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**The Weight of Golden Citizenship: A  
Critical Analysis of Citizenship by  
Investment Schemes in the European Union**

**Lilian Smith**

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# European Union Law Working Papers

**Editors: Siegfried Fina and Roland Vogl**

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## **Abstract**

Citizenship has developed over time, from territorial and sovereign origins to a commodity that countries can market to prospective citizens. An example of this development are so-called 'golden passports' or 'golden visas' which refer to acquisition of citizenship policies developed by countries seeking to attract wealthy people to become residents or citizens. The most common terminology for these schemes are Citizenship by Investment (CBI) and Residence by Investment (RBI) respectively. Despite the prevalence of these schemes worldwide, they have sparked controversy within the European Union (EU), particularly since Malta's launch of its Individual Investor Programme in 2013. Among other concerns, arguments have been made that this method of acquisition of citizenship devalues EU citizenship broadly.

In order to probe this question of the value, validity, and nature of citizenship, the paper employs a historical analysis of the dual concepts of citizenship and nationality, and examines the legal frameworks for acquisition of citizenship at general international law, and in the EU. Drawing on the Maltese CBI scheme, it analyses the changing dynamics of citizenship in a globalized world and the impact of this change (and these schemes) on the perceived value of EU citizenship.

It is ultimately concluded that CBI schemes in the EU do not devalue EU citizenship. This is drawn from three arguments: first, the meaning and content of citizenship has become increasingly varied, abstract and globalised, extending beyond traditional state boundaries and notions of kinship or loyalty. Second, EU citizenship itself is a modern, cosmopolitan identity that is less dependent on the traditionally citizenship links of territorial or familial ties. Third, the EU's CBI schemes, including Malta's, align with contemporary understandings of citizenship and meet the necessary requirements for nationality to be effective, distinguishing them from other, less onerous CBI models. In this way, it underscores that modern citizenship and methods of acquisition of nationality are developing and adaptable, and these schemes reflect the modern, dynamic nature of citizenship – in the EU, and abroad.

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## LIST OF ABBREVIATIONS

CBI	Citizenship by Investment
DADP	Draft Articles on Diplomatic Protection 2006
ECN	European Convention on Nationality
ECJ	European Court of Justice
EU	European Union
IACtHR	Inter-American Court of Human Rights
ICJ	International Court of Justice
ILC	International Law Commission
OSCE	Organisation for Security and Co-operation in Europe
PCIJ	Permanent Court of International Justice
RBI	Residence by Investment
TFEU	Treaty on the Functioning of the European Union

# 1. INTRODUCTION

Nationality and its acquisition take many forms in international law. The concept has developed over time from its territorial and sovereign control origins; today nationality is a commodity that countries can market to prospective citizens.<sup>1</sup> An example of this development are so-called ‘golden passports’ or ‘golden visas’ which refer to “policies developed by countries seeking to attract wealthy people to become residents or citizens.”<sup>2</sup> The most common terminology for these policies are Citizenship by Investment (CBI) and Residence by Investment (RBI) respectively. Despite different names or requirements, these schemes exist in almost every country across the globe.<sup>3</sup> Notwithstanding their historic prevalence, these schemes have become the subject of heated debate in the European Union (EU) since Malta announced their Individual Investor Programme in 2013.<sup>4</sup> These schemes raise serious questions of fairness, transparency, discrimination, and corruption, but the question considered in this paper is whether CBI schemes devalue EU citizenship as has been argued by the European Parliament, among others.<sup>5</sup>

This paper will argue that CBI schemes in the EU do not devalue EU citizenship for three reasons. First, the modern meaning of citizenship has changed in the context of globalisation,

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<sup>1</sup> For discussion, see, for example, Owen Parker, ‘Commercializing Citizenship in Crisis EU: The Case of Immigrant Investor Programmes’ (2017) 55(2) *JCMS: Journal of Common Market Studies* 332 ; Ingemar Bengtsson, ‘A market for citizenships: Should citizenship be commodified?’ (2023) 76(4) *Kyklos* 705; Odile Ammann, ‘Passports for Sale: How (Un)Meritocratic Are Citizenship by Investment Programmes?’ (2020) 22(3) *European Journal of Migration and Law* 309.

<sup>2</sup> Jelena Dzankic, ‘Immigrant investor programmes in the European Union (EU)’ (2018) 26(1) *Journal of contemporary European studies* 64, 64.

<sup>3</sup> Elodie Thirion and Amandine Scherrer, *Citizenship by Investment (CBI) and Residency by Investment (RBI) schemes in the EU: State of play, issues and impacts* (European Parliamentary Research Service, October 2018), 5.

<sup>4</sup> The Maltese scheme will be discussed below, but for further discussion, see, e.g., Sergio Carrera, ‘The Price of EU Citizenship: The Maltese Citizenship-for-Sale Affair and the Principle of Sincere Cooperation in Nationality Matters’ (2014) 21(3) *Maastricht journal of European and comparative law* 406.

<sup>5</sup> For discussion, see European Parliament, ‘Citizenship and residence by investment schemes’ (*European Parliament*, 20 April 2024) <<https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-citizenship-and-residence-by-investment-schemes>> ; European Commission, *Report From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions* (2019).

such that its composition and features is considerably more abstract or ambiguous than it has been traditionally. Modern citizenship was born out of a persons' relationship to the State, so it is unsurprising that the State has remained the focal point of understanding citizenship and political relations.<sup>6</sup> However, human life is no longer centred around the state. In light of 'the rise of globalisation, changes in the international world order towards global governance, and increasing power of transnational corporations, we cannot continue to understand citizenship solely through the relationship between a person and their nation state.'<sup>7</sup> Second, EU citizenship represents a further modernisation of 'new' citizenship, as considerably more cosmopolitan and less tied to territorial or kinship identity, therefore, the means of acquisition of nationality have also become modernised in line with the more cosmopolitan notion of citizenship. Third, the CBI schemes present in the EU are not traditional strict CBI schemes and necessitate the requisite requirements or fulfill sufficient core components of the modern understanding of citizenship such that they do not devalue EU citizenship, or citizenship broadly.

This essay will proceed as follows:

1. The paper will begin by explaining the historic development of citizenship, from Ancient Greece to modern day, to understand how citizenship as a concept has changed over time. Then, nationality as a legal status at international law will be discussed, focusing on the various modes of acquisition of nationality to demonstrate how the current models of acquisition of nationality reflect this broader change in understandings of what it means to be a national or a citizen, and the breadth of potential links that we deem sufficiently genuine or strong to be conferred the status of national or citizen and welcomed into the relevant community.

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<sup>6</sup> Saskia Sassen, 'Towards post-national and denationalized citizenship' in Engin F Isin and Bryan S Turner (eds), *Handbook of Citizenship Studies* (SAGE Publications 2002) 279.

<sup>7</sup> Kristin Henrard, 'The Shifting Parameters of Nationality' (2018) 65 *Netherlands international law review* 269, 275.



2. On the basis of this broader discussion on citizenship and nationality, discussion will turn to EU citizenship, and the relationship between Member State nationality and EU citizenship. Focus will be placed on evidencing the very modern nature of EU citizenship, and its status as dependent on and additional to Member State nationality. From there, discussion will turn to the ways in which nationality is understood and considered for the purposes of EU law, and how the various methods of acquisition of Member State nationality are viewed and regulated in the EU, demonstrating the consensus with international law and practice broadly.
3. Finally, we will delve into CBI schemes in the EU, with focus on the most highly contested or most infamous scheme – the Maltese CBI scheme. Through evaluation of the scheme, it will be demonstrated that the Maltese scheme does not depart from accepted modern understandings of citizenship and connectedness, nor from accepted modes of acquisition of nationality in the EU or in general. While conceding that traditional strict CBI schemes could have the effect of devaluing citizenship, with the amendments made to the Maltese scheme (and other EU schemes), these cannot be categorised in the same terms as strict CBI schemes.

Through this, it will therefore have been demonstrated that the concept of citizenship has changed, the accepted modes of acquisition of nationality are broader, and EU citizenship itself represents these changes. On this background, it will have been demonstrated that CBI schemes present in the EU do not devalue EU citizenship (normatively or otherwise).

## 2. NATIONALITY AND CITIZENSHIP

The terms ‘nationality’ and ‘citizenship’ are often used interchangeably – both describe the relationship between the individual and the state, and, arguably, in politics and law they refer

to two sides of the same coin. However fine the distinction may seem, it is important to separate the two at law: nationality refers to the relationship of a person *vis-à-vis* their own State and other States at international law, while citizenship concerns the relationship between a person and their government domestically.<sup>8</sup> On the other hand, citizenship can be subcategorised into its legal status as a corollary of nationality, and as sociopolitical membership of a community.<sup>9</sup> At law, citizenship triggers discussion of acquisition of citizenship and other procedural legal matters, whereas sociopolitical citizenship “encompasses not only the rights and duties contingent on legal citizenship, but also refers to questions of participation, identity, and belonging.”<sup>10</sup> Notwithstanding this distinction, scholars, practitioners, governments, and courts continually conflate the two. For the purposes of this thesis, sociopolitical citizenship will be the primary focus (as opposed to citizenship as a domestic legal status). In an effort to deeply comprehend the alleged devaluing of EU citizenship as a result of CBI schemes, we must first understand the development of citizenship from core notions of community and statehood to our modern understanding in light of globalisation.

## 2.1. Citizenship as Political, Legal, or Politico-Legal

Citizenship is a fundamental tenant of politics, law, society, and community, yet to this day the content of citizenship remains a highly contested subject.<sup>11</sup> Ideas of community, hierarchy, and belonging have been held by humans since at least the Neolithic revolution.<sup>12</sup> While the combination of these notions could be thought of as a sort of *proto* citizenship, the first

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<sup>8</sup> Kim Rubenstein and Daniel Adler, ‘International Citizenship: The Future of Nationality in a Globalized World’ (2000) 7(2) *Indiana journal of global legal studies* 519, 521.

<sup>9</sup> *Ibid* 522.

<sup>10</sup> Henrard, ‘Shifting Parameters’ (n 7), 278.

<sup>11</sup> Agustín José Menéndez and Espen D. H. Olsen, ‘The Concept and the Conception of Citizenship’ in Agustín José Menéndez and Espen D. H. Olsen *Challenging European Citizenship* (Springer International Publishing 2020) 17.

<sup>12</sup> Henrard, ‘Shifting Parameters’ (n 7), 272.

development of the concept occurred with the creation of the city-states or *polis* of ancient Greece.<sup>13</sup> For the ancient Greeks, the Aristotelian paradigm of citizenship was not tied to kinship or ethnicity, rather, citizenship was based on territorial residence and consent to be bound by the same rules, share the same rights, and take heed of the same duties as part of that territorial community.<sup>14</sup> While Aristotle's definition of citizenship as relating to the enjoyment of equal rights and political participation sounds idealistic, even Aristotle himself was ineligible for citizenship, as it was restricted to free, educated, and, importantly, *wealthy* adult males.<sup>15</sup> The origins of citizenship was exclusionary, and founded on the value and nature of commitment and connection to community by way of financial and political participation.

From the Ancient Greeks and Aristotelean citizenship as financial and political participation, citizenship as involving a strong connection to nationhood and allegiance to country only developed following the Peace of Westphalia – the watershed treaty which essentially codified the State-centric world order we know today.<sup>16</sup> As Europe was divided into bounded territorial jurisdictions with independent sovereignty held by monarchs with centralised power, necessarily the population was in turn divided into nations – thereby bearing nationality.<sup>17</sup> Through the struggle for sovereignty over territory, people became part of the taxonomy of ownership of the lands and identified as *belonging* to one state.<sup>18</sup> This is where, at least in common law traditions, the ascription of allegiance at birth was born.<sup>19</sup> As 'property' of the State (or the absolute monarch), they were able to be controlled by large-scale taxation and

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<sup>13</sup> For discussion on Ancient Greek politics and citizenship, see, e.g., Lucia Cecchet and Anna Busetto, *Citizens in the Graeco-Roman world : aspects of citizenship from the archaic period to AD 212* (Brill 2017)

<sup>14</sup> Ayelet Shachar and others, *The Oxford Handbook of Citizenship* (1st edn, Oxford University Press 2017) ch 3, 38.

<sup>15</sup> For further discussion particularly regarding Aristotle and citizenship theory, see Susan D. Collins, *Aristotle and the rediscovery of citizenship* (Cambridge University Press 2006).

<sup>16</sup> For a full analysis of the development of modern Western nations, see Simone Zurbuchen, *The Law of Nations and Natural Law 1625-1800* (1st edn, Koninklijke Brill NV 2019).

<sup>17</sup> *Ibid.*

<sup>18</sup> Shachar and others, *The Oxford Handbook of Citizenship* (n 14) ch 3, 44.

<sup>19</sup> *Calvin v. Smith* 77 Eng. Rep. 377 (K.B. 1608).

development of bureaucracies. National identity was formed through the creation of these political communities under the monarch, whose actions were justified as done for the good of the nation.<sup>20</sup> It was loyalty to the nation, however, that led to the demise of allegiance to the king, and a shift to loyalty to the political community.<sup>21</sup> People began to conceive of rights, equality, and subsequently thought of their own citizenship in terms of each member of the political community being entitled to equal rights – hailing back to the Aristotelean terms of citizenship (albeit this was the 18th century, so this understanding still did not yet include women or people of colour).<sup>22</sup> By the 20th century, in particular following the first world war, theorists gave renewed focus to citizenship studies, now through the lens of the burgeoning field of international human rights. It is here that we see the modern development of citizenship.

## 2.2. Development of Citizenship and Modern Conceptions

Having considered the historic development of citizenship, the modern content and definition of citizenship can be investigated. Arendt's 'right to have rights' is perhaps the most famous modern articulation of citizenship. It is a somewhat circular articulation, but it is argued that citizenship is the means for securing rights, so is the fundamental basis of those rights. In turn, the right to have rights *is* the right to citizenship as membership of a political community, who, together, form the foundation of the protection and fulfilment of our otherwise abstracted rights – it is a means of ascribing the abstract from the State into the realised rights of the person.<sup>23</sup>

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<sup>20</sup> For interesting discussion on the development of national identity from the Middle Ages, see R. Evans and G. Marchal, *The Uses of the Middle Ages in Modern European States: History, Nationhood and the Search for Origins* (1 edn, Palgrave Macmillan UK 2010).

<sup>21</sup> Andreas Wimmer and Yuval Feinstein, 'The Rise of the Nation-State across the World, 1816 to 2001' (2010) 75(5) *American Sociological Review* 764, 764.

<sup>22</sup> Costica Dumbrava, *Nationality, Citizenship and Ethno-Cultural Belonging: Preferential Membership Policies in Europe* (Palgrave Macmillan UK 2014) 4.

<sup>23</sup> Ayelet Shachar, 'Introduction: Citizenship and the 'Right to Have Rights'' (2014) 18(2) *Citizenship Studies* 114, 114; Hannah Arendt, *The origins of totalitarianism* (New with added prefaces edn, Harcourt Brace Jovanovich 1976).

In this way, citizenship means being a member of a polity founded on notions of community, shared identity, and equal rights.<sup>24</sup> There is a clear connection between Arendt's conception of politics and citizenship with that of Aristotle – humans are political beings who derive their status as citizens from the mutual respect of equal rights within their political community.

No definition of citizenship can be applied seamlessly to all political, legal, and historical circumstances.<sup>25</sup> The myriad of conceptions of citizenship throughout history evidence this. Despite the variance, there are some uniting principles inherent in all conceptions of citizenship. Primarily, citizenship involves ideas of birth, identity, community, and belonging.<sup>26</sup> The thread that ties literature on citizenship together is the application of these ideas through membership of a political community and the relations between the individual and that community (in their status as a member or non-member).<sup>27</sup>

### 2.3. Nationality as an Interstate and Intrastate Legal Status

Having established that, while there is no single definition, at its core citizenship is about membership of a political community, and the relations between the individual and that community, we can turn to evaluation of nationality as the other side of the coin. Nationality, as discussed, is a concept intertwined with citizenship, but is more appropriately reserved for the international law domain, with citizenship being part of the domestic domain. Certain scholars argue that this basic distinction between nationality and citizenship is necessary for a

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<sup>24</sup> Rubenstein and Adler, 'International Citizenship' (n 8) 522.

<sup>25</sup> Kim Rubenstein, 'Citizenship in an Age of Globalisation: The Cosmopolitan Citizen?' (2007) 25(1) *Law in context* 88, 88.

<sup>26</sup> Menéndez and Olsen, 'The Concept and the Conception of Citizenship' (n 11) 19.

<sup>27</sup> Deniz Eroğlu Utku and İbrahim Sirkeci, 'Ethics of commodified (golden) citizenship' (2020) 62 *Journal of economy, culture and society* 365, 367.

number of reasons, if not purely for some conceptual clarity.<sup>28</sup> However, it must be noted that, for the purposes of public international law, it is more terminologically precise to understand nationality to be the legal status of an individual *vis-à-vis* the State, and accordingly to understand citizenship to be the consequences of the status of nationality, being the rights and duties under national law stemming from being a national of the relevant State.<sup>29</sup> In this way, individuals only fall under rules of international law (i.e., the rules governing interstate relations) in their capacity as a national of a sovereign State, for example in cases of diplomatic protection or consular relations.<sup>30</sup>

It has been argued that while both citizenship and nationality relate to questions of membership, nationality strictly relates to legal membership of a State for inter-state purposes.<sup>31</sup> Nationality and citizenship, on this conception, need not coincide – “the international legal concept of nationality is a passive status distinct from the active persona and rights of citizenship. Nationality stands apart from citizenship: political rights, though perhaps desirable, are not integral to being a national.”<sup>32</sup> This, arguably, is an improper construction as you cannot completely separate the political from the legal, nor the international from the national. While it may not be *necessary* for nationality and citizenship to coincide, as a matter of practice they do. International law may be primarily concerned with the status of nationality as a means for determining responsibility, but that does not mean that the practical and normative politico-legal relationship between the national and the nation in their capacity as a citizen is somehow separable from nationality at international law. Even the explanatory note to the *European Convention on Nationality* (ECN), states that the terms ‘nationality’ and ‘citizenship’ are

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<sup>28</sup> For discussion on this nexus, see Alison Kesby ‘The Right to have Rights as Nationality’ in Alison Kesby (ed) *The Right to Have Rights: Citizenship, Humanity, and International Law* (Oxford Academic, Oxford University Press 2012).

<sup>29</sup> Oliver Dörr, ‘Nationality’ in Wolfrum et al (eds), *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2019).

<sup>30</sup> *Ibid.*

<sup>31</sup> Kesby, ‘The Right to have Rights as Nationality’ (n 28) 44.

<sup>32</sup> *Ibid.*

synonymous for the purposes of the Convention.<sup>33</sup> Nationality and citizenship are two sides of the same coin.

This view is shared by the Inter-American Court of Human Rights (IACtHR) (who interpret international instruments relating to nationality), and of former Judge of the International Court of Justice, Hersch Lauterpacht. Nationality is a status at international law, but it “is now increasingly regarded as an instrument for securing the rights of the individual in the national *and* international spheres.”<sup>34</sup> As per the IACtHR:

“[t]he right to a nationality ... provides the individual with a minimal measure of legal protection in international relations through the link his nationality establishes between him and the state in question; and, second, the protection therein accorded the individual against the arbitrary deprivation of his nationality, without which he would be deprived for all practical purposes of all of his political rights as well as of those civil rights that are tied to the nationality of the individual.”<sup>35</sup>

On the basis of this deeper connection between the national and international (due to globalisation, the advances of international human rights, and other forces), it would be incorrect to state that nationality remains a status exclusively reserved for the international forum. The broader conception put forth by Lauterpacht and the IACtHR correctly acknowledges the dual function of nationality as an international legal status, and nationality as a means for securing rights and enabling the exercise of rights and obligations inherent in political community domestically under the banner of citizenship.<sup>36</sup>

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<sup>33</sup> Council of Europe, The Explanatory Report to the European Convention on Nationality, 1997 ETS 166 § 32. § 70 [23].

<sup>34</sup> Hersch Lauterpacht, ‘Foreword to the First Edition’ in P. Weis, *Nationality and statelessness in international law* (2d edn, Sijthoff & Noordhoff 1979).

<sup>35</sup> *Advisory Opinion on Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, OC-4/84, IACtHR, 19 January 1984, [34].

<sup>36</sup> *Case of the Yean and Bosico Children v. The Dominican Republic*, IACtHR, 8 September 2005, [137].

### 2.3.1. Acquisition of Nationality

Having established that nationality coincides with citizenship, insofar as they both pertain to membership of a political community, and that nationality goes further than citizenship with its dual function as an international legal status, and its status as a means of securing domestic political and legal rights and obligations, we now must answer the question – how does one become attain the status of being a national?

When the Permanent Court of International Justice (PCIJ) first ruled on nationality in 1923 in the case of *Nationality Decrees Issued in Tunis and Morocco*,<sup>37</sup> it was held that conferment of nationality was a question ‘in principle within the reserved domain of States’ (also called the *domain réservé* - i.e., while it is necessary to understand nationality at international law, it is not for international law to determine how nationality should be regulated beyond the inter-State recognition of nationals).<sup>38</sup> This principle was codified in Article 1 of *The Hague Convention of 1930 on Certain Questions relating to the Conflict of Nationality Laws*.<sup>39</sup> Just over one hundred years later, the freedom of States to regulate their nationality is considerably more restricted, however, *in principle*, States remain entitled to determine under their law who are its nationals. This position is supported by the International Law Commission (ILC) in their most recent commentary on nationality – the Draft Articles on Diplomatic Protection 2006 (DADP).<sup>40</sup> While the DADP relates to diplomatic protection specifically, it provides useful guidance on generally accepted international practices and definitions regarding nationality

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<sup>37</sup> *Nationality Decrees Issued in Tunis and Morocco [French Zone] [Advisory Opinion]* PCIJ Series B No 4.

<sup>38</sup> *Nationality Decrees Issued in Tunis and Morocco* (n 37) [24]; See also *Acquisition of Polish Nationality [Advisory Opinion]* PCIJ Series B No 7 [16].

<sup>39</sup> League of Nations, *Convention on Certain Questions Relating to the Conflict of Nationality Law*, 13 April 1930 League of Nations, Treaty Series, vol. 179, No. 4137, 89.

<sup>40</sup> International Law Commission, ‘Draft articles on Diplomatic Protection with Commentaries’ [2006] II(2) *Yearbook of the ILC* 26 (DADP).



broadly. On the point of determination of a State's own nationals, Articles 4(1) and 4(2) reiterate the *domain réservé* position from *Nationality Decrees Issued in Tunis and Morocco*.<sup>41</sup>

While it is up to the discretion of States to determine who their nationals are, acquisition of nationality laws tend to fall into three categories: birth (*ius soli*), descent (*ius sanguinis*), and naturalisation.<sup>42</sup> These are the connecting factors deemed to be most illustrative by the ILC in the DADP.<sup>43</sup> Despite their prevalence, they are by no means perfectly applied in all situations, nor are they static or settled in terms of their application or implications.<sup>44</sup> As a preliminary issue, each of the categories there are further variations and subcategories which create significant variation between States. These variations include matters pertaining to ethnicity, merit, familial relations, marriage status, criminal record, language competency, financial status, among others.<sup>45</sup> These variations are in part due to the fact that international law does not put specific prescriptions or prohibitions on acquisition of nationality criteria.<sup>46</sup> Each mode of acquisition will now be discussed in turn and evaluated in light of the modernised definition of what it means to be a national and a citizen. It must be noted that when discussing modes of acquisition of nationality, the laws and literature use 'nationality' and 'citizenship' interchangeably, as it is based in domestic law, not international law.

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<sup>41</sup> *Nationality Decrees Issued in Tunis and Morocco* (n 37) [24].

<sup>42</sup> Rainer Bauböck, 'Epilogue: International Norms for Nationality: An Elusive Goal?' (2018) 65(3) *Netherlands International Law Review* 497, 501.

<sup>43</sup> DADP (n 40) art 4(3).

<sup>44</sup> Bauböck, 'Epilogue' (n 42) 501.

<sup>45</sup> *Ibid.*

<sup>46</sup> Dörr, 'Nationality' (n 29).

### 2.3.2. Birthright Citizenship

Birthright citizenship is the most common mode of acquisition of nationality and includes citizenship acquisition on the basis of descent (*ius sanguinis*) and place of birth (*ius soli*).<sup>47</sup> Beginning with *ius soli*, it is clear here how the territorial origins of citizenship – and subsequently nationality – have pervaded. Traditionally, *ius soli* was unconditionally conferred on all children born on the territory of the State.<sup>48</sup> This demonstrates the long-held Westphalian idea of citizenship being based on birth in a territory, to which it is assumed that, given you were born there, you will be loyal to that territory. Moreover, traditional *ius soli* assumes that once you are born somewhere, you do not leave – you build a life, bond to the community, and therefore are committed to that community for life.<sup>49</sup> In light of certain modern developments, *ius soli* jurisdictions have amended their rules, such that there is more often than not a breed of conditional *ius soli*.<sup>50</sup> Most commonly, the conditions imposed on *ius soli* are to do with the residence and citizenship of the parents.<sup>51</sup> Notwithstanding the conditions, it is evident that *ius soli* continues to retain many features or core assumptions of Westphalian citizenship and still remains a primary means of obtaining nationality.

Where *ius soli* builds the assumption of loyalty based on residence in a territory, *ius sanguinis* is more abstracted – you are loyal to the community because of your kinship, not because of the specific territory.<sup>52</sup> Acquisition of nationality *ius sanguinis* is rooted in this idea of community as lineage, but it must be noted that it is not the *sanguinis* (blood) that is key today,

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<sup>47</sup> For full discussion on birthright citizenship, see, e.g., Costica Dumbrava, ‘Bloodlines and Belonging: Time to Abandon Ius Sanguinis?’ in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer, 2018).

<sup>48</sup> Iseult Honohan and Nathalie Rougier, ‘Global Birthright Citizenship Laws: How Inclusive?’ (2018) 65(3) *Netherlands International Law Review* 337, 339.

<sup>49</sup> Gerard-René de Groot and Olivier Vonk, ‘Acquisition of Nationality by Birth on a Particular Territory or Establishment of Parentage: Global Trends Regarding Ius Sanguinis and Ius Soli’ (2018) 65(3) *Netherlands international law review* 319, 321.

<sup>50</sup> *Ibid* 322.

<sup>51</sup> Honohan and Rougier, ‘Global Birthright’ (n 48) 339.

<sup>52</sup> Henrard, ‘Shifting Parameters’ (n 7) 283.

it is the legal status of the parentage, not only as a citizen of the relevant State, but as the parent at law.<sup>53</sup> This means that a State does not require any sort of proof of biological truth for the establishment of parentage (unless this is somehow already a condition of the establishment).<sup>54</sup> Interestingly, it has been posited that the better term for such modern conceptions would be *ius filiationis* to recognise the paramount importance of the legal status of the parent, and their relationship *at law* (not blood) to the child.<sup>55</sup> Whichever term used to describe this form of acquisition of nationality, what must be recognised is that it evidences an instance in which the rules of acquisition (and, in turn, recognition) of nationality are changing as society modernises.

### 2.3.3. *Analysis of Birthright Citizenship – Developments for our Time*

Despite *ius soli* being more strongly rooted in traditional conceptions of nationality and citizenship, *ius sanguinis* is significantly more prevalent in modern nationality laws.<sup>56</sup> Arguably, this indicates a historic shift in our understanding of nationality, and what it means to be a citizen. It would be difficult to assert that territory remains paramount in determination of validity of nationality or citizenship. While blood is stronger than soil in modern nationality practices, it can be argued that, on the basis that neither are on their own sufficient, in the modern era something further is required to evidence a sufficient commitment to a community to which membership is sought.

Furthermore, whether citizenship is awarded on the basis of birth or parentage, it can be argued that birthright citizenship is a lottery: the citizenship you acquire purely by chance on the basis of where you were born or where your parents were born significantly and arbitrarily

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<sup>53</sup> de Groot and Vonk, 'Acquisition of Nationality by Birth' (n 49) 321.

<sup>54</sup> de Groot and Vonk, 'Acquisition of Nationality by Birth' (n 49) 321.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid 323.

determines life outcomes.<sup>57</sup> For example, the country you are born into can impact your health depending on regional capacities in healthcare or finances, it can impact your freedom of movement or political association depending on what sort of political system you are born into, and it can impact your prospects in work and in travel depending on the state of the economy you are born into. The arbitrary nature acquisition by birth is strengthened when you recognise that, as noted, *ius sanguinis* is significantly more prevalent today. Without adequate *ius soli* acquisition rules, it can be argued that citizenship is becoming less connected to nationhood, and is instead “an ethnic privilege derived from descent.”<sup>58</sup> For example, the citizenship laws of Albania, the Czech Republic, Lithuania, Moldova, Norway, Poland, Switzerland and Turkey allow for the perpetual transmission of citizenship via *ius sanguinis* abroad, but provide no possibility to acquire citizenship via *ius soli*.<sup>59</sup> How can we continue to assert that modern citizenship has retained its strong values of loyalty and allegiance to a community when it can be acquired without any practical connection to language, culture, or territory beyond a potentially distant familial connection, especially when it is considered that other factors on balance demonstrate a far closer connection with another State?<sup>60</sup> It is strongly arguable, that these developments simply acknowledge the continual redefining of citizenship in for the society of the day. In this way, citizenship retains the normative value we ascribe to it, but is allowed to evolve with the time.

#### 2.3.4. Choice – Voluntary Naturalisation

The third option in the typical matrix of acquisition of nationality is choice. Here is where we would find voluntary naturalisation – “the conferment of nationality onto an alien by a formal

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<sup>57</sup> For in-depth analysis on the lottery nature of birthright citizenship, see Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Harvard University Press 2021).

<sup>58</sup> Dumbrava, *Nationality, Citizenship and Ethno-Cultural Belonging* (n 22) 29.

<sup>59</sup> Costica Dumbrava, *Nationality, Citizenship and Ethno-Cultural Belonging* (n 22) 29.

<sup>60</sup> *Ibid.*

individual act with the consent of, and usually upon special application by, the person concerned.”<sup>61</sup> This process of acquisition is regulated by the relevant authorities of the State under their citizenship laws, with the general goal of uncovering and nurturing some tie between the individual and the State through assessment of the “individual’s physical link with the state (residence), his or her knowledge of the socio-cultural norms of the polity (language and culture tests), moral standing (proof of non-conviction), and financial sustainability (proof of income).”<sup>62</sup> Residence is a key criterion in most naturalisation procedures.<sup>63</sup> We must note that residence is an ambiguous legal construct; it is a more complex question than simply where someone’s address is or where they are located in the world at the time of questioning.<sup>64</sup> It is neither legally or physically impossible for a person to have more than one residence, but it is impossible to be physically present in more than one jurisdiction.<sup>65</sup> Residence is also one of the most objectively verifiable factors of a connection between a person and a State.<sup>66</sup>

Once naturalised, the individual holds the same rights and owes the same duties as any other citizen, and are (supposed to be) completely integrated into the community for the purposes of being a citizen.<sup>67</sup> Notwithstanding exceptional circumstances such as strict CBI schemes where no connection to community is required, it is arguable this mode of acquisition is arguably the least arbitrary, given the requirements of a connection to community being practically and quantitatively proven. This discussion on naturalisation and residence will be returned to in the discussion on CBI schemes below.

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<sup>61</sup> Dörr, ‘Nationality’ (n 29).

<sup>62</sup> Jelena Dzankic, ‘The pros and cons of ius pecuniae: investor citizenship in comparative perspective’ (2009) Robert Schuman Centre for Advances Studies Research Paper 64, 1  
<[https://cadmus.eui.eu/bitstream/handle/1814/21476/RSCAS\\_2012\\_14.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/21476/RSCAS_2012_14.pdf?sequence=1&isAllowed=y)>.

<sup>63</sup> Bauböck, ‘Epilogue’ (n 42) 502.

<sup>64</sup> Ibid 503.

<sup>65</sup> Bauböck, ‘Epilogue’ (n 42) 502.

<sup>66</sup> For analysis of the ‘residence’ requirement as it relates to CBI schemes and the ‘genuine link’ requirement, see Sergio Carrera, ‘How much does EU citizenship cost? The Maltese citizenship-for-sale affair: A breakthrough for sincere cooperation in citizenship of the union?’ (2014) 64 *Liberty and Security in Europe*.

<sup>67</sup> Rainer Bauböck and others, *Acquisition and Loss of Nationality, 1: Comparative Analyses - Policies and Trends in 15 European Countries*, vol 1 (1 edn, Amsterdam University Press 2006) 24.

### 3. EU CITIZENSHIP

The above discussion has established modern citizenship and nationality as political and legal concepts relating to the relationships between individuals and states, based on some sort of ambiguous connection to the community in question. Subsequently the modes of acquisition of nationality – birth and choice – have been broken down and evaluated to demonstrate the breadth of means of demonstrating connection to a community for the purposes of membership in that community. Now, we will turn to applying this analysis to the unique case of EU citizenship.

EU citizenship is somewhat paradoxical - it tries at once to distinguish itself from Member State nationality, but in doing so, it distinguishes itself from Member State citizenship as well. By definition, there is no such thing as European nationality, but nationality is a precondition of obtaining EU citizenship.<sup>68</sup> By asserting itself as different from and additional to Member State nationality, it must also be distinguished necessarily from the Member State citizenship – as at domestic law, citizenship and nationality are (generally) one and the same.<sup>69</sup> Conceptually, this means that EU citizenship is built upon differentiating itself from two ultimately equal meanings: it is at once *not* a citizenship, but it *is* a citizenship as the alternate face of nationality.<sup>70</sup> In this way, it is arguable that the EU is simultaneously a novel system of political community and supra-national governance, while also being quite fragile due to the ambiguous sense of identity or connection felt within that system. Notwithstanding this, it is

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<sup>68</sup> Lorin-Johannes Wagner, ‘Member State nationality under EU law – To be or not to be a Union Citizen?’ (2021) 28(3) Maastricht Journal of European and Comparative Law 304, 306.

<sup>69</sup> Serhii Lashyn, ‘The Aporia of EU Citizenship’ (2021) 42(1) The Liverpool Law Review 361, 372.

<sup>70</sup> Lashyn, ‘The Aporia of EU Citizenship’ (n 69) 372.

arguable that, possibly even more than general notions of citizenship, EU citizenship represents a modern, cosmopolitan understanding of what it means to be a citizen due to this somewhat ambiguous or fragmented attitude towards their identity.

### 3.3. History of EU Citizenship

EU citizenship as a political initiative can be traced back at least to 1973, when the Heads of State of Government of the European Community Member States implemented the *Declaration on European Identity*.<sup>71</sup> European political identity was developed further in 1979 when the European Parliament was first elected by direct universal suffrage, as envisioned by the *Treaty Establishing the European Economic Community*.<sup>72</sup> Then, in 1984 the legal concept of EU citizenship was first introduced by the European Parliament in the *Draft Treaty Establishing the European Union*.<sup>73</sup> In the Draft Treaty, Article 3 states “[t]he citizens of the Member States shall *ipso facto* be citizens of the Union, Citizenship of the Union shall be dependent upon citizenship of a Member State; it may not be independently acquired or forfeited.”<sup>74</sup> Moreover, it sets out quite a swarth of rights, duties, and policies aimed at strengthening and developing EU citizenship, as separate from and additional to existing Member State nationality.<sup>75</sup>

The final form of the *Draft Treaty* was the *Treaty on the European Union* (Maastricht Treaty), which establish the European Union, and EU citizenship.<sup>76</sup> Pursuant to Article 8 of the Maastricht Treaty, “each person holding the nationality of a Member State shall be a citizen of

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<sup>71</sup> *Declaration on European Identity*, Bulletin of the European Communities, December 1973, No 12.

<sup>72</sup> European Union, Treaty Establishing the European Community (Consolidated Version), Rome Treaty, signed 25 March 1957 (entered into force 1 January 1958] 294 UNTS 17).

<sup>73</sup> European Parliament, Draft Treaty Establishing the European Union [1984] 2 Bull CE 8

<sup>74</sup> Ibid art 3.

<sup>75</sup> Ibid arts 46, 61 and 14 (for example).

<sup>76</sup> Consolidated Version of the Treaty on European Union [1992] OJ C 325/5 (Maastricht Treaty).

the Union.”<sup>77</sup> Part two goes on to outline rights and obligations of citizens of the Union, including matters such as diplomatic protection, freedom of movement, and voting rights.<sup>78</sup> Interestingly, despite having considerably clearer language in the Draft Treaty, the wording in the Maastricht Treaty regarding the resolution on citizenship states, “resolved to establish a citizenship *common to nationals of their countries*”<sup>79</sup> but nowhere else is the relationship between Member State nationality, Member State citizenship, and the new EU citizenship mentioned. To resolve this, the Amsterdam Treaty clarified that “citizenship of the Union shall complement and not replace national citizenship”,<sup>80</sup> however this wording was ultimately replaced in the Lisbon Treaty to read “citizenship of the Union shall *be additional to* and not replace national citizenship”.<sup>81</sup> This subjugation of EU citizenship to Member State nationality is an important distinction to note. Unlike typical citizenship, EU citizenship is not as salient as Member State nationality – where usually citizenship and nationality go hand in hand as a dual character, EU citizenship is placed somewhat ‘below’ Member State nationality, raising difficult conceptual questions about implications for European identity.

### 3.4. EU Citizenship Today

Having established EU citizenship as dependent on and somewhat subordinate to Member State nationality, we turn to the question of the concept of European identity today, and how this relates to modern citizenship and nationality.

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<sup>77</sup> Maastricht Treaty (n 76) art 8.

<sup>78</sup> Ibid arts 8a-c.

<sup>79</sup> Ibid.

<sup>80</sup> Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Related Acts, [1997] OJ C340/1.

<sup>81</sup> Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community (2007/C 306/01) art 2(B).



Despite lofty aspirations for an EU identity, “the political value of European citizenship has become progressively devalued.”<sup>82</sup> In the most recent iteration of the *Eurobarometer Report on European Citizenship*,<sup>83</sup> Europeans themselves said they feel more strongly connected to their city/town/village (89%) or their country (91%), than they feel attached to Europe (66%) or the European Union (59%).<sup>84</sup> This result is explicable when considering that while people may understand that they have status as EU citizens, they do not necessarily feel a sense of *European identity* in the way traditionally associated with citizenship – they are not a EU Citizen in the same way that they perceive themselves to be a citizen of their home State. Despite being an expression of the legal core of the EU, EU citizenship arguably remains a symbolic endeavour, rather than a legal one.<sup>85</sup>

This is not to say that EU citizens do not feel connected to each other, nor that EU citizenship is devoid of the common elements of modern citizenship. In fact, I believe it is perhaps the most modern form of citizenship – in line with the famous words of Martha Nussbaum, EU citizens are *citizens of the world*.<sup>86</sup> While it is considered ‘modern’, this is not a new idea. The words were famously spoken by Diogenes the Cynic, who, when asked where he came from, replied “I am a citizen of the world (*cosmopolites*).” Of course, neither Diogenes, Nussbaum, nor anyone espousing such words believes that they are in fact a world citizen in the sense of holding a legal status as a member of a world polity. The generally held consensus is that all human beings, regardless of political affiliation or background, are (or ought to be) citizens in

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<sup>82</sup> Agustín José Menéndez and Espen D. H. Olsen, ‘European Citizenship: Between Formal Status and Practice’ in Agustín José Menéndez and Espen D. H. Olsen *Challenging European Citizenship* (Springer International Publishing 2020) 135.

<sup>83</sup> European Commission and Directorate-General for Communication, *European citizenship – Eurobarometer report* (2024).

<sup>84</sup> *Ibid* 8.

<sup>85</sup> For discussion, see, for example, Dimitry Kochenov, ‘EU Citizenship: Some Systemic Constitutional Implications’ in Dimitry Kochenov, Nathan Cambien and Elise Muir (eds), *European Citizenship under Stress* (Brill 2020).

<sup>86</sup> Martha C. Nussbaum, *Love's knowledge : essays on philosophy and literature* (Oxford University Press 2023).

a single “global” community.<sup>87</sup> Importantly, though, what this is built on in ‘new’ cosmopolitanism is not the fact that we are all necessarily the *same*, simply that we are sufficiently similar to be able to have *commitment to each other as a community*.<sup>88</sup>

The EU is regarded as “the first international model which begins to resemble the cosmopolitan model.”<sup>89</sup> It is arguable that describing the EU in terms of cosmopolitanism resolves the conceptual issues of the otherwise disjointed nature of the relationship between EU citizenship and Member State nationality. EU citizenship represents a departure from traditional understandings of citizenship, and demonstrates the new flexibility in what it means to be a citizen as part of a more ambiguous community. For example, Article 23 of the TFEU exemplifies the common responsibility of *all* Member States to *all* EU citizens as a new collective community of common allegiance.<sup>90</sup> Furthermore, beyond questions of common identity and allegiance, the provisions on universal suffrage and elections to the European Parliament indicate a stretching of the boundaries of national law and politics to a new supranational normal.<sup>91</sup> On this basis, it would be difficult to persuasively argue that the new means of ‘genuine link’ as connected to acquisition of EU citizenship (to be discussed below), somehow erode or devalue EU citizenship. The international community has loosened the conception of citizenship to allow for modernisation, building a community of EU citizens on the cosmopolitan idea of loyalty and commitment to humanity at large.<sup>92</sup> With such loosening and modernisation, necessarily the means by which people acquire that citizenship must also be brought in line with the new accepted practice.

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<sup>87</sup> Pauline Kleingeld and Eric Brown, "Cosmopolitanism" in *The Stanford Encyclopedia of Philosophy* (Winter 2019 Edition) ed Edward N Zalta <https://plato.stanford.edu/archives/win2019/entries/cosmopolitanism/>.

<sup>88</sup> Florian Pichler, ‘How Real Is Cosmopolitanism in Europe?’ (2008) 42(6) *Sociology* 1107, 1110.

<sup>89</sup> *Ibid* 1111.

<sup>90</sup> Consolidated version of the Treaty on the Functioning of the European Union 2008/C 115/01 (TFEU).

<sup>91</sup> Armin von Bogandny and Felix Arndt, ‘European Citizenship’ in Wolfrum et al (eds), *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2011).

<sup>92</sup> Linda Bosniak, ‘Citizenship Denationalized’ (2000) 7(2) *Indiana Journal of Global Legal Studies* 447, 448.

### 3.5. Nationality under EU Law

Having established EU citizenship as a modernised version of citizenship, it is necessary to discuss Member State nationality and acquisition of nationality as the means for becoming an EU citizen. EU citizenship is accessorial and complimentary to the status of being a national of a Member State. Its accessoriness comes from Article 20(1) of the *Treaty on the Functioning of the European Union* (TFEU),<sup>93</sup> which grants EU citizenship to every national of a Member State. It is complimentary insofar as it cannot be held independently from nationality of a Member State.<sup>94</sup> The ECN defines nationality in Article 2 as “the legal bond between a person and a State and does not indicate the person’s ethnic origin.”<sup>95</sup>

As to ascertaining whether that legal bond exists (and how), the rule for the EU remains the same as in general international law – it is in the *domaine réservé* of domestic law of the relevant State. This principle is recalled in Article 3 of the ECN, as well as in Declaration No 2 of the Maastricht Treaty states that “whether an individual possesses the nationality of a Member State” is solely to be settled “by reference to the national law of the Member State concerned.”<sup>96</sup> However, it is complicated by the fact that each Member State, naturally, have differing definitions of what it means to be a national.<sup>97</sup> Moreover, notwithstanding the *domaine réservé* of Member States to determine who their nationals are, the concept of nationality is enshrined in the treaties of the EU, so it must be assessed through the prism of EU law.<sup>98</sup>

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<sup>93</sup> TFEU (n 90) art 20(1).

<sup>94</sup> con Bogandy and Arndt, ‘European Citizenship’ (n 91).

<sup>95</sup> *European Convention on Nationality 1997* Council of Europe Treaty Series 166 (ECN).

<sup>96</sup> Maastricht Treaty (n 76).

<sup>97</sup> Wagner, ‘Member State nationality under EU law’ (n 68) 314.

<sup>98</sup> *Ibid.*

The prism of EU law requires a number of things. The European Court of Justice (ECJ) sets out in the *Rottman* case that rules for determining nationality falls within the *domain réservée* of each Member State, but this domain is not absolute, as “it is for each Member State *having due regard to Community law* to lay down the conditions for the acquisition and loss of nationality”.<sup>99</sup> Because of the accessoriness and complementary nature of EU citizenship, it is incumbent upon each Member State to formulate their respective nationality laws having sufficient regard to everyone else in the Union. This idea is also evinced in the ECN which states that Member States are free to determine who their nationals are *within the limits set by international law*.<sup>100</sup> While this would seem to hinder the sovereign prerogative of States to determine who their nationals are, the jurisprudence of the ECJ indicates that, in respect of EU citizenship, the exercise of the power to determine who your nationals are necessarily affects the rights conferred and protected by the EU legal order, therefore it ought to be carried out in light of EU law.<sup>101</sup>

Moreover, Article 20 TFEU seemingly makes EU citizenship dependent on the formal status of nationality under international law.<sup>102</sup> Therefore, as a legal construct, EU citizenship draws on nationality based on the traditional understanding of having a territorial nexus with the State in question, but, at the same time, it draws on an international law conception of nationality that is (incorrectly) based on a genuine link between the individual and the social and legal fabric of a State.<sup>103</sup> This ‘genuine link’ requirement comes from the much cited *Nottebohm* judgment of the International Court of Justice (ICJ).<sup>104</sup> When discussing this case, it is all too often erroneously cited as ruling that international law demands a ‘genuine link’ to grant

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<sup>99</sup> Wagner, ‘Member State nationality under EU law’ (n 68) 305.

<sup>100</sup> ECN (n 95) art 3.

<sup>101</sup> See, e.g., Case C-135/08 *Rottmann v. Freistaat Bayern* [2010] ECR I-01449.

<sup>102</sup> Wagner, ‘Member State nationality under EU law’ (n 68) 306.

<sup>103</sup> *Ibid* 330.

<sup>104</sup> *Nottebohm Case (Liechtenstein v Guatemala) (Second Phase)* [1955] ICJ Reports 4.

nationality.<sup>105</sup> This ‘doctrinal mantra’ of the genuine link requirement was perfectly summarised by Slone who state that, “despite the oft-quoted rhetoric of the Nottebohm majority, which ostensibly supports the genuine link theory, scrutiny of the opinion as a whole reveals that the ICJ’s actual concern in Nottebohm had little to do with genuine links.”<sup>106</sup> Indeed, as was recognised by the ILC in the DADP Article 4(5), the court in Nottebohm was not espousing a general requirement that nationality requires a genuine link, but rather that in resolving a conflict of nationality of a dual national for the purpose of diplomatic protection, the State with the more genuine link is to be preferred.<sup>107</sup>

Despite the criticisms, the genuine link requirement is very much part of EU law. What constitutes a ‘genuine link’ for the purposes of EU law will be discussed below, but what is important is that this link seems to be capable of being evidenced through a variety of means. The key seems to be that there is a link, and its ‘genuineness’ is evaluated through quantitative measures (such as periods of residency), but also qualitative, such as social and cultural ties to a community. Arguably, this lends credence to the argument that the acquisition of EU citizenship must be understood in line with modern conceptions of citizenship and nationality as relatively broad in scope, rather than the traditional acquisition of nationality through birth or residence. This view is supported by the ILC in the DADP, where it is noted that “in today’s world of economic globalisation and migration, there are millions of persons who have moved away from the State of nationality and made their lives in States whose nationality they never acquire, or who have acquired nationality by birth or descent from States with which they have a tenuous connection.”<sup>108</sup> The argument is not that such acquisition of nationality is less-than

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<sup>105</sup> Jose-Miguel Bello y Villarino, ‘If Mr Nottebohm Had a Golden Passport: A Study of the Obligations for Third Countries under International Law regarding Citizenships-for-Sale’ (2019) 9(1) Cambridge International Law Journal 76, 76.

<sup>106</sup> Robert D Sloane, ‘Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality’ (2009) 50 Harvard International Law Journal 1, 3.

<sup>107</sup> DADP (n 40) art 4(5).

<sup>108</sup> Ibid 4(6).

or not sufficiently genuine, rather, this demonstrates that what is accepted as a genuine link today has evolved in light of globalisation and large-scale migration, such that we allow these connections that previously would perhaps been regarded as not sufficiently strong to evince a connection for the purposes of being a citizen.

### 3.5.1. Acquisition/Conferral in EU Law

Having established the notion of EU citizenship as a somewhat ambiguous cosmopolitan concept, subjugated to Member State nationality, we turn to evaluating acquisition of nationality under EU law. Chapter III of the ECN codifies rules relating to nationality, including rules on acquisition and conferral of nationality.<sup>109</sup> Notably, the ECN endorses *ius sanguinis*, “each State Party shall provide in its internal law for its nationality to be acquired *ex lege* by a child, one of whose parents possesses at the time of the child’s birth the nationality of that State Party.”<sup>110</sup> Further, in the same *ius sanguinis* provision, it acknowledges there ought be conceptual limits on the transmission of *ius sanguinis* in cases of birth abroad, “this provision does not require a State to grant its nationality to children born abroad generation after generation without limitation, when such children have no links with that State.”<sup>111</sup> Save for certain caveats in the event of statelessness where such conferral would be deemed necessary, this would seem to indicate a generally-held consensus of where the link to citizenship should stop – blood is not enough on its own after immediate family relations (and even then, it is very rarely unconditional).

If blood alone is insufficient, can we turn to residence in the EU to deem an acquisition of citizenship acceptable? Firstly, it must be noted that unconditional *ius soli* does not exist in any

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<sup>109</sup> ECN (n 95) ch III.

<sup>110</sup> ECN (n 95) art 6(1).

<sup>111</sup> *Ibid.*

European Member State – if you are born on European Member State soil to a non-citizen, you do not acquire automatic citizenship. Conditional *ius soli* regimes do exist in Europe, but the primary condition is usually at a minimum connected to the birthplace or residency status of the parents.<sup>112</sup> Even still, conditional *ius soli* “is by no means as firmly established in European citizenship regimes as it is often assumed.”<sup>113</sup>

Having removed pure *ius soli* and pure *ius sanguinis*, we are still left with the question of what combination of factors can constitute a genuine link. In the Organisation for Security and Co-operation in Europe (OSCE) High Commissioner on National Minorities’ *The Ljubljana Guidelines on Integration of Diverse Societies*, “citizenship should be based on a genuine link of the individual to the State,”<sup>114</sup> and the Guidelines seem to suggest that residency or identity can be regarded as sufficient and legitimate proof of a genuine link between an individual and a state.<sup>115</sup> On the point of ‘identity’, these guidelines interestingly acknowledge that citizenship has an important symbolic value for both the State and individuals: “[i]t is a tangible signal of common belonging and of shared core values for both the holder of citizenship and the State granting it.”<sup>116</sup> This would seem to indicate, in light of the insufficiency of blood alone, the modern understanding of citizenship places more emphasis on the social and cultural link between citizen and State, as opposed to specific territorial or blood ties. However, the Guidelines take things a step further into the abstract, arguably in contradiction to its original goals, by actively encouraging State to facilitate the naturalization of individuals who have only symbolic ties to the state.<sup>117</sup>

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<sup>112</sup> Costica Dumbrava, *Nationality, Citizenship and Ethno-Cultural Belonging* (n 22) 23.

<sup>113</sup> Ibid.

<sup>114</sup> OSCE, 2012 HRE/NOND/1R/24 [33].

<sup>115</sup> Ibid [32].

<sup>116</sup> Ibid.

<sup>117</sup> OSCE (n 114) [32].

Whether you want to say that this further abstracting of citizenship from territorial or immediate blood ties, to social and cultural links, to simply symbolic ties is good or bad, it either way indicates a further loosening of the strict traditional conception of citizenship in allowing abstract or varied links to be sufficiently ‘genuine’. As stated by Pogonyi, “[i]nvariably, the more simple and unconstrained the passing down of citizenship, and the less birthright citizenship is tied to territory, the less citizenship becomes a marker of factual, genuine stakeholding in a country.”<sup>118</sup> If EU law centres on the genuine link *Nottebohm* requirement, the only logical conclusion to be made in the face of the increasingly loose and simplified citizenship rules which continue to be deemed a genuine link is that *the meaning of genuine link has changed*. On this basis, it is arguable that if a ‘genuine link’ is defined as such a broad range of connections such as blood, territory, residency, language, and culture (or even symbolism), then EU citizenship cannot have been devalued normatively or otherwise. ‘Genuine link’ simply means something different than it did 100 years ago, and collective consensus on acquisition of nationality globally and in the EU is indicative of this. The value of citizenship has not been changed, but what is validly considered as a genuine connection between an individual and a State for the purposes of acquisition of nationality has evolved.

## 4. CBI SCHEMES

Above we set up the concept of EU citizenship as highly modern, and argued that the means of acquisition of nationality have in turn been modernised to allow for a broader, arguably more ambiguous, variety of connections to the State. We now turn to consider CBI as another more modern form of choice naturalisation, and continue to argue this does not devalue EU

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<sup>118</sup> Szabolcs Pogonyi, ‘The right of blood: ‘ethnically’ selective citizenship policies in Europe’ (2022) 24(5) National Identities 523, 535.



citizenship due to it being in line with the broader ambit of accepted connections for the purposes of becoming a citizen.

As noted above, CBI schemes, or ‘golden passports’, would fall under the ambit of “choice” in our hierarchy of acquisition modes, as a form of voluntary naturalisation. In such instances, “the free will of the individual to associate itself with the State in question, which finds expression in the application for nationality, constitutes a sufficient connection and is therefore recognized as a legitimate ground for the conferment of nationality.”<sup>119</sup> Before delving into the intricacies of the relationship between CBI schemes, citizenship, naturalisation, and EU law, we must first discuss what exactly these schemes are.

### 4.3. CBI and the EU

CBI schemes offer individuals the chance to ‘buy’ their passport. In essence, wealthy aliens can secure fast-tracked citizenship in certain States with large financial contributions, often attached to few other requirements.<sup>120</sup> Despite developments in the requirements for naturalisation in the EU under CBI schemes, the key to obtaining citizenship remains financial.<sup>121</sup> The practice is becoming increasingly commonplace, not only in the EU but globally. These schemes do fall in a sort of spectrum that accords with what each State deems necessary to confer nationality – where some simply waive or relax certain requirements for naturalisation (such as the Maltese scheme), others remove nearly all requirements outright (such as many of the Caribbean schemes).<sup>122</sup> Moreover, the level of discretion varies, with

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<sup>119</sup> Dörr, ‘Nationality’ (n 29).

<sup>120</sup> Michael B. Krakat, ‘Genuine links beyond state and market control: The sale of citizenship by investment in international and supranational legal perspective’ (2018) 30(1) *Bond law review* 145, 148.

<sup>121</sup> *Ibid* 149.

<sup>122</sup> Ana Tanasoca, ‘Citizenship for Sale Neomedieval, not Just Neoliberal?’ [Cambridge University Press] (2016) 57(1) *European Journal of Sociology* 169, 171.

States such as Austria and Montenegro affording officials near full discretion to decide who is naturalised under their schemes.<sup>123</sup> The list of EU Member States who have such schemes are as follows:<sup>124</sup>

Austria	Romania
Bulgaria	Slovakia
Cyprus	Slovenia
Mata	

CBI schemes must be distinguished from Residence by Investment (RBI), also called ‘Economic Residence’ schemes or ‘golden visas’. Procedurally, RBI schemes do not *necessarily* lead to citizenship being granted (although, as a matter of practice, they often do).<sup>125</sup> Substantively, there are a number of salient differences: the suite of rights owed to citizens are considerably stronger and broader than residence rights, residence is considerably easier to revoke than citizenship, and citizenship not only confers a person with the suite of rights and obligations, but as it is often inheritable it can secure these rights and obligations for generations to come.<sup>126</sup> The list of EU Member States who run RBI schemes are as follows:<sup>127</sup>

Austria	Ireland
Belgium	Italy
Bulgaria	Latvia
Croatia	Lithuania

<sup>123</sup> Tanascoa, ‘Citizenship for Sale Neomedieval, not Just Neoliberal’ (n 123) 171.

<sup>124</sup> Maarten Vink, Luuk van der Baaren, Rainer Bauböck, Jelena Džankić, Iseult Honohan and Bronwen Manby (2023). GLOBALCIT Citizenship Law Dataset, v2.0, Country-Year-Mode Data (Acquisition). Global Citizenship Observatory, <https://hdl.handle.net/1814/73190>.

<sup>125</sup> Kristin Surak, ‘Millionaire mobility and the sale of citizenship’ (2021) 47(1) Journal of Ethnic and Migration Studies 166, 169.

<sup>126</sup> Ibid.

<sup>127</sup> Vink and others, ‘GLOBALCIT’ (n 124).

Czech Republic	Luxembourg
Denmark	Malta
Estonia	Netherlands
Finland	Poland
France	Portugal
Germany	Romania
Greece	Slovakia
Hungary	Slovenia
Iceland	Spain
	Sweden

Despite it being a relatively widespread practice, EU officials have been less than pleased with Member States such as Malta implementing CBI schemes. Viviane Reding declared in 2014 that citizenship "is a fundamental element of our Union. One cannot put a price tag on it."<sup>128</sup> However, as it stands, one *can*, in fact, put a price tag on it. This is another manifestation of the loosened concept of genuine link.

Without Member State nationality, EU citizenship cannot be acquired, thus losing its meaning.<sup>129</sup> As determining what is national citizenship remains in the *domain réservé* of the Member States, leveraging EU law against CBI or RBI schemes, or really attempting to leverage it against any new or updated form of creation of EU citizens, is not a particularly fruitful exercise.<sup>130</sup> If EU citizenship is additional to and dependent on Member State nationality, could it not be argued that, so long as CBI schemes retain sufficient elements of

<sup>128</sup> Tanascoa, 'Citizenship for Sale Neomedieval, not Just Neoliberal' (n 123) 172.

<sup>129</sup> Lashyn, 'The Aporia of EU Citizenship' (n 69) 372.

<sup>130</sup> Rainer Bauböck, 'Summary: Global, European and National Questions About the Price of Citizenship' in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer, 2018) 4.

traditional citizenship, such that they do not erode the value of the conferring State's citizenship or normative identity, then it can be logically inferred that it will not erode the value of EU citizenship more broadly. Moreover, if the link is sufficiently 'genuine' by way of retaining these key features of citizenship, then it does not flow that adding a price tag makes it less genuine.

#### 4.4. Malta: Genuine Connection, not Exceptional Exception

The Maltese CBI scheme is perhaps the most controversial, or at least the most pointed to, when discussing the potential dangers of these schemes. Before diving into normative discussions, I will first break down the scheme as it stands (updated in 2022).

The Granting of Citizenship by Naturalisation for Exceptional Services by Direct Investment is regulated by the *Granting of Citizenship for Exceptional Services Regulations*.<sup>131</sup> The scheme has changed faces, names, and criterion across the years, but as of 2024, the specific eligibility criteria for filing an application are:<sup>132</sup>

1. Provide a proof of residence in Malta for a period of thirty six (36) months, provided that this period may by exception be reduced to a minimum of twelve (12) months, subject to an exceptional direct investment (of six hundred thousand euro [€600,000] and seven hundred fifty thousand euro [€750,000] respectively), to be effected prior the issue of the certificate of naturalisation;
2. Purchase an immovable residential property in Malta having a minimum value of seven hundred thousand euro (€700,000) or take on a lease a residential immovable property

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<sup>131</sup> S.L. 188.06. Retrieved from <<https://legislation.mt/eli/sl/188.6/eng/pdf>>.

<sup>132</sup> Community Malta Agency, 'Acquisition of Citizenship' <<https://komunita.gov.mt/en/services/acquisition-of-citizenship/>> accessed April 2024.

in Malta for a minimum annual rent of sixteen thousand euro (€16,000), which property shall be adequate and suitable for the applicant and his dependants, for a minimum period of five (5) years from the date of issue of the certificate of citizenship;

3. Carry out an exceptional direct investment in Malta, in accordance with the Granting of Citizenship for Exceptional Services Regulations (S.L. 188.06); and
4. Donate, prior to the issue of the certificate of naturalisation, a minimum of ten thousand euro (€10,000) to a registered philanthropic, cultural, sport, scientific, animal welfare or artistic non-governmental organisation or society, or as otherwise approved by the Agency.

During the residence period, prospective applicants cannot simply sit by the pool and wait for the time to pass. The procedure is as follows: “Prospective applicants are required to be physically in Malta and build connecting factors during the residence period. These requirements shall be satisfied by providing documented proof. It is required that the applicant presents to the Agency his proposal on how he intends to create these connecting factors when presenting the eligibility application.”<sup>133</sup> Only after the stipulated residence period can a separate citizenship application be submitted.

#### 4.2.1. Maltese Analysis: Sufficiently Genuine

On 21 March 2023, the European Commission brought an action against Malta regarding this CBI scheme, arguing that it “offers naturalisation in the absence of a genuine link of the applicants with the country, in exchange for pre-determined payments or investments, the Republic of Malta has failed to fulfil its obligations under Article 20 TFEU and Article 4(3)

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<sup>133</sup> Community Malta Agency, ‘Acquisition of Citizenship’ (n 132).

TFEU.”<sup>134</sup> A result in this case is pending at the time of writing, but questions have been raised about the validity or likelihood of success of the Commission’s case.

Critics have argued that the Maltese CBI scheme is not sufficiently rooted in community, institutions, residence, participation in political life, and other spheres of participation that we associate with traditional citizenship such that it could not demonstrate a ‘genuine link’.<sup>135</sup> However, much of the criticism was levelled at the earlier iterations of the scheme, which were considerably more relaxed. Matla’s first RBI scheme was launched in 1964 to encourage British retirees to stay longer, enjoying the sunshine at a considerably favourable tax rate.<sup>136</sup> Since then, the versions of the scheme have become increasingly more expensive, attaching progressively longer residence periods, ultimately leading to the CBI scheme today.<sup>137</sup> The requirements of the scheme today mean that you cannot just hand over your envelope (or, in this case, large suitcase) of money and be handed a passport in return.

While I acknowledge and support the criticisms levelled at the scheme on other bases such as inequality and corruptive practices, I find it difficult to support an argument that somehow this scheme devalues or changes the concept of citizenship any more than other naturalisation procedures. Particularly in light of the more stringent eligibility criteria and monitoring, I would find it difficult to argue that someone who has lived in a State for (at least) twelve months, actively resided in the community, participated in community life and contributed to the polity, and made exceptional investments into that community, is somehow devaluing the State citizenship by ultimately being made an ‘official’ part of that community. How is the conferment of the title of ‘citizen’ on these investors as opposed to ‘resident’ devaluing the

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<sup>134</sup> Case C-181/23 *European Commission v Republic of Malta* OJ C 173 27.

<sup>135</sup> Chris Armstong, ‘The Price of Selling Citizenship’ in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer, 2018) 25.

<sup>136</sup> Kristin Surak, ‘Who wants to buy a visa? Comparing the uptake of residence by investment programs in the European Union’ (2020) 30(1) *Journal of Contemporary European Studies* 151, 157.

<sup>137</sup> *Ibid.*

status of citizenship for everyone else? Looking back to the previously mentioned generational conferment of citizenship, how can we argue that ethnic citizenship policies who create hundreds of thousands of new EU citizens abroad are somehow ‘better’ than CBI programs which necessitate at least *some* active connection, or ‘genuine link’ to the State in question?<sup>138</sup>

Moreover, it is arguable that, due to the tightening of schemes such as the Maltese CBI scheme in light of broader pushback from the EU, these no longer resemble strict CBI schemes. Strictly, the CBI schemes that critics (reasonably) take the most issue with are those which really are a simple purchase of a passport, with effectively no strings attached. Such schemes were previously present in the EU, but now typically only find their home in the Caribbean. Even there, however, in the face of mounting international pressure four of the five Organisation of Eastern Caribbean States countries which have CBI schemes (Dominica, Grenada, St Kitts and Nevis, and Antigua) have agreed to raise their minimum investment price to USD\$200,000.00 from 30 June 2024.<sup>139</sup> However, it seems that the other requirements will not manifestly change, and, importantly, no new residency requirements are being implemented. To my mind, these are what true CBI schemes are – a simple investment of money into a State and being issued a passport. If such a scheme was implemented in the EU, it could be argued then that EU citizenship could be devalued, given the complete lack of any connection to the relevant State. However, it is difficult to equate the comparatively strict scheme in Malta with these *laissez-faire* Caribbean schemes. Therefore, it is strongly arguable that the ‘genuine link’ necessitated in EU law is no weaker under CBI schemes such as Malta which require residency, community contribution, and financial investment as compared to other schemes of naturalisation present in the EU, such as generational and ethnic naturalisation. It would be

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<sup>138</sup> Rainer Bauböck, ‘What is Wrong with Selling Citizenship? It Corrupts Democracy!’ in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer, 2018) 37.

<sup>139</sup> The Caribbean Council, ‘Caribbean countries set CBI passport price floor’ (11 April 2024) <<https://www.caribbean-council.org/caribbean-countries-set-cbi-passport-price-floor/>>.

difficult to posit that this quantitatively and qualitatively proven, evidenced, and demonstrated active connection to a community for a period of at least a year is not a sufficiently ‘genuine’ link to that community for the purposes of attaining membership to that community. While it can be acknowledged that, without the financial contribution, naturalisation would typically take approximately four years.<sup>140</sup> Notwithstanding, it is not persuasive to argue that an additional two years, minus hefty financial and community contributions, would evince a somehow more genuine link than the scheme in Malta as it stands.

As a matter of jurisprudence, the ‘genuine link’ is not strictly required for matters of national rules on acquisition and loss of nationality.<sup>141</sup> It has, however, been continually employed as an argument against CBI schemes.<sup>142</sup> The argument, however, is not that a genuine link is a necessary or unnecessary, good or bad – rather, the argument here is that the scheme *does* in fact evince a genuine link between the relevant individual and the State based on the modernised, broad conception of EU citizenship, and in doing so cannot be said to devalue the conception of EU citizenship.

## 5. DISCUSSION: EVALUATING MODERN CONNECTIONS

Citizenship matters. I hasten to stress that I do not believe CBI schemes should exist, they have grave potential for corruption “by breaking down the wall that separates the spheres of money and power.”<sup>143</sup> As well, their existence raises concerns about global justice and fairness, inter-state and intra-state inequality, security, and other matters such as financial crime and

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<sup>140</sup> Community Malta Agency, ‘Acquisition of Citizenship’ (n 132).

<sup>141</sup> See, for example, Case C-135/08 *Rottmann v. Freistaat Bayern* [2010] ECR I-01449; Case C-221/17 *M.G. Tjebbes and others v Minister van Buitenlandse Zaken (Judgment)* ECLI:EU:C:2019:189 [2019]; and discussion by Merijn Chamon ‘A Rejoinder to Citizenship for Sale (Commission v Malta)’ (15 April 2024) <<https://verfassungsblog.de/a-rejoinder-to-citizenship-for-sale/>>.

<sup>142</sup> See, e.g., European Parliament Resolution of 16 January 2014 on citizenship for sale 2013/2995(RSP).

<sup>143</sup> Bauböck, ‘Summary’ (n 130) 5.



regulation.<sup>144</sup> Despite the convincing criticisms levelled at other aspects of these programmes, I cannot agree with the argument that CBI schemes have somehow eroded the normative or substantive value of EU citizenship, or citizenship broadly for that matter.

The most convincing argument in support of my case, in my opinion, is levelled by Spiro, “[g]lobalisation has already deeply undermined national citizenship as a bond between individuals and states and the sale of passports is just a symptom of an irreversible commodification of citizenship.”<sup>145</sup> Citizenship cannot reasonably still be described in Aristotelian terms, nor in terms of the Peace of Westphalia, not even in terms of the way we understood citizenship even 100 years ago. Even from the point of view of the global injustice argument, the CBI schemes present in the EU are not the most significant instances of policies globally which “both feed off, and make it harder to tackle, underlying global inequalities.”<sup>146</sup> While the argument of “well he did it, so why can’t I” is not particularly persuasive on its own, you cannot point to EU CBI schemes and say they are more destructive of the value of citizenship, or that they create necessarily more inequality, than other naturalisation processes present in the EU, such as generational *ius sanguinis*.

The criterion of physical presence as a precondition to acquisition of nationality is often a concern for critics of CBI schemes – to become a part of a community, you ought to at least have been physically present in that community for some period of time. Physical presence forces us to engage with and be cognisant of other members of the community, whether it be standing in queues, abiding by certain social rules such as going to the park on Sundays, or staying quiet after 10pm so as to not disturb others. The act of being physically present in a community connects us with each other, regardless of prior circumstance, economic status,

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<sup>144</sup> Surak, ‘Millionaire mobility’ (n 125) 183.

<sup>145</sup> Emphasis added, Bauböck, ‘Summary’ (n 130) 3.

<sup>146</sup> Bauböck, ‘What is Wrong with Selling Citizenship?’ (n 138) 38.

political ideologies, religion, or other characteristics which would otherwise separate us.<sup>147</sup> This is a primary reason why people feel uneasy with traditional strict CBI schemes which either do not require any period of residence, or negligible periods of residence.<sup>148</sup> If you are not here, how can you be part of our community? *What is your link to us, and is it genuine?* This is a completely valid concern, rooted in not only human practice, but, I think, in the embedded nature of community and connection which makes us human. However, I do not agree that it is validly levelled against the CBI schemes we see in the EU. In particular due to the fact that these schemes have residency requirements of at least a year (not just owning property, but being physically in the community), in addition to the requirements of proof of your connection to community during that requisite period – satisfying a qualitative connection requirement through quantitative proof, which is a relatively high standard.

Another point raised is the arbitrary nature of acquisition of citizenship through CBI schemes. This I cannot agree with either. This is certainly an area of stiff debate, but the more persuasive argument is that all mechanisms of acquisition of citizenship are, to some extent, arbitrary or discriminatory.<sup>149</sup> I would not go as far as Kochenov who asserts that “it is wrong to pretend that any other principle than outright randomness is at the core of the assignment of citizenship statuses in today’s world.”<sup>150</sup> (It must be noted that Kochenov was instrumental in developing CBI programs, so he arguably has skin in the game in ensuring the schemes retain their validity.) Despite Kochenov’s partiality, I do find some of his arguments to be relatively convincing (albeit taken with a grain of salt). He persuasively raises the point of arbitrariness in many naturalisation pathways otherwise accepted, such as the external citizenship provisions

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<sup>147</sup> Paulina Ochoa Espejo, ‘What Money Can’t Buy: Face-to-Face Cooperation and Local Democratic Life’ in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer, 2018) 45.

<sup>148</sup> Krakat, ‘Genuine links beyond state and market control’ (n 120) 154.

<sup>149</sup> Ayelet Shachar, ‘Dangerous Liaisons: Money and Citizenship’ in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer, 2018) 7.

<sup>150</sup> Dimitry Kochenov, ‘Citizenship for Real: Its Hypocrisy, Its Randomness, Its Price’ in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer, 2018) 52.

of States such as those for Croatians in Bosnia & Herzegovina, and even in Australia.<sup>151</sup> Moreover, the issue is raised again of generational *ius sanguinis*. While I acknowledge the symbolic ties of generational *ius sanguinis*, it is arguable that such schemes prove the point that residence is not the crucial element. Using the example of Italy, what of a case where Italian grandparents moved to Australia in the 1960s, and subsequently stayed in Australia, having children and grandchildren, and building their life in Australia. The grandchildren do not speak Italian and have never been to Italy. If physical presence in the community (i.e., in the EU) was key to validly attaining citizenship from a normative perspective, would the granting of EU citizenship to these grandchildren not devalue EU citizenship normatively? If we argue, as Italy would, that such conferral of citizenship *does not* devalue their citizenship, then I do not think it would be arguable to say that CBI schemes who include residency and community commitments requirements devalue citizenship.<sup>152</sup> Certainly, the CBI process with several hoops to jump, and sums of money to pay, seems less arbitrary than our Italian example. Looking to a similarly unorthodox means of attaining citizenship, there have been several cases over time of so-called ‘extraordinary’ acquisitions of nationality. These occur without any prolonged connection to the community, but what is vital for establishing what is seen as a ‘genuine’ connection (such that they can be deemed a member of the relevant community) is the value or quality of that connection.<sup>153</sup> In this way, there is arguably nothing ‘extraordinary’ in these cases, in terms of the core basis upon which citizenship is conferred. In Australia, this mode of acquisition of nationality has been in headlines recently. In the past month, there was mass stabbing committed in Sydney Australia, which left 6 women dead, and a dozen other victims wounded. In the horror, there were some acts of incredible bravery. Of note is a French

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<sup>151</sup> Jo Shaw, ‘Citizenship for Sale: Could and Should the EU Intervene?’ in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer, 2018) 61.

<sup>152</sup> Shaw, ‘Citizenship for Sale’ (n 151) 61.

<sup>153</sup> Elisabeth Badenhoop, ‘Rationalities of Naturalisation: Citizenship as Award or Entitlement’ in *Calling for the Super Citizen* (Springer International Publishing AG 2023).

man, Damien Guerot, who was living in Australia as a construction worker on a temporary working visa which was due to expire in July. Guerot rushed into danger wielding a bollard in an attempt to hold back the attacker. Later in the attack, he ran behind a police officer charging the attacker, brandishing a plastic chair as his only protection. As a reward for his heroism, he was made an Australian permanent resident.<sup>154</sup> Prime Minister Anthony Albanese stated in a press conference that Mr Guerot “is someone Australia would welcome as a citizen.”<sup>155</sup> Another person who demonstrated bravery in the attack was Muhammad Taha, a Pakistani national, who was stabbed when we confronted the attacker. His visa was due to expire in two weeks, and Prime Minister Anthony Albanese stated that citizenship would be offered to him too “as a thank you for his courage.”<sup>156</sup> Other than their acts of bravery on that day in Sydney, these men had no substantial connection to Australia, besides being on temporary working visas. It must be noted that both men have been offered permanent residency, which, in Australia, is not the same. However, permanent residency is the ‘final hurdle’ before attaining citizenship – after obtaining a permanent visa, the residency requirement is only 12 months before becoming eligible for Australian citizenship by conferral.<sup>157</sup>

Despite some differences, what can be extrapolated from these instances of conferral of citizenship in the face of heroic acts by foreigners is a notion that *if you are willing to show such commitment to this community, even if for a moment, then you should be welcomed as one*

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<sup>154</sup> Praveen Menon, ‘French ‘bollard man’ hero invited to stay in Australia permanently’ (*Reuters Asia Pacific*, 16 April 2024) <<https://www.reuters.com/world/asia-pacific/sydney-knife-attack-hero-welcome-stay-australia-pm-says-2024-04-16/>>; President Emmanuel Macron praised the act, Mikala Theocharous, ‘French President hails Frenchmen ‘heroes’ after confronting mass stabber at Bondi Junction’ (*9 News Australia*, 17 April 2024) <<https://www.9news.com.au/national/france-president-hails-frenchmen-heroes-after-fending-off-serial-stabber-in-bondi-junction/760d80f8-da20-4db4-846d-b195fe7bc582>>.

<sup>155</sup> Lucy Slade, ‘‘You are welcome here’: PM offers citizenship to French bollard hero in Bondi attack’ (*9 News Australia*, 16 April 2024) <<https://www.9news.com.au/national/bondi-junction-stabbing-update-pm-offers-bollard-hero-damien-guerot-citizenship/71df918c-bbef-46a5-8781-1689ba5106cf>>.

<sup>156</sup> Jesse Hyland, ‘Security guard Muhammad Taha who was stabbed in Westfield Bondi Junction attack granted permanent resident visa’ (*ABC News*, 19 April 2024) <<https://www.abc.net.au/news/2024-04-19/nsw-security-guard-stabbing-granted-permanent-visa/103745502>>.

<sup>157</sup> For further information, see Australian Government Department of Home Affairs, ‘Permanent resident’ (21 March 2024) <<https://immi.homeaffairs.gov.au/visas/permanent-resident/overview>>.

*of us*. They have proven themselves as people ‘worthy’ of Australian citizenship, worthy of *becoming part of the community*, through their selfless, *and genuine*, acts for the community. Such cases are persuasive demonstrations of what is truly at the core of modern, cosmopolitan citizenship – commitment to a community. As a matter of social practice, the acts are extraordinary, but the subsequent conferral of citizenship represents the same key ideals that we see in EU CBI schemes – demonstrated commitment and connection to a community.

While financial contributions and residency in a country are not equitable with fending off a knife attacker, it does follow that it is not about the period of time a person has been in a community, but, for the purposes of becoming a member of that community, the key is the show of allegiance. This can be applied to EU citizenship as well. What is paramount is the connection between the individual and community, and a necessary proof that your link, whatever it may be, is genuine. If I demonstrate my allegiance to the European community, whether it be through an act of bravery, a period of residence, participation in community life, or all of the above, that should suffice to prove my worthiness as a citizen. Adding the additional criterion of a price tag to that show of commitment does not devalue what it means to be a citizen of that community, so long as the commitment is there.

## 6. CONCLUSION

This essay has argued that CBI schemes do not devalue EU citizenship. It has concluded this by reasoning that the concept of citizenship has developed over time, and today manifests in a broad sense, in particular due to globalisation. Thus, the accepted means of acquisition of nationality have also changed, such as to allow a more loosened approach to determining what is a sufficient link between an individual and a community to be allowed to be a member of that community. In particular, EU citizenship represents this modernisation of citizenship, as a

particularly cosmopolitan notion of citizenship as connection to ‘Europeans’ broadly, irrespective of differences in language, culture, politics, religion, or otherwise.

## 6.1. Avenues for Further Research

This seminar paper has considered citizenship, nationality, EU citizenship, CBI schemes and the relationships between them. Considering the exceedingly vast scope of the field, further analysis could be conducted into the value and meaning of identity domestically in States which run CBI schemes – how do they conceive of their national identity, and how does that play a role in whether they run CBI schemes? Furthermore, findings relating to EU Member State domestic identity could be contrasted with that of the Caribbean States who run CBI schemes, with a particular focus on a comparative histo-political analysis of the formation of these States and their identity, and how this has in turn impacted the varying legal frameworks which manage that identity. These are simply guiding questions for further research and has not formed part of the present discussion, nor have these questions been analysed in any depth beyond initial considerations for future research.

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