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Working Paper No. 156

December 2021

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The Centre on Migration, Policy & Society
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Funding / acknowledgement / disclaimer

COMPAS does not have a Centre view and does not aim to present one. All views expressed in the document are solely those of the authors and do not necessarily reflect the views of funders, those providing feedback, COMPAS or the University of Oxford.

Competing interests: The author(s) declare none.

* CEU Democracy Institute, Budapest; CEU Legal Studies Department, Vienna. This work draws on the discussions held in the auspices of the seminar 'Citizenship by Investment: Law, Policy and Sociology', which I co-convened with Madeleine Sumption at the Centre on Migration Policy and Society in the School of Anthropology, University of Oxford, in the Hilary term of 2021. I am grateful to numerous colleagues, but especially to Manuela Boatcă, Sarah Ganty, David de Groot, Christian Joppke, Suryapratim Roy, Robert Schütze, Peter Spiro and Kristin Surak for their engagement and comments. The assistance of Harry Panagopoulos, Bhavna Prashanth, Emma Schulte, Endi Spaho and Jacquelyn D. Veraldi is kindly acknowledged. The final version of this text will appear in the volume on *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging*, which I co-edit for Cambridge University Press with Kristin Surak (LSE).

Abstract

This contribution introduces the concept of 'victims of citizenship', encompassing the majority of the world's population for whom citizenship is a set of liabilities and obstacles rather than a bundle of rights, who are caged in spaces of no opportunity by border-crossing and visa rules designed to keep them out of the 'First World', and who thus find themselves on the 'other side' of the concept of citizenship, behind its Western façade of equality, political self-determination and rights. The global *status quo* that citizenship is there to perpetuate does not work in their favour: they are kept out for others to be 'free'. The whole point of citizenship is to perpetuate the victims' of citizenship exclusion from dignity and rights without any justification defensible in terms of the values officially underpinning any modern constitutional system. In the majority of cases, the status of citizenship worldwide is conferred by blood: dividing the world into a global aristocracy and the rest. Citizenship is sold to those among its victims who can afford it; and for the absolute majority of those not victimised by it, there is no need to buy. The path to the sale of citizenship is thus paved with the status's conflicted nature. This includes: the hypocrisy and randomness underpinning contemporary citizenship as a legal *carte blanche* for the exclusion of its victims, rich and poor; citizenship's consequential nature in terms of the unequal random distribution of rights and liabilities in the world based on the pre-modern principle of blood aristocracy; and the ongoing rights transformation leading to the rise in the prestige of personhood in constitutional parlance, as citizenship's double and rival. Marketisation is helped by the uneven pace in the growth of global wealth when compared to the dynamics of the quality of particular citizenship statuses. Simultaneously, the same processes allow the normative compatibility of citizenship with the ideals alleged to underpin contemporary constitutionalism to be called into question as such.

'In the middle of the forum of Messana a Roman citizen, O judges, was beaten with rods; while in the meantime no groan was heard, no other expression was heard from that wretched man, amid all his pain, and between the sound of the blows, except these words, "I am a citizen of Rome." He fancied that by this one statement of his citizenship he could ward off all blows, and remove all torture from his person'.

Marcus Tullius Cicero, *Against Verres*¹

¹ Marcus Tullius Cicero, *Against Verres* (Charles D Yonge tr, George Bell & Sons 1903), Second pleading, book 5, para 62.

Meet the victims, whom citizenship denigrates

Should it be a surprise that citizenship does not work as idealised – and never has throughout its history? Could (non-legal) scholars be correct in underlining the importance of citizenship practice and contestation,² as opposed to the formal, necessarily ideological descriptions of what the status officially entails? Clearly, the poor Roman beaten with rods in Cicero’s famous retelling is not the only victim of citizenship’s unfulfilled promises.

In fact, the majority of the world’s population consists of ‘victims of citizenship’. The citizenship they know has nothing to do with the glorious ideals described in political science textbooks, but is instead a randomly distributed penal status of privation and exclusion from dignity,³ which can also be described in neo-colonial terms, as Manuela Boatcă does in her work.⁴ Indeed, once the quality of different nationalities is approached comparatively,⁵ it becomes clear that the victims of citizenship are overwhelmingly not white, pointing to the racist core of citizenship as a colonial concept.⁶

The liabilities which supplant their rights are presented as a given to the victims of citizenship under the absurd (in their particular case) pretext of equal dignity. Like any other successfully attempted fraud, this ‘dignity’ and ‘equality’ comes with some small print: a Central African is equal to a Central African, but comparing her to a French citizen would be unthinkable. The normative world of citizenship is country specific. It crumbles at any attempt at generalisation, which explains the immense normative pressure that the status of citizenship is subjected to in

² Engin Isin, ‘Citizenship in Flux: The Figure of the Activist Citizen’ (2009) 29 *Subjectivity* 367; Antje Wiener, ‘Going Home?’ “European” Citizenship Practice Twenty Years Later’ in Dimitry Kochenov (ed), *EU Citizenship and Federalism: The Role of Rights* (Cambridge University Press 2017).

³ Dimitry Kochenov, *Citizenship* (MIT Press 2019).

⁴ Manuela Boatcă, ‘Unequal Institutions in the Longue-durée: Citizenship through a Southern Lens’, in Dimitry Kochenov and Kristin Surak (eds), *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging* (Cambridge University Press, 2022); Manuela Boatcă, ‘Citizenship’ in Olaf Kaltmeier, Anne Tittor, Daniel Hawkins & Eleonora Rohland (eds), *Routledge Handbook to the Political Economy and Governance of the Americas* (Routledge 2020) 284.

⁵ Dimitry Kochenov and Justin Lindeboom, ‘Empirical Assessment of the Quality of Nationalities’ (2017) 4 *European Journal of Law and Governance* 314; Dimitry Kochenov and Justin Lindeboom (eds), *Kälin and Kochenov’s Quality of Nationality Index* (Hart Publishing 2020).

⁶ Kochenov (n 3) 88–120; James Tully, ‘Lead Essay’ in James Tully (ed), *On Global Citizenship: James Tully in Dialogue* (Bloomsbury 2014); Manuela Boatcă, *Global Inequalities beyond Occidentalism* (Ashgate 2015).

today's globalising world. The dominant reality of container societies⁷ and the incomparable statuses of 'equal dignity' are said to be natural and just: the victims of citizenship are taught to organise their lives as though the world beyond the sovereign reservations they are born into was not there. Those caged in the spaces of no opportunity under the noble banner of citizenship are thus on the 'other side' of the concept, as opposed to its Western façade of equality, political self-determination and rights. This 'other side' is a well-known skeleton in citizenship's closet, the reason why citizenship's normative dominance is bound to come to an end, like any other complex of concepts unjustifiable under the core organisational values and principles of the societies confronting them, be it slavery, aristocracy, or child marriage.⁸ Blood lineage, the basis of the modern citizenship status in the absolute majority of cases, is a pre-modern concept unsuited to convincingly justify total exclusion. For now, however, those who were born with sub-standard citizenships need to obtain a compensatory status, no matter where they choose to reside⁹ if they are to enjoy the plenitude of rights in the world. Acquiring a citizenship that does not victimize them is a must. In other words, to partake in what the globalised world of opportunity has to offer, one cannot be a Central African. Even if you choose a career in diamond mining and even if you are from there, you need to be French or pick any other super-citizenship.¹⁰ Consequently – similar to indentured labourers or slaves in ages past, the victims of citizenship have to upgrade their legal status. They will not enjoy citizenship comparable to the one described in the political science textbooks before such an upgrade. Make no mistake, a Central African can amass an immense fortune, but as long as the humiliation of her low-class citizenship remains, living a global life of rights, dignity and opportunity will remain beyond reach.

Poor or rich, the victims of citizenship have to invest money and time to procure for themselves a better citizenship status from solid second-rate options in the Caribbean to the global super-citizens – the contemporary aristocracy. In the contemporary world, *where* you are allowed to be matters much more for your life expectancy, education and economic wellbeing than your class: global inequalities

⁷ Kitty Calavita, 'Law, Citizenship, and the Construction of (Some) Immigrant "Others"' (2005) 30 *Law & Social Inquiry* 401, 405–409.

⁸ Dimitry Kochenov, 'Ending the Passport Apartheid' (2020) 18(4) *International Journal of Constitutional Law* 1525.

⁹ See Yossi Harpaz, 'Citizenship and Residence Rights as Vehicles of Global Inequality', Dimitry Kochenov and Kristin Surak (eds), *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging* (Cambridge University Press, 2022); Yossi Harpaz, *Citizenship 2.0* (Princeton University Press 2019).

¹⁰ On super-citizenships, see, Kochenov (n 3) 239.

are spatialised.¹¹ In a world where the place where a life is lived is a strong predictor of the horizon of opportunities marking that life, borders become the epitome of inequality and the legal tools designed to make them impenetrable for some – most importantly citizenship – are the main guardians of global inequalities today.¹² As long as the victims of citizenship are assigned by birth to spaces of no opportunity – with the borders sealed by their citizenship status not offering access to other spaces – the role of citizenship in their lives is quite clear. We live in a world of passport apartheid and its key tool – citizenship – has been very effective in its mission to exclude its victims.¹³

Without the victims of citizenship there would not be any sales of citizenship.

Building on this starting premise, this contribution aims to contextualise the commercialisation of citizenship by analysing the most important recent citizenship trends, essentially arriving at a rude awakening: citizenship – which is normatively impossible to justify on the basis of its own preached premises without positing it also as a singular collective of citizens existing in a void – is moving, as we shall see, towards the ‘person’ – offering a radically different normative starting point for thinking about the weaving of humans into the fabric of contemporary constitutionalism.¹⁴

The ‘personhood’ upgrade can ease some tensions surrounding the victims of citizenship already resident in a super-citizenship jurisdiction, as we shall see, but has no impact on the unquestionable exclusion of the absolute majority of others, thus offering no solution to the core problems of citizenship, encoded in its nature. Such an analysis demonstrates how attempts to bridge the gap between the normative foundations of the citizenship status and its day-to-day functioning necessarily leads to pertinent questions concerning citizenship’s value and long-term normative sustainability in the contemporary world. This questioning ultimately drives this contribution. Indeed, to grumble about ‘selling’ or ‘not selling’ a feudal privilege to the victims it creates is almost beside the point, when the privilege itself is questioned and measured against the values and ideals of any contemporary democratic constitutional system. Criticising a legal setup, which

¹¹ Branko Milanović, *Global Inequality* (Harvard University Press 2016).

¹² *ibid.*

¹³ Kochenov (n 8).

¹⁴ Linda Bosniak, ‘Persons and Citizens in Constitutional Thought’ (2010) 8 *International Journal of Constitutional Law* 9.

allows the victims of citizenship to upgrade a status inequitably received at birth, is thus akin to attacking manumission. Suryapratim Roy explains this *con brio*: chanting the mantras of a blood-based global aristocracy of super-citizens in a world allegedly based on enlightenment values is not acceptable.¹⁵

This contribution hypothesises that precisely the same developments, which make citizenship self-contradictory and normatively conflicted outside a narrow purview of nationalist perspectives, have led to the status's growing openness to marketisation, which Kristin Surak documents so vividly in her contribution to this collection.¹⁶ Attention is thus paid to the hypocrisy and randomness underpinning contemporary citizenship as a legal *carte blanche* for the sharp exclusion of its victims: the focus is on citizenship's consequential nature in terms of the unequal distribution of rights and liabilities in the world. All are divided by *ius sanguinis* and *ius soli* – essentially down bloodlines¹⁷ – into super-citizens,¹⁸ i.e., a happy minority for whom the world is a friendly and open globalised playground – and citizenship's victims, i.e., those miserable many who are caged within steep visa walls in 'their' blood spaces of no opportunity. In-between spaces are also possible, and the welcoming Dubai, where anyone can settle but not naturalise, comes to mind.¹⁹ The story is thus not black and white: a whole spectrum of shades and hues of status quality emerges, as I have described elsewhere in detail together with Justin Lindeboom.²⁰ Add to this the uneven pace of the growth of global wealth when compared to the dynamics of the quality of particular citizenship statuses and the picture is complete: extremely rich victims are increasing common as global wealth is ever less concentrated in the former imperial centres and significant

¹⁵ Suryapratim Roy, 'The "Streetlight Effect" in Commentary on Citizenship by Investment', in Dimitry Kochenov and Kristin Surak (eds), *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging* (Cambridge University Press, 2022).

¹⁶ See also her other important works on this topic: Kristin Surak, 'Millionaire Mobility and the Sale of Citizenship' (2021) 47(1) *Journal of Ethnic and Migration Studies* 166; Kristin Surak, *Citizenship 4 Sale: Millionaires, Microstates, and Mobility* (Harvard University Press 2022).

¹⁷ In the absolute majority of cases at least one parent of any '*ius soli* kid' is a citizen, which means that both *ius soli* and *ius sanguinis* come down to a shorthand for bloodline transmission of privilege: the preservation of the aristocracy of the high born in this global world where the majority of the population remain right-less plebs: Dimitry Kochenov, 'Policing the Genuine Purity of Blood: The EU Commission's Assault on Citizenship and Residence by Investment and the Future of Citizenship in the European Union' (2021) 25(1) *Studies in European Affairs* 33.

¹⁸ Kochenov (n 3) 239.

¹⁹ Milanović (n 11) 152.

²⁰ Dimitry Kochenov and Justin Lindeboom, 'Part I: Laying down the Base', in Kochenov and Lindeboom (n 5 *Quality of Nationality*).

wealth is appearing in the former colonies.²¹ Colonial victims of citizenship – however rich – are still deprived of any rights globally, as well as of the other super-citizenship rents, which they may never draw upon regardless their wealth.²² All these factors combined offer a path to citizenship's de-sacralisation and its emergence on the market for sale. Amplifying the ongoing processes is the growing cumulability of citizenship²³ coupled with the Joppkean 'lightening of citizenship',²⁴ both triggered by the worldwide acceptance of human rights ideology and non-discrimination on the basis of sex in the contemporary world.²⁵

Note that the result of this inquiry directly contradicts some of the key presumptions of what citizenship is, which are held by the UNHCR and many scholars.²⁶ This is particularly true of the premise that *any* citizenship is better than statelessness. In a context where the quality of citizenships varies to such a significant degree as we observe now across the world, it is often better to be stateless in a particular space of opportunity, i.e. Germany or France, rather than a victim of a particular citizenship.²⁷ In other words, presenting statelessness as the main problem in contemporary international citizenship law,²⁸ as opposed to the existence of the citizenship statuses, which fail their bearers in every respect, is a mistaken perspective, bound to trigger erroneous policy and personal tragedies.²⁹ By fighting statelessness and making no distinction between a super-citizenship and the status of a victim of citizenship, pretending, quite absurdly, that being a Kyrgyz and being Swiss is roughly the same, contemporary international law

²¹ Andrés Solimano, 'International Mobility of the Wealthy in an Age of Growing Inequality' (2019) 14(1) *Norteamérica* 163.

²² Branko Milanović, *Capitalism Alone* (Harvard University Press 2019).

²³ Peter J Spiro, *At Home in Two Countries* (NYU Press 2017).

²⁴ Christian Joppke, 'The Inevitable Lightening of Citizenship' (2010) 51 *European Journal of Sociology* 9.

²⁵ Peter J Spiro, 'Dual Nationality and the Meaning of Citizenship' 46 *Emory Law Journal* 1997; Peter J Spiro, 'Dual Citizenship as Human Right' (2010) 8 *International Journal of Constitutional Law* 111; Peter J Spiro, *Beyond Citizenship* (Oxford University Press 2007).

²⁶ For a crucial exception, see Katja Swider, 'A Rights-Based Approach to Statelessness' (PhD thesis, University of Amsterdam 2018).

²⁷ Katja Swider, 'The Quality of Statelessness' in Dimitry Kochenov and Justin Lindeboom (eds), *Kälén and Kochenov's Quality of Nationality Index* (Hart Publishing 2020).

²⁸ This approach reflects the dominant paradigm in international citizenship law and citizenship studies: Paul Weis, *Nationality and Statelessness in International Law* (Stevens and Sons 1956); Alice Edwards and Laura van Waas (eds), *Nationality and Statelessness under International Law* (Cambridge University Press 2014).

²⁹ Katja Swider, 'The Quality of Statelessness' in Dimitry Kochenov and Justin Lindeboom (eds), *Kälén and Kochenov's Quality of Nationality Index* (Hart Publishing 2020).

reinforces the inequitable realities. Pretending that assignment to a caste as such, rather than *which particular* caste one is assigned to is the crucial element in rooting out basic injustices related to contemporary citizenship or the lack thereof is as untenable as it is accepted by the UNHCR and UNHCR-friendly scholars. Moreover, international law reinforces a reality where once imposed, this caste assignment is extremely difficult to object to; where statelessness as such rather than a sub-standard status of a victim of citizenship is viewed as a problem, a sub-standard status becomes very difficult to get rid of as a result, no matter the circumstances. This development is relatively new, as before the Second World War, citizenship could be disposed of without acquiring a new one, benefiting plenty of people, from Nietzsche and Einstein, to countless others³⁰ for whom statelessness – sometimes only intermittent, but still – was a choice and a reflection of their deeply-held convictions and personal preferences. The international worldwide fight against statelessness thus oppresses the holders of second-rate citizenships deeply, undermining their position even further than the national legal systems do.

This work looks at the global picture of citizenship's evolution *sensu lato*, to contextualize the zoom in on the main subject matter of this edited work: citizenship sales to the victims of citizenship. It pursues, precisely the understanding of the legal-political processes shaping and re-shaping belonging by addressing the plight of some of the groups of citizenship's victims, of which citizenship's marketisation is but a minor – albeit a telling – part.³¹

To further this task, the chapter first takes issue with the invisibility of the victims of citizenship – the majority of the population of the world – in the dominant scholarly literature engaging with citizenship, with only minimal exceptions.³² The literature has seemingly taken upon itself to justify the *status quo*, if not actively to engage in co-creating the victims. As a result, it has laboured under an overwhelmingly Western – i.e. super-citizens' – perspective,³³ which is also, to agree

³⁰ Abraham Pais, *Subtle Is the Lord: The Life and Science of Albert Einstein* (Oxford University Press 1982) 41, 45; Sue Prideaux, *I am Dynamite! A Life of Friedrich Nietzsche* (Faber & Faber 2018) 46.

³¹ Peter Spiro has pioneered this perspective several years ago: Peter J Spiro, *Cash-for-Passports and the End of Citizenship*" in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer 2018) 17.

³² See e.g. Manuela Boatcă, 'Citizenship' in Olaf Kaltmeier, Anne Tittor, Daniel Hawkins and Eleonora Rohland (eds), *Routledge Handbook to the Political Economy and Governance of the America* (Routledge 2020) 284; Milanović (n 22).

³³ Cf. Kamal Sadiq, 'Postcolonial Citizenship' in Ayelet Shachar, Rainer Bauböck, Irene Bloemraad and Maarten Vink (eds), *The Oxford Handbook of Citizenship* (Oxford University Press 2017) 178.

with Linda Bosniak,³⁴ purely nationalist in essence, even if presented as seemingly neutral or even critical.³⁵ This chapter then offers a brief overview of the key functions that citizenship has played in the contemporary world, and then moves to distil critical directions of citizenship's global evolution in recent decades, outlining the growing tensions between the normative foundations of the status and the tasks it is expected to perform in the world of contemporary constitutionalism. It proceeds to zoom in on citizenship's random ascription, combined with its proclaimed abstract nature resulting in victimising the losers of Ayelet Shachar's 'Birthright Lottery'³⁶ with determination and ease. In extending citizenship rights to some of the previously right-less groups, especially women,³⁷ as well as distributing the status of citizenship itself to some of the resident minorities previously deprived of it,³⁸ the evolution of the status has moved towards solidification of its normative appeal by ending suppression of some groups of its past victims, usually those resident in the state issuing the status.

Given that, once again, the core *loci* of exclusion are the borders to the spaces in the world to which the victims of citizenship are assigned – as Branko Milanović convincingly teaches us³⁹ – addressing the plight of those who are already 'in' is not enough to prevent citizenship from shrinking the horizon of opportunities of its victims. Elimination of a large chunk of the resident victims of citizenship does not affect the normative inconsistencies at the status's core: a status of rights and liberty writ on a constitutional parchment, citizenship has emerged as a blood-based global tool for the distribution of inequalities and exclusion.

Against this background, the last section of this chapter focuses on the growth of selling citizenship to its victims, providing an account, which is radically different

³⁴ Linda Bosniak, *The Citizen and the Alien* (Princeton University Press 2006) 5–9; and further James Tully (ed), *On Global Citizenship: James Tully in Dialogue* (Bloomsbury 2014). See also crucially Christian Joppke's work, virtually all of which could stand as an illustration of this point.

³⁵ To promote a peculiar Western perspective as the only acceptable take on personhood in law, while ignoring its negative effects on innumerable populations worldwide has been one of the citizenship's signature features as a colonial project: James Tully (ed), *On Global Citizenship: James Tully in Dialogue* (Bloomsbury 2014); Willem Schinkel, 'Against "Immigrant Integration": for an End to Neocolonial Knowledge Production' (2018) 6(1) *Comparative Migration Studies* 1; Manuela Boatcă, *Global Inequalities beyond Occidentalism* (Ashgate 2015).

³⁶ Ayelet Shachar, *The Birthright Lottery* (Harvard University Press 2009).

³⁷ Candice L Bredbenner, *A Nationality of Her Own* (University of California Press 1998).

³⁸ E.g. Bain Attwood, *The 1967 Referendum: Race, Power and the Australian Constitution* (Aboriginal Studies Press 2007); Sherally Munshi, 'Immigration, Imperialism, and the Legacies of Indian Exclusion' (2016) 28 *Yale Journal of Law and Humanities* 51.

³⁹ Milanović (n 11).

from – if not directly opposite to – the approach of the majority writing, which looks away when the victims of citizenship are in sight. Today, Russians, Brazilians and Chinese – like all other holders of second-rate global statuses of belonging, no matter how rich and well-educated – are invited to compensate for the punishing nature of the distribution of birthright sub-prime status assignment by investing large amounts to buy themselves out of citizenship's victimhood, just like slaves in antiquity or later indentured labourers could upgrade their statuses through a financial transaction.⁴⁰ A citizenship thus purchased would often be a purely compensatory citizenship.⁴¹ Some would consider the purchase of freedom by a slave as immoral and they could even be right – but not in the post-enlightenment moral universe of individualism, freedom and rationality, the emergence of which Sir Larry Siedentop has described so well.⁴²

What is immoral is to allow slavery to exist, not to allow some slaves to go free. Marketisation is but an element in a broader picture: when a victim of citizenship is elevated to a better citizenship, if not a super-citizenship, via a different route than paying a lot of money, an identical dynamic is at play, as we will see throughout the chapter – a sacrifice is always required.⁴³ Keeping the victims of citizenship constantly in mind enriches our perspective on the evolution, causes and the future of citizenship's marketisation in contemporary world. Moving beyond the sale of citizenship, opening our eyes to the existence of victims of citizenship and the function that the concept plays in bringing about and preserving this category is of importance for the future research and theorising of citizenship and migration flows, as well as victimisation and discrimination as such.

We will proceed as follows: now that that we know who the victims of citizenship are (I.) we will turn to the failing citizenship literatures which have ensured that the victims of citizenship – the majority of the world's population – remain unseen (II.); then to move to the core functions (III.) and normative challenges faced by citizenship, including the crucial importance of territory and exclusion in balancing

⁴⁰ The acquisition of medieval citizenships followed the same logic: Maarten Prak, *Citizens without Nations* (Cambridge University Press 2018); Maarten Prak, 'Citizenship for Sale in Pre-Modern Europe', in Dimitry Kochenov and Kristin Surak (eds), *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging* (Cambridge University Press, 2022).

⁴¹ For a slightly different meaning of the term, see, Yossi Harpaz, *Citizenship 2.0: Dual Nationality as a Global Asset* (Princeton University Press 2019).

⁴² Larry Siedentop, *Inventing the Individual* (Belknap Press 2014).

⁴³ Willem Schinkel, 'Against "Immigrant Integration": for an End to Neocolonial Knowledge Production' (2018) 6(1) *Comparative Migration Studies* 1; Adrian Favell, 'Integration: Twelve Propositions after Schinkel' (2019) 7 *Comparative Migration Studies* (Art No 12).

citizenship and human rights (IV.); and the core developments in the attempts to adapt it to the moral realities of the twenty-first century, where ‘personhood’ does not really help (V.); and to come to the issue of whether it is morally acceptable to sell citizenship to its own victims (VI.). The conclusion concludes.

Tackling the invisible: the victims of citizenship in citizenship studies

The global *status quo* that citizenship perpetuates is not in the interest of its victims: they are left out for others to be ‘free’. This is the essence of citizenship when approached from a global perspective. The whole point of citizenship is to perpetuate the exclusion of citizenship’s victims from dignity and rights without any justification that can be grounded in the terms of the values proclaimed in any mature constitutional system. This starting point of citizenship is vehemently upheld and enforced by law and sanctified in the fabric of the social reality we inhabit. Citizenship – whenever the concept is used – is taken to be part of our ‘natural world’:⁴⁴ living without it is unthinkable for many, no matter how many contradictions this legally driven social construct actually entails.⁴⁵ The citizenship studies literature has largely failed to engage critically with the essence of the phenomenon it has chosen to study. This concerns in particular two scholarly trends fashionable of late: ‘acts of citizenship’ and ‘stakeholder citizenship’. Let us deal with these one-by-one to see how they contribute to the creation and mundanisation of the victims of citizenship by normalising and reinforcing the inequitable *status quo*.

Crucially, no ‘act of citizenship’⁴⁶ can redeem its victims. For lawyers, who are necessarily bound by texts rich in definitions, what scholars refer to as the ‘acts’ and ‘practices’ of citizenship are not referring to citizenship at all, of course. Bourdieu is right that the law is very effective in pre-empting the recognition of what lies outside the well-framed realm of a reality which the law itself has mandated and created,⁴⁷ branding as non-existent any fact of social reality which does not overlap

⁴⁴ John R Searle, *The Construction of Social Reality* (Free Press 1997).

⁴⁵ Mira Siegelberg, *Statelessness: A Modern History* (Harvard University Press 2020).

⁴⁶ Engin Isin and Greg Nielsen (eds), *Acts of Citizenship* (ZED Books 2008). Cf. Antje Wiener, ‘Going Home? “European” Citizenship Practice Twenty Years Later’ in Dimitry Kochenov (ed), *EU Citizenship and Federalism: The Role of Rights* (Cambridge University Press, Cambridge 2017); Engin Isin, ‘Citizenship in Flux: The Figure of the Activist Citizen’ (2009) 29 *Subjectivity* 367.

⁴⁷ Pierre Bourdieu, ‘The Force of Law: Toward a Sociology of the Juridical Field’ (1987) 38 *Hastings Law Journal* 805, 814.

the 'legal truth',⁴⁸ regardless how harsh the world shaped by the this turns out to be.⁴⁹ No matter how European you feel and how much you protest – thereby engaging in these so called 'acts of citizenship' – if you do not have the right papers, you are a foreigner, full stop.⁵⁰ You will be excluded harshly.⁵¹ Of course activism – political or in the courts – can cause the legal truth to be reshaped and obtain legal recognition of your plight. If you are successful then you will achieve precisely that: a legal citizenship status of some kind. Before such a success can be booked – and that moment might never come – you are not a citizen, no matter what you or social scientists think of your position. Citizenship is always the authority's call, whatever such authority may be – never a personal choice. The first starting point in any conversation is therefore this: let us leave aside the ideologies of 'citizenship acts', 'choice' and the 'dignity' of citizenship, and all the literature – which fail to acknowledge and relate citizenship's *status* with its often right-less and unjust *contenu* – as the starting point of our conversation. What such literature does is misrepresent the victims of citizenship as actors somehow responsible for their own fate, in order to glorify citizenship as something evolving and improving. This perspective is flawed.

⁴⁸ Jack M Balkin, 'The Proliferation of Legal Truth' (2003) 26 *Harvard Journal of Law & Public Policy* 5, 9.

⁴⁹ Jack M Balkin, 'Agreements with Hell and Other Objects of Our Faith' (1997) 65 *Fordham Law Review* 1703.

⁵⁰ While the law used to be precisely this categorical, the rise of Art. 8 ECHR jurisprudence prohibiting, in numerous cases, deportations to the country of citizenship, has created something akin to a *de facto* nationality, altering the legal reality to a great degree. For one of the first notable examples, see the Concurring Opinion of Judge Martens in *Beldjoudi (Beldjoudi v France* No. 12083/86 (ECtHR Chamber, 26 March 1993); *Jeunesse v Netherlands* No. 12738/10 (ECtHR Grand Chamber, 3 October 2016). This trend, although markedly counter-orthodox in citizenship matters, and deeply empowering at the individual level, has been criticised in the literature (e.g. Daniel Thym, 'Respect for Private and Family Life under Article 8 ECHR in Immigration Cases: A Human Right to Regularize Illegal Stay?' (2008) 57 *International & Comparative Law Quarterly* 87) and is not yet a mainstream position of the European Court of Justice: Stanislas Adam and Peter Van Elsuwege, 'EU Citizenship and the European Federal Challenge through the Prism of Family Reunification' in Dimitry Kochenov (ed), *EU Citizenship and Federalism: The Role of Rights* (Cambridge University Press 2017). The trend definitely adds to the picture of the ongoing contestation of the normative foundations of citizenship and is observable also in the practice of the UN Committee on Human Rights (UNCHR), which is in tune with ECtHR practice: *Stewart v Canada*, UN Doc CCPR/C/58/D/538/1993 (1 November 1996) ('no one shall be arbitrarily deprived of the right to enter his own country' (quoting Article 12(4) of the International Covenant on Civil and Political Rights (ICCPR), GA Res 2200A (XXI), UN Doc A/6316 (December 16, 1966)). See also UNCHR, General Comment 27, Freedom of Movement (Article 12), UN Doc CCPR/C/21/Rev.1/Add.9 (November 2, 1999). According to the Committee, the scope of 'his own country' in the sense of Art 12 ICCPR is broader than 'his country of nationality' (at para 20).

⁵¹ Kochenov (n 8).

Likewise, no ‘stakeholder citizenship’, as popularised in many of Rainer Bauböck’s contributions can redeem the victims of citizenship.⁵² Criticised by theorists on various grounds elsewhere,⁵³ the core problem with this scholarship for our purposes is that it builds on an untenable misrepresentation of two crucially important elements of the world it engages with: the status of citizenship and its spatiality. Furthermore, it also underplays the notion of a boundary – an error too obvious for our purposes to criticise; an Afghan will never acquire a ‘stake’ in Hungarian society because a visa would never be issued and an Afghani asylum seeker would be jailed, tortured and sent away.⁵⁴ Of course, the level of harshness of exclusion varies depending on the point of crossing – you are turned back at JFK when flying on a ‘wrong’ passport from Paris with relative politeness, while an attempt to enter Europe from Africa could see you drowning, among hundreds of others that season, in full view of the Frontex guards, if not with their active ‘assistance’.⁵⁵ However, the basic point remains unchanged: the whole system of global migration management is *designed* to deprive our Afghan of any possibility to enter and acquire a ‘stake’ in any society of super-citizens. This is what contemporary citizenship is about. Stakeholder citizenship is thus only for those who already possesses a super-citizenship status, boosting their legal position around the world – Americans, Europeans, Australians and the like – it is a useless non-starter for the absolute majority of the world’s population.

Two of the less obvious flaws of ‘stakeholder’ citizenship deserve a more serious discussion, and bring us back to our starting point: stakeholder citizenship, instead of helping its victims, is designed at best not to see and at worst to denigrate them

⁵² On stakeholder citizenship see, e.g. Rainer Bauböck, *Democratic Inclusion: Rainer Bauböck in Dialogue* (Manchester University Press 2018) (and the literature cited therein).

⁵³ E.g. Peter J Spiro, ‘Stakeholder Theory Won’t Save Citizenship’ in Rainer Bauböck (ed), *Democratic Inclusion: Rainer Bauböck in Dialogue* (Manchester University Press 2018) 204.

⁵⁴ See Boldizsár Nagy, ‘Investment Migration and Corruption: The Example of Hungary’, in Dimitry Kochenov and Kristin Surak (eds), *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging* (Cambridge University Press, 2022); Boldizsár Nagy, ‘Migration in the Context of Hungarian Populism’ in Vladislava Stoyanova and Stijn Smet (eds), *Migrants’ Rights, Populism and Legal Resilience in Europe* (Cambridge University Press 2021). The same essentially applies to the EU as a whole: Barbara Grabowska-Moroz and Dimitry Kochenov, ‘The Loss of Face for Everyone Concerned: EU Rule of Law in the Context of the “Migration Crisis”’ in Vladislava Stoyanova and Stijn Smet (eds), *Migrants’ Rights, Populism and Legal Resilience in Europe* (Cambridge University Press 2021); Evangelia L Tsourdi, ‘Asylum in the EU: One of the Many Faces of Rule of Law Backsliding?’ (2021) *European Constitutional Law Review* (early view).

⁵⁵ E.g., ‘EU: Probe Frontex Complicity in Border Abuses’ (News, Human Rights Watch 9 November 2020) <https://www.hrw.org/news/2020/11/09/eu-probe-frontex-complicity-border-abuses> accessed 16 November 2021, Numerous legal actions were launched and investigations started.

as not having a ‘stake’. First, if all statuses of citizenship are believed to be of more-or-less the same quality – something that I, together with Justin Lindeboom, have repeatedly proven to be an untenable view⁵⁶ – then stakeholder citizenship could make sense: a Dutch person would move to Nicaragua, put down roots, acquire a stake in that society and naturalise, thereby losing Dutch citizenship. In abstract isolation, that is fine. The absurdity of this view is that it is applied in a world where Nicaraguan citizenship is a punishment and Dutch citizenship is a global privilege: a Dutch citizen – any Dutch citizen – no matter how much in love with her Nicaraguan life, will do anything in her power *not* to become a Nicaraguan, thereby escaping the risk of becoming a victim of citizenship.⁵⁷

This is precisely why so few possessors of super-citizenships naturalise into victim-of-citizenship status, just as aristocrats would not willingly become serfs – Count Leo Tolstoy’s flirting with simple life is an exception proving the point.⁵⁸ Famous cases from the history of citizenship teach us as much. In the infamous case of *Nottebohm*⁵⁹ – the owner of coffee plantations in Guatemala passed his whole life in that country and obviously enjoyed it. He believed he held an enormous stake there, but he chose to naturalise in Liechtenstein, not in his beloved Guatemala, when the time came to get rid of his odious Third Reich citizenship. The reasons for that are obvious: Guatemalans – even the richest among them, as Mr Nottebohm would have been had he opted for naturalisation there – are the right-less victims of citizenship and Liechtensteiners are not.⁶⁰ In fact, this explains the

⁵⁶ Kochenov and Lindeboom (n 5 ‘Empirical Assessment’); Kochenov and Lindeboom (n 5 *Quality of Nationality*).

⁵⁷ See, in a similar context, Hans Ulrich Jessurun d’Oliveira’s clarification that accepting a foreign citizenship at the risk of losing his original Dutch is not attractive, even when the new citizenship is designed to rectify the wrongs the Sephardic community was subjected to in Spain and Portugal many hundreds of years ago: Hans U Jessurun d’Oliveira, ‘Iberian Nationality Legislation and Sephardic Jews’ (2015) 11 *European Constitutional Law Review* 13.

⁵⁸ Cf., for the rare examples of citizenship downgrades, Kristin Surak, ‘Millionaire Mobility and the Sale of Citizenship’ (2021) 47(1) *Journal of Ethnic and Migration Studies* 166.

⁵⁹ *Nottebohm Case (Liechtenstein v Guatemala)* [1955] ICJ Rep 4. Cf.: Peter J Spiro, ‘Nottebohm and ‘Genuine Link’: Anatomy of a Jurisprudential Illusion’ in in Dimitry Kochenov, Madeleine Sumption and Martijn van den Brink (eds), *Investment Migration in Europe and the World: Current Issues* (Hart Publishing, 2023, forthcoming). Early version available in (2019) *Investment Migration Working Papers* No 2019/1 (and the literature cited therein). Cf. Daniel Sarmiento and Martijn van den Brink ‘EU Competence in Investor Migration’, in Dimitry Kochenov and Kristin Surak (eds), *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging* (Cambridge University Press, 2022); Petra Weingerl and Matjaž Tratnik, ‘Relevant Links – Investment Migration as an Expression of National Autonomy in Matters of Nationality’, in Dimitry Kochenov and Kristin Surak (eds), *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging* (Cambridge University Press, 2022)..

⁶⁰ Cf. Kochenov (n 3) 115–117.

only clearly articulated principle of international law today related to citizenship: ‘presumed naturalisations’ based on acquired ‘stakes’ in the society of the country where one resides for a long time are prohibited outright – and the story behind the prohibition goes exactly to Latin America and its attempts to turn the super-citizens of the US and the European Empires into the Latin American victims of citizenship without their express consent.⁶¹

This seamlessly connects with the second core flaw of stakeholder citizenship: just as the various citizenship statuses as such are of different value, the spaces locked or unlocked through such statuses are not equal, as Branko Milanović, *inter alia*, has demonstrated.⁶² The horizon of opportunities offered by the citizenship of either of the two Congos is negligible, compared with those of France or Belgium. Consequently, Congolese citizenship, entitling one to enter Congo and stay there, in a locus of no opportunity, while simultaneously excluding its holder from the spaces that super-citizenship unlocks. Such a citizenship is a curse, not a privilege.

The same logic applies here as it does to the citizenship status cases such as Nottebohm’s: any stake established in Congolese society could easily become a burden too heavy to bear should it threaten the super-citizenship of a lover of all things African, as the acquisition of a new citizenship still frequently cancel the one previously held.⁶³ ‘Stakeholder citizenship’ is thus an ideological mantra retold to

⁶¹ Cf. Peter Spiro, ‘Investment Migration and the Long Leash of International Law’, in Dimitry Kochenov and Kristin Surak (eds), *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging* (Cambridge University Press, 2022). Ironically, and proving this point, the differences between the quality categories of citizenship usually matters more than such differences between the concrete citizenships within a given category, be it super-citizenships or the worst statuses the world has ever known. Naturalisations happen between categories, not within, which results in different rules *de iure* or *de facto* applying within the category and out of the category naturalisations. EU citizens naturalise much more easily in other EU Member States, to give one example, and nobody minded when presumed naturalisations were applied to Germans naturalising in different state of the German Empire – this at the same time as presumed naturalisations were pronounced non-kosher for Latin America: Andreas F Fahrmeir, ‘Nineteenth-Century German Citizenship: A Reconsideration’ (1997) 40 *The Historical Journal* 721. Cf. Dimitry Kochenov, ‘Member State Nationalities and the Internal Market: Illusions and Reality’ in Niamh Nic Shuibhne and Laurence W Gormley (eds), *From Single Market to Economic Union* (Oxford University Press 2012) (analysing the EU example).

⁶² Milanović (n 11).

⁶³ Consequently, a significant level of care is required when a compensatory citizenship is acquired in terms of publicity and information disclosures: José-María Arraiza, ‘Good Neighbourliness as a Limit to Extraterritorial Citizenship: The Case of Hungary and Slovakia’ in Dimitry Kochenov and Elena Basheska (eds), *Good Neighbourly Relations in the European Legal Context* (Brill-Nijhoff 2015); Dimitry Kochenov, Oskar J Gstrein and Jacquelyn Veraldi, ‘On the Privacy – Naturalisation Interface:

explain away the plight of the victims of citizenship, rather than to help them. Given citizenship's punishing nature as an effective instrument for the promotion of global inequalities and exclusion from rights, any theorising based on denying citizenship's essential features – be it Engin Isin's 'acts of citizenship', T.H. Marshall's writings on 'rights',⁶⁴ or Rainer Bauböck's 'stakeholder' approaches – should thus be dismissed as outright harmful from the perspective of the victims of citizenship, which is the only relevant viewpoint in this debate. Stakeholdership is thus the same or worse than the nationalist citizenship tales retold under the banner of republicanism.

Citizenship's core functions in the face of its normative dilemmas

Again: regardless whether this simple fact is acknowledged, it is impossible to ignore citizenship's nature as a *legal* status of attachment to a public authority,⁶⁵ entailing the enjoyment of a set of citizenship rights – or, in the majority of cases, being subjected to bitter liabilities. These rights include, but are not limited in the majority of jurisdictions to, the right to remain and work in the territory under the jurisdiction of the authority in question, the right not to be deported,⁶⁶ political rights (in the minority of jurisdictions in the world where there is a democracy⁶⁷), and the entitlement to non-discrimination among citizens. Non-discrimination is of particular importance in this context: while it is frequently positioned as a right, it is also unquestionably implied into the status as such. Remove the formal requirement of equality before the law and characterising the resulting legal arrangement as a citizenship becomes difficult, to say the least.

Belonging, a legal fiction established by the sovereign (unrelated to your subjective feelings) is often cited as the third element of citizenship's essence, added to status and rights. In essence, it is unnecessary, and on closer scrutiny, its recognition is a process strikingly similar to the one regulating the assignment of the status in the

European Practice of the Publication of Personal Data of New Citizens Analyzed' (2020) 42 *Houston Journal of International Law*, 237.

⁶⁴ For detailed criticism of the untenable contradictions underlying TH Marshall's perspective, see, most importantly, Luigi Ferrajoli, 'Dai diritti del cittadino ai diritti della persona' in Danilo Zolo (ed), *La cittadinanza: Appartenenza, identità, diritti* (Laterza 1994) 264– 268.

⁶⁵ The formal level of the authority does not usually matter: Rainer Bauböck, 'Global Justice, Freedom of Movement and Democratic Citizenship' (2009) 50 *Archives européennes de sociologie* 1.

⁶⁶ Bridget Anderson, Matthew J Gibney and Emanuela Paoletti, 'Citizenship, Deportation and the Boundaries of Belonging' (2011) 15 *Citizenship Studies* 547.

⁶⁷ The Economist, 'The Economist Intelligence Unit's Democracy Index' (updated annually).

first place, however objective the sovereign pretends such belonging to be. No matter how much you think you belong, a change in the law can always make you an outcast and a foreigner, as so many experienced in Germany in 1935,⁶⁸ in Latvia and Estonia in 1991,⁶⁹ in post-Yugoslav Slovenia⁷⁰ and, most recently, in the UK following Brexit:⁷¹ demonstrating the exclusionary core of citizenship in action – shunting aside all the popular rhetoric of ‘I am proud and I belong’. Those who are proclaimed ‘not to belong’ are excluded from the territory controlled by the authority issuing citizenship regardless of what they themselves think; they cannot live and work there, unless a specific authorisation is granted.

The absence of the non-citizens’ automatic right to enter aside,⁷² the interpenetration of citizenship rights and human rights has led to the relative – and necessarily welcome – trivialisation of the status of citizenship and growing attempts to theorise a more faithful correspondence between the actual society under the authority in question and the citizenry recognised under the same authority.⁷³ Once the rigidity of the citizens–non-citizens divide is questioned in terms of the corresponding rights and entitlements, abuses of power relying on this divide as their chief legal tool and only justification are made difficult. Of course, history knows plentiful examples of such unfortunate deployment of the status of citizenship. Think, for instance, of the Nurnberg laws inspired by the US racism of the day,⁷⁴ which excluded Germany’s Jewry from the full status of citizenship as a way to justify their formal exclusion from its key rights.⁷⁵ South-African *apartheid* ‘homelands’, designed to distribute citizenships of non-

⁶⁸ Kristin Rundle, ‘The Impossibility of an Exterminatory Legality: Law and the Holocaust’ (2009) 59 *University of Toronto Law Journal* 65, 69–76.

⁶⁹ Richard C Visek, ‘Creating Ethnic Electorate through Legal Restorationism: Citizenship Rights in Estonia’ (1997) 38 *Harvard International Law Journal* 315.

⁷⁰ Jelka Zorn, ‘Non-citizens in Slovenia: Erasure from the Register of Permanent Residents’ in Caroline Sawyer and Brad K Blitz (eds), *Statelessness in the European Union: Displaced, Undocumented, Unwanted* (Cambridge University Press 2011) 195.

⁷¹ Dimitry Kochenov, ‘EU Citizenship and withdrawals from the Union: How Inevitable Is the Radical Downgrading of Rights?’ in Carlos Closa (ed), *Troubled Membership: Dealing with Secession from a Member State and Withdrawal from the Union* (Cambridge University Press 2017); Martijn van den Brink and Dimitry Kochenov, ‘Against Associate European Citizenship’ (2019) 57 *Journal of Common Market Studies* 1366.

⁷² See: Joseph Carens, ‘Aliens and Citizens: The Case for Open Borders’ (1987) 49 *Review of Politics* 251.

⁷³ Christian Joppke, ‘Citizenship by Investment as Instrumental Citizenship’, in Dimitry Kochenov and Kristin Surak (eds), *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging* (Cambridge University Press, 2022).

⁷⁴ James Q Whitman, *Hitler’s American Model* (Princeton University Press 2017).

⁷⁵ Ingo Müller, *Hitler’s Justice* (Harvard University Press 1991).

recognised all-black puppet states, like Bophuthatswana and Transkei,⁷⁶ to grant minorities ‘full rights abroad’⁷⁷ are equally good examples. More recently, the Latvian and Estonian policies of humiliating Russian, Ukrainian and Jewish minorities, based precisely on the same strategy of denying citizenship to supply a justification for the exclusion of people from key rights did not work as well: under pressure from the international institutions, the majority of former ‘citizenship’ rights were extended to the minorities as ‘human’ rights.⁷⁸ These examples were efforts *de facto* to turn ‘non-citizenship’ statuses into racist second-rate citizenships reserved for minority members only.⁷⁹ That human rights-based reasoning challenges them is to be welcomed. In other words, ‘they are not citizens’ is no longer an automatically accepted pretext to abuse settled resident populations – it works everywhere, but at least it does not come unquestioned.

The proclamation of equal rights at the inception of citizenship was precisely the ideological tool that facilitated the *de facto* socioeconomic exclusion and legitimisation of the authority in charge of the preservation of the *status quo*, solidifying inequalities and paralysing social change as TH Marshall explained.⁸⁰ The same applied to political, sexual and racial exclusion, which were core aims of citizenship at its inception, ensuring that it worked as an efficient governing tool without producing any significant risks of challenging the elites.⁸¹ Classical modern citizenship thus did not even remotely overlap with the actual reality on the ground, as James Tully has wonderfully described;⁸² it endowed with rights as opposed to empty proclamations only a radical minority in any society – usually white males able to pass the property census. Women counted for so little that their very legal being as citizens could be retained only as long as they did not marry a foreigner or a stateless person.⁸³ Passing on citizenship to their own kids

⁷⁶ At some point, the hive mind of Wikipedia un-ironically included Nelson Mandela among the ‘notable citizens’ of this ‘state’, which is not legalistically incorrect, *per se*.

⁷⁷ See e.g. South African, Bantu Homelands Citizenship Act, 1970, which instituted the denaturalisation of the black majority during *apartheid*. Cf. John Dugard, ‘South Africa’s Independent Homelands: An Exercise in Denationalization’ (1980) 10 *Denver Journal of International Law and Policy* 11.

⁷⁸ Pritt Järve, ‘Sovetskoje nasledije i sovremennaja ètnopolitika stran Baltii’ in Vadim Poleschchuk and Vladimir Stepanov (eds), *Ètnopolitika stran Baltii* (Nauka 2013).

⁷⁹ Dimitry Kochenov and Aleksejs Dimitrovs, ‘EU Citizenship for Latvian Non-Citizens: A Concrete Proposal’ (2016) 38 *Houston Journal of International Law* 1.

⁸⁰ Thomas H Marshall, ‘Citizenship and Social Class’ in Thomas H Marshall, *Citizenship and Social Class* (Pluto Press 1992).

⁸¹ Kochenov (n 3).

⁸² James Tully (ed), *On Global Citizenship: James Tully in Dialogue* (Bloomsbury 2014).

⁸³ Cf. e.g. Patrick Weil, *The Sovereign Citizen* (University of Pennsylvania Press 2012).

was out of reach for them: granting citizenship was a male-only affair.⁸⁴ The gradual extension of human rights brought the reality on the ground closer to the initial rhetorical ideal, also empowering further contestations of exclusions within the ambit of citizenship: consider for instance the sexual citizenship story,⁸⁵ queer citizenship⁸⁶ or the ongoing animal citizenship debate.⁸⁷ This resulted, ultimately, in the gradual disappearance of the rigid divide between citizenship rights and human rights for those in the territory of the authority. The same did not apply to those who were kicked out or remained outside, since entry to a territory – the most sacred right of citizenship – alongside its double – the right not to be deported from the territory – remained the direct offspring of citizenship status par excellence, largely unaffected by human rights thinking. Indeed, there is no human right to enter any state of your choosing, we are told⁸⁸ – even if the arguments to support the contrary position are attractive and sound, as Joseph Carens has demonstrated.⁸⁹

The residue of pre-human rights thinking, predating the tectonic shifts in the understanding and practice of citizenship, still persist and could explain, *inter alia*, the backlash apparent in the regulation of access to the status of citizenship. Naturalisations are increasingly made dependent on elaborate *rites de passage* in the form of ‘culture’ and ‘values’ tests, which settled foreigners are required to pass to acquire the formal status of citizenship, however absurd the ‘neutral’ premise of this approach might be, as Willem Schinkel and Adrian Favell explain.⁹⁰ This

⁸⁴ Jamie R Abrams, ‘Examining Entrenched Masculinities in the Republican Government Tradition’ (2011) 114 *Virginia Law Review* 165.

⁸⁵ Ůladzislau BelavusaŮ, ‘EU Sexual Citizenship: Sex Beyond the Internal Market’ in Dimitry Kochenov (ed), *EU Citizenship and Federalism: The Role of Rights* (Cambridge University Press 2017) (and the literature cited therein).

⁸⁶ Dimitry Kochenov, ‘On Options of Citizens and Moral Choices of States: Gays and European Federalism’ (2009) 33 *Fordham International Law Journal* 156; Ůladzislau BelavusaŮ and Dimitry Kochenov, ‘Federalizing Legal Opportunities for LGBT Movements in the Growing EU’ in Koen Slotmaeckers, Heleen Tourquet and Peter Vermeersch (eds), *The EU Enlargement and Gay Politics: The Impact of Eastern Enlargement on Rights, Activism and Prejudice* (Palgrave Macmillan 2016) 69.

⁸⁷ Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford University Press 2011); William A Edmundson, ‘Do Animals Need Citizenship?’ (2015) 13 *International Journal of Constitutional Law* 749.

⁸⁸ Which fact renders the proclaimed right to leave entirely ephemeral too: Dimitry Kochenov, ‘The Right to Leave Any Country’ (2012) 28 *Connecticut Journal of International Law* 43.

⁸⁹ See, for a magisterial treatment: Joseph Carens, *The Ethics of Immigration* (Oxford University Press 2013).

⁹⁰ Willem Schinkel, ‘Against “Immigrant Integration”: for an End to Neocolonial Knowledge Production’ (2018) 6(1) *Comparative Migration Studies* 1; Willem Schinkel, ‘The imagination of “society” in measurements of immigrant integration’ (2013) 36(7) *Ethnic and Racial Studies*; Adrian Favell,

'integration' rationale is now deployed in novel contexts, sometimes to increase the othering of citizens with immigrant backgrounds and of the poor, as well as to undermine the functioning of European citizenship as a status based on non-discrimination on the basis of nationality, as Sarah Ganty has shown.⁹¹

The assumption behind such tests is as problematic as it is commonplace: cultures located beyond our borders are a barbarian non-equivalent of our own.⁹² Implementing this assumption in practice is even more difficult than embracing it rationally, as the proclaimed core legal value of any liberal democracy today is tolerance.⁹³ Tolerance is what all the 'specificity testing' is necessarily bound to come down to.⁹⁴ In this sense testing the specificity of the unique Danish culture and of an even more unique Swiss one amount, in fact, to testing the same thing.

Officially, however, citizenship stands to promote the idea of a 'good citizen', someone who fully respects the local law and is loyal to whatever state or political system he or she was born into: a much glorified meekness ideal, aiming to make the society most governable and frowning both at the indifferent and those who want to overturn the regime or introduce deep changes into the core aspects of the legal system/ society in question.⁹⁵ Being a 'good citizen', i.e. approving of all the official mantras underpinning the public authority claiming that person at any given moment, is thus the core duty of citizenship today – just as it was a hundred years ago.⁹⁶

'Integration: Twelve Propositions after Schinkel' (2019) 7 *Comparative Migration Studies* (Art No 12); See also Dimitry Kochenov, 'Mevrouw de Jong gaat eten: EU Citizenship and the Culture of Prejudice' [2011] EUI Working Paper RSCAS 2011/06.

⁹¹ Sarah Ganty, *L'intégration des citoyens européens et des ressortissants de pays tiers en droit de l'UE* (Larcier 2021).

⁹² However nasty, this assumption seems to be 'natural': Melvin J Lerner, 'The Justice Motive: Some Hypotheses As to Its Origins and Forms' (1977) 45 *Journal of Personality* 1, 29. For the whole picture, see, Melvin J Lerner and Susan Clayton, *Justice and Self-Interest* (Cambridge University Press 2011).

⁹³ Kochenov (n 3) 196. Contrast the mantras of tolerance with the virtually official Islamophobia practiced in Europe today: Christian Joppke, *Citizenship and Immigration* (Cambridge University Press 2010).

⁹⁴ This presents traditional accounts of citizenship in a radically new light: Linda Bosniak, 'Citizenship Denationalized' (2000) 7 *Indiana Journal of Global Legal Studies* 447. See also Mikko Kuisma, 'Rights or Privileges? The Challenge of Globalization to the Values of Citizenship' (2008) 12 *Citizenship Studies* 613; Kim Rubinstein and Daniel Adler, 'International Citizenship: The Future of Nationality in a Globalised World' (2000) 7 *Indiana Journal of Global Legal Studies* 519; Ronnie D Lipschutz, 'Members Only? Citizenship and Civic Virtue in a Time of Globalization' (1999) 36 *International Politics* 203.

⁹⁵ Kochenov (n 3) 159–196.

⁹⁶ *ibid.*

In the light of the considerations above, it is possible, very broadly, to outline the core functions of citizenship as a legal-political concept, which the normative core of the notion seeks to achieve. These amount, chiefly, to three elements:

1. Providing legalistic reasons for exclusion viewed as desirable and expedient by the public authority at a given moment;
2. Ensuring complacency, societal uniformity and popular legitimation of the powers that be – regardless whether they are democratic and no matter who is in power;
3. Inter-generational perpetuation of the *status quo* between the affluent and the poor societies globally, by locking the victims of citizenship out of the spaces of opportunity.

Quite naturally, the successful operation of citizenship today means one thing: a thoroughgoing exclusion of the victims of citizenship from the world. Should they wish to escape such exclusion, then naturalisation into a super-citizen – the acquisition of an elite status in one of the richest democracies in the world – is an absolute must. Again, just as in antiquity, when a slave could buy freedom, a victim of citizenship must invest time, talent and money to acquire a ‘compensatory citizenship’, as Yossi Harpaz explains in detail in his scholarship.⁹⁷ This is where selling citizenship to its victims comes to the fore.

Citizenship versus rights and why territory matters

Discussing the normative foundations of modern citizenship necessarily implies not taking its official ideology for granted, and focusing on both sides of the coin: the exclusions and discriminations veiled behind the grand rhetoric of sovereignty and democracy; and an ideal picture of equality, self-governance and rights within the strict limits of the permitted field of contestation. The two are the same story, which has proved astonishingly effective in reaching its goals, especially given the crude simplicity of the narrative and the relative naïveté of its underlying thinking.

The story of the absolute majority of the modern liberal democracies is a story of a constant nuancing of what citizenship entails and stands for,⁹⁸ to the point when, as a result of its long evolution, it becomes clear that citizenship has gone through a fundamental overhaul over the last half century. In the process, all the foundational assumptions behind citizenship are put to the test, including its

⁹⁷ Harpaz (n 9 ‘Citizenship and Residence’).

⁹⁸ Joppke (n 93).

ability to exclude without justification,⁹⁹ to oppress by imposing identities, to disregard the plight of those unable or unwilling to conform to the ‘good citizen’ ideal mandated by the authority,¹⁰⁰ its connection with a set of rights officially reserved for citizens;¹⁰¹ and its ability to circumscribe equality before the law – citizenship’s core consideration – to groups out of favour with the authorities at any given moment: women, minorities, communists or the poor, for instance.¹⁰²

Moreover, the connection between the equality before the law, and the territoriality of the scope of any of citizenship’s core rights, is not as straightforward as the texts of the national constitutions would strongly imply, thus altering the concept’s very fundamentals. The sovereign territoriality of the citizenship concept can no longer be assumed,¹⁰³ and neither can the idea that this legal status alone can provide a solid ground for the equal protection of all its bearers under the law of the authority, which distributes the status.¹⁰⁴ In fact, the hitherto unquestioned correlation between citizenship rights and the relevant sovereign territory is changing in many places:¹⁰⁵ increasingly many citizenships around the world secure access to key citizenship rights, including residence, work and not infrequently political rights, outside the confines of the sovereign territory whose authority is behind the grant of the legal status of citizenship. Importantly, this does not only concern the (quasi-)citizenship of the formerly subordinated colonies which – through some version of a ‘compact of free association’¹⁰⁶ with what used to be the ‘mother country’ – would extend the rights in the colonial centre to the

⁹⁹ Iris M Young, ‘Polity and Group Difference: a Critique of the Ideal of Universal Citizenship’ (1989) 99 *Ethics* 250, 254–255; William E Forbath, ‘Caste, Class, and Equal Citizenship’ (1999) 98 *Michigan Law Review* 1.

¹⁰⁰ Kochenov (n 3) 159–196 (and the literature cited therein).

¹⁰¹ Joseph S Carens, ‘Citizenship and Civil Society: What Rights for Residents?’ in Randall Hansen and Patrick Weil (eds), *Dual Nationality, Social Rights and Federal Citizenship in the U.S. and Europe* (Randall Books 2002) 100.

¹⁰² Imogen Tyler, ‘Designed to Fail: A Biopolitics of British Citizenship’ (2010) 14 *Citizenship Studies* 61; Kristin Rundle, ‘The Impossibility of an Exterminatory Legality: Law and the Holocaust’ (2009) 59 *University of Toronto Law Journal* 65, 69–76; Anthony, Lord Lester of Herne Hill QC, ‘East African Asians Versus the United Kingdom: The Inside Story’ (Lecture, October 23, 2003) <https://www.blackstonechambers.com/document.rm?id=73> last accessed 16 November 2021.

¹⁰³ Kochenov (n 3) 135–142.

¹⁰⁴ Dimitry Kochenov, ‘On Tiles and Pillars: EU Citizenship as a Federal Denominator’ in Dimitry Kochenov (ed), *EU Citizenship and Federalism: The Role of Rights* (Cambridge University Press 2017) 3.

¹⁰⁵ For a full account, see Dimitry Kochenov, ‘Interlegality – Citizenships – Intercitizenships’ in Gianluigi Palombella and Jan Klabbbers (eds), *The Challenge of Interlegality* (Cambridge University Press 2019).

¹⁰⁶ Chimène I Keitner and W Michael Reisman, ‘Free Association: The United States Experience’ (2003) 39 *Texas International Law Journal* 1.

former colonial subjects: think of the Micronesians in the US¹⁰⁷ or the Belarusians in Russia.¹⁰⁸ The logic of opening up the sovereign territory and thus potentially the access to citizenship status as such for each-other's citizens, first proposed by AV Dicey at the end of the nineteenth century,¹⁰⁹ while destined only to find cold reception then, has proved popular around the world today. From the Gulf Cooperation Council¹¹⁰ to Latin America,¹¹¹ West Africa (at least on paper),¹¹² the Nordic countries¹¹³ and more broadly the EU,¹¹⁴ the dislocation of the citizenship–sovereign territory correlation has become a crucial trend in contemporary citizenship evolution, what could be branded as the rise of inter-citizenships penetrating two or more jurisdictions via the same legal status, enhanced by a binding requirement of mutual recognition.¹¹⁵

¹⁰⁷ Tung-Lam Dang, 'Relation associative: les États Fédérés de Micronésie: les spécificités de l'association' in Jean-Yves Faberon et al (eds), *Destins des collectivités politiques d'Océanie*, Vol 1 (Presses Universitaires d'Aix-Marseille 2011).

¹⁰⁸ Benedikt Pirker and Kirill Entin, 'The Free Movement of Persons in the Eurasian Economic Union – between *Civis Eurasiaticus* and *Homo Economicus*' in Nathan Cambien, Dimitry Kochenov and Elise Muir (eds), *European Citizenship under Stress: Social Justice, Brexit, and Other Challenges* (Brill-Nijhoff 2020) 508.

¹⁰⁹ L Dyer, 'Anglo-Saxon Citizenship: A Proposition by Professor Dicey Looking to This End' (1897) 3 *The Barrister* 107. The new status was to be inaugurated on January 1, 1901, but the proposal did not generate enough following for this plan to become a reality.

¹¹⁰ Zahra Babar, 'Free Mobility within the Gulf Cooperation Council' [2011] Occasional Paper No 8 (Center for International and Regional Studies, Georgetown University School of Foreign Service in Qatar).

¹¹¹ Diego Acosta Arcarazo and Luisa F Freier, 'Turning the Immigration Policy Paradox Upside Down? Populist Liberalism and Discursive Gaps in South America' (2015) 49 *International Migration Review* 659. See also Diego Acosta Arcarazo and Andrew Geddes, 'Transnational Diffusion or Different Models? Regional Approaches to Migration Governance in the European Union and MERCOSUR' (2014) 16 *European Journal of Migration and Law* 19.

¹¹² Aderanti Adepoju, 'Fostering Free Movement of Persons in West Africa: Achievements, Constraints, and Prospects for Intraregional Migration' (2002) 40 *International Migration* 3; Adedayo Adepoju, 'Migration Management in West Africa within the Context of ECOWAS Protocol on Free Movement of Persons and the Common Approach on Migration' in OECD (ed), *Regional Challenges of West African Migration* (OECD Publishing 2009) 17.

¹¹³ Mikko Kuisma, 'Nordic Models of Citizenship: Lessons from Social History for Theorising Policy Change in the "Age of Globalisation"' (2007) 12 *New Political Economy* 87.

¹¹⁴ Dimitry Kochenov, 'Member State Nationalities and the Internal Market: Illusions and Reality' in Niamh Ní Shuibhne and Laurence W Gormley (eds), *From Single Market to Economic Union* (Oxford University Press 2012).

¹¹⁵ Dimitry Kochenov, 'Interlegality – Citizenships – Intercitizenships' in Gianluigi Palombella and Jan Klabbers (eds), *Interlegality* (Cambridge University Press 2019).

Two developments resulted from the mutation of the territoriality of rights combined with the increasing importance of human rights in general in the context of citizenship's evolution discussed in the previous section. First, the scope of disadvantage of the victims of citizenship apparently shrank with the advent of human rights. Second, the territories of rights associated with the majority of citizenships in the world have grown significantly, boosted by inter-citizenships. As the gap between the scope of merely nominal citizens and of 'true' citizens enjoying full citizenship rights narrowed (women have now obtained the right to vote and pass on their citizenship status to their descendants, for instance),¹¹⁶ coupled with the extension of the status of citizenship to formerly excluded minority groups (consider the extension of the Australian citizenship to the aboriginals, for instance),¹¹⁷ the ideological distinction between citizens and non-citizens in modern society has predictably become contested and problematised, bringing about the gradual extension of rights, coupled with the grant of a (sometimes theoretical) potential right for any settled resident of a modern liberal democratic state to acquire citizenship. The majority of jurisdictions today do not recognise the formerly commonplace disqualifications related to race and religion, for instance.

There is a crucially significant footnote to this glorious story of the 'de-victimisation' of citizenship presented above. Indeed, while those in the territory of an authority can more readily acquire the status and while those who belong to previously excluded groups – be they women or various minorities – can now experience workable citizenship rights, at least to some degree, this *only applies within the territory of rights* of each particular citizenship.¹¹⁸ In other words, the story of citizenship's 'thinning' and 'lightening', and its newly-discovered benevolence does not in any way affect the rigid boundaries dividing the spaces occupied by the best as opposed to third-rate citizenships. Indeed, it could be that the visa barriers between the 'Western world' and the spaces to which the victims of citizenship are confined have become even higher and steeper, compared with even half a century ago. While further data-driven research into this area is needed

¹¹⁶ Michael Goldhaber, *A People's History of the European Court of Human Rights* (Rutgers University Press 2007) 15–26.

¹¹⁷ David Mercer, "'Citizen Minus'?: Indigenous Australians and the Citizenship Question' (2003) 7 *Citizenship Studies* 42].

¹¹⁸ Dimitry Kochenov, 'Interlegality – Citizenships – Intercitizenships' in Gianluigi Palombella and Jan Klabbers (eds), *The Challenge of Interlegality* (Cambridge University Press 2019); Dimitry Kochenov and Justin Lindeboom, 'Part I: Laying down the Base' in Kochenov and Lindeboom (n 5 *Quality of Nationality*).

unquestionably, it is reasonable to assert that decolonisation has led to a decrease in the number and quality of the citizenship rights globally enjoyed by the newly proclaimed free citizens of the decolonised spaces, further racialising the concept of citizenship. For the majority of these people, the former imperial centres – and all other super-citizenship areas – are now out of reach. In other words, the now benevolent face of citizenship directed at resident, formerly victimised groups should not be mistaken for a change in citizenship's core task, which is the exclusion of non-citizen others from the spaces of opportunity, thereby ensuring the preservation and reinforcement of global inequalities. Citizenship thus does not get 'less relevant' – it is as effective in the performance of its core function as before, and the fact that women can now vote in Switzerland and an Asian person can be naturalised in the US changes little as far as citizenship's function is concerned. This function, responsible for the production of the victims of citizenship, is the core of what citizenship is about.

Returning to the 'resident victims' story, the evolution of the extension of citizenship to hitherto excluded groups goes hand-in-hand with the evolution of how citizenship's duties function. Traditionally, the duties of citizenship played a role as the main vehicle for transposing the purely legal truths into the reality of day-to-day life, through coercion, mass schooling and conscription. Now, the duties of citizenship are undergoing an astonishingly speedy downward revision in the majority of liberal democratic jurisdictions around the globe, as 'forging a good citizen', *i.e.* punishing those who deviate from the legal truth enforced by teachers, the army and the police (and crucially, challenging the complacency of the well-meaning, law-abiding masses),¹¹⁹ is no longer a defensible task for the modern democratic state. Joppke is right: 'liberal citizenship is duty free'.¹²⁰ In the majority of the liberal democratic jurisdictions there is no conscription,¹²¹ no more

¹¹⁹ Patricia Szobar, 'Telling Sexual Stories in the Nazi Courts of Law: Race Defilement in Germany, 1933 to 1945' (2002) 11 *Journal of the History of Sexuality* 131, pointing out that the persecution of the 'Arian-Jewish' couples relied entirely on the information provided by the good willing citizens. Countless similar examples from a variety of jurisdictions could be provided.

¹²⁰ Christian Joppke, 'Liberal Citizenship Is Duty-Free' in Rainer Bauböck (ed), *Debating European Citizenship* (Springer 2018) 199.

¹²¹ The countries that retain conscription stick out as highly atypical and experience very specific threats, real or imaginary. Consider Estonia, Greece, Israel and the Ukraine.

citizenship-based taxation¹²² and no more harassment of dual nationals,¹²³ to offer just a few examples. That said, dual nationality, even in the EU, can still amount to a worse legal situation in practice for the holder,¹²⁴ given the Court of Justice's inexplicable readiness to punish Europeans for multiple allegiances.¹²⁵

The fact remains that as long as the duties and civic virtues promoted by any state are designed to quash the recognition of minority groups in society (and sometimes even majorities, as was the case with women around the world and the blacks in South Africa),¹²⁶ any arguments for their 'goodness' and 'necessity' fail to tell the whole truth,¹²⁷ stopping at the retelling of the ideological mantras of the unity of the *demos* and political community, which – as polished as they are

¹²² With the marked exception of the US, filing income taxes around the world is determined by residence, not citizenship. Cf. J Richard Harvey, 'Worldwide Taxation of United States Citizens Living Abroad– Impact of FATCA and Two Proposals' (2014) 4 *George Mason Journal International and Commercial Law* 319; Taylor Denson, 'Goodbye, Uncle Sam? How the Foreign Account Tax Compliance Act Is Causing a Drastic Increase in the Number of Americans Renouncing Their Citizenship' (2015) 52 *Houston Law Review* 967. Peter Spiro speaks in this context of 'citizenship overreach': Peter J Spiro, 'Citizenship Overreach' (2017) 38 *Michigan Journal of International Law* 167.

¹²³ Peter J Spiro, *At Home in Two Countries: The Past and Future of Dual Citizenship* (New York University Press 2016); Peter J Spiro, 'Dual Citizenship as Human Right' (2010) 8 *International Journal of Constitutional Law* 111. Again, there are obviously exceptions, even in the European Union, but the global trend towards multiple nationality toleration around the world is as clear as day, as Professor Spiro has masterfully proven. For a critical analysis of the exceptional cases in the EU, see Dimitry Kochenov, 'Double Nationality in the EU: An Argument for Tolerance' (2011) 17 *European Law Journal* 323.

¹²⁴ David AJG. de Groot, 'Free Movement of Dual EU Citizens' in Nathan Cambien, Dimitry Kochenov and Elise Muir (eds), *European Citizenship under Stress: Social Justice, Brexit, and Other Challenges* (Brill-Nijhoff 2020).

¹²⁵ So the Netherlands, a leading EU jurisdiction which punishes its own citizens for dual nationality, has recently scored a dubious victory at the Court of Justice of the EU: C-221/17 *Tjebbes and Others* ECLI:EU:C:2019:189; Dimitry Kochenov, 'The *Tjebbes* Fail' (2019) 4 *European Papers* 319; Katja Swider, 'Legitimising Precarity of EU Citizenship: *Tjebbes*' (2020) 57 *Common Market Law Review* 1163.

¹²⁶ Dimitry Kochenov, 'EU Citizenship without Duties' (2014) 20 *European Law Journal* 482. A similar argument has been made in the context of constitutionalism as such: James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge University Press 1995).

¹²⁷ That said, the inertia of the mantras of the 'necessity' of duties is very much alive in scholarly writings, constantly repeated by colleagues with little critical regard. For an overview of some examples, see Dimitry Kochenov, 'EU Citizenship without Duties' (2014) 20 *European Law Journal* 482, 482–483.

comfortable – ignore the functions of such duties in the actual societies on the ground.¹²⁸

Just as with the ‘lightening’ of citizenship, the recess of citizenship duties has not had any significant import on citizenship’s exclusionary function. At a meta-level, citizenship has turned into an astonishingly effective tool for the preservation of global inequalities. The gap between poor and rich societies is not going away and the ‘paper citizens’¹²⁹ of the Global South have radically different rights and life chances compared to the citizens of the most privileged spaces in the world.¹³⁰ In a world where capital moves relatively freely while the holders of the majority of Third World nationalities are locked within the boundaries of their second-rate states, the centrality of citizenship’s function to preserve inequality is crystal-clear. Having acquired a seemingly benevolent face ‘at home’, the exclusion of citizenship’s victims *outside* these territories has significantly intensified.

‘Personhood’ as a new way of blinding oneself to the victims of citizenship

The most fundamental normative evolution, which has been unfolding in the world of citizenship over the last decades, is a direct consequence of the key developments briefly described above: the extension of meaningful rights to those not in possession of the formal status of citizenship. That is, a ‘person’ in the global constitutional parlance and theorising, as Linda Bosniak has also underlined, is gradually replacing the ‘citizen’.¹³¹ This is no small feat: changing a single word signals a radical rethinking of the basics of modern constitutional systems marked by the intense penetration of the social facts in the legal realities, overturning established constitutional underpinnings. This fundamental transformation draws entirely on the unsustainability – in the context of the human rights-aware democratic constitutionalism – of the traditional core normative assumptions informing citizenship, which are unsurprisingly being rethought. Analysed together, the above considerations have thus very far-reaching effects on citizenship’s role in the context of legitimising the governing authority: that is, its

¹²⁸ For an example of such idealising, see e.g. Richard Bellamy, ‘A Duty-Free Europe? What’s Wrong with Kochenov’s Account of EU Citizenship Rights’ (2015) 21 *European Law Journal* 558 (and the literature cited therein).

¹²⁹ Sadiq (n 33).

¹³⁰ Milanović (n 11). For an attempt to come up with an objective measurement of these differences, see Kochenov and Lindeboom (n 5 *Quality of Nationality*).

¹³¹ Linda Bosniak, ‘Persons and Citizens in Constitutional Thought’ (2010) 8 *International Journal of Constitutional Law* 9.

key tasks and its key normative predestination. Its role in the narrative of self-governance and democracy is thus not the same as it had been previously. What remains unchanged, however, is its ability to produce the victims of citizenship and ignore their plight.

The core issue here is very basic and has to do with the traditional approaches to the core aspects of legitimacy in a political community: the justification of violence and of the obligation to submit to violence inflicted by the authority in charge, as a necessary element of being 'free,' which harks back to Jean Bodin¹³² and is rooted in the Christian soteriology of the day.¹³³ If only citizens and no one else are counted as the constituents of the community from whom legitimacy officially emanates – call it the *demos*, the nation or the political community – then the picture of what the state and necessarily the law is about is quite different to a situation where all humans under the same authority are counted, non-citizens included. Indeed, why not establish humans as the basis of the *demos*, the nation or the political community? While legal and social truths are bound to overlap for the law to be effective¹³⁴ – and knowing the bio-power of the contemporary state in shaping life itself to the whims of the fashion of the day¹³⁵ – making citizens is still much easier than acknowledging humans.

Making a citizen is an ideology-inspired legal exercise, implying a choice among the available bodies capable of being useful, or not, to the achievement of the authority's goals at any given time, whatever those might be. Those bodies, which are perceived less useful, are simply excluded from rights bearing status, inexistent in the eyes of the law. Exclusions can be on any basis. They can be on geographic place of origin, race, religion, education, language, time – you name it and a legal-historical example will be found. Citizenship's capacity to exclude is its core function, which means that in the 'golden days' of citizenship – the mythical days of the concept's unquestioned authority – exclusion at the level of the *legal status* could only rarely be questioned, if at all: equality is *among* citizens, remember? As a consequence, the authority that works with 'citizens' enjoys an almost universal

¹³² Cf. Julian H Franklin, *Jean Bodin and the Sixteenth-Century Revolution in the Methodology of Law and History* (Columbia University Press 1963), discussed in detail in Keechang Kim, *Aliens in Mediaeval Law: The Origins of Modern Citizenship* (Cambridge University Press 2000) 193.

¹³³ Keechang Kim, *Aliens in Mediaeval Law: The Origins of Modern Citizenship* (Cambridge University Press 2000) 193.

¹³⁴ Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field' (1987) 38 *Hastings Law Journal* 805, 814.

¹³⁵ Mark L Flear, 'Developing Bio-Citizens through Migration for Healthcare Services' (2007) 14 *Maastricht Journal of European & Comparative Law* 239.

carte blanche: you create ethnic electorates,¹³⁶ you assign the status of those who are not white enough to suit your preference to the ‘ancestral homelands’ referred to above,¹³⁷ and you declare those you send away as ideologically¹³⁸ or racially deficient and therefore, non-citizens.¹³⁹ The long history of fragrant discrimination is rich and diverse. Under this paradigm, the core question before looking at rights, entitlements, duties and equality claims is *who* is a citizen in this society? Those who are not citizens are entitled to nothing and this is legally and politically right, even if frequently also morally unjust.

Such reasoning cannot hold with persons: recognising the person as the figure of importance for the purposes of constitutional law, as a component part of the *demos*, however humble this relative innovation can seem, actually revolutionises the legal understanding of our society, because it exposes for criticism and legal contestation the status assignment decisions which cannot, in the majority of cases, be contested under the citizenship paradigm. Moreover, it also flips the sequence of status-rights interactions. The core question here is *why* this person is not entitled to a particular right. A simple ‘she is not a citizen’ response will no longer suffice under the personhood paradigm: a substantive analysis will clearly be required. It goes without saying that the distinction between the ‘status’ and ‘rights’ taken for granted by lawyers is artificial and is not justifiable on all occasions. This development is in line with a broader shift in constitutionalism, marking a departure from what Cohen-Eliya and Porat branded ‘the culture of authority’ in favour of the ‘culture of justification’.¹⁴⁰

Once humanity and personhood, not the formal legal status of citizenship, emerges as the key factor behind rights assignment, the relevance of the formal status of citizenship as such is fundamentally reinvented, if not outright diminished, as can already be seen in the Article 8 ECHR jurisprudence of the European Court of Human Rights. Those who are French *in fact* on the basis of how their lives are lived and their social world is constructed – even if not recognised *de*

¹³⁶ Richard C Visek, ‘Creating Ethnic Electorate through Legal Restorationism: Citizenship Rights in Estonia’ (1997) 38 *Harvard International Law Journal* 315.

¹³⁷ John Dugard, ‘South Africa’s Independent Homelands: An Exercise in Denationalization’ (1980) 10 *Denver Journal of International Law and Policy* 11.

¹³⁸ Lesley Chamberlain, *The Philosophy Steamer: Lenin and the Exile of the Intelligentsia* (Atlantic Books 2006).

¹³⁹ Kristen Rundle, ‘The Impossibility of an Exterminatory Legality: Law and the Holocaust’ (2009) 59 *University of Toronto Law Journal* 65.

¹⁴⁰ Moshe Cohen-Eliya and Iddo Porat, *Proportionality and Constitutional Culture* (Cambridge University Press 2013).

jure as French, and even those bearing foreign citizenships – will remain in France protected by the ECHR.¹⁴¹ Under this logic, a place in the nation is not ‘deserved’ through a random act of birth in particular circumstances or by passing humiliating tests of knowledge of the non-existent cultural uniqueness of their place of residence, but by *being part of a society* – Bauböck’s stakes. The threat of the loss of rights, then, assessed in the context of a concrete life project, becomes the key factor of importance for the courts to consider, not the legal status of citizenship. Moreover, the harsh consequences of the loss of rights can even prevent the state from denaturalising a person:¹⁴² a blending of legal and social reality unheard of before the twenty-first century.¹⁴³ These two logics are in stark contradiction, but help the victims of citizenship equally little, as we shall see. Their cleavage separates reasoning which starts from legal facts, from that which starts with social facts. The result is the legal recognition of social facts in a growing array of contexts, which pushes personhood as such, not necessarily connected to the formal status of citizenship, to prominence, with far-reaching implications for the relevance of the classical normative picture of citizenship that we know from political theory textbooks.

The person–citizen cleavage itself is not new, of course. In fact, it has walked a long path hand-in-hand with citizenship, as the latter was maturing. The normative function of citizenship, focusing, in its latest emanations, on forging abstract equality and framing the political community and rights, has always found itself in a necessary tension with the concept’s actual operation: that is, providing deeply ideological rhetorical justifications for radical exclusion and effectively taming the

¹⁴¹ See also the discussion in (n 50) *supra* of ECtHR *Beldjoudi v France* No. 12083/86 (ECtHR Chamber, 26 March 1993); *Jeunesse v Netherlands* No. 12738/10 (ECtHR Grand Chamber, 3 October 2016).

¹⁴² The European Court of Justice case of *Rottmann* is the best example, probably: Case C-135/08 *Janko Rottman v Freistaat Bayern* ECLI:EU:C:2010:104. The absolute majority of commentators have ignored the fundamental point granting this case overwhelming importance: it is a decision about the status which is based on the rights this status is associated with, an impossibility in the classical citizenship world, as the border line between the legal and social reality, which is the fundamental starting point of pretty much all citizenship theorising, simply disappeared in the court’s reasoning, illustrating the shift we are discussing very well. Cf. Dimitry Kochenov, ‘The Right to Have *What* Rights? EU Citizenship in Need of Clarification’ (2013) 19 *European Law Journal* 502.

¹⁴³ Betty de Hart, ‘Regulating Mixed Marriages through Acquisition and Loss of Citizenship’ (2015) 662 *The Annals of the American Academy of Political and Social Science* 170; Betty de Hart, ‘The Morality of Maria Toet: Gender, Citizenship and the Construction of the Nation-State’ (2006) 32 *Journal of Ethnic and Migration Studies* 49.

claims for a more substantive reading of equality, as T.H. Marshall has successfully described.¹⁴⁴

How far can personhood help address the plight of the victims of citizenship who are not 'here' and who will never be permitted to build any 'stakes' in 'our society' – the majority of those punished by citizenship? The critiques of stakeholder approaches to citizenship show that personhood, which is directly connected to the stakeholder approaches, is no panacea. In fact, if it is accepted as a starting point for the distribution of rights in a jurisdiction, it permits the rights and dignity of all the victims of citizenship whom the status of citizenship effectively keeps at bay to be swept away. Ultimately, whether personhood or citizenship are taken as a starting point makes little difference, from the perspective of those victims of citizenship who are *outside* of the jurisdiction in question. Personhood thus potentially emerges as a counterpart of citizenship –traditionally the key legal tool for sanctioning the erection of a border dividing 'us' from 'them' based on entirely contingent considerations of political convenience,¹⁴⁵ while also creating legally and socially meaningful racial, cultural and linguistic groups – what Bourdieu characterised as the 'practical activity of "world making"'.¹⁴⁶

The morality of selling citizenship to its victims

Many among the privileged minority of citizens of the richest countries in the world present citizenship by investment as a sacrilege: citizenship is presumed to represent the moral high ground, and should not be the object of mundane transactions. There are serious problems with this view. As we have seen, in a world of mass inequality where citizenship is allocated at random through Shachar's 'birthright lottery'¹⁴⁷ and where state borders, as Branko Milanović documented,¹⁴⁸ are the key tools for separating the globalised spaces of opportunity from the racialised reservations where the bearers of sub-prime statuses are confined (your Bangladeshi grandmother will not be joining you in Denmark anytime soon, while the Swedish one is welcome any day), this 'sacred citizenship' perspective is not

¹⁴⁴ Thomas H Marshall, 'Citizenship and Social Class' in Thomas H Marshall, *Citizenship and Social Class* (Pluto Press 1992).

¹⁴⁵ On the invention of the foreigner as a legally meaningful concept see, Keechang Kim, *Aliens in Mediaeval Law: The Origins of Modern Citizenship* (Cambridge University Press 2000).

¹⁴⁶ Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field' (1987) 38 *Hastings Law Journal* 805, 838.

¹⁴⁷ Ayelet Schachar, *The Birthright Lottery. Citizenship and Global Inequality* (Harvard University Press 2009).

¹⁴⁸ Milanović (n 11).

convincing. The *Quality of Nationality Index* – illustrating our intuitions – shows that comparing citizenships leads to interesting conclusions:¹⁴⁹ while some citizenships, such as the French or the Maltese, give us rights, others, such as Afghan or Pakistani, are unquestionably a liability and obstacle: a lottery lost.

These differences are the key driver behind the Investment Migration industry. If all the citizenships in the world were Danish, not one of them would have been offered for sale: there would be no need for anyone to buy. The industry's tremendous growth and success, as analysed by Kristin Surak among others,¹⁵⁰ thus underlines several dark truths about citizenship, which are hidden beneath the surface of its lighter day-to-day connotations.¹⁵¹ The crucial starting point here is that citizenships in the absolute majority of cases are sold to the victims of citizenship – those who lost the birthright lottery and need to upgrade their status to enjoy the plenitude of the rights available worldwide, which super-citizens received by birth. The sale is not motivated by equality or humanitarian considerations – it is a way to cash in on the plight of those who would like to upgrade their status from a victim of citizenship and whom contemporary liberal-democratic constitutional systems are designed to ignore as non-existent, as least as long as they remain outside the polity. As we have seen, all the recent tectonic shifts in the conceptual landscape of citizenship have had little or no impact on citizenship's core function: the victims of citizenship abound.

Once the statuses received at birth by the victims of citizenship are compared with those of super-citizens, the hypocrisy and randomness behind the concept of citizenship are laid bare.¹⁵² The uselessness of many of the worlds' citizenships suddenly comes into stark relief, turning talk of 'equality' within a state's borders into an unfunny joke: it amounts to what I characterised elsewhere as global 'passport apartheid'.¹⁵³ The malign nature of the political dimension of the arguments in citizenship that seek to disqualify from access to desirable statuses those who did not win the birthright lottery and were allocated the sub-standard status of victim of citizenship becomes particularly clear, as Suryapratim Roy also demonstrates.¹⁵⁴ As long as, following Joseph Carens, citizenship remains a

¹⁴⁹ Kochenov and Lindeboom (n 5 *Quality of Nationality*).

¹⁵⁰ Surak (n 16 *Citizenship 4 Sale*).

¹⁵¹ Kristin Surak, 'Global Citizenship 2.0 – The Growth of Citizenship by Investment Programmes' in Dimitry Kochenov, Madeleine Sumption and Martijn van den Brink (eds), *Investment Migration in Europe and the World: Current Issues* (Hart Publishing, 2023, forthcoming).

¹⁵² Kochenov and Lindeboom (n 5 'Empirical Assessment').

¹⁵³ Kochenov (n 8).

¹⁵⁴ Roy (n 15).

'modern equivalent of feudal privilege'¹⁵⁵ in the contemporary world, otherwise based on the ideals of individualist assessment, equity and rights, any argument against investment migration based on the popular 'normative considerations' endowing citizenship with mythical goodness only befogs citizenship's very nature, aiming unsuccessfully to save the concept from itself and to insist, pointlessly, that the victims of citizenship are not there.

Hypocrisy is difficult to sell as an argument: land can be bought; prostitution is often legal, just as is marrying above your class and not necessarily for the torments of the heart; and some of the greatest art was sponsored by those who wanted to buy salvation for themselves and who hopefully succeeded. To insist that citizenship is not for sale is to ensure the perpetuation of the hypocritical and self-righteous excuses lurking behind the fundamental mechanisms of exclusion, which mark citizenship's core and push its victims to the invisible margins of the citizenship story. Fighting against commercialisation is nothing but a way to mystify and thereby attempt to justify the injustice, which is the core of citizenship, at the expense of citizenship victims' hopes and dreams.

Those boasting Italian great-grandparents in Paraguay, members of Polish diasporas in Australia and elsewhere, not to mention great benefactors and talented athletes – all these people can acquire a better citizenship in this lottery world, however random the rules. However, popular opprobrium usually focuses on those countries that offer citizenship for investment in a perfectly transparent way. See for instance the European Parliament's 2014 Resolution on Malta,¹⁵⁶ remarkable for the lack of a single argument on the reasons why the practice that the Parliament is criticising is actually bad for anyone and identifying who suffers as a result.¹⁵⁷ Quite evidently, no one is on the losing side of the practice besides the glorifiers of the *status quo*, intent to rejoice in their privilege and use flimsy

¹⁵⁵ Carens (n 72).

¹⁵⁶ European Parliament resolution 2013/2995 (RSP) of 16 January 2014 on EU citizenship for sale [2016] OJ C482/117. See also, in a similar vein, European Commission, 'Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions (Report)' COM (2019) 12 final. Cf. Questions and Answers on the Report on Investor Citizenship and Residence Schemes in the European Union available from https://europa.eu/rapid/press-release_MEMO-19-527_en.htm accessed 01 August 2020.

¹⁵⁷ Costanza Margiotta, 'Ricchi e poveri alla prova della cittadinanza europea. Annotazioni sulla Relazione della Commissione europea sui programmi di cittadinanza per investitori' (2020) *Ragion Pratica* No 2; Dimitry Kochenov, 'Genuine Purity of Blood: The 2019 Report on Investor Citizenship and Residence in the European Union and Its Litigious Progeny' [2020] LEQS Paper No 164 (London School of Economics and Political Science).

moralising to sanctify the injustices of citizenship as it stands. Corruption and other considerations unrelated to citizenship should not dominate the conversation as they explain little about why the victims of citizenship should not be able to acquire the compensatory citizenship they need for a lot of money, as opposed to other forms of sacrifice, such as the humiliation of ‘language’ and ‘culture’ tests required of many naturalisers whose otherness is regarded as in need of purification.

The European Commission’s 2019 Report on investment migration followed exactly the same lines as the EP Resolution and boasted innumerable mistakes in fact and in law.¹⁵⁸ Sanctifying the random allocation of crucially important legal statuses cannot withstand serious scrutiny: unquestionably, this approach is wrong, just as it is wrong to pretend that any other principle than feudal blood-based randomness is at the core of the assignment of most citizenship statuses in today’s world.¹⁵⁹ Once the inevitable randomness of exclusion is admitted, we need to ask what citizenship is *actually* about.

In the context of citizenship by investment, concern is frequently displayed about discrimination at the point of acquisition of citizenship.¹⁶⁰ However, a strict non-discrimination approach would deprive citizenship of its main – and ultimately *only* key function: i.e. random exclusion from dignity, as any non-citizens’ claims to equality and rights are usually treated as frivolous and dismissed lightly. Crucially, both *de facto* and *de jure* aspects of exclusion must be taken into account, a point that is often forgotten. The fact that countless *de jure* citizens are *de facto* stateless, in the sense of not receiving protection by their state of origin or enjoying any usable substantive rights of nationality, is of crucial importance. Idealistic images of a citizenship of the past are based on the misrepresentation of social facts, perpetuating an often-repugnant *status quo*, where plenty of people, especially women and minorities, were – and often still are – failed by their states, day after

¹⁵⁸ European Commission, ‘Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on Investor Citizenship and Residence Schemes in the European Union’ COM (2019) 12 final.; Costanza Margiotta, ‘Ricchi e poveri alla prova della cittadinanza europea. Annotazioni sulla Relazione della Commissione europea sui programmi di cittadinanza per investitori’ [2020] *Ragion Pratica* No 2.

¹⁵⁹ As I explain in detail elsewhere, citizenship, even if it is a *ius soli* citizenship, is still a blood-based caste status in the absolute majority of cases: Dimitry Kochenov, ‘Genuine Purity of Blood: The 2019 Report on Investor Citizenship and Residence in the European Union and Its Litigious Progeny’ [2020] LEQS Paper No 164 (London School of Economics and Political Science).

¹⁶⁰ Roy (n 15).

day.¹⁶¹ Therefore, real citizenship starts with the actual extension of rights, and give voice to those who are already formally included: women, minorities, the poor and the weak, as well as simultaneously pointing the victims of citizenship to their proper place, outwith the ambit of dignity and opportunity presumed by super-citizens as their God-given right. The bountiful problems, which emerge in this regard, are at the core of what citizenship is about. In essence, these cannot be 'corrected': they *are* citizenship.¹⁶²

Viewed in this light, naturalisation, of which the acquisition of citizenship by investment is but one illustration among many, is only a second step and serves three functions: providing citizenship status to long-term resident immigrants; respecting and recognising citizens' family ties through special naturalisation rules for family members: and reinforcing society with talent, money, inspiration and diversity – which translates into inviting the rich, the beautiful and the smart (sometimes these three categories overlap of course – sometimes they do not).

No confusion between different groups of applicants should arise: to ask that all follow the same path is rarely helpful¹⁶³ – even if it is the dominant approach for 99% of the world's population: it is just about having 'the right blood'. This is particularly true when the context is that of discrimination against and among the victims of citizenship, punishing them for the faults of their blood, which is not good enough to land them a super-citizenship at birth: one of the reasons why citizenship is, necessarily, a racist concept.¹⁶⁴

Arguing for making the rules as strict as possible for all misses the different purposes of conferring nationality in the first place, as well as the fundamental starting point of discrimination inherent in citizenship: the Swedish grandma is welcome in Denmark precisely because she is Swedish and European – unlike the Bangladeshi one, as in the earlier example. If both were fluent in Danish and extremely rich, this would matters very little: the colour of the passport is the key thing.¹⁶⁵ Be it sports, science, money or family, it is up to the legislator to determine

¹⁶¹ Indeed, as a vehicle of exclusion, any citizenship is by definition a tool designed and deployed to fail particular individuals, communities, and groups: Tyler (n 102); Sadiq (n 33), 180–183.

¹⁶² Kochenov (n 3).

¹⁶³ Dimitry Kochenov and Justin Lindeboom, 'Pluralism through Its Denial: The Success of EU Citizenship', in Gareth Davies and Matej Avbelj (eds), *Research Handbook on Legal Pluralism and EU Law* (Edward Elgar 2018) 179.

¹⁶⁴ Cf. Boatcă (n 4, 'Unequal Institutions').

¹⁶⁵ Kochenov (n 8).

the criteria, as the story goes.¹⁶⁶ Crucially, there is no special ethical point to be made in arguing against money, since having a familial relationship with someone already proclaimed a citizen, or an expensive education or muscular power, and above all the right pedigree, can also do the trick. Money is no less random a criterion and this is exactly what citizenship is about, as we have seen: random and harsh, since some will be too poor, and some will be too 'foreign'. Unlike marriages and running fast, money – especially when it is a lot of money – could actually have a positive impact on the development of the country in question. If asked to pick between an imported husband of no particular distinction, a speed skater and a billionaire, a proverbial philosopher-king could hardly be accused of forgetting rationality if the third person is picked when deciding how to distribute citizenship. There is no place for talk of discrimination at the point of access to a random status, obviously, while discrimination *between* citizens should not be tolerated. Real discrimination would be to sell a partial rather than fully-fledged citizenship¹⁶⁷ or a status that could easily be distinguished from what a 'real' or 'full' citizenship of the land is – but the attractiveness of the former would be questionable.¹⁶⁸

All citizens are different and closing the doors to investment naturalisations based on forgetting this simple fact is another popular error. In the age of post-heroic geopolitics (as has always been the case previously), plenty of people naturalise or cherish the nationality they already have for entirely different reasons. Indeed, the political aspect, rather than being at the core of citizenship, regrettably often becomes the scapegoat for justifying refusals to extend the status to those who already belong to a society. The idea that only the 'right' people should participate in political life is so important that you will be discriminated against, threatened with deportation, exploited and humiliated in order to protect the sacred body politic. Only the targets of the attacks have changed since the time of the Suffragettes – the core premise that democracy should exclude has remained. The troubling truth is that increasingly many people do not care about politics, as opinion polls amply testify – and the majority of the world's population, including a huge share of the victims of citizenship, do not live in a democracy.¹⁶⁹ The good

¹⁶⁶ Cf. Weingerl and Tratnik (n 59); Spiro (n 61).

¹⁶⁷ What Cypriots, in one example, seemed to be doing, in a blunt violation of EU free movement of capital law: Sofya Kudryashova, 'The "Sale" of Conditional Citizenship: the Cyprus Investment Programme under the Lens of EU Law' in Nathan Cambien, Dimitry Kochenov and Elise Muir (eds), *European Citizenship under Stress: Social Justice, Brexit, and Other Challenges* (Brill-Nijhoff 2020) 413.

¹⁶⁸ That said, examples of such sales abound, from the 'Honourary citizenship' of Vanuatu to the 'Economic citizenship' of Panama today – to 'Tonga protected person' status in the past.

¹⁶⁹ The Economist, 'The Economist Intelligence Unit's Democracy Index' (updated annually).

news is that where democracy can be found, people can be politically engaged despite not having the formal status of citizenship.¹⁷⁰ To state, thus, that a handful of investment citizens are a problem for democracy is an absurd point sparkled with hypocrisy, unless of course, democracies are viewed as blood-based caste systems.¹⁷¹ Should this not be the case, even if all of the investment citizens in the world were suddenly to mobilise as one to seize a stronger role in governing their countries via the representative democratic channels, no possible argument comes to mind to prevent that. As ironic as this might sound, while the democratic voice story proclaims citizenship to be among ‘equals,’ rather than allocated based on social capital, beauty or wealth – precisely the factors the denial of which is at the core of what citizenship, as an abstract legal status, is about – political life is not based on the equality of voice: an op-ed in the *Financial Times* or a super-PAC donation will have an infinitely more significant impact than someone bothering to show up at the right place on the election day.¹⁷²

For the reasons above, opposing the sale of citizenship to its victims on ‘moral’ or ‘ethical’ grounds means only one thing: forgetting what citizenship means, what its impact is and how it is acquired – as well as turning a blind eye to its tormented evolution, as explained above, marked by poisonous inconsistency at the core. In fighting against feudalism for dignity and equality before the law, citizenship has emerged as a blunt feudal blood-based instrument of unjustified exclusion from precisely this dignity and equality before the law. Such exclusion would *not* be accepted as valid as such in any contemporary constitutional system, as equality preached from *within* is the core point of departure for any constitutional system (but inapplicable to ‘outsiders’). In the world of citizenship, however, exclusion is a sacred cow. Any stance ignoring this basic starting point and deploying ‘moral’ and ‘ethical’ arguments on top of a feudal randomness ought thus to be dismissed outright as both immoral and ahistorical. However, popular, bad arguments that render down to the upholding of the nationalist *status quo* in approaching citizenship should not be taken at face value.

¹⁷⁰ Cf. John Mueller, ‘Democracy and Ralph’s Pretty Good Grocery: Elections, Equality, and the Minimal Human Being’ (1992) 36 *American Journal of Political Science* 983.

¹⁷¹ See, Rainer Bauböck, ‘What Is Wrong with Selling Citizenship? It Corrupts Democracy!’ in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer 2018).

¹⁷² John Mueller, ‘Democracy and Ralph’s Pretty Good Grocery: Elections, Equality, and the Minimal Human Being’ (1992) 36 *American Journal of Political Science* 983.

Feudalism for sale in the hypocrisy republic

This contribution introduced the concept of ‘victims of citizenship’, encompassing the majority of the world’s population for whom citizenship is a set of liabilities and obstacles rather than a bundle of rights, and who are caged in spaces of no opportunity in a contemporary world where inequalities are spatialised, and thus betrayed by the concept of citizenship by its very design. The global *status quo* that citizenship is there to perpetuate does not work in their favour: the whole point of citizenship is to reinforce the victims’ of citizenship exclusion from dignity and rights without any justification defensible in terms of the values officially underpinning any modern constitutional system.

Starting on the ‘other side’ of citizenship helps contextualise its commercialisation. Analysing the most important recent developments reshaping the citizenship concept demonstrates how bridging the gap between the normative foundations of citizenship – proclaiming equality, rights and self-government – as opposed to its day-to-day functioning at the global scale as a key tool of inequality and deprivation of rights, necessarily leads to pertinent questions concerning citizenship’s value and long-term normative sustainability in the contemporary world, where the majority of humans are its victims. The picture is that of a feudal status of blood-based global aristocracy parroting as a republic of equals – let us call it a ‘hypocrisy republic’.

Selling citizenship is not a panacea for anyone: why should a Russian pay hundreds of thousands to count among the super-citizenship aristocracy, which is marked by blood-based membership and thus entirely free (for the lucky few)? Even worse, how can the *majority* of the victims of citizenship benefit from the practice? These questions raise issues akin to those surrounding the sale of freedom to slaves. Rather than abolishing slavery, it makes it more awkward and, crucially, more visible. When the path from being a victim of citizenship to becoming a super-citizen is made so straightforward, the horrible hypocrisy of the whole edifice of citizenship is laid bare. No, there is no fundamental transformation of the soul of a victim of citizenship when she becomes British after having placed millions on hold under the Tier 1 (investor) programme in order to ‘show her wealth’, in Madeleine Sumption’s terms:¹⁷³ she was a human being worthy of rights, dignity and opportunity also before. Only she was a victim, not a citizen in the sense of the

¹⁷³ Cf. Madeleine Sumption ‘Can Investor Citizenship Programmes Be a Policy Success?’, in Dimitry Kochenov and Kristin Surak (eds), *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging* (Cambridge University Press, 2022).

Western hypocritical republican casebooks. The generation and suppression of the victims of citizenship is what citizenship as a global legal institution is about. The same can be said of a former slave: before the purchase of freedom, she was already a worthy human being. The only difference was her legal status: that she was a slave, not free. Production and suppression of slaves is what slavery as a legal institution is about. Vivid illustrations of overwhelmingly accepted injustices – like the injustice of citizenship or slavery – are crucial for social reality to start changing to support ends that are more equitable. Sales of citizenship, thus, while incapable of abolishing citizenship, expose its essence,¹⁷⁴ which explains the passionate interventions to defend the ‘citizenship as it once was’ against the ‘corrupting practice’, ultimately shielding the blood-based super-citizen aristocracy from a critical view of itself.¹⁷⁵ As this chapter has demonstrated, citizenship has always been about random exclusion, brutish subordination, and the suppression of women and minorities. Indeed, this has been one of the core meanings of citizenship, as I have argued elsewhere.¹⁷⁶ Consequently, it is now as clear as day that there is no sacred substance to justify humiliating the victims of citizenship: it is abuse and exclusion served *saignant* under a sauce of ‘democracy’, ‘normalcy’ and the protection of the ‘community’.

This contribution presupposed that the same developments which made citizenship self-contradictory and normatively conflicted when approached from outside a narrow purview of nationalist perspectives, and thus making its victims visible, led to the status being sold to the victims it itself created. The path to citizenship sales is thus paved by the status’s conflicted nature, offered in the majority citizenship literatures under the guise of good intentions. This includes the hypocrisy and randomness underpinning contemporary citizenship as a legal *carte blanche* for the exclusion of its victims; citizenship’s consequential nature in terms of the unequal random distribution of rights and liabilities in the world; as well as the ongoing rights transformation which is leading to the rise in the prestige of personhood in constitutional parlance as citizenship’s double and rival.

¹⁷⁴ Cf. Peter J Spiro, ‘Cash-for-Passports and the End of Citizenship’ in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer 2018) 17; Dimitry Kochenov, ‘Citizenship for Real: Its Hypocrisy, Its Randomness, Its Price’ in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer 2018) 51.

¹⁷⁵ E.g. Ayelet Shachar, ‘Dangerous Liaisons: Money and Citizenship’ in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer 2018) 7; Ana Tanasoca, ‘Citizenship for Sale: Neomedieval Not Just Neoliberal’ (2016) 57(1) *European Journal of Sociology* 169; Ayelet Shachar, ‘Citizenship for Sale?’ in Ayelet Shachar et al (eds), *The Oxford Handbook of Citizenship* (Oxford University Press 2019) 795.

¹⁷⁶ Kochenov (n 3).

Whatever your starting point for thinking about persons in contemporary constitutionalism, however, the victims of citizenship remain precisely that: its victims. Wasting time to pass culture tests and/or paying huge amounts to upgrade their status to a global minimum is thus what is required of them. In offering an indentured labourer the possibility to buy freedom and agency, questions of immorality or impropriety underlying the transaction cannot be the focus of our critique: only citizenship as such – the creator of victims – is immoral.

Given citizenship's centrality to the functioning of modern politics and law, the outcomes of seriously contesting the institution of citizenship can nevertheless be highly disruptive, signifying a break with a worldview now taken for granted. Rather than ousting citizenship, it is being nuanced in an ongoing evolution of thinking about how to approach the person in a contemporary constitutional context. This chapter demonstrates that personhood is the emergent trend driving the attempts to save citizenship normatively by redeeming some of its victims but without changing the world's fundamental citizenship-based normative setup. Such developments encounter problems instantly: personhood, as it emerges, denies citizenship's very core: it does take issue with citizenship's randomly assigned abstract nature, while aiming at correcting some of the more unfortunate outcomes of this ascription.

Although recent evolution, including the turn towards personhood, amounts to a partial dismissal of the 'abstract' in the abstract status of citizenship, making this status more rights-aware in the face of those whose plight it was designed to ignore, such a turn cannot offer a convincing logical twist to save citizenship, which remains very effective in producing victims. As long as this process continues, and since the morally corrupt nature of citizenship is self-evident for the majority of the world's population which victimised by it, the demand for status upgrades from victim to super-citizen (and the statuses in-between) will only grow. In addition, where there is an opportunity to cash in on such demand, a lot of money will be made.

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