008. *The Political Economy of Managed Migration: Nonstate Actors, Europeanization, and the Politics of Designing Migration Policies*. Oxford: Oxford University Press.
- Miller, David. 2007. *National Responsibility and Global Justice*. Oxford: Oxford University Press.
- Offe, Claus. 2011. From migration in geographic space to migration in biographic time: views from Europe. *Journal of Political Philosophy*, 19, 333–73.
- Ong, Aihwa. 1999. *Flexible Citizenship: The Cultural Logic of Transnationality*. Durham: Duke University Press.
- Orgad, Liav. 2010. Illiberal liberalism: cultural restrictions on migration and access to citizenship in Europe. *American Journal of Comparative Law*, 58, 53–105.
- Putnam, Robert D. 1988. Diplomacy and domestic policy: the logic of two-level games. *International Organization*, 42, 427–60.
- Radin, Margaret J. 1987. Market-inalienability. *Harvard Law Review*, 100, 1849–937.
- Sandel, Michael J. 2012. *What Money Can't Buy: The Moral Limits of Markets*. New York: Farrar, Straus and Girous.
- Sassen, Saskia. 1996. *Losing Control? Sovereignty in an Age of Globalization*. New York: Columbia University Press.
- Satz, Debra. 2010. *Why Some Things Should Not be for Sale: The Moral Limits of Markets*. Oxford: Oxford University Press.
- Shachar, Ayelet. 2006. The race for talent: highly skilled migrants and competitive immigration regimes. *NYU Law Review*, 81, 148–206.
- Shachar, Ayelet. 2009. *The Birthright Lottery: Citizenship and Global Inequality*. Cambridge, MA: Harvard University Press.
- Shachar, Ayelet. 2011. Earned citizenship: property lessons for immigration reform. *Yale Journal of Law & the Humanities*, 23, 110–58.
- Shachar, Ayelet and Ran Hirschl. 2007. Citizenship as inherited property. *Political Theory*, 35, 253–87.
- Shamir, Ronen. 2005. Without borders? Notes on globalization as a mobility regime. *Sociological Theory*, 23, 197–217.
- Simmons, Beth A. and Zachary Elkins. 2004. The globalization of liberalization: policy diffusion in the international political economy. *American Political Science Review*, 98, 171–89.
- Sommers, Margaret R. 2008. *Genealogies of Citizenship: Markets, Statelessness, and the Rights to Have Rights*. Cambridge: Cambridge University Press.
- Spiro, Peter J. 2008. *Beyond Citizenship*. Oxford: Oxford University Press.
- Stiglitz, Joseph E. 2003. *Globalization and Its Discontents*. New York: Norton.
- Sunstein, Cass R. 1996. On the expressive function of law. *University of Pennsylvania Law Review*, 144, 2021–53.

- Sunstein, Cass R. 1997. Incommensurability and kinds of valuation: some applications in law. Pp. 234–54 in Ruth Chang (ed.), *Incommensurability, Incomparability, and Practical Reason*. Cambridge, MA: Harvard University Press.
- Triadafilopoulos, Triadafilos, ed. 2013. *Wanted and Welcome? Policies for Highly Skilled Immigrants in Comparative Perspective*. New York: Springer.
- Van Parijs, Philippe. 2000. The ground floor of the world: on the socio-economic consequences of linguistic globalization. *International Political Science Review*, 21, 217–33.
- Walzer, Michael. 1983. *Spheres of Justice*. New York: Basic Books.
- Wellman, Christopher Heath and Philip Cole. 2011. *Debating the Ethics of Immigration: Is There a Right to Exclude?* Oxford: Oxford University Press.