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The instrumental turn of citizenship

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ABSTRACT

Instrumentalism, I argued earlier [Joppke, Christian. 2010a. "The Inevitable Lightening of Citizenship." *European Journal of Sociology* 51 (1): 9–32.], is the heart of an 'inevitable lightening' of citizenship in liberal societies. This theme is further developed here, in two directions. Normatively, I argue that the Roman tradition of legal citizenship provides a better foil for understanding current citizenship developments than Greek political citizenship, which is predominant in political theory. Empirically, three cases of instrumentalism are highlighted: the selling of citizenship, expanding provisions of external citizenship, and the rapidly evolving European Union citizenship as a citizenship without identity. While states have always been strategists in matters of citizenship, particularly in inter-state relations, the novelty is to see individuals also in this role, seizing possibilities that states have often inadvertently created for them.

KEYWORDS

Citizenship; immigration; liberalism; nationalism; individualism; Europe

Citizenship is not usually understood as 'an instrumental resource in the hands of individuals', as the editors describe the common theme of this special issue (Harpaz and Mateos 2019). Instead, at the level of the individual, citizenship connotes interest-transcending loyalty and exclusive affiliation with a state. As the American nineteenth-century diplomat George Bancroft famously said, it is as impermissible for a man to belong to two states as to have two wives. The source of this exclusivity is nationalism. A classic analysis sees citizenship conditioned by ideas of nationhood that are beyond the reach of mundane interest (Brubaker 1992). As Brubaker argued earlier (1989, 4), to be considered 'sacred' is one of the core features of citizenship, according to which 'profane attitudes toward membership, involving calculations of personal advantage, are profoundly inappropriate'. He immediately qualifies this view as vestigial, because a 'desacralization of membership' has become inevitable in the current condition of welfare bureaucracy, obsolete citizen armies, and recurrent immigration.

This is a most unlikely development, at least from a Durkheimian perspective, for which the sacred-profane distinction is a universal of human society, ancient, and modern. For Durkheim, 'sacred things', as against the merely 'profane', are 'things set apart and forbidden' ([1912] 1960, 65). Originally, the sacred was identical with the realm of the religious. However, as the true function of the sacred is to provide unity and solidarity to a group or society, it had to survive the decline of religion in a secular

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age, lest one gives up on the idea of integration. For Durkheim, the integrity of society, even today, rests on its setting some things apart as sacred. While previously the sacred was filled in by God or Totem, in a post-religious age it happens to be 'fatherland, freedom, reason' ([1912] 1960, 306), or – as he argued in a famous essay – 'individualism' and the 'Rights of Man', which he memorably dubbed 'our moral catechism' ([1898] 1973, 45). While not without tension, one might consider 'fatherland' and 'individual' as two sides of the same coin, namely, of national citizenship. Citizenship indeed has always played a special role in states' promotion of unity and solidarity, from its inception in the late eighteenth-century democratic revolutions to contemporary campaigns of reasserting 'Britishness', 'Frenchness', 'Dutchness', etc. (for the contemporary scene, see Orgad 2015).

Considering Durkheim's (and the Durkheimians') stress on collective ritual (see Lukes 1975) and the need for a sacralised centre of society (Shils 1972), his identification of the 'human person' as the core of the integrative 'religion of today' is profoundly paradoxical. Because the logical consequence of putting the individual first is to relativise the group, and thus to generate the instrumentalism that is incommensurate with the nationalist shell of citizenship. The 'religion of humanity' (Durkheim [1898] 1973) is a contradiction in terms because to prioritise the individual and her interests, which is indeed the core of the liberal order, destroys the very possibility of keeping some things 'apart and forbidden', which requires the persistence of taboo and piety. On the one hand, the point of departure of this new 'religion', which Durkheim appositely grounds in Christian ethics, is the notion that 'communal life is impossible without the existence of interests superior to those of the individual' (44); on the other hand, the consequence of considering the 'human person … sacred, in the ritual sense of the word' is to place 'the rights of the individual … above … the state' (Durkheim [1898] 1973, 46). One cannot have it both ways. Eventually, the forces of individualism must bust collective pieties. This, I argue, is the direction that citizenship is taking today.

The collectivism v. individualism dilemma is readily visible in today's tug of war between de- and re-nationalization forces, the former pushing (and being pushed by) the individualism that is at the heart of citizenship, the latter seeking to reinvigorate citizenship's integrative, group- and society-making powers. While the tension between collectivism and individualism is inherent in the nature of citizenship, it is greatly heightened in the contemporary constellation. This is one of globalization and human rights discourse that has significantly advanced since Durkheim's days, in particular since the 1970s (see Moyn 2010), and which makes it ever more difficult to legitimise the nationalist shell of citizenship. For this development stands the vastly expanded scope of non-citizen rights, especially of legal permanent residents, whose status has come to approximate that of citizens on most dimensions, especially civil and social (though not political) rights (see Soysal 1994; Spiro 2008). The de-nationalization of citizenship, in terms of eased access to citizenship, less exclusive rights attached to this status, and thinning identities, has been the master trend in the late twentieth century, especially in Western Europe (see Joppke 2010b).

However, with the caesura of post-2001 Islamist terror and concerns about failing immigrant integration, in particular of Muslims, there has been a counter-trend of attempted re-nationalization, with newly imposed citizenship tests, ceremonies, and civic integration requirements, which seek to reinject value and exclusivity to a deflated

citizenship (see Goodman 2014; Orgad 2015). At the same time, in Western Europe, where this trend has been most pronounced, the re-nationalization of citizenship has also been a futile enterprise, because it is counteracted, even neutralised by the de-nationalizing, mobility-enhancing powers of European Union (EU) citizenship and EU law at large (more on this below).

In this paper, I make a case for instrumental citizenship on both normative and empirical grounds. In the normative part, I embed it within a Roman model of legal citizenship, which provides a better foil than the dominant Greek political model for understanding current citizenship developments (I); as I argue in a second step, 'thin' Roman citizenship has been neglected in political theory, but elements for it can be found in Oakeshott's concept of civil association and Kelsen's concept of the state as coercive legal order (II). In the empirical part, I outline three contemporary forms of instrumental citizenship, in a Roman spirit that does not immediately denounce instrumentalism as deviation from an idealised Greek model of citizenship. The first is the singularly most blatant instance of instrumentalism, the selling and buying of citizenship, so-called citizenship by investment (III). In particular, I argue that the 'Greek' objections to this form of citizenship are either exaggerated or implausible to begin with. The second form of instrumentalism is based on external citizenship, which is the citizenship of people who do not reside in the citizenship-providing state, and which is often acquired as a second citizenship in less secure and wealthy regions of the world, functioning as insurance policy against things going wrong in the country of residence (IV). Thirdly, European Union citizenship has instrumentalism, in terms of free mobility rights, written on its forehead, and it is also a major spoiler of re-nationalised citizenship at member-state level (V). In conclusion, I point at the common core of the three forms of instrumental citizenship, which is the advancing of legal individualism in liberal societies (VI).

I. Roman v. Greek

Instrumental citizenship tends to be contrasted with a previously sacred and nationalist citizenship, from which it is seen as a deplorable deviation. But this exaggerates the empirical prevalence, not to mention the normative force, of the status quo ante. The Republican tradition of political theory has always eulogised sacred and nationalist citizenship, taking political participation for the sake of the public good to be the quintessential citizenship act. But since classical times, the Greek model of citizenship, canonised in Aristotle's definition of the citizen as 'one who both rules and is ruled' (Pocock 1995, 30), has been rivalled by a Roman model of rights-based and interest-focused citizenship. According to the Roman model, a citizen is a legal not political being, a 'possessor of things' with 'rights' to protect her sphere of personal freedom from encroachment by others or the state (35). As Samuel Finer described the import of the Roman model, 'the principle of being able to sue the authorities … represents the greatest, most durable, and far-reaching of all the Roman contributions to the history of government' (1997, 604). By contrast, the quintessentially Greek invention was that of the status of citizen to imply 'the right to participate in the goods and/or processes of the state' (317).

The different thrusts of both citizenships should not let us forget that both models belong to an ancient civilization in which families, not individuals, were the constitutive unit of society (Siedentop 2014, ch.1) – the society of individuals was yet to come,

mainly as a result of Latin Christianity. Accordingly, the absolute power of the paterfamilias over slaves, women, and children was as much a Greek as a Roman reality. The difference, however, is the sealing between both spheres in ancient Athens, and their greater permeability in Rome. In Athens, the concerns of the *oikos* were categorically shut out of the *polis* as the true citizen domain, where 'no trivial question but how a man should live' mattered (Pocock 1995, 45). But this is organised hypocrisy. Greek citizenship was not only no device to emancipate women or slaves; it was premised on and perpetuated their exclusion, in considering the merely private concerns of the *oikos* as below its dignity. Roman citizenship, with its focus on rights and personal immunities, at least in principle, does not brush aside the concerns of the *oikos*, providing a language for redressing its inequities. In this respect, Roman citizenship foreshadows modern liberalism and its inclusive dynamics. Greek citizenship *presupposed* and thus could not further equality, that of male native property holders, and it jealously guarded its exclusivity. By contrast, Roman citizenship was hierarchical, while showing a hierarchy-busting, inclusive dynamic. From the start, Roman citizenship comprised unequal groups, plebeians, and privileged patricians, and it was readily extended to foreigners and freed slaves via naturalization – something the Greek did only 'on occasion' (Lape 2010, 243) and on the condition of proved 'manly virtue' (*andragathia*) (248). As Pocock projects the Roman possibilities, 'the Gaian, juristic and liberal ideal of citizenship … enables us to … empower all manner of social beings to claim rights and legal citizenship, irrespective of gender, class, race, and perhaps even humanity' (1995, 45).

Athenian citizenship was ultra-exclusive, since its first legal codification under Pericles requiring descent not just from an Athenian father but mother also, which makes it a precursor of 'racialised citizenship' (FitzGerald 2017). By contrast, the Romans bestowed citizenship on their conquered peoples, naturally without any pretension to make them join in the business of rule. The readiness to integrate foreigners, which notably included the possibility of 'honorary citizenship to individuals in return for services rendered' (Sherman-White 1973, 245),[1] opened up a very contemporary-sounding dialectic of enforced 'Romanization', with a concern that newcomers adopt 'Latin culture', and contrary charges of devalued or cheapened citizenship – 'citizenship is not worth much nowadays', already Tacitus complained (258). Romanization implies that the Roman people had never been 'racially one', and it did not stand in the way of pioneering the likewise contemporary-sounding 'idea of incorporation without extinction of local particularities' (8).

When Shachar and Hirschl (2014) oppose some of today's more blatantly instrumental forms of citizenship, such as fast-track naturalization for Olympic talent, their fear is that this undermines 'participation, co-governance, and a degree of solidarity' (247). As Shachar put it more recently, cash-for-passports 'poisons the political ideal of a common enterprise committed to promoting equality, rights, and collective decision-making through processes of deliberation and participation' (2017, 811). The benchmark of these critiques is obviously Greek citizenship. But when the point of departure is the Roman model, there is much less to fear. Political theory's fixation on the Greek, political model rather than the Roman, legal model is puzzling. This is because liberalism's classic formulations, from Benjamin Constant to Isaiah Berlin, have considered 'individual liberty' the 'true modern liberty' (Constant 1816), contrasting it with the collectivistic 'liberty of the ancients', defined by Constant as 'active and constant participation in

collective power'. This is precisely the aspect of citizenship receding with the rise of instrumentalism.

II. Theorizing 'thin' citizenship

Fixed on the more ambitious political model of participatory citizenship, political theory has neglected the legal model of 'thin' citizenship. A good if perhaps surprising point of entry for theorizing thin citizenship is Oakeshott's concept of civil association (1975). Better known as philosophical defender of conservativism, Oakeshott's more implicit than explicit citizenship theory really proves him to be in the liberal tradition. He distinguishes between two forms of human association, 'enterprise association' and 'civil association'. In an enterprise association, concrete goals for the satisfaction of needs are pursued by people who are united by the same beliefs and proclivities. A civil association, by contrast, is not substantive but formal; it is 'association in respect of a common language and not in respect to having the same beliefs, purposes, interests' (121). Like the language in which we are brought up, we do not choose the civil association, it is coercive. The civil association is meta-association, which is presupposed for the substantive enterprises that people engage in by their own choice: '(I)t is not concerned with the satisfaction of wants and with substantive outcomes but with the terms upon which the satisfaction of wants may be sought' (174). Its laws lay out 'conditions of conduct', instead of being instruments for satisfying needs or achieving goals. Importantly, the *res publica* that assembles people in the civil condition 'does not define or even describe a common … good' (147) – otherwise people could not be free to define and pursue their own goods. In other words, Greek 'virtue politics' (Balot 2017), which strives for the substantive goal of 'happiness' and human perfection, is not the point of civil association. Moreover, the *cives* are united not by affection, choice, or need satisfaction but by 'a practice or language of intercourse' (Oakeshott 1975, 182). The civil association, in removing people from their primordial relations of family or tribe, by definition associates strangers. This naturally limits its emotional and identificatory reach. If citizenship is a space in which 'strangers can become associates', as Ulrich Preuss memorably phrased it (1995, 275), there is a sober core to citizenship that tempers nationalist hubris.

If one applies the distinction between civil association and enterprise association to the history of the modern state, the latter appears as uneasy, tension-riddled combination of both. On the one side, the state is *societas*, that is, a civil association combining strangers who, colloquially speaking, have other fish to fry than working for the common good. But the state is also *universitas*, Oakeshott's odd Latinism for the state as enterprise association, 'a partnership of persons which is itself a person' (Oakeshott 1975, 203). While in principle both 'deny one another', *societas* and *universitas* have been 'contingently joined', as 'sweet enemies', in the making of the modern European state (Oakeshott 1975, 323 and 326). It is still important to keep both elements apart. Qua *societas*, the state is 'association in terms of legal relationships' (212), the purpose of rule being 'to keep the conversation going, not to determine what is said' (203). In this sense, the state is *nomocracy*, its laws understood as 'conditions of conduct, not devices instrumental to the satisfaction of preferred wants' (Oakeshott 1975). The early European state, this is Oakeshott's provocative proposition, was *societas*, assembling adventurous people with a mindset of 'individuality' (239), who were 'strangers to one another, separated in respect of

language, moral imagination, customs, aspirations, and conditions of living' (233). This state was *civitas peregrina*, 'an association, not of pilgrims travelling to a common destination, but of adventurers each responding as best he can to the ordeal of consciousness in a world composed of others of his kind' (243).

However, the Christian Church, whose formative influence on the early European state is the subject of a famous work of legal history (Berman 1983), provided a counter-model of the state as goal-driven enterprise, *teleocracy*.[2] An early example is sixteenth-century Geneva under Jean Calvin. There were, in fact, two sources for conceiving of the state as *universitas*: on the one side, the religious, soul-making imprint derived from church influence; on the other side, the relic of medieval 'lordship', in which the person of the ruler and his goal-driven (especially military) ambition stood above the law. In a daring leap of imagination, Oakeshott derives from the legacy of lordship a modern understanding of the state as economy, an institution to further 'progress' or, in Francis Bacon's words, 'to make nature yield what it has never yet yielded' (Oakeshott 1975, 290).[3] Naturally, the quintessential activity of the early European state, which is war-making, pushed for an understanding of the state as goal-driven enterprise, as did the experience of colonialism and the character of some of its low-rank subjects, which Oakeshott characterised, with aristocratic contempt, as 'individual manqué': the poor, displaced labourers, and dispossessed believers. The state as *universitas* is the classic nation-building state, with compulsory public schooling, a citizen army, and, in the twentieth century, the provision of welfare. However, Oakeshott's ultimately liberal message is that from the point of view of the state as *societas*, the nation-state is a distortion, violating the nature of civic association: 'There can be an unregulated variety of self-chosen purposive associations only where a state is not itself a purposive association' (316).

From a liberal point of view, there are some oddities to Oakeshott's understanding of civil association. As it is a legal, not political relationship, it is indifferent to the form of government, and thus might well go together with aristocracy or monarchy; and its rules do not require 'approval' but merely 'recognition' (1975, 255). Here, one recognises the conservative streak in Oakeshott's thinking. Yet, in this way he also catches the Hobbesian nature of the state as coercive order, which is prior to its political form, and which liberals have always had a hard time understanding. And, now on unmistakably liberal terrain, the important point is to stress the non-purposive character of civil association, without which there could not be the space for individuals' own purposive enterprises:

> (A)ssociates are free precisely because they are not joined in the pursuit of any common purpose but only in respect of their common acknowledgment of the authority of a system of law which does not and cannot specify substantive conduct and which does not require approval of the conditions it prescribes. (251)

Oakeshott's important message is that citizenship is membership in a purpose-free 'civil association', a coercive meta-association, which leaves people free to pursue substantive goals in their chosen enterprises and affiliations. Citizenship by nature is thin citizenship. It unites people not in shared beliefs and purposes but in a common legal framework that is the presupposition for people to associate, or abstain from association, at their own discretion.

If one reduces the state to its Hobbesian essence of coercive legal order, one likewise arrives at a minimal conception of citizenship. In this respect, already an early

twentieth-century observer noted a trend to 'make residence rather than citizenship the essential and sufficient title of state membership' (Salmond 1901, 271). For Hans Kelsen, the law is but a specific 'social technique' to bring about order, which is by way of coercion. Compare law, morality, and religion: they all forbid murder. But only law does it by way of coercion. In the coercive order that is law, '(f)orce is employed to prevent the employment of force' (Kelsen 1949, 21). But this is what a state does, and what *only* a state does. The state is identical with legal qua coercive order, it has no existence apart from the law (unlike 'individuals', as Kelsen adds, who can be thought apart and separate from the 'state'): 'The State is that order of human behavior that we call the legal order. There is no sociological concept of the State besides the juristic concept' (188). Importantly, the existence of a state is 'dependent upon the existence of individuals that are subject to its legal order, but not upon the existence of "citizens"' (241).

Kelsen's minimalistic theory of the state has an affinity with the Roman concept of citizenship, which is likewise a legal relationship that blurs the distinction between citizen and subject (Pocock 1995, 40). Consequently, Kelsen devotes only a few, sardonic pages to citizenship, which he deems 'a legal institution lacking import', relevant more for 'the relations between the States than within a State' (1949, 241).[4] Furthermore, Kelsen takes 'allegiance', that quintessential citizen disposition, which is often deemed impaired by the forms of instrumentalism to be discussed shortly, as merely 'moral and political' phenomenon, devoid of any 'legal significance': 'There is no special legal obligation covered by the term allegiance. Legally, allegiance means no more than the general obligation of obeying the legal order, an obligation that aliens also have' (235). As allegiance and military service are the two principal citizen duties identified by Kelsen (234–235), they amount to little, if anything, particularly in an age of professional armies. Taking the EU citizenship as a citizenship of our time, Kochenov (2014a) appositely speaks of citizenship's 'liberal de-dutification' (see below).

III. Citizenship by investment

The most blatant case of instrumental citizenship is 'citizenship by investment' (which includes the buying of citizenship through a donation). Something akin to it has been long known in the context of immigration law, in terms of investor visas. The novelty is to apply this logic to citizenship law, whereby the normal residence requirement for naturalization is lifted. One might well interpret the fact of investment as equivalent to the anchoring of the individual in 'her' new state, which usually is measured in the form of residence time. However, one cannot deny that the bracketing of a residence requirement deviates from the liberal notion that time and territorial affiliation creates the 'social membership' that, in turn, generates a claim to citizenship (Carens 2013, ch.8). Temporality counts, as Tanasoka (2015) stresses in an interesting analogy of citizenship-by-investment with the early modern practice of selling nobility titles: 'Just as one's longstanding commitments and services to the Crown made one worthy of nobility, so do one's longstanding commitments and relationship to a community make him worthy of citizenship' (96). From the importance of time she derives the illegitimacy of selling both nobility and citizenship. On the other hand, the same objection could be mounted against citizenship by birthright: 'Birth alone does not create relationships' (49).

Citizenship by investment is blanket instrumentalism on both sides: on the part of states which hand it out for pecuniary reasons, and on the part of individuals, whose eyes are mainly on the visa-free mobility that a 'good' passport provides. The market for the latter has greatly increased through the globalization-induced appearance of emergent countries, like China and India, with skyrocketing numbers of ultra-rich people in these countries whose passports, however, do greatly restrict mobility. China, the single-biggest provider of citizenship purchasers, had 2,400,000 millionaire households in 2013, up from 1,500,000 just the year before; but its passport provides visa-free entry to only 44 countries. Compare that, say, to citizens of Malta (an EU country), who can travel visa-free to no less than 166 countries (Sumption and Hooper 2014, 18 and 5, respectively). Hence the spectacular rise of the passport-selling industry.

Sandel (2012) argued compellingly that there are 'moral limits of markets' and that not all goods should be commodified. The question is whether citizenship, which is not discussed by him, is one of them. The range of goods that already *are* on sale is astounding, from prison-cell upgrades to renting-out your forehead for a travel ad or 'ticket scalping' (standing-in-line for a fee), the latter apparently a minor growth industry in some U.S. metropoles like New York. Sandel distinguishes between goods that money cannot buy (like friendship, love, or academic prizes), and goods that *can* be bought but should not be bought (like your liver or children) – though the line between both may be thin. With respect to goods that can but should not be bought, which would have to be the model for citizenship, Sandel raises two objections: a fairness objection, in that poor people may be indirectly coerced into selling things they would otherwise not sell (like parts of their body); and a corruption/corrosion objection, in that these goods would be 'corrupted', or the attitudes procuring them 'corroded', by being sold.

Critics have objected to the commodification of citizenship in both terms. Rainer Bauböck argued that the coincidence of easing the access to citizenship for the rich and of raising its hurdles for the poor, in terms of recent civic integration requirements (such as citizenship tests), 'link(s) access to citizenship once again to social class' (2014a, 20). It *is* odd to impose civic integration just when citizenship-for-cash absolves of any integration requirement, including even residence. Austria, for instance, is a (albeit rare) case of having both schemes, civic integration and citizenship-for-cash, so it is vulnerable to Bauböck's charge. However, it is not true that civic integration, at least at the point of citizenship acquisition, *only* affects the 'poor'; naturalization is something that *all* strata tend to make use of, not only the poor. Citizenship-by-investment is merely an exception for the (very) rich, and it is *addition to* the usual ways of acceding to citizenship that are the same for all, irrespective of class; it does not compromise the chances of the non-rich (or of those unwilling to use the investment option) to accede to citizenship. Sandel's inequality argument concerned a direct disadvantage to vulnerable individuals through indirectly forcing them to sell a questionable (non-economic) good. But a parallel cannot be found in the case of citizenship, where apart from the state, there is no 'secondary market' for citizenship (see Surak 2016, 13); thus the 'poor', under the whip of necessity, cannot be forced to sell 'their' citizenship to the 'rich'.

Facially more plausible is the corruption or corrosion charge, which concerns the 'attitudes and norms that market relations may damage or dissolve' (Sandel 2012, 110). One should hold no illusion about the danger of 'market fundamentalism' to the moral fabric of society (see Block and Somers 2014). The question is how large citizenship-on-sale looms

in it. Shachar and Hirschl argue that '(t)urning the ability to pay into a condition for citizenship risks undermining the very concept of political membership', and they deem the 'logical conclusion' to be 'a world where anyone included in the pool of members must pay up' (2014, 248). According to their corruption/corrosion charge, the sale of citizenship would 'cause harm to the vision of citizenship as grounded in long-term relations of trust, participation, and shared responsibility' (249). In particular, it would 'risk further eroding the willingness of members who habitually contribute to the civic fibre of these societies', by seeing others 'free-ride' on their efforts.

However, no evidence is provided for the stated psychodynamics. First, one might consider a significant financial investment or cash payment to the government as indirect contribution to the 'civic fibre' of society, in generating jobs and income that most often are the presupposition for civic engagement.[5] More importantly, the citizenship-by-investment schemes that currently exist in Europe represent a tiny fraction, under 0.01% of all citizenship acquisitions (Kälin 2015, 213). These schemes and their beneficiaries are practically 'invisible to the existing citizenry' (Spiro 2014, 10). This is also because 'nearly 100 percent of the applicants … have absolutely no interest in the political participation aspect of citizenship', as someone writes who knows a good number of them as he's selling it to them (Kälin 2015, 213). In this respect, the apolitical purchasers of citizenship do not differ much from the native rest (see Kochenov 2014b).

Shachar and Hirschl (2014) consider 'cash-for-passport programmes' part of a larger category of 'Olympic citizenship', in which exceptional talent, merit, or contributions to state and society provide a fast-track to citizenship. This possibility was known in antique Greece and Rome. Revolutionary France thus honoured Thomas Paine and Friedrich Schiller, and today many European countries, including France or Germany, allow outstanding footballers and other sportsmen and – women to acquire citizenship just in time to compete for the World Cup or for an Olympic medal. It is sensible to distinguish these programmes according to how radically they waive the customary residence requirement, considering them more legitimate to the degree that they retain an element of it. However, less plausible is a cut-and-dried distinction between 'human capital' and mere 'capital', with the latter generating less if any claim to citizenship. Citizenship-for-sale, Shachar and Hirschl argue, is 'qualitatively different' and 'ethically more disturbing' than a skill-based talent-for-citizenship exchange (234). The reason offered is that human capital, in being 'non-transferable and non-alienable', a 'part of the self', grants a 'particular immigrant access to the new political community', which the authors consider all right (251). However, while capital indeed is transferable and alienable, it may well be the fruit of the talent and merit of its owner (just think of Donald Trump). This is an empirical matter that cannot be conceptually determined. It is not clear why the kind of talent that generates capital, and which would have to be measured in these 'alienable' terms, is stigmatised as a less legitimate form of Olympic citizenship.

Eventually, the defenders of the classic citizenship ideal reject 'Olympic citizenship' as a whole, irrespective of the variations that one may find within this category. What they find fault with is its 'instrumental logic' – it '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 transaction' (Shachar and Hirschl 2014, 234). Anyone observing the average election campaign in France or the United States, the two pioneers of democratic citizenship, will not see much resemblance with

the 'ideal of political membership' as stipulated by Shachar and Hirschl (254). In my view, a 'more calculated approach to citizenship' (254) is not likely to be the cause of democracy's malaise.

Overall, if states are free to deny immigration and citizenship to foreigners, as they are under international law, it is not clear why they should not be able to give them the possibility of buying it (see Hidalgo 2015). 'Citizenship-by-investment', summarises a Swiss lawyer who makes his living branding and marketing it, 'is based on an individualistic, depoliticizing liberal conception of citizenship that is formal, legalistic and without ties to a collective identity' (Kälin 2015, 267f). This may not be the citizenship preferred by the political theorist, but it is the one that is happening in the real world.

IV. External citizenship

'External citizenship' pertains to people who do not live in the country whose passport they hold. In a world of increased cross-border mobility, there is a notorious and growing incongruity between people and politically demarcated territories, 'states'. This is often captured by the concept of transnationalism, one of the busiest approaches in migration and mobility studies. One of its major proponents distinguishes between three categories of transnational citizen: multiple nationals, denizens (the prototypical 'immigrant'), and external quasi-citizens, i.e. non-resident non-citizens who are granted a legal status similar to citizenship that includes immigration rights to 'their' country (Bauböck 2007). 'External citizens' share elements of all three, in different combinations and emphases according to the concrete case.

To call external citizenship an instance of instrumentalism is at first paradoxical. As the notion of trans*nationalism* suggests, external citizenship seems to be the opposite of instrumentalism: an instance of re-nationalised or 're-ethnicised' citizenship (as I argued in Joppke 2003). Indeed, in a context of globalization, with shrinking geographical distance and a diminishing significance of territory for social transactions of all kinds, states come to understand themselves as embodiments of globally spread populations. Haitian President Aristide put it representative for all: 'Haiti now exists wherever Haitians settle' (quoted in Collyer 2014, 60). On the part of states, this implies as much instrumentalism as nationalism: a material interest in maximizing remittances, planting foreign-policy satellites abroad, even winning elections at home is among the key drivers of state transnationalism; and historians of 'invented tradition' have long known about nationalism's manipulative origins in states (Hobsbawm and Ranger 1983). On the part of individuals, the ubiquitous satellite dishes, ethnic groceries, and foreign-language billboards in immigrant neighbourhoods testify to the contemporary possibilities of staying at home away from home – which, by the way, suggests a good deal of naïvité on the part of liberal theorists who derive 'social membership' from the automatism of time and residence (Carens 2013, ch.8). External citizens often live in 'diasporas', in which one's native citizenship symbolises attachment to home, and in an earlier time of internationally prescribed mono-nationality the sentimental clinging to one's original citizenship was a major reason for not naturalizing abroad. In sum, to find instrumentalism in transnationalism is not the default option.

Paradoxically, it is sending states' often blatantly nationalistic preparedness to court and accommodate their populations abroad, which has opened up some of the most

extreme forms of citizenship instrumentalism, that is, of decoupling its status and identity dimensions. Cases in point are Italy and eastern European states after the fall of communism. Italy, one of the world's major emigrant nations over the past two centuries, changed its citizenship law in the early 1990s to allow the remote descendants of past emigrants to register as Italian citizens – all that is required now is sporting a male ancestor (or female if the applicant is born after 1948) who had never renounced Italian nationality voluntarily and in front of Italian authorities, independently of how remote in time and generations the descent connection happens to be. This scheme was introduced just when non-European immigrants (so-called *extracomunitari*), mainly from Morocco and Albania, entered Italy in massive numbers, and one must suspect that the point was to tap more culturally close and desirable sources of immigration. As a result, incited also by the late 1990s' financial crisis in Latin America, which was especially severe in Argentina, over 855,000 Latin Americans acquired Italian citizenship between 1998 and 2008, without ever having resided in Italy, and another 700,000 applications were pending by the end of this period – alone in Brazil, the contingent of potential Italians by simple descent-declaration is estimated at 12 million (Tintori 2011). Most of these new 'Italians' do not ever intend to move to Italy – they became so *por las dudas* (you never know), as an insurance policy. Of approximately 1 million registered Italians in South America in 2007, 62 percent were Italians by descent, having acquired their citizenship in the past 10 years. As Guido Tintori observes, 'most newly-recognized citizens cannot speak or understand Italian and do not show any knowledge of Italian politics' (177). And if they migrate, then not to Italy but to Spain – the Italian consulate in Madrid reported a 400 percent increase in registered Italians in the first decade of the new millennium (180).

An even more extreme pairing of state nationalism and instrumentalism on the part of external citizens can be found in post-communist Eastern Europe. Generous naturalization schemes to undo historical wrongs were introduced for former citizens in the Czech Republic, Hungary, Poland, and Romania, and these come on top of ancestry-based, 'ethno-national' kin provisions in three of these countries (Poland, Hungary, and Romania) and elsewhere, not to mention unqualified (that is, infinite) jus sanguinis birthright citizenship for the descendants of emigrants in most of these countries. Eastern Europe is indeed marked by a 'resilient ethno-national obsession with original, native, or natural citizenship' (Dumbrava 2015, 307). As a result, external citizenship for co-ethnics extends to 20 percent of the total population of Central and East European (CEE) countries, which is about 28 million people abroad (Dumbrava 2014, 2341). The citizenship policies of these countries are entirely focused on facilitating the life of their diaspora abroad, with very little if any attention to their immigrants at home. None of the so-called Accession-12, that is, the Eastern European states joining the EU in two waves in the early millennium, provides jus soli citizenship; most have asymmetric stances on dual citizenship (allowing it for emigrants but prohibiting it for immigrants); and nine are in the 'restrictive', none in the 'liberal' category of an index that measures the openness of citizenship policy (Howard 2008, ch.8).

At the same time, Eastern Europe, this hothouse of ethnic nationalism, is a major generator of instrumental 'passport citizenship', which is Harpaz's (2013) word for the external acquisition of citizenship without immigration. Since 2000, some 60,000 Israelis took advantage of this possibility, applying for citizenship in a CEE country. Theirs is an 'a-

national' citizenship, considered a 'kind of private property', both a mark of social distinction and insurance policy for members of a precarious state.[6]

External citizenship thrives on a dual trend of a globally more relaxed attitude toward dual citizenship and facilitated naturalization rules on the basis of ancestry or ethnicity without a prior residence requirement, which is today offered by no less than 18 EU states (see Harpaz 2015). Since 1991, 3.5 million non-Europeans obtained a second citizenship from an EU country, including Italy, Hungary, and Romania, but also from Germany and Spain. The demand for a second passport is highest among people from the global south and east, interestingly in a middle-tier of neither very poor nor rich countries, who predictably take a 'practical-economic' approach to their second citizenship. The trend signals a 'growing commodification of citizenship', whereby citizenship 'is taking on more and more of the characteristics of class position within a stratified world society' (19).

Instrumental external citizenship is not *always* the paradoxical flip-side of state nationalism. It may also stem from the co-existence of jus soli and jus sanguinis birthright citizenship rules in an increasingly connected world society. A case in point is a curious birth-tourism industry between the United States and countries such as Turkey, China, South Korea, India, and Mexico, catering to mainly middle-class and upper-middle-class people who take advantage of the unconditional jus soli citizenship of the U.S. In 2011, 600 Turkish women gave birth in the U.S. only to endow their newborn with life-long American citizenship. Two Turkish sociologists call it a 'transnational strategy developed to alleviate local anxieties about the general transfer of class distinctions' (Altan-Olcay and Balta 2015, 7), alluding to the soft Islamization that is threatening secular middle-class privileges, in particular for women, in Turkey. These women can turn to tourist companies that sell 'birth packages' in the USD 22,000–60,000 range. Hilariously, the U.S. citizenship of U.S.-born children, who immediately move back with their mothers to Turkey and are likely to grow up there, not only reduces the tuition cost of an eventual public university education in America; it may also help these children to enter one of the thriving new Turkish elite universities in Istanbul or Ankara – through the less crowded international admissions path! This would require the young applicant to abandon her or his Turkish citizenship. But, since a citizenship reform in 2009, this is now possible even for young males who have not yet done their required Turkish army service. In fact, the U.S.–Turkish birth traffic is contingent on Turkey's successively relaxed stance on dual nationality, from 1981 on, which is part and parcel of a more inclusive, ethno-nationalist approach toward its large diaspora abroad. Again, state nationalism is closely entangled with a blatantly instrumental use of external citizenship.

From a normative perspective, there are two problems with external citizenship. The first mirrors a problem of citizenship-by-investment: the acquisition of citizenship by ancestry tends to go without a residence requirement. This violates the international norm, stipulated by the International Court of Justice in the mid-1950s, that citizenship should reflect a 'genuine link' between individual and state. And it often violates this norm in more extreme ways than in the case of citizenship-by-investment, which at least requires the anchoring of a part of one's wealth in the citizenship-granting state. Bauböck (2009) argues that, from a 'stakeholder' perspective that takes account of an individual's 'dependency' on and 'biographical subjection' to a particular state (482), external citizenship should not be passed on to the second-generation born abroad (483). Some

states, like Germany from the early 1990s on, indeed respect this limitation, even though in the latter case it may be easily bypassed by registration procedures. But the majority of East European states, as well as some West European countries (including Italy, the Netherlands, Spain, and – curiously – France) do not know any intergenerational stopping-point for transfering citizenship abroad. Overall, the absence of a residence requirement feeds rather extreme forms of instrumentalism, of decoupling national identity from citizenship status.

A second problem connected with external citizenship is the proliferation of external voting. The possibility (not necessarily practice) of external voting has 'increased remarkably in the last decades' (Dumbrava 2014, 2349), and the great majority of EU countries now allow both external citizenship acquisition *and* external voting. Globally, 115 of the world's 214 countries permit external voting, which is a 'genuinely new trend' (Collyer 2014, 62), driven by the lobbying of expatriate communities as much as by electoral strategizing in emigrant states. Some countries, such as Portugal, France, Italy, Croatia, and Romania, have even created special districts and parliamentary seats for voters abroad. External voting poses an obvious democratic legitimacy problem, because of the asymmetry of information and knowledge at home and abroad, but above all because of the multiplicity of votes and commitments for dual citizens and external voters' not having to bear the consequences of their voting behaviour (see Tanasoka 2015). Luckily, the political interest and thirst for participation by external citizens tends to be low or even 'declining' (Collyer 2014, 62). This suggests a dominant mindset of instrumentalism among external citizens, which in this respect proves to be democratically virtuous.

V. EU citizenship

European Union (EU) citizenship is instrumental citizenship writ large. In not extending the right to vote from the local and European to the national level, it notoriously sleights citizenship's political dimension. European citizenship is also not meant to constitute a free-standing own identity, because the national *demoi* rest in place. An 'ever closer union (of the peoples of Europe)' has been the telling formula in the preamble of the European Treaty since 1957. This implies that a European democracy could only be a *demoicracy*, an entirely new and sui generis form of political rule at multiple levels, without a sovereign centre (for its implications for citizenship, see the excellent synopsis by Bauböck 2014b). EU citizenship is notoriously a citizenship without identity. This may be precisely its emancipatory potential, liberating the individual from the suffocating grip of nation-states and taming the latter's demonic potentials that, after all, had forced the idea of 'Europe' back to life after 1945. EU citizenship is Roman to the core, providing mostly free mobility rights that allow individuals to choose the community they want to join, if any.

EU citizenship is not, as many had initially believed, a false citizenship (Weiler 1999). Rather, it is the avant-garde of 'citizenship lite' (Joppke 2010a), being exclusively about rights with no complementary duties whatsoever, decoupled from even the thinnest of identities. The functionalist 'spill-over' logic of the European project, spinning outwards from its economic core to the political sphere, had included a proto-citizenship from the start, its nucleus being the freedom of workers guaranteed by the Treaty of Rome that established the European Economic Community in 1957. EU citizenship became

legal letter with the 1992 Treaty of European Union (known as Maastricht Treaty), and life was then breathed into it by a series of bold decisions by the European Court of Justice (ECJ) – it is entirely a legal construct devoid of any bottom-up social dynamics. The first court thunder was to declare EU citizenship the 'fundamental status of nationals of Member States', thus challenging its officially merely derivative nature (i.e. to 'complement' but not to 'replace' member-state nationality, as is the wording of the EU Treaty's citizenship clause, now Article 20). This occurred in the ECJ's benchmark *Grzelczyk* decision of 2001, which forced the aghast member states to make even tax-based (and thus redistributive), intentionally citizen-privileging social aids available to all European comers. The latter could now move unconditionally, as citizens, and not only, as previously, conditionally, as market participants.

Bizarrely, just when the financial crisis of 2008 drowned Europe's political momentum, forever perhaps, with swastikas and riot police greeting the German chancellor in Athens and Britain preparing to leave the Union altogether, the ECJ daringly consolidated the evolving European citizenship. In its landmark *Rottmann* (2010) and *Zambrano* (2011) decisions, one nagging anomaly of this 'citizenship' came to be fixed, which is that it applied only in a cross-border situation, *outside* one's state of national citizenship. This had always entailed 'reverse discrimination' for non-moving European citizens, and it could not last. In *Rottmann,* while upholding Germany's de-naturalization of a person who had acquired German citizenship by fraud and who, by losing his German, also lost his EU citizenship, the ECJ *also* declared that this situation fell within the scope of EU law (concretely, its citizenship clause in Article 20) 'by reason of its (EU citizenship's) nature and its consequences'.[7] This innocent-sounding formula meant that the granting or denying of member-state citizenship was no longer an act of sovereign state power. While the ECJ had intimated this possibility as far back as 1992, in its *Micheletti* decision, *Rottmann* meant that the court now was set to act on it, allowing the EU to intrude in one of the last bastions of state sovereignty in Europe: member-states' nationality laws and policies. Ironically, this makes the EU look more like a state in the very moment that even the economic nuts and bolts of the European project are put in question, not to mention that more and more people do not think positive about Europe, as the explosive growth of Eurosceptic populist parties and movements testifies.

In *Zambrano*, the ECJ confirmed the *Rottmann* revolution, namely, that EU citizenship protected also citizens who had never crossed a border, in a situation previously considered purely internal, and thus outside the purview of EU law. In this case, the beneficiaries were rather more sympathetic types than the fugitive Dr Rottmann: the two small children of a Columbian rejected asylum-seeker who both held Belgian (and thus EU) citizenship at birth and would have been deprived of the 'genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union'[8] if they were forced to leave Belgium and return to Columbia with their parents, as the Belgian authorities very much wanted.

One must realise that purely instrumentalist citizenship practice, even bordering on the illegal, was in principle (*Rottmann*) or in reality (*Zambrano*) legitimised in these decisions, reinforcing the natural lightness of EU citizenship. In *Rottmann*, our European 'hero' is a criminal who had fled Austria for Germany only to escape justice, who was fully aware that he would lose his Austrian nationality upon naturalizing in Germany, and whose acquisition of German citizenship was based on a lie and thus liable to be annulled once the

truth emerged. Naturally, the European court did not deny this, but still used the occasion for a quantum leap of the value of EU citizenship. In *Zambrano*, one cannot but side with innocent children who were rescued by Europe's good judges. However, it is also fact that their parents, failed but 'tolerated' asylum-seekers without permanent legal residence rights in Belgium, had strategically produced the Belgian (and thus European) citizenship of their children through *not* registering their birth at the Columbian embassy; only this non-registration allowed the children to become Belgian and simultaneously European by triggering Belgian (and international) legal rules to prevent statelessness. The Zambranos, in turn, bootstrapped their own right to stay in Belgium through the European citizenship of their children (as the rights of the latter could only be effectively used if their parents were with them). This may all be perfectly legal, but it is not just instrumentalism but moral dubiousness that is grounding European citizenship here.

Technically speaking, the ECJ-driven evolution of EU citizenship greatly expanded the personal and material scope of EU Treaty rights. With respect to personal scope, the Treaty's traditional economic and cross-border paradigms no longer apply – not only workers but citizens enjoy the rights provided by it, and even in a purely domestic situation. With respect to material scope, 'no rule, as such, can be excluded from the scope of the Treaty' (Spaventa 2008, 23), even if it is not explicitly mentioned there. While the right to reside in another member state is notionally tied to sufficient economic resources and comprehensive health insurance, these conditions are practically voided by a 'proportionality' test to be applied in each case.[9] As the European Court declared in the trail-blazing *Grzelczyk* decision, a 'certain degree of financial solidarity' had to be expected of member-state citizens.[10] The Treaty rights, especially of free movement in combination with the prohibition to discriminate on the basis of nationality, have a 'pervasive effect' (Spaventa 2008, 28), creating a general expectation of equal treatment, down to national laws that determine surnames.[11] All this is achieved, notably, not by social movement, as has often been the case in the national evolution of citizenship rights, but by law and legal twisting. The result is still 'empowering the individual' (Spaventa 2008, 44).

However, this development has not been linear. Under the influence of Europe's cataclysmic financial, political, and migration crises, the ECJ recently retreated from its previous citizenship expansionism, entering into a 'reactionary phase' (Spaventa 2017). Recent court decisions have confirmed that a migratory element remains necessary for activating EU citizenship rights, and that the ascribed national, and not the chosen transnational affiliation is the EU citizen's primary status. As a result, the 'fundamental status' of EU citizenship can only be enjoyed by 'mobile, healthy, and wealthy migrants' (Spaventa 2017) – *civis capitalist sum*, one legal observer labelled the recovery of the older paradigm of 'market citizenship' that seemed to have been overcome with the invention of EU citizenship in the Maastricht Treaty (O'Brien 2016). Accordingly, in the landmark *Dano* case (2013)[12], the ECJ decided that there was no access to German welfare for a Romanian who was not economically active and also had no intention of becoming so. The court was clearly under the influence of a political campaign against 'welfare tourism' and mounting concerns about the costs of internal EU migration, which could be registered even in EU-friendly Germany and Belgium, and which fuelled the successful Brexit referendum of June 2016. In *Alokpa* (2013),[13] a Luxemburg residence permit was denied to the Third-State parent (and only caretaker) of two French children (whose nationality derived

from their absent father), despite the fact that the mother had a permanent job offer in Luxembourg, and even though their joint 'return' to France was to a country with which none of the three had any tie. This rammed through the notion that one's primary home is one's country of origin and not one's country of residence, even for EU citizens in Europe. In general, the EU citizenship construct is marked by a tension being 'fundamental status' and being only 'supplementary', and the jury is out which direction will prevail. For Spaventa (2017), EU citizenship in its recently diminished condition is 'a mere and minor addition to national citizenship, rather than a true supranational status'. Others are more optimistic that the 'larger framework' of strengthened fundamental rights protections, democracy, and Rule of Law in the EU will bear a 'constitutional' rather than 'market-based' citizenship (Sarmiento and Sharpston 2017).

If one brackets the recent lull, the evolution of EU citizenship is still astonishing. There are two opposite lines of interpreting it. One celebrates EU citizenship as 'humiliating the state', the other denounces it for 'corrupting individuals' (see Kochenov 2013). Very much in a Greek mode, Weiler (1999) welcomes the 'civilizing' impact of a Europe of multiple *demoi*. But more fundamentally, he bemoans the fact that political practice, oriented toward equality and justice, is not part of the package – EU citizenship thus 'corrupts' the individual. In a distinctly Roman mode, Gareth Davies welcomes the coming of 'a voluntary society, open to change', in which 'residence' has effectively replaced 'nationality' as the new Europeans' master status: 'The new Belgians are those who choose Belgium … residence is the new nationality' (2005, 56) – though this optimism is more difficult to sustain after *Alokpa*. Both views, as different as they are, convene on the same interpretation of EU citizenship as instrumental citizenship, only that instrumentalism is differently valued (negative by Weiler, positive by Davies).

Incontrovertible fact is that EU and member-state citizenship policies work at cross purposes. National policy tries to lock-in people, as demonstrated by the recent wave of 'fortifying' civic integration requirements (see Goodman 2014) – though this is in conflict with some de-nationalizing forces and trends that *also* work at member-state level (see Joppke 2003). By contrast, the point of supranational policy is to encourage people to move and to become emancipated from the confines of the national. To the degree that EU law imposes itself on member-states citizenship policies, the balance must tilt toward de-nationalization. Consider that six member states now provide more liberal naturalization rules for other member-state citizens, on the basis of reciprocity. This contributes to the flattening of the differences between national citizenships. In fact, the effect of EU citizenship on national citizenship is 'the reinvention of the legal essence of nationality in terms of a merely procedural connection between the individual in possession of this status and a state' (Kochenov 2010, 24) – as the Russian or Chinese buyers of a Maltese passport are well aware of.

VI. Toward legal individualism

At one level, instrumental citizenship reflects the parting of ways between status and identity that inevitably follows from the fact of international migration. As almost 97 percent of the world population continue to live and die in their country of birth,[14] instrumental citizenship concerns only a tiny minority – among others, those rich enough to 'buy' a citizenship of their choice (if they are born with one that impairs mobility), the

(remote) descendants of emigrants, and the few mobile European movers, to mention only the three cases discussed in this paper. This is a tiny fraction of the tiny three percent that, technically, are on the move. For the sedentary majority, 'citizenship' just is not an issue – they live their lives without ever showing a passport, except when vacationing in a faraway land. Kelsen's observation remains pertinent that citizenship is 'of greater importance in the relations between the States than within a State' (1949, 241) – had not the fact of international migration messed up the foreign-domestic binary a bit. In its formative inter-state context, citizenship is merely a mechanism of attributing people to states, and it lacks the layer of 'metaphysical thinking' (Bickel 1973, 387) that it tends to adopt in domestic settings. Not by accident is 'realism' the classic paradigm of international relations, and 'instrumental citizenship' is what citizenship *is* in this domain, by definition on the part of states which have always used this mechanism to further their interests, but increasingly on the part of individuals also.

Indeed, that citizenship appears to individuals in this denuded form is historically contingent and new. Certainly, the three forms of instrumental citizenship discussed in this paper each grow out of a specific context, not to be mixed up and confused with the others. Yet, there are significant communalities. Citizenship-by-investment is the state's mimicking of the market in the era of globalization, which has otherwise greatly diminished the state's authority by privatizing everything. The selling and buying of citizenship is surely neoliberalism's biggest imprint on the citizenship construct. By contrast, the instrumentalism connected with external citizenship is the ironic flip-side of some states' (trans)nationalist assertiveness, which is likewise enabled by contemporary globalization, yet in a different key and direction. And EU citizenship grows out of a historically unique project of regional integration in a continent ravaged by war twice during its short twentieth century, while still partaking of a general trend toward the 'lightening' of citizenship in liberal societies.

Accordingly, the increasing internationalization that goes under the name of globalization is a significant communality of all three citizenship developments. The most important communality, yet, is the centrality of the individual and the slighting of concerns of the community. Citizenship has always combined an individual with a collective element, but the novelty is the decided shifting of the balance toward the individual. It may be too strong to depict citizenship as evolving from 'contingent' to 'sovereign' (Weil 2011), particularly if one considers a recent trend toward citizenship stripping in the context of anti-terrorism policy (see Joppke 2016). Citizenship itself is not a right or 'right to have rights' (pace Somers 2008), and it is not the property of the individual – every passport bears the imprint that it is the 'property' of the passport-issuing state, and thus not of the individual who carries it.

However, citizenship is still part of a general trend toward legal individualism in liberal societies. Well into the 1960s, a major function of law had been the protection of corporate entities such as family, nation, even God, the latter in the form of blasphemy laws. Against this, a comparative study of 'sex laws' detected a world-level process of 'individualization', whereby persons became 'disembedded from families, nations, and other corporate bodies, and … re-rendered … as autonomous, empowered actors' (Frank, Camp, and Boutcher 2010, 887). The same individualizing process has long been observed in other branches of the law, like family law (Glendon 1989), and, of course, there is the dying species of blasphemy law (Jones 1980). In most jurisdictions, 'treason' as a crime that only citizens could

commit has disappeared, and it has been replaced by 'sedition' laws that are indifferent to citizen status (see Fletcher 1993, ch.3). This reflects a weakening of the exclusive, loyalty-commanding nexus between citizen and nation-state. A century ago, Durkheim declared the 'human person' the subject of a new 'religion in which man is at once the worshipper and the god' ([1898] 1973, 46). In the meantime, the reach of 'individualism' has greatly expanded, though in the direction of undermining the transcendence of state and community that Durkheim had not foreseen and would not have condoned. This has been registered here as instrumental citizenship.

States, to repeat, have *always* been strategists in matters of citizenship. And nationalism is often not the opposite but the very content of these strategies, as in the contemporary forms of state transnationalism, but also as in the use of citizenship for containing immigrant diversity. The novelty is to see individuals as citizenship strategists. This should be welcomed as further step in the demystification of states and empowerment of individuals.

Notes

1. Naturalization as 'reward for performing state benefactions' (Lape 2010, 243) was available in Athens, but very rare – for instance, in the period between 358 and 322 BC there were only 50 known naturalizations (254).
2. Oakeshott's nomocracy-teleocracy binary was later adopted by Hayek (1976).
3. For an alternative political history, see Hirschman (1977), who argues that (political) 'passions' were neutralized by (economic) 'interests'.
4. Situating citizenship in inter-state relations, Kelsen (1949) articulates a third model of citizenship, beyond the Greek and Roman, the 'Westphalian' (see Bauböck 2019).
5. This is naturally more likely to be the case in very small and poor countries, such as St. Kitts and Nevis, a pioneer of citizenship selling, large parts of whose annual GNP has come to depend on the passport industry (37% in St. Kitts by 2015, up from merely 13% in 2013) (see Surak 2016, 13); it is less likely to be the case in large and rich countries, all of which do not sell citizenship in the first, or have retracted from economically ineffective investment immigration programs in recent years (such as Canada and Australia) (see Sumption and Hooper 2014, 19).
6. Of course, not all external CEE citizens are exclusively instrumentally oriented. For a nuanced analysis of nationalist-instrumentalist amalgams, see Pogonyi's contribution to this issue (2019), which is on the motivations of recently naturalized non-resident Hungarians 2019.
7. ECJ, *Janko Rottmann v. Freistaat Bayern* (C-135/08), 2 March 2010.
8. ECJ, *Ruiz Zambrano v. Office national d`emploi* (C-34/09), 8 March 2011.
9. See ECJ, *Baumbast and R v. SS for the Home Department* (C-413/93), 17 September 2002.
10. ECJ, *Rudy Grzelczyk v. Centre public d`aide social d`Ottignier-Louvain-la Neuve* (C-184/99), 20 September 2001.
11. ECJ, *Garcia Avello v. Belgian State* (C-148/02), 2 October 2003.
12. ECJ, *Dano v. Jobcenter Leipzig* (C-333/13), 11 November 2014.
13. ECJ, *Alokpa and Moudoulou* (C-86/12), 10 October 2013.
14. 2015 data, reported in http://www.un.org/sustainabledevelopment/blog/2016/01/244-million-international-migrants.

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References

Altan-Olcay, Ö., and E. Balta. 2015. "Class and Passports: Transnational Strategies of Distinction in Turkey." *Sociology*: 1–17. Advance online publication. doi:10.1177/0038038515591944.

Balot, Ryan. 2017. "Revisiting the Classical Ideal of Citizenship." In *Oxford Handbook of Citizenship*, edited by Ayelet Shachar, et al. New York: Oxford University Press.

Bauböck, Rainer. 2007. "Stakeholder Citizenship and Transnational Political Participation." *Fordham Law Review* 75: 2393–2447.

Bauböck, Rainer. 2009. "The Rights and Duties of External Citizenship." *Citizenship Studies* 13 (5): 475–499.

Bauböck, Rainer. 2014a. "What is Wrong with Selling Citizenship? It Corrupts Democracy." In *Should Citizenship be for Sale?* edited by A. Shachar and R. Bauböck. Florence: EUI Working Paper, RSCAS 2014/01, European University Institute.

Bauböck, Rainer. 2014b. "The Three Levels of Citizenship in the European Union." *German Law Journal* 15 (5): 751–763.

Bauböck, Rainer. 2019. "Genuine Links and Useful Passports: Evaluating Strategic Uses of Citizenship." *Journal of Ethnic and Migration Studies* 45 (6): 1015–1026. doi:10.1080/1369183X.2018.1440495.

Berman, Harold. 1983. *Law and Revolution*. Cambridge, MA: Harvard University Press.

Bickel, Alexander. 1973. "Citizenship in the American Constitution." *Arizona Law Review* 15: 369–387.

Block, Fred, and Margaret Somers. 2014. *The Power of Market Fundamentalism*. Cambridge, MA: Harvard University Press.

Brubaker, Rogers, ed. 1989. *Immigration and the Politics of Citizenship in Europe and North America*. Lanham, MD: University Press of America; "Introduction".

Brubaker, Rogers. 1992. *Citizenship and Nationhood in France and Germany*. Cambridge, MA: Harvard University Press.

Carens, Joseph. 2013. *The Ethics of Immigration*. New York: Oxford University Press.

Collyer, Michael. 2014. "A Geography of Extra-Territorial Citizenship: Explanations of External Voting." *Migration Studies* 2 (1): 55–72.

Constant, Benjamin. 1816. "The Liberty of the Ancients Compared with that of the Moderns." http://www.earlymoderntexts.com.

Davies, Gareth. 2005. "'Any Place I Hang My Hat?' or: Residence is the New Nationality." *European Law Journal* 11 (1): 43–56.

Dumbrava, Costica. 2014. "External Citizenship in EU Countries." *Ethnic and Racial Studies* 37 (13): 2340–2360.

Dumbrava, Costica. 2015. "Super-Foreigners and Sub-Citizens: Mapping Ethno-National Hierarchies of Foreignness and Citizenship in Europe." *Ethnopolitics* 14 (3): 296–310.

Durkheim, Emile. [1898] 1973. "Individualism and the Intellectuals." In *Emile Durkheim on Morality and Society*, edited by Robert Bellah. Chicago: University of Chicago Press.

Durkheim, Emile. [1912] 1960. *Les formes élémentaires de la vie religieuse*. Paris: Presses universitaires de France.

Finer, S. E. 1997. *The History of Government from the Earliest Times*. Vol. 1. Oxford: Oxford University Press.

FitzGerald, David. 2017. "The History of Racialized Citizenship." In *Oxford Handbook of Citizenship*, edited by Ayelet Shachar. New York: Oxford University Press.

Fletcher, George P. 1993. *Loyalty: An Essay on the Morality of Relationships*. New York: Oxford University Press.

Frank, David John, B. J. Camp, and S. A. Boutcher. 2010. "Worldwide Trends in the Criminal Regulation of Sex, 1945–2005." *American Sociological Review* 75 (6): 867–893.

Glendon, Mary-Ann. 1989. *The Transformation of Family Law*. Chicago: University of Chicago Press.

Goodman, Sara Wallace. 2014. *Immigration and Membership Politics in Western Europe*. New York: Cambridge University Press.

Harpaz, Yossi. 2013. "Rooted Cosmopolitans: Israelis with a European Passport - History, Property, Identity." *International Migration Review* 47 (1): 166–206.
Harpaz, Yossi. 2015. "Ancestry into Opportunity: How Global Inequality Drives Demand for Long-Distance EU Citizenship." *Journal of Ethnic and Migration Studies*: 1–24. Advance online publication. doi:10.1080/1369183X.2015.1037258.
Harpaz, Yossi, and Pablo Mateos. 2019. "Strategic Citizenship: Negotiating Membership in the Age of Dual Nationality." *Journal of Ethnic and Migration Studies* 45 (6): 843–857. doi:10.1080/1369183X.2018.1440482.
Hayek, Friedrich. 1976. *Law, Legislation and Liberty, Volume 2: The Mirage of Social Justice*. London: Routledge & Kegan Paul.
Hidalgo, Javier. 2015. "Selling Citizenship: A Defense." *Journal of Applied Philosophy*: 1–17. Advance online publication. doi:10.1111/japp.12117.
Hirschman, Albert O. 1977. *The Passions and the Interests*. Princeton, NJ: Princeton University Press.
Hobsbawm, Eric, and Terence Ranger, eds. 1983. *The Invention of Tradition*. Cambridge: Cambridge University Press.
Howard, Marc Morjé. 2008. *The Politics of Citizenship in Europe*. New York: Cambridge University Press.
Jones, Peter. 1980. "Blasphemy, Offensiveness, and Law." *British Journal of Political Science* 10 (2): 129–148.
Joppke, Christian. 2003. "Citizenship between De- and Re-Ethnicization." *European Journal of Sociology* 44 (3): 429–458.
Joppke, Christian. 2010a. "The Inevitable Lightening of Citizenship." *European Journal of Sociology* 51 (1): 9–32.
Joppke, Christian. 2010b. *Citizenship and Immigration*. Cambridge: Polity.
Joppke, Christian. 2016. "Terror and the Loss of Citizenship." *Citizenship Studies* 20 (6–7): 728–748.
Kälin, Christian. 2015. "Citizenship by Investment and Economic Contribution to the State." Doctoral dissertation, University of Zürich.
Kelsen, Hans. 1949. *General Theory of Law and State*. Cambridge, MA: Harvard University Press.
Kochenov, Dimitry. 2010. "Rounding Up the Circle: The Mutation of Member States' Nationalities under Pressure from EU Citizenship." EUI Working Paper RSCAS 2010/23, European University Institute, Florence.
Kochenov, Dimitry. 2013. "The Essence of EU Citizenship Emerging from the Last Ten Years of Academic Debate." University of Groningen Faculty of Law Research Paper Series, No. 02/2014.
Kochenov, Dimitry. 2014a. "EU Citizenship without Duties." *European Law Journal* 20 (4): 482–498.
Kochenov, Dimitry. 2014b. "Citizenship for Real." In *Should Citizenship be for Sale?* edited by A. Shachar and R. Bauböck. Florence: EUI Working Paper, RSCAS 2014/01, European University Institute.
Lape, Susan. 2010. *Race and Citizen Identity in the Classical Athenian Democracy*. New York: Cambridge University Press.
Lukes, Steven. 1975. "Political Ritual and Social Integration." *Sociology* 9 (2): 289–308.
Moyn, Sam. 2010. *The Last Utopia*. Cambridge, MA: Harvard University Press.
Oakeshott, Michael. 1975. *On Human Conduct*. Oxford: Oxford University Press.
O'Brien, Charlotte. 2016. "Civis Capitalist Sum: Class as the new Guiding Principle of EU Free Movement Rights." *Common Market Law Review* 53: 937–978.
Orgad, Liav. 2015. *The Cultural Defense of Nations*. New York: Oxford University Press.
Pocock, J. G. A. 1995. "The Ideal of Citizenship since Classical Times." In *Theorizing Citizenship*, edited by Ronald Beiner. Albany: State University of New York Press.
Pogonyi, Szabolcs. 2019. "The Passport as Means of Identity Management: Making and Unmaking Ethnic Boundaries Through Citizenship." *Journal of Ethnic and Migration Studies* 45 (6): 975–993. doi:10.1080/1369183X.2018.1440493.

Preuß, Ulrich K. 1995. "Problems of a Concept of European Citizenship." *European Law Journal* 1 (3): 267–281.
Salmond, John W. 1901. "Citizenship and Allegiance." *The Law Quarterly Review* 17: 270ff.
Sandel, Michael J. 2012. *What Money Can't Buy*. New York: Farrar, Straus and Giroux.
Sarmiento, Daniel, and Eleanor Sharpston. 2017. "European Citizenship and Its New Union." In *EU Citizenship and Federalism*, edited by Dimitry Kochenov. Cambridge: Cambridge University Press.
Shachar, Ayelet. 2017. "Selling Out the Political? The Marketization of Citizenship." In *Oxford Handbook of Citizenship*, edited by A. Shachar, et al.New York: Oxford University Press.
Shachar, Ayelet, and Ran Hirschl. 2014. "On Citizenship, States, and Markets." *Journal of Political Philosophy* 22 (2): 231–257.
Sherman-White, A. N. 1973. *The Roman Citizenship*. Oxford: Oxford University Press.
Shils, Edward. 1972. *The Constitution of Society*. Chicago: University of Chicago Press.
Siedentop, Larry. 2014. *Inventing the Individual*. London: Penguin.
Somers, Margaret. 2008. *Genealogies of Citizenship*. New York: Cambridge University Press.
Soysal, Yasemin. 1994. *Limits of Citizenship*. Chicago: University of Chicago Press.
Spaventa, Eleanor. 2008. "Seeing the Wood Despite the Trees? On the Scope of Union Citizenship and its Constitutional Effects." *Common Market Law Review* 45: 13–45.
Spaventa, Eleanor. 2017. "Earned Citizenship." In *EU Citizenship and Federalism*, edited by Dimitry Kochenov. Cambridge: Cambridge University Press.
Spiro, Peter. 2008. *Beyond Citizenship*. Princeton: Princeton University Press.
Spiro, Peter. 2014. "Cash-For-Passports and the End of Citizenship." In *Should Citizenship be for Sale?*, edited by A Shachar and R Bauböck. EUI Working Paper, RSCAS 2014/01, European University Institute, Florence.
Sumption, Madeleine, and Kate Hooper. 2014. *Selling Visas and Citizenship*. Washington, DC: Migration Policy Institute.
Surak, Kristin. 2016. "Beyond Blood and Soil: *Jus Pecuniae* and the Rise of Citizenship by Investment". Unpublished paper, in author's possession.
Tanasoka, Ana-Maria. 2015. "The Ethics of Multiple Citizenship." Doctoral dissertation, University of Essex.
Tintori, Guido. 2011. "The Transnational Political Practices of 'Latin American Italians'." *International Migration* 49 (3): 168–188.
Weil, Patrick. 2011. "From Conditional to Secured and Sovereign: The New Strategic Link between the Citizen and the Nation-State in a Globalized World." *International Journal of Constitutional Law* 9 (3–4): 615–635.
Weiler, Joseph. 1999. *The Constitution of Europe*. New York: Cambridge University Press.