

# A Blocked Exchange? Investment Citizenship and the Limits of the Commodification Objection

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**Abstract:** Critics of investment citizenship often appeal to the idea that citizenship should not be commodified. This chapter clarifies how the different arguments in support of this Commodification Objection are best understood as versions of wider claims in the literature on the moral limits of markets (MLM). Through an analysis of the three main objections – The Wrong Distribution Argument, The Value Degradation Argument, and the Motivational Corruption Argument – it claims that these objections rely on flawed and partial interpretations of the broader debates. As such, they do not in fact support the conclusions critics of investment citizenship wish to draw from them. The paper concludes that the commodification objection to investment citizenship should therefore be abandoned, and that normative resistance to the practice should be made on other grounds.

**Keywords:** Citizenship; Commodification; Moral Limits of Markets; Motivation Crowding Theory; Value Theory

## 1. Introduction

Critics of investment citizenship rely on a variety of arguments to make their case. They raise security and global governance concerns, point to a lack of fairness in admissions, warn of institutional corruption and illicit motives, and criticise the economic efficiency justifying these schemes. Above all these, one clear line is more symbolic and philosophical: the idea that citizenship cannot be made into a commodity. In her speech to the European Parliament discussing the Maltese Citizenship-by-Investment Scheme, EU Justice Commissioner and Vice President of the Commission, Viviane Reding, repeatedly emphasised that EU citizenship must “not be for sale” and that “one cannot put a price tag on it”.<sup>1</sup> In the US, Senator Diane Feinstein called for the abolition of the EB5 Investor Visa Program, arguing that it sends a message that American citizenship is for sale, and “that’s not what our country stands for”.<sup>2</sup> Prime minister of Saint Vincent and the Grenadines, Ralph Gonsalves, is even more explicit: “citizenship is not a commodity for sale, and the passport, which is a manifestation of the citizenship, what I call the outward sign of the inward grace of citizenship, is also not for sale”.<sup>3</sup>

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<sup>1</sup> Viviane Reding, ‘Citizenship Must Not Be up for Sale’ (2014) <[https://europa.eu/rapid/press-release\\_SPEECH-14-18\\_en.htm](https://europa.eu/rapid/press-release_SPEECH-14-18_en.htm)>.

<sup>2</sup> Diane Feinstein, ‘U.S. Citizenship Should Not Be for Sale | Commentary’ (*Roll Call*, 4 November 2015) <<https://www.rollcall.com/news/u-s-citizenship-not-sale-commentary>> accessed 30 July 2019.

<sup>3</sup> ‘No Economic Citizenship Programme for St Vincent’ (*Antigua Observer Newspaper*, 5 August 2014) <<https://antiguaobserver.com/no-economic-citizenship-programme-for-st-vincent/>> accessed 18 August 2019.

This line of argument, which I will hereafter refer to as the “Commodification Objection”, was until recently left unexamined in the academic research on investment citizenship and migration. For economists, as well as for legal scholars working within the law and economics framework, this kind of objection was ruled out by design; they remained focused on questions of efficiency and institutional regulation.<sup>4</sup> Other legal analyses of the practice focused mostly on its compatibility (or lack thereof) with international legal norms, and especially EU law.<sup>5</sup> More recently, however, there has been a surge in works from philosophers, political theorists, and normative legal scholars who directly engage with the Commodification Objection, providing a more sophisticated and nuanced version of the public argument.<sup>6</sup> These scholars argue that even when it can be shown to be economically efficient and in compliance with international legal norms, investment citizenship policies are morally wrong: citizenship should not be commodified.

The Commodification Objection is not unique to investment citizenship. In philosophy, political theory and legal theory, scholars engage in a vivid debate on the moral limits of markets (MLM). While critics of investment citizenship occasionally cite this broader literature, the precise way in which these more general debates apply to the particular question of investment citizenship remains obscure. The leading voices in the MLM debates have discussed a variety of contested goods and markets – human organs, surrogacy, sex work, carbon emissions trading, to name just a few – but have given scant attention to investment citizenship.<sup>7</sup> At the same time, critics and defenders of investment citizenship have mostly relied on analogies and disanalogies to other contested markets and goods, but without sufficiently reflecting on the broader framework of the Commodification Objection in the MLM debates.

Given the lack of clarity, the goal of this chapter is twofold. The first is exegetical and interpretative. I aim to unpack the Commodification Objection to investment citizenship, and argue that it is best understood as an instantiation of the broader philosophical and theoretical debates. This reading has some textual support, as several critics of investment citizenship cite and refer to central works in the MLM debates. However, I hold that my interpretation is justified primarily because it is productive for understanding the theoretical structure of the commodification

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<sup>4</sup> E.g., Gary S Becker and Edward P Lazear, ‘A Market Solution to Immigration Reform’ *Wall Street Journal* (2 March 2013) <<http://www.wsj.com/articles/SB10001424127887323375204578271531542362850>> accessed 19 January 2017; Shaheen Bornha and James M Stearns, ‘The Ethics and Efficacy of Selling National Citizenship’ (2002) 37 *Journal of Business Ethics* 193.

<sup>5</sup> Owen Parker, ‘Commercializing Citizenship in Crisis EU: The Case of Immigrant Investor Programmes’ [2016] *JCMS: Journal of Common Market Studies* n/a.

<sup>6</sup> Ayelet Shachar and Ran Hirschl, ‘On Citizenship, States, and Markets’ (2014) 22 *Journal of Political Philosophy* 231; Ayelet Shachar, ‘Dangerous Liaisons: Money and Citizenship’ in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer 2018); Ayelet Shachar, ‘Citizenship for Sale?’ in Ayelet Shachar and others (eds), *The Oxford Handbook of Citizenship* (Oxford University Press 2017); Ana Tanasoca, *The Ethics of Multiple Citizenship* (Cambridge University Press 2018); Jelena Džankić, *The Global Market for Investor Citizenship* (Springer 2019); Luca Mavelli, ‘Citizenship for Sale and the Neoliberal Political Economy of Belonging’ (2018) 62 *International Studies Quarterly* 482; Laura Johnston, ‘A Passport at Any Price? Citizenship by Investment Through the Prism of Institutional Corruption’ (2013) ID 2324101 <<https://papers.ssrn.com/abstract=2324101>> accessed 22 February 2018. For theorists critical of the commodification objection, see Javier Hidalgo, ‘Selling Citizenship: A Defence’ (2016) 33 *Journal of Applied Philosophy* 223; Kevin KW Ip, ‘Selecting Immigrants in an Unjust World’ [forthcoming] *Political Studies* <<https://doi.org/10.1177/0032321719833885>> accessed 30 July 2019. My own contribution to the debate is Lior Erez, ‘In for a Penny, or: If You Disapprove of Investment Migration, Why Do You Approve of High-Skilled Migration?’ [forthcoming] *Moral Philosophy and Politics*.

<sup>7</sup> With the exception of a brief discussion in Michael J Sandel, *What Money Can't Buy: The Moral Limits of Markets* (Macmillan 2012). But see below on the limitations of this discussion.

objection. My second aim in this chapter is critical: I argue that the Commodification Objection fails. Moreover, I will argue that it fails in ways that become clear once it is understood as an applied version of the broader MLM debates.

In the sections that follow, I first introduce the broader MLM debates. The ethical justifications for limiting the scope of the market are manifold, but given the nature of investment citizenship, not all are relevant. I show that there are three compatible but distinct versions of the argument – The Wrong Distribution Argument, The Value Degradation Argument, and the Motivational Corruption Argument – and demonstrate how they are employed by critics of investment citizenship. I show that, when properly understood, these arguments do not in fact support the conclusions critics wish to draw from them in that particular context. I conclude that the Commodification Objection, in whichever plausible version it may take, is not a persuasive argument against investment citizenship.

My point is not to argue that investment citizenship is ethically defensible, as other arguments against the practice exist. Theorists may argue, for example, that investment citizenship is problematic because it exacerbates global inequality, because it is discriminatory, because it is prone to institutional corruption, because it facilitates tax evasion, because it expresses an attitude of disrespect towards existing citizens, etc.<sup>8</sup> These are important critiques to be considered, but they are not the Commodification Objection, which is meant to address specifically the practice of turning citizenship into a commodity. The Commodification Objection, in short, is a red herring; it fails under scrutiny, and distracts normative scholarship from more fruitful avenues of critique.

## 2. The Moral Limits of Markets: A Brief Introduction

Most participants in the contemporary debate on the moral limits of markets do not object to the market and market relations as such, as these may be appropriate and even valuable for certain kinds of goods and interactions. What they object to is ‘market imperialism’ – the extension of the scope of market norms and discourse into other realms of society. These theorists offer different accounts of what is wrong with market imperialism, what goods should be protected from the market, and on what basis one should make these judgements.

The framework I find most useful for categorizing these arguments, which I will follow in the rest of this chapter, is the one proposed by two defenders of universal commodification, Jason Brennan and Peter Jaworski. In their book, *Markets Without Limits*, Brennan and Jaworski offer several categories of anti-commodification arguments, three of which are particularly relevant for the present analysis.<sup>9</sup> The first are fairness-based objections, among which the important one for my purposes is the objection that markets in certain goods and services might cause those goods to be allocated unjustly. Consider the queue-jumping examples provided by Michael Sandel, allowing those who can afford it to cut in line. These range from the pedestrian (premium passes at Disneyland) to the extreme (scalpers of doctor’s appointments at a Beijing hospital).<sup>10</sup> The second category is semiotic objections, according to which certain markets undermine the non-commodified meaning of goods. Thus some opponents of markets in bodily organs argue that such

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<sup>8</sup> Erez (n 6).

<sup>9</sup> Jason F Brennan and Peter Jaworski, *Markets without Limits: Moral Virtues and Commercial Interests* (Routledge 2015).

<sup>10</sup> Sandel (n 7).

markets undermine the sanctity of the human body. And finally, Brennan and Jaworski consider the category of motivational corruption objections, according to which markets in certain goods crowd out certain kinds of moral behaviour, specifically behaviour driven by intrinsic motivation. The classic example of this is Titmuss's argument that paying for blood undermines altruistic motivation, and may in fact result in a decrease in the number of donors.<sup>11</sup>

I set aside two additional general objections to commodification, which, while important in some contexts, are largely irrelevant for the analysis of investment citizenship. First, some markets should be limited because, given societal background conditions, they are exploitative or harmful. In Michael Sandel's typology, this is called the "coercion objection", as it applies to cases where market transactions are not meaningfully voluntary. "If a homeowner facing imminent foreclosure agrees to have a garish ad painted on her house", he writes, "her choice may not really be free but effectively coerced".<sup>12</sup> Debra Satz similarly points out that the operation of some markets produces extremely harmful outcomes for their participants, reflecting, or even exacerbating, underlying vulnerabilities and power asymmetries of the parties.<sup>13</sup> The sale of bodily organs, for example, may be prohibited because of the concern that people in desperate economic situations will be forced to sell, causing severe harm to their bodies. Yet, it is implausible that the ethical problem with investment citizenship is the vulnerability or exploitation of either party to the exchange, whether the state or the investor migrants. It is illuminating that Sandel's brief discussion of Gary Becker's proposal to sell migration rights quickly moves to the repugnant implications of extending this program to asylum seekers, which would indeed be a case of exploiting vulnerabilities.<sup>14</sup> This does not, however, reflect the position and agency of actual buyers of citizenship in the existing market.

A second important objection, which is nonetheless irrelevant here, is that certain goods should not be for sale because, as a matter of conceptual definition, they cannot be owned or alienated. In Judith Andre's influential formulation, "nothing can be owned unless it is something over which laws can be effective".<sup>15</sup> Love and friendship are the paradigmatic examples of this; as they are defined by an inner attitude that cannot be willed, they cannot be regulated by law and therefore cannot be for sale. Note, however, that this does not preclude the sale of particular actions associated with these attitudes (e.g. companionship, sexual intercourse, assistance), or the legally recognized versions of these relationships. In other words, a loving relationship cannot be legally enforced, but a marriage contract can be. When thinking about investment citizenship, the analogy is to the latter cases, and not the former. Perhaps love of country cannot by definition be sold, but the good in question is as the legal status of citizenship (or a version of it), and as such it *can* be sold. Whether it *should* be sold is a different question.

I suggest, therefore, grouping the different strands of the Commodification Objection to investment citizenship under these three headings:

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<sup>11</sup> Richard Titmuss, *The Gift Relationship: From Human Blood to Social Policy* (Policy Press 1970). I discuss this argument in more detail in Section 5 below.

<sup>12</sup> Sandel (n 7).

<sup>13</sup> Debra Satz, *Why Some Things Should Not Be for Sale: The Moral Limits of Markets* (Oxford University Press 2012) 91–115.

<sup>14</sup> Sandel (n 7) 61–63.

<sup>15</sup> Judith Andre, 'Blocked Exchanges: A Taxonomy' (1992) 103 *Ethics* 29.

1. **Wrong Distribution:** Citizenship is a social and political practice, which should be distributed according to a specific normative principle linked to its social meaning. Allowing the exchange of citizenship for money is a violation of this principle.

2. **Degradation of Value:** Putting a price on citizenship undermines its intrinsic or non-market value as a source of identity and solidarity.

3. **Motivational Corruption:** Commodifying citizenship crowds out moral motivation, which will lead to a kind of behaviour which is socially harmful, or at least sub-optimal.

In what follows, I will tackle these arguments in turn, both in the broader MLM debates and in the works of critics of investment citizenship.

### 3. The Wrong Distribution Argument

Within the MLM debates, Michael Walzer's theoretical framework, and especially his resistance to the influence of money on politics, is a clear example of a Wrong Distribution Argument. In a nutshell, Walzer offers a pluralist theory of social equality. In contrast to those who hold that the same distributive principle must apply to all primary social goods, Walzer argues that different goods belong to different social spheres and are to be governed by distinct distributive principles. Importantly, each good's distributive principle is determined by the historical, contingent social meaning of that good in a particular society. Discussing American culture, Walzer argues that it follows from the social meaning of medical care that it should be distributed according to need; that it follows from the social meaning of political membership that it should be held equally; and from that of commodities, that they ought to be distributed by free exchange (perhaps under sufficient regulation). Walzer argues that when a certain social good becomes dominant – that is, when it becomes the 'gold standard' according to which other goods are distributed – it leads to one sphere controlling the others, and a hierarchy between members of society. To address this concern, Walzer proposes the normative ideal of 'complex equality', which requires blocking the exchange of goods across spheres. In Walzer's words, "No social good X should be distributed to men and women who possess some other good Y merely because they possess Y and without regard to the meaning of X".<sup>16</sup> In capitalist societies, where money is most likely to become a socially dominant good, this means mitigating the influence of money in politics, resisting privatized healthcare and education, and so on.

Critics of investment citizenship have employed this Walzerian argument explicitly. According to Ayelet Shachar, selling citizenship is "a textbook example of what theorists, lawyers, and political economists have referred to as 'blocked exchanges' or 'prohibited transactions' that allow advantages in one social sphere or arena (the economic) to unfairly influence another (the political)".<sup>17</sup> Shachar argues that "turning citizenship into a money-based prize also contradicts any Walzerian-like notion of complex equality according to which advantage in one sphere (here, wealth) cannot be legitimately transferred to another (in this case, membership)".<sup>18</sup> Similarly, Jelena Džankić argues that "[t]he fast-track admission of investors into a polity breaks the equality principle inherent in the citizenship legislation in that only wealthy individuals are able to offer a significant contribution to the state's economy". Citing Walzer directly, she argues that this gives

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<sup>16</sup> Michael Walzer, *Spheres Of Justice: A Defense Of Pluralism And Equality* (1983) 20.

<sup>17</sup> Shachar, 'Citizenship for Sale?' (n 6) 796.

<sup>18</sup> Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Harvard University Press 2009) 56.

one social class precedence over others, “breaching the sphere boundary of ‘money’”.<sup>19</sup> Both Shachar and Džankić, in other words, apply the Walzerian framework to argue against financial criteria for naturalisation.

Yet this extension of the normative ideal of complex equality to questions of immigration policy sits uneasily within the wider architecture of Walzer’s argument. It is telling that while Walzer dedicates an entire chapter to questions of membership, he explicitly states that “the distribution of membership is not pervasively subject to the constraints of justice”.<sup>20</sup> This is not to say that Walzer thinks that there are no constraints on immigration policy – he specifically mentions internal constraints of egalitarian norms (prohibiting permanent guestworker status, or racial selection criteria in a multi-ethnic society), as well external constraints of aid with regards to the claims of refugees and asylum seekers. In addition, he also defends a right to emigrate, which should not be subjected to one’s position in competing spheres. But outside these constraints, political communities are free to determine their own immigration policy – including making investment a criterion for entry, residence, or naturalisation.

This appeal to authority by itself does not, of course, settle the argument: we may, very reasonably, want to challenge Walzer’s position that the distribution of membership to outsiders is not the subject of justice. But that is not the main takeaway here: whatever we may think is the correct distributive norm for membership, the structure of Walzer’s theory does not permit us to deduce it from the distributive norms of certain goods situated *within* the practice of common membership. Walzer’s argument for complex equality cannot be simply extended to membership itself, because common membership is the background assumption against which the demand for complex equality arises.<sup>21</sup> Indeed, this point is not unique to Walzer’s account. It is not a coincidence that MLM theorists mostly view equality in relational terms, its scope limited to the bounds of the background assumption of common membership.<sup>22</sup>

Admittedly, even within these limitations we may find reasons to object to certain forms of investment citizenship. These would correspond to the two constraints Walzer identifies. Were the political process by which the policy was endorsed to become compromised – for example, if the policy was adopted as a result of illegal bribery or the influence of powerful political donors - the state’s policy would not be a representation of the political community’s self-determination. Were the enactment of investment citizenship programs undermine the rights of asylum seekers, refugees, or anyone with a special claim to membership, that would be a reason to object to them. But these are not objections to investment citizenship as such – and they are not objections to the distributive norm of free exchange.

So there is little reason to assume that the distributive norm of citizenship must be the same as that of the rights and duties constitutive of it. Unfortunately, some critics of investment citizenship wrongly assume this is the case. For example, Ana Tanasoca makes the following argument (adapted from p. 77):

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<sup>19</sup> Jelena Džankić, ‘The Pros and Cons of *Ius Pecuniae*: Investor Citizenship in Comparative Perspective’ (2012) Working Paper 3 <<http://cadmus.eui.eu/handle/1814/21476>> accessed 18 August 2019. [reference to Walzer 1983, 102 omitted].

<sup>20</sup> Walzer (n 16) 61.

<sup>21</sup> David Miller, ‘Complex Equality’ in David Miller and others (eds), *Pluralism, Justice, and Equality* (1995).

<sup>22</sup> Elizabeth Anderson, ‘The Ethical Limitations of the Market’ (1990) 6 *Economics & Philosophy* 179; Sandel (n 7); Satz (n 13).

1. If one thinks that the rights and duties entailed by one's citizenship should not be bought and sold, then by extension one should also think that citizenship itself should not be bought and sold.
2. Some of the rights and duties citizens have (e.g. military duties, juror duties, and voting rights) should not be bought and sold).

THEREFORE: Citizenship should not be bought and sold.<sup>23</sup>

The argument does not succeed for several reasons. First, the kind of exchanges Tanasoca cites are blocked in the first instance because allowing political rights and duties to be sold from one individual to another, or permitting the accumulation of rights, would be detrimental to social equality. This she correctly captures later, stating that “A market in political rights...would, on one hand, concentrate power in the rich, [while] a market in political duties would, on the other, concentrate burdens in the poor”.<sup>24</sup> But that in itself does not tell us what to think about the allocation of political rights to outsiders. Second, we may reasonably argue that selling individual political rights to outsiders (for example, the right to vote) should be prohibited, but simply extending the argument to citizenship as a whole is committing a fallacy of composition. More generally, from the point of view of social equality, one can plausibly argue that the rights and duties of citizenship should not be disaggregated and distributed separately.<sup>25</sup> However, admitting a new individual to the full package of rights and duties does not undermine that.

It is a mistake, therefore, to take the Walzerian argument against the influence of money in politics and transpose it to the allocation of membership: the distributive norm in question is the one governing allocating citizenship to outsiders, not political rights and duties among citizens. Mixing the two considerations obscures the normative issues in cases where there is a clear violation of political equality. For example, in his critique of investment citizenship, Rainer Bauböck provides the illustrative story of billionaire Frank Stronach, who bought his way into an Austrian citizenship and used his wealth to buy political influence by recruiting former politicians and running an expensive election campaign.<sup>26</sup> Bauböck attributes his “corruptive influence on Austrian politics” to the way Stronach acquired his citizenship, but surely the problem here is the lack of proper separation between money and politics, allowing wealthy citizens (naturalised or otherwise) to buy political influence. The fact that Stronach bought his citizenship is beside the point.

Even if we cannot simply extend the distributive norms internal to citizenship to the distributive norms of citizenship itself, it is still possible that a version of Walzer's argument might hold against investment citizenship. Suppose then that we apply the ideal of complex equality to the allocation of citizenship. Walzer writes that “No social good X should be distributed to men and women

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<sup>23</sup> Adapted from Tanasoca (n 6) 77.

<sup>24</sup> *ibid* 78.

<sup>25</sup> Importantly, this is not Tanasoca's position, as she explicitly defends the unbundling of rights associated with citizenship (*ibid* 130–133.). For an argument that such unbundling is inevitable, see Elizabeth F Cohen, *Semi-Citizenship in Democratic Politics* (Cambridge University Press 2009).

<sup>26</sup> Rainer Bauböck, ‘What Is Wrong with Selling Citizenship? It Corrupts Democracy!’ in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer 2018).

who possess some other good Y merely because they possess Y and without regard to the meaning of X”.<sup>27</sup> In our argument, we can replace “social good X” with “citizenship”: we first need a theory of the meaning of citizenship, then we must determine the distributive norm that arises from this meaning, and finally we need to show that selecting members by the ability to pay (that is, exchanging wealth for citizenship) violates this principle.

One way to flesh out this argument is to extend it globally, and to ask how citizenship should be distributed. To do this, we’ll have to ignore here Walzer’s own stipulation that limits questions of justice to bounded communities (denying that anything beyond ‘thin’ concepts is available globally), and concede that there is a convergence of norms on the international level. But that would not get us very far. What is, after all, the *global* meaning of citizenship? As Bauböck clarifies, in our current Westphalian system, citizenship is an ‘empty linkage concept’: “It is universal in aiming to attribute a citizenship status to each human being and it is egalitarian in relying on mutual recognition of citizenship statuses by equally sovereign states, but it does not entail any particular content either in terms of rights or political participation”.<sup>28</sup> If we try to deduce the distributive norm of citizenship from the meaning assigned to it by international practice, states have the prerogative of deciding their own naturalisation policies, while committing them to the principle of equal birthright citizenship. This comes very close to Walzer’s own position on state discretion whereby citizenship and immigration policies reflect the value of self-determination, which, as I’ve already shown above, does not exclude investment criteria.

Global egalitarians are likely to resist this convergence on the Westphalian meaning of citizenship, in the same way that many have resisted Walzer’s reliance on conventional social meanings.<sup>29</sup> So there might be a version of complex equality that does not rely on the existing meaning of citizenship as understood in international practice. If we adhere to the value of equality between persons, extended globally, and view citizenship’s value as inhering in foundational rights and protections, we may well come up with a very different distributive norm – but not necessarily one that would rule out investment citizenship. Viewed from a cosmopolitan perspective, some theorists regard citizenship as equivalent to a feudal birth privilege, where some are granted a better position due to the accident of birth.<sup>30</sup> It is telling that recent defenders of investment citizenship, unlike their predecessors’ unreflective reliance on the Westphalian system, are highly critical of the institution of citizenship itself for similar reasons.<sup>31</sup> If abolishing citizenship is not feasible, however, then it is unclear why blocking investment citizenship is required from a global egalitarian point of view: if the feudal system allows wealthy commoners to become nobles, this is not obviously worse than a system where nobility is fixed at birth.<sup>32</sup>

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<sup>27</sup> Walzer (n 16) 20.

<sup>28</sup> Rainer Bauböck, ‘Genuine Links and Useful Passports: Evaluating Strategic Uses of Citizenship’ (2019) 45 *Journal of Ethnic and Migration Studies* 1015.

<sup>29</sup> Ronald Dworkin, ‘To Each His Own’ [1983] *New York Review of Books* <<https://www.nybooks.com/articles/1983/04/14/to-each-his-own/>> accessed 25 September 2019; Susan Moller Okin, *Justice, Gender, and the Family* (Basic Books 1991).

<sup>30</sup> Joseph Carens, ‘Aliens and Citizens: The Case for Open Borders’ (1987) 49 *The Review of Politics* 251; Shachar, *The Birthright Lottery* (n 18).

<sup>31</sup> Hidalgo (n 6); Christopher Freiman, ‘The Case for Markets in Citizenship’ (2019) 36 *Journal of Applied Philosophy* 124; Dimitry Kochenov, *Citizenship* (MIT Press 2019).

<sup>32</sup> Dimitry Kochenov, ‘Citizenship for Real: Its Hypocrisy, Its Randomness, Its Price’ in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer 2018).



Alternatively, we might try to deduce the distributive norm for citizenship from its social meaning *within* a given society. One immediate worry here is that the social meaning of citizenship, even within liberal democratic societies, is contested, and we can refer to sociologists and anthropologists detailing the transformation of meaning, from ethnic to civic, from collective to individual.<sup>33</sup> Moreover, examining the existing practices of citizenship law within liberal democratic societies shows that states offer citizenship to those born on their territory, family members of existing citizens (even those who live abroad), asylum seekers, skilled migrants, Olympic athletes, and ethnic diasporas. There isn't a single governing norm here beyond state discretion, which – for the initial assignment of citizenship – cannot be refused. Some of these policies seem to prioritise need; other, individual merit; others still, community belonging. Some of these norms appear inconsistent with investment citizenship, where others (such as high-skilled migration) are analogous to it.

Normative theorists may object here that a governing norm for the allocation of citizenship can be provided, and our best interpretation of such a norm would rule out investment citizenship. A common thread in contemporary theory identifies long-standing social membership or a “genuine connection” as the just distributive norm, with the implication that long-term residents should have access to citizenship, and some other categories (for example, descendants of expatriates without a social connection, or investment migrants) should be excluded.<sup>34</sup> Thus Džankić objects that investment citizenship “reduces citizenship to a commodity that is traded for money and not for genuine ties with the state, as is the case in ordinary naturalisation”.<sup>35</sup> But thinking about *jus nexi* as a distributive norm is misleading: citizenship is not a scarce good, and a policy admitting those who do not fall under this norm does not undermine the rights of those who do. A world where market logic has displaced all other migratory routes would be objectionable; but that is not the case in question here.

An alternative compelling justification of *jus nexi* links it to the ideal of social equality: the stability and coherence of a democratic political community requires that the boundaries of the *demos* will be extended to all those, and only all those, who are bound by its decisions. Not including those that should be included, or including those who should not be included, is not a wrongful distribution of a bundle of civic goods, but a corruption of democratic norms.<sup>36</sup> This version of the argument would be effective against certain forms of investment citizenship, but it is important to note its limitations. Most importantly for my purposes, this interpretation of the argument moves away entirely from the Commodification Objection: it is both broader and narrower in scope. Broader, because it identifies the problem with external citizenship in general, and not just investment citizenship; and narrower, because it only applies to investment programs offering citizenship (and expatriate voting rights) without any further requirements, and not to those with residence requirements.

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<sup>33</sup> Christian Joppke, ‘The Inevitable Lightening of Citizenship’ (2010) 51 *European Journal of Sociology / Archives Européennes de Sociologie* 9; Yossi Harpaz, *Citizenship 2.0: Dual Nationality as a Global Asset* (Princeton University Press 2019).

<sup>34</sup> Shachar, *The Birthright Lottery* (n 18); Joseph Carens, *The Ethics of Immigration* (Oxford University Press 2013).

<sup>35</sup> Džankić (n 19).

<sup>36</sup> Bauböck (n 26); Samantha Besson, ‘Investment Citizenship and Democracy in a Global Age. Towards a Democratic Interpretation of International Nationality Law’ [2019] *Fribourg International Law Research Papers* <<https://ssrn.com/abstract=3403033>> accessed 19 November 2019.

The Wrong Distribution Argument, therefore, fails on two accounts. In the first instance, it conflates the appropriate distributive norms *within* a social practice with the appropriate distributive norms of *membership*. These are not necessarily the same for any given social practice. Second, even if we can arrive at a distributive norm governing the allocation of citizenship, I have argued that it is either too broad or too narrow to capture the wrong of investment citizenship.

#### 4. The Value Degradation Argument

A second prominent objection in the MLM debates is the Value Degradation Argument. Elizabeth Anderson's influential version maintains that the market is not a neutral medium. Rather, it is a specific social practice, which like all social practices expresses particular social relations and norms of valuation. Goods that are appropriately traded in the market are commodities as their value is solely realized through use. Market relations are governed by five main norms. First, they are impersonal. Second, within the limits of the law, one may act egoistically without regards to the need of others. Third, market goods are exclusive and rival; Fourth, the market is purely want-regarding. And, fifth, dissatisfaction is expressed primarily by 'exit' rather than 'voice'. Other kinds of relations, however, should be governed by different norms of valuation. Anderson argues that the need to limit the market's scope arises from the social conditions necessary for the liberal values of freedom and autonomy: "because people value different goods in different ways, their freedom requires the availability of a variety of social spheres that embody these different modes of valuation".<sup>37</sup> Reducing all social relationships to the market norms of valuation makes it impossible to express these values.

Thus, for example, personal relationships are appropriately valued non-instrumentally, with altruism and gift as the governing norms. A friend helping me solely because she expects something in return is not a good friend; but I don't expect (or even desire) such attitude from a trader. While political relations are not personal relationships, Anderson argues that political goods are also distinct from economic goods: they "can be secured only through a form of democratic provision that is nonexclusive, principle- and need-regarding, and regulated primarily through voice... [t]o attempt to provide these goods through market mechanisms is to change the kind of good they are for the worse".<sup>38</sup>

Critics of investment citizenship similarly argue that democratic citizenship relies on a kind of communal reciprocity which is distinct from the self-regarding, narrower conception of reciprocity of the market. They claim that it has a detrimental effect on the meaning of citizenship, hollowing it out and replacing it with a degraded, lesser version of itself. Thus Shachar writes that "if political relations, valued in part because they are not for sale, become tradable and marketable, the ramifications may prove far-reaching, affecting not only those directly engaged in the transaction, but also broader societal perceptions of how we value these relations".<sup>39</sup> Furthermore, she argues that "marketization processes facilitate a legal rewriting of the basic logic of emancipatory

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<sup>37</sup> Anderson (n 22) 141.

<sup>38</sup> *ibid* 193.

<sup>39</sup> Shachar, 'Citizenship for Sale?' (n 6) 809.

conceptions of citizenship, giving reign instead to the imperialistic idea that ‘trades’ and ‘transactions’ can cover the full terrain of human value and meaning”.<sup>40</sup>

But to object to investment citizenship based on this argument would be to commit the same fallacy of composition identified with the Wrong Distribution argument above. We may well agree that the value of citizenship is diminished or corrupted when political goods are distributed by the market rather than through public decision making, when public spaces are turned into private property, or when employees contract away their rights. The commodification of political goods is objectionable because it undermines the equal standing of citizens. But none of this holds for investment citizenship: “selling” citizenship does not exclude citizens from previously public goods, diminishes their rights, or undermines their equal status. Moreover, insofar as the integrity of the political process is preserved, collective self-determination of the distribution of the “good” is maintained. Once again, we cannot deduce an objection to selling citizenship from an objection to selling the disaggregated rights and goods composing it.

We might think that putting a price on citizenship is still wrong under Anderson’s framework because it expresses the wrong attitude to citizenship by the state. Shachar and Hirschl write that “[t]he sale and barter of citizenship... sends a loud message in both law and social ethics about whom the contemporary market-friendly state gives priority to in the immigration and naturalisation line and whom it covets most as future citizens”.<sup>41</sup> The idea here is that employing pecuniary criteria to naturalisation is inflicting an expressive harm on existing citizens, especially those who, but for the coincidence of birth, would not have been able to buy their way into political membership.

However, determining the expressive meaning of a particular law or policy is notoriously difficult, especially since, as Anderson argues in her influential essay with Richard Pildes, this meaning is not determined by the legislator’s intentions or by the subjective interpretation of those subjected to law.<sup>42</sup> Elsewhere I argued that the most plausible expressive effect of immigration policies towards existing citizens is one of preference: when selecting by criterion X, the state expresses the view that it prefers its citizens to be X, or to have the traits of X. This may be objectionable when X stands for ethnic identity, religion, or sexual orientation, but it is not clearly objectionable when it stands for wealth.<sup>43</sup>

The Value Degradation argument can also be interpreted somewhat differently, as is the case with Margaret Radin’s contribution to the MLM debates. Radin distinguishes between personal goods (constitutive of one’s personhood) and fungible goods. Body parts and sexual relations, for example, are personal goods. They hold a special moral significance and thus deserve a special protection which Radin calls ‘market-inalienability’ – they may be transferred, but not treated as commodities to be sold on the market. Because they are constitutive of personhood, commodifying body parts, sexual relations, or parental rights would be equivalent to commodifying persons.<sup>44</sup>

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<sup>40</sup> *ibid* 806.

<sup>41</sup> Shachar and Hirschl (n 6).

<sup>42</sup> Elizabeth S Anderson and Richard H Pildes, ‘Expressive Theories of Law: A General Restatement’ (2000) 148 *University of Pennsylvania Law Review* 1503.

<sup>43</sup> Erez (n 6).

<sup>44</sup> Margaret Jane Radin, ‘Market-Inalienability’ (1987) 100 *Harvard Law Review* 1849; *Contested Commodities* (Harvard University Press 1996).

In the first instance, it is important that critics of investment citizenship not fall prey to a category mistake of thinking of citizenship as a personal good, and of its marketization as alienation. Shachar claims that citizenship should be “nonfungible” because citizenship “stands for enabling qualities that... are recognized as bound up with defining the self and facilitating well-being”. In his defence of investment citizenship, Javier Hidalgo correctly points out that there are many goods which define the self and facilitate well-being, and yet are permissibly sold on the market (for example, food). In addition, he questions whether citizenship is constitutive to personhood in the same way as other personal goods, such as, for example, one’s body.<sup>45</sup> But these objections, even if compelling, are missing the point: even if citizenship was a personal good which should be market inalienable, investment citizenship policies do not facilitate the market-alienability of citizenship. Even states who adopted the most permissive citizenship by investment policy do not permit individuals to alienate their own citizenship. Moreover, given the political economy of investment citizenship, and despite some outlandish proposals from defenders of universal commodification<sup>46</sup> and concerns about a slippery slope from critics of investment citizenship<sup>47</sup>, this kind of policy is extremely unlikely.

But perhaps my response here is too quick. Even if the analogy to personal goods is imperfect, it may be possible to work through Radin’s framework to construct a similar justification for why selling citizenship by the state should be prohibited. In her work, Radin recognizes that in a liberal pluralist society her argument about the importance of personal goods might beg the question. “If some people wish to sell something that is identifiably personal, why not let them?”<sup>48</sup> In response, she considers three justifications for the market-inalienability of personal goods - a prophylactic argument, assimilation to prohibition, and a domino theory. I will now consider these in turn, and demonstrate how they do not apply to the case of investment citizenship.

The first justification is what Radin calls the “prophylactic argument”. We may believe that everything in a market society should be for sale, if the seller freely wishes so. However, when the commodification of a good could be destructive to one’s personhood, there is a justification for a presumption of coercion, even if an uncoerced transaction is theoretically possible. The paradigmatic example of a prophylactic argument is the prohibition of selling oneself to slavery; as Radin puts it, selling oneself to slavery is prohibited “because the risk of harm to personhood in the coerced transactions we might mistakenly see as voluntary is so great that we would rather risk constraining the exercise of choice by those (if any) who really wish to enslave themselves”.

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Since the investment citizenship market does not involve the sale of one’s own citizenship, a further argument will be required to explain why states should be prohibited from selling

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<sup>45</sup> Hidalgo (n 6) 231.

<sup>46</sup> Gordon Tullock, ‘Trading Citizenship’ (1997) 50 *Kyklos* 251; Jawad B Muaddi, ‘The Alienable Elements of Citizenship: Can Market Reasoning Help Solve America’s Immigration Puzzle’ (2006) 56 *Emory Law Journal* 229; Matthew Webb, ‘Citizenship for Sale: National Rights as Transferable Goods’, *4th Annual International Conference on Political Science, Sociology, and International Relations* (2014); Freiman (n 31); Kit Johnson, ‘A Citizenship Market’ (2018) 2018 *Illinois Law Review* 969.

<sup>47</sup> Shachar and Hirschl (n 6); Shachar, ‘Citizenship for Sale?’ (n 6).

<sup>48</sup> Radin, ‘Market-Inalienability’ (n 44) 1909.

<sup>49</sup> *ibid.* Cf. Satz (n 13); Sandel (n 7).

citizenship. One possibility is to treat the state as moral person whose personhood requires protecting as such: for example, when Shachar describes the Maltese Citizenship-by-Investment scheme as the polity selling “a precious part of its soul”.<sup>50</sup> Alternatively, we can view the prophylactic prohibition as serving to protect the interests of the people as a group. Tanasoca worries that “selling citizenship may be damaging the self-esteem of the citizen community”, as it equates group membership to a pile of money.<sup>51</sup> This is a compelling form of argument in some circumstances, as we can plausibly conceive of ways by which collective goods are constitutive of individuals’ personhood and therefore raise suspicion of coercion when sold. Consider, for example, religious sites or parcels of territory constitutive of a group distinct way of life. But damage to collective self-esteem does not seem to require the presumptive ban of sales that the argument suggests.

A second justification Radin offers is that, at least for certain social goods, the commodified and non-commodified versions are qualitatively different, and moreover that there is a moral requirement that the commodified version should not exist. Love, friendship, and sexuality are her examples of “goods” which are radically different in value when they are embedded in market relations, rather than personal relationships. More generally, it may be that ‘the use of market rhetoric, in conceiving of the "good" and understanding the interactions of people respecting it, creates and fosters an inferior conception of human flourishing’.<sup>52</sup> In those cases, we would have a reason to prohibit the commodified versions of these goods.

In the context of investment citizenship, Tanasoca writes that in the same way as “[f]reely offered sex has a different meaning from sold sex, one that is particularly valued in our societies... putting on sale citizenship may change the value and meaning citizenship typically has”.<sup>53</sup> Yet unlike other contested commodities such as organs or intimate relationships, it is not at all obvious that political membership is valued primarily in an intrinsic manner. The intuition behind the argument relies on a romantic view of citizenship which conflates identity and allegiance with the legal status. Even natural-born citizens may not value their citizenship intrinsically for its significance for their identity, but instrumentally for the legal and material protections it provides, or for its contribution to their status. They may, and often do, emigrate from one political community to another solely for monetary gain, indicating that there is indeed a price for membership, even when it is not explicitly stated. More strongly, we may agree with Peter Spiro and Christian Joppke that citizenship is not viewed as instrumental because it is sold, but it is sold because it was already hollowed out of its previously thick meaning. “If citizenship still meant what it used to mean”, Spiro writes, “if [citizenship] still represented special ties as a sociological matter, then investor citizenship schemes would not exist... In the old world, such programmes would have been inconceivable”.<sup>54</sup>

Critics unsatisfied with this sociological observation are likely to offer normative distinctions between more and less valuable versions of citizenship. Tanasoca, for example, argues that the

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<sup>50</sup> Shachar, ‘Dangerous Liaisons: Money and Citizenship’ (n 6).

<sup>51</sup> Tanasoca (n 6) 77.

<sup>52</sup> Radin, ‘Market-Inalienability’ (n 44) 1912.

<sup>53</sup> Tanasoca (n 6) 72.

<sup>54</sup> Peter Spiro, ‘Cash-for-Passports and the End of Citizenship’ in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer 2018); cf. Christian Joppke, ‘The Instrumental Turn of Citizenship’ (2019) 45 *Journal of Ethnic and Migration Studies* 858.

primary meaning of citizenship is as a human right: as such, it is universal and inalienable, and therefore should not be bought and sold. As investor citizens are presumably already citizens of their birth state, blocking them from becoming citizens through investment does not violate their human rights. “Citizenship, as a good secured in a transaction, cannot achieve its full potential”, she argues, further stating that “human right applies to only one citizenship (usually the birth one)”.<sup>55</sup> But this argument is either too weak or too strong. On the one hand, it sets constraints on states to avoid statelessness, but does not directly affect the permissibility of allocating citizenship for other reasons. As Tanasoca concedes later on, food’s primary value is as means of subsistence, but that does not mean that people are not permitted to value it for aesthetic, cultural or even market reasons.<sup>56</sup> I’ll return to this problem below. If, conversely, we take the argument to limit investment citizenship, it is too strong: all naturalisations not based on human rights considerations (and presumably, all those cases where the person already possess a second nationality) would be barred on the ground of value degradation. Tanasoca may be willing to bite the bullet on this particular implication, but I doubt many critics of investment citizenship will.

In order to avoid such a conclusion, some theorists offer distinctions between monetary exchange and other forms of exchange. Laura Johnston argues that “the act of exchanging a higher-value good (citizenship) for a lower value good (money) destroys the value of citizenship and corrodes public trust in that institution in a way that naturalisation on other bases does not”.<sup>57</sup> Thus she argues that unlike citizenship by investment “naturalization in exchange for military service preserves the historical link between citizenship and service and reinforces existing citizens’ conception of citizenship as a privilege”.<sup>58</sup> This argument, however, is problematic in two ways. First, it goes against the logic of the anti-commodification argument by treating the value of citizenship as commensurable. Second, and more importantly, the fact that it reinforces the conception of citizenship as a privilege seems to be equally a reason to resist naturalisation in exchange for military service, especially as universal conscription is no longer the norm in most countries.

Similarly, Shachar and Hirschl offer a distinction between human capital and capital *simpliciter*. Selecting by the ability to pay is arbitrary as “there is no rational connection between delivering a stack of cash or sending in a bank wire transfer and establishing the kind of participation and equal standing among fellow citizens that the political bonds of membership are meant to represent and foster”.<sup>59</sup> But that is not the same as focusing “on the distinctive skills, talents, or abilities “encapsulated” in the recruited migrant herself who moves to the new country”. Human capital, unlike capital *simpliciter*, “is non-transferable and non-alienable; it is part of the self”.<sup>60</sup> This distinction may hold, but it is beside the point; whether or not human capital is a part of the self, it is valued by the naturalising state for its economic value.

Even if we suppose that the arguments above are convincing, and a commodified version of citizenship is less valuable than a non-commodified one, it remains an open question why the two

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<sup>55</sup> Tanasoca (n 6) 73.

<sup>56</sup> *ibid.*

<sup>57</sup> Johnston (n 6) 5.

<sup>58</sup> *ibid* 20.

<sup>59</sup> Shachar and Hirschl (n 6) 250.

<sup>60</sup> *ibid* 251.

versions cannot simply co-exist. This brings us to Radin's third argument, the domino theory. Instead of focusing on the importance of excluding commodified versions of goods from the social life, this argument highlights the importance of preserving the non-commodified versions. The existence of the commodified version of the good, it is argued, creates Gresham law-like effects, crowding out non-market valuations of the good under question.<sup>61</sup> Since the two cannot co-exist, and the non-commodified version is morally preferable, this justifies a limitation of the market.

Tanasoca employs this logic. States may wish, she argues, that all of their members share a common meaning and value of citizenship in order to avoid confusion. To illustrate, she gives the following analogy:

One can have sex with both one's spouse and a prostitute, and sex would have a different meaning with each. Bought sex is different from freely given sex. Maybe one can keep these meanings separate. But if one's spouse finds out about the prostitute, they will wonder what is the real meaning of sex for their spouse, after all. They will wonder whether sex with them is valued differently by their spouse from sex with the prostitute, or not. And if one is not a schizophrenic, can he hold unto both meanings of sex at the same time without confusing them?<sup>62</sup>

It is not entirely clear how to interpret this analogy, but there are good reasons to think it does not illuminate the question of investor migration. First, as I have already argued, analogies between intimate relationships and citizenship are not particularly helpful. Specifically here, the relationship between citizens and the state is not monogamous, so the fact that the state engages with multiple citizens (and, *contra* Tanasoca, the citizen with multiple states) does not by itself degrade the value of the relationship. Second, it seems perfectly possible for one person to hold two meanings of the same good in different contexts: the wine I drink at a romantic dinner with my partner and the wine I drink during the Passover ceremony may well come from the same bottle. Perhaps this is not true for all goods, but a further argument has to be made as to why this is the case. And third, it is unclear why receiving the same good sometimes as a gift and sometimes through payment devalues the gift; just as reasonably, the fact that the good could have been sold but instead was gifted makes the gift more, not less valuable. To flesh out Tanasoca's example, why should we think citizens by birth would view naturalisation by investment as degrading the value of their citizenship, instead of reinforcing their sense of privilege?

Radin's "domino effect" is primarily an argument about valuing certain goods in the wrong way, but it can also be understood as a consequentialist concern. In other words, the worry might be that valuing citizenship in the wrong way would have bad consequences, either in terms of civic behaviour (on part of the new citizens or the citizenry as a whole), or in terms of corrupted state action. While this line of objection is often lumped together with the value degradation argument, the focus on consequences makes it more helpful to consider them separately. This will be the task of the next section.

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<sup>61</sup> Radin, 'Market-Inalienability' (n 44); Sandel (n 7); cf. Eric Mack, 'Dominos and the Fear of Commodification' (1989) 31 *Nomos* 198.

<sup>62</sup> Tanasoca (n 6) 73–74.

## 5. The Motivational Corruption Argument

As a behavioural claim, the motivational corruption argument has ample support in the empirical literature.<sup>63</sup> Richard Titmuss demonstrated in his seminal *The Gift Relationship* that offering payments for blood donations had, counterintuitively, reduced the number of donors, and also had a negative effect on the quality of donated blood.<sup>64</sup> Similarly, an experiment in six Israeli day-care centres has shown that imposing a fine on parents who were late to pick up their children doubled their tardiness.<sup>65</sup> The more general claim here is that, contrary to the psychological assumptions of mainstream economics, adding pecuniary incentives for the provision of a good to existing altruistic or other-regarding motivational sets can in fact undermine the provision of that good, as extrinsic motivation crowds out the intrinsic one.

How is this crowding out effect explained? The psychological and economic literature offers several competing mechanisms. Psychologists offer a mechanism grounded in self-determination theory, arguing that payment or the offer of payment is seen as an attempt of external control, undermining the sense of autonomy and thus relinquishing the previously held intrinsic motivation.<sup>66</sup> Alternatively, over-justification theories maintain that when people recognize an extrinsic reason for action, they will attribute their motivation to this reason at the expense of intrinsic reasons. When the task becomes too onerous or when the extrinsic incentive is removed, they will no longer be motivated to act.<sup>67</sup> Microeconomic theories, building on the signalling literature, hold that when a market for blood did not exist, donating blood served as a signal that one is an altruist. By turning blood into a sellable good, the signal becomes ‘noisy’ and the action no longer conveys the message the donor wished to convey. Alternatively, offering payment for a task serves as a signal to the actor that the task is unpleasant or undesirable, or that the payer does not trust the actor to act without external incentives.<sup>68</sup>

Citing these influential works, several scholars in political science and political theory argue that relying on extrinsic incentives (positive or negative) undermines civic behaviour.<sup>69</sup> Critics of investment citizenship follow suit. Shachar writes that “[t]urning citizenship into a paid transaction may contribute to crowding out public-minded motivations that currently provide the ‘social glue’ binding our institutions and communities”.<sup>70</sup> Tanasoca argues that “if we want citizenship to foster reciprocity, then granting citizenship on the basis of short-term investment might be a bad idea”, as the market conception of reciprocity would substitute the communal conception of reciprocity,

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<sup>63</sup> I have benefitted considerably from the discussion in Natalie Gold, ‘The Limits of Commodification Arguments: Framing, Motivation Crowding, and Shared Valuations’ (2019) 18 *Politics, Philosophy & Economics* 165.

<sup>64</sup> Titmuss (n 11). For an influential critique of this argument see Kenneth J Arrow, ‘Gifts and Exchanges’ (1972) 1 *Philosophy & Public Affairs* 343.

<sup>65</sup> Uri Gneezy and Aldo Rustichini, ‘A Fine Is a Price’ (2000) 29 *The Journal of Legal Studies* 1.

<sup>66</sup> Edward L Deci, ‘Effects of Externally Mediated Rewards on Intrinsic Motivation’ (1971) 18 *Journal of Personality and Social Psychology* 105.

<sup>67</sup> Mark R Lepper, David Greene and Richard E Nisbett, ‘Undermining Children’s Intrinsic Interest with Extrinsic Reward: A Test of the “Overjustification” Hypothesis’ (1973) 28 *Journal of Personality and Social Psychology* 129.

<sup>68</sup> Roland Bénabou and Jean Tirole, ‘Incentives and Prosocial Behavior’ (2006) 96 *American Economic Review* 1652.

<sup>69</sup> For this line of argument in political philosophy and political theory: Peter Singer, ‘Altruism and Commerce: A Defense of Titmuss against Arrow’ (1973) 2 *Philosophy & Public Affairs* 312; Bruno S Frey, ‘A Constitution for Knaves Crowds out Civic Virtues’ (1997) 107 *The Economic Journal* 1043; Ruth W Grant, *Strings Attached: Untangling the Ethics of Incentives* (Princeton University Press 2011).

<sup>70</sup> Shachar, ‘Citizenship for Sale?’ (n 6) 809.



leading investors to defect during hardships.<sup>71</sup> Furthermore, she argues that “[i]n the case of citizenship, thinking of it as satisfying the desire for profits may lead us to forget that it is first and foremost a human right – that is, it should satisfy the basic needs of people, not desires for profits”.<sup>72</sup>

Normative defenders of investment citizenship have been critical of this move. Javier Hidalgo, for example, presents three arguments against the motivational corruption position.<sup>73</sup> First, as the argument relies on an empirical claim, he states that we do not yet have sufficient evidence that commodification of citizenship would crowd out civic norms. Investment citizenship programs are relatively new, and the numbers are still too small for thorough assessment. Second, he argues against Titmuss by showing that other studies have revealed that his thesis is not universal and is only applicable under particular institutional and social settings. Finally, Hidalgo maintains that it is equally plausible that investment-based migration schemes could incentivise prospective migrants to be more disposed to improve the economic and political institutions of their new country by, for example, requiring investment in infrastructure.

My claim here is that both the arguments made by critics and the objections to it by defenders are unpersuasive because they fail to engage with the underlying structure of the motivational corruption argument. The fact that empirical evidence about the effects of a particular market does not yet exist is beside the point. Once we have an understanding of the mechanism by which introducing a market undermines non-instrumental motivation, we may apply this argument to non-existing markets. Understanding the mechanism would also explain whether the analogy between citizenship and blood is a valid one, and what speculations about changes in motivation and behaviour we may make. In order to address these questions convincingly, there are two ambiguities in the Motivational Corruption Argument that have to be resolved.

First, we have to be clear about *whose* motivation is being corrupted. There are at least three available answers to this question. The first two are the parties of the exchange: the investor-citizen and the state. Having paid for her citizenship rather than acquiring it in some other way, investor-migrants will only view their citizenship instrumentally and will not act in solidaristic ways necessary to the polity. Thus, Tanasoca argues that “investors will prefer exit to voice insofar as they are thinking and acting as economic agents rather than as citizens”.<sup>74</sup> Or it might be that the state, once offered payment for the “good” of citizenship, will lose sight of its real value and begin to act towards all citizens as mere customers. Alternatively, we may think that the problem is the spillover effect: with the possibility of citizenship being on sale, other citizens – previously motivated by intrinsic reasons – will be incentivized to act instrumentally, again corroding the basis of civic solidarity. Which one of these do critics have in mind?

It is immediately clear that applying the findings of psychological and economic research to the behaviour of investor migrants is questionable. In Titmuss-like experiments, offering monetary incentives for goods and services had the counterintuitive result of undermining intrinsic motivation, for example to donate blood. But in our analogy, investor-migrants are not offered payment, but instead are the ones paying. An analogous case might have been if the state began to offer payment for performing civic duties, previously performed out of patriotism or solidarity; for

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<sup>71</sup> Tanasoca (n 6) 62.

<sup>72</sup> *ibid* 74.

<sup>73</sup> Hidalgo (n 6) 233–234.

<sup>74</sup> Tanasoca (n 6) 63.

example, paying citizens to vote, take on jury duty, or serve in the armed forces.<sup>75</sup> This may indeed have the effect of undermining intrinsic motivation, in light of the mechanisms described above; although of course, real life experiments may prove otherwise. Yet extending this to the practice of investment citizenship both reverses the direction of payment, and repeats the fallacy of composition already discussed above.

One may still object that, even if not directly analogous to the other examples of motivational corruption, paying for citizenship would still have a deleterious effect on the behaviour of investor-citizens. They will, the argument goes, be more inclined to view their new citizenship in market terms, aiming to exploit its benefits and abandon it as soon as it becomes costly. While plausible, as a general statement this seems overly strong: paying for admission does not necessarily turn all relationships within an institution or a social practice into market exchanges. But even if paying for citizenship had this attitudinal effect on investor-citizens, it is important to remember that the state does not rely solely on the intrinsic motivation of its citizens. Indeed, the state routinely uses other measures to encourage civic behaviour and enforce compliance, including employing its coercive apparatus. A self-interested attitude by investor-citizens might make this task more costly for the state, but not impossible.

The more convincing analogy to Titmuss-like cases is the corrupting effect of investment on the behaviour of the state. It is the state granting the "good" for payment, so we may argue that allowing investment citizenship crowds out *the state's* intrinsic motivation for instrumental reasons. However, it is important to be clear what the argument here is. It could be that the state, in accepting payment, is incentivised to act in a self-interested manner, maximising its gain from new immigrants.<sup>76</sup> But that seems unobjectionable, at least insofar as we assume that investor-migrants are not vulnerable agents being exploited. An instrumental view of citizenship may also drive states to prefer a trade-off between higher investment and lower naturalisation requirements. This might raise questions of fairness with regards to other routes of naturalisation.

A more troubling thought is that this state behaviour would spill-over to its treatment of existing citizens, or to other categories of immigrants. If the state is driven to see its relationship with its citizens as one of mere economic value, there is a risk that it would shirk away its responsibilities to those it views as valueless. At least with regards to changing norms of immigration and naturalisation policy, there is indeed evidence that financial requirements are introduced into immigration and naturalisation routes that were previously free from them, such as family reunification or asylum.<sup>77</sup> Furthermore, as Margaret Somers argues, the turn towards a more contractualised conception of citizenship could render even those who are formally citizens into *de facto* stateless people.<sup>78</sup> The erosion of state duties towards vulnerable citizens and non-citizens is indeed a serious concern. Importantly, however, even if the same transformation in the norms of citizenship is the source of both investment citizenship and the erosion of state duties to the vulnerable, it does not follow that blocking the sale of citizenship is the remedy. More plausibly,

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<sup>75</sup> Sandel (n 7).

<sup>76</sup> Tsilly Dagan and Talia Fisher, 'State Inc.' [forthcoming] *Cornell Journal of Law and Public Policy*.

<sup>77</sup> See for example in Antje Ellermann, 'Human-Capital Citizenship and the Changing Logic of Immigrant Admissions' [forthcoming] *Journal of Ethnic and Migration Studies* <<https://doi.org/10.1080/1369183X.2018.1561062>> accessed 2 June 2019.

<sup>78</sup> Margaret R Somers, *Genealogies of Citizenship: Markets, Statelessness, and the Right to Have Rights* (Cambridge University Press 2008).

guaranteeing the fulfilment of state duties will require compliance and enforcement institutions in the form of domestic and international courts, and civil society organizations.

Finally, we should consider spillover effects on the behaviour of non-investor citizens. Given that the applicability of the argument to investor-migrants themselves is questionable, extending it to non-investor citizens is even shakier. As their own citizenship was acquired without payment, it is unclear why the fact that others have paid for it should undermine their intrinsic valuation of it, insofar as they had one to begin with. Again, they are not offered payment for *their own* citizenship, and the counterfactual is not one where they would have given their citizenship for free. The psychological and economic mechanisms of over-justification or signalling would not apply. The most likely effect on citizens' behaviour would be as the result of a change in the state's behaviour. If, as the thought I discussed above, the state begins to differentiate its actions towards all of its citizens according to their economic value – tying civic rights to economic class, for example – this will undoubtedly effect citizens' attitude and behaviour towards their civic duties. But given existing conditions, this transformation seems an unlikely result of investment citizenship.

## Concluding Remarks

In this chapter, I have argued that The Commodification Objection to investment citizenship fails to convince. By taking a closer look at the different versions of the argument put forward in the MLM debates, I showed that they are not applicable to the practice of investment citizenship. Whatever else may be wrong with investment citizenship policies, they are not good examples of either a trespassing of spheres, a degradation of value, or a corruption of motivation. Throughout my critical discussion, I have also highlighted certain shared fallacies in the debate, including a fallacy of composition (extending the argument from elements of citizenship to citizenship as a whole), conflating investment citizenship with a fully commodified private market for citizenship, and flawed analogies to personal property, such as bodily organs.

My hope is that the analysis provided in this chapter will persuade those engaged in the debate over the ethics of investment citizenship to move away from anti-commodification arguments. I remain agnostic as to whether these kinds of arguments are effective in other contexts and for other “goods” (e.g. bodily organs, sex work, surrogacy), but in the present context they serve more to obscure than to illuminate. Leaving the Commodification Objection behind will clear the way to more context-relevant objections to investment citizenship, and to a more fruitful debate as to how to design ethically better immigration and naturalisation policies.

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