

Introduction: Advancing Investment Migration Scholarship

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INVESTOR MIGRATION HAS rapidly emerged as one of the most controversial, contested and captivating practices within contemporary migration and citizenship policy. The very idea of putting a price tag on citizenships and residences abhors many. That some investor migration schemes have additionally been riven with corruption,¹ and been used by states to shrug off their responsibilities to their stateless population,² has only fuelled and reinforced criticism. Yet, at the same time, well-designed investor migration policies – under some conditions – can provide a welcome financial boost to the local economy, with revenues in smaller island states easily exceeding 10 per cent of the government budget or their GDP.³ Further to this, investor migration helps people with deep pockets move up the global citizenship hierarchy and acquire the rights, privileges and freedoms of those with sought-after Western passports.⁴ Indeed, it helps losers in the so-called ‘birthright lottery’⁵ to secure a ‘super citizenship’⁶ of a rich country and benefit from the ‘citizenship rents’ that come with it.⁷ The fact that it provides a selective escape route for the wealthy with ‘sub-standard citizenships’⁸ explains at once the popularity of investor migration among the most immediate beneficiaries and its critical reception among some politicians and scholars.

Investment migration clearly is a complex and multifaceted phenomenon. Numerous recent studies confirm and augment this understanding.⁹ While the initial reaction of political

¹ Nagy, ‘Investment Migration and Corruption’ in Kochenov and Surak (eds), *Citizenship and Residence Sales* (Cambridge University Press 2023); Corrado and Marsh, ‘Investment Migration and the Importance of Due Diligence’ in Kochenov and Surak (eds), *Citizenship and Residence Sales* (Cambridge University Press 2023); Van Fossen, ‘Passport Sales: How Microstates Use Strategic Management to Organise the New Economic Citizenship Industry’ (2018) 13 *Island Studies Journal* 285.

² Spiro, ‘Investment Citizenship and the Long Leash of International Law’ in Kochenov and Surak (eds), *Citizenship and Residence Sales*; Abrahamian, *The Cosmopolites* (Columbia Global Reports 2015).

³ Surak, ‘Investment Migration: Empirical Developments in the Field and Methodological Issues in Its Study’ in Kochenov and Surak (eds), *Citizenship and Residence Sales*, 66; Surak, ‘Do Passports Pay off?’ (2024) *JEMS* (early view).

⁴ Harpaz, ‘Citizenship and Residence Rights as Vehicles of Global Inequality’ in Kochenov and Surak (eds), *Citizenship and Residence Sales*.

⁵ Shachar, *The Birthright Lottery* (Harvard University Press 2009).

⁶ Kochenov, *Citizenship* (MIT Press 2019) 239.

⁷ Milanović, *Capitalism, Alone* (Belknap 2019); Kalm, ‘Citizenship Capital’ (2020) 34 *Global Society* 528.

⁸ Kochenov and Lindeboom, ‘Empirical Assessment of the Quality of Nationalities’ (2017) 4 *EJCL* 314; Kochenov, ‘Victims of Citizenship’ in Kochenov and Surak (eds), *Citizenship and Residence Sales*.

⁹ See, especially, Kochenov and Surak (eds), *Citizenship and Residence Sales*; Surak, *The Golden Passport* (Harvard University Press 2023); Džankić, *The Global Market for Investor Citizenship* (Palgrave Macmillan 2019); Kälin, *Ius Doni in International Law and EU Law* (Brill-Nijhoff 2019).

theorists was one of moral indignation,¹⁰ they have started offering more nuanced examinations. Some remain critical of the commodification of citizenship,¹¹ but others argue that investor migration is no more arbitrary or unjust than more traditional ways of allocating legal belonging.¹² Social scientists, meanwhile, have much improved our empirical understanding of the investor migration market, of the actors on the scene, the motivations of states selling passports and visas and of the individuals willing to pay hefty sums to buy them and the possible financial and economic consequences of these policies.¹³ Lawyers, in response to ongoing lawsuit against investor migration schemes,¹⁴ have closely examined how norms of international and European Union law apply to these schemes.¹⁵ Add to this historians who show the ‘long pedigree’ of contemporary investor migration,¹⁶ public policy scholars interested in questions of (successful) policy design¹⁷ and (political) economists inquiring into the economic factors driving investors’ choices,¹⁸ and what emerges is a thriving and thoroughly interdisciplinary field of study.

This book contributes to this field. Studies before this one have tried making sense of the curious world of investor migration, but were, as Atossa Abrahamian remarked, ‘not afraid to raise more questions still’.¹⁹ With this book, we hope to answer some of these questions, even if the individual contributions will no doubt also raise more still. This book also builds on recent studies in another way. It understands investor migration not as an outlying phenomenon in the field of citizenship and migration, but instead as a practice with direct implications for contemporary understanding of the mechanisms underpinning the essential functions of citizenship and the global distribution of rights and opportunities.²⁰ Investor migration is part of the wider transformation of citizenship and residence that has been underway for decades.²¹

¹⁰ eg Shachar, ‘Citizenship for Sale?’ in Shachar et al (eds), *The Oxford Handbook of Citizenship* (Oxford University Press 2017).

¹¹ Mavelli, ‘Citizenship for Sale and the Neoliberal Political Economy of Belonging’ (2018) 62 *International Studies Quarterly* 482; Tanasoca, ‘Citizenship for Sale: Neomedieval, Not Just Neoliberal?’ (2016) 57 *EJS* 169. For critical reflection, see Roy, ‘The “Streetlight Effect” in Commentary on Citizenship by Investment’ in Kochenov and Surak (eds), *Citizenship and Residence Sales*, 306.

¹² Erez, ‘A Blocked Exchange?’ in Kochenov and Surak (eds), *Citizenship and Residence Sales*; Kochenov, ‘Citizenship for Real: Its Hypocrisy, Its Randomness, Its Price’ in Bauböck (ed), *Debating Transformations of National Citizenship* (Springer 2018) 51.

¹³ See especially, Surak, *The Golden Passport*. See also Kalm, ‘The Business of Citizenship’ (2022) 37 *Global Society* 68.

¹⁴ Case C-181/23 *Commission v Malta* OJ C 173/27 pending. Cf. Sarmiento and Íñiguez’s as well as Weiler’s contributions to this volume and van den Brink, ‘3½ Myths about EU law on Citizenship for Sale’ (VerfBlog 2024).

¹⁵ On international law, Spiro, ‘Investment Citizenship and the Long Leash of International Law’ in Kochenov and Surak (eds), *Citizenship and Residence Sales*; van der Baaren, ‘Investor Citizenship and State Sovereignty in International Law’ in Kochenov and Surak (eds), *Citizenship and Residence Sales*. On European Union law, van den Brink, ‘Revising Citizenship within the European Union’ (2022) 23 *GLJ* 79; Sarmiento and van den Brink, ‘EU Competence and Investor Migration’ in Kochenov and Surak (eds), *Citizenship and Residence Sales*; Kochenov, ‘Genuine Purity of Blood’ (2020) LEQS Paper No. 164/2020.

¹⁶ Prak, ‘Citizenship for Sale in Pre-Modern Europe’ in Kochenov and Surak (eds), *Citizenship and Residence Sales*. See also, Lee’s chapter in this volume.

¹⁷ Sumption, ‘Can Investor Residence and Citizenship Programmes Be a Policy Success?’ in Kochenov and Surak (eds), *Citizenship and Residence Sales*; Gamlen et al, ‘Citizenship as Sovereign Wealth: Re-thinking Investor Immigration’ (2019) 10 *Global Policy* 527.

¹⁸ Consterdine and Hampshire, ‘Buying in? The Political Economy of Investor Migration in Western Europe’ (2023) *WEP* 47 (7): 1588–1613; Solimano, ‘Why Do Wealthy Individuals Migrate Internationally’ in Kochenov and Surak (eds), *Citizenship and Residence Sales*.

¹⁹ Abrahamian, ‘Preface’ in Kochenov and Surak (eds), *Citizenship and Residence Sales*, xviii.

²⁰ Spiro, ‘Cash-for-Passports and the End of Citizenship’ in Bauböck (ed), *Debating Transformations of National Citizenship* (Springer 2018) 17; Kochenov, ‘Citizenship for Real’, 51.

²¹ Bosniak, *The Citizen and the Alien* (Princeton University Press 2006); Tully, *On Global Citizenship* (Bloomsbury 2014); Bloom, *Noncitizenism* (Routledge 2017); Swider, *A Rights-Based Approach to Statelessness*

This transformation is partly characterised by its (supposedly inevitable) lightening and the growing ‘instrumentalism and a dissociation of citizenship from nationhood’.²² States have expanded the reach of citizenship rights following the acceptance that they are not ‘container societies’²³ and cannot continue denying the rights and status of citizenship to people with meaningful ties to their societies. For states, however, it has also meant granting membership to people seemingly *without* meaningful social ties to their society, sometimes to remedy past injustices,²⁴ recognize perceived co-ethnic kin but more so for instrumental reasons: to attract the best, the brightest or simply the (ultra-)rich.²⁵ For individuals, it means they can acquire what Yossi Harpaz calls ‘compensatory citizenship’ – a status that makes up ‘for deficits in the original citizenship in terms of opportunities, security, rights and travel freedom’.²⁶ Investor migration may be at the extreme end of this transformation, amounting to ‘the marketization of sovereignty’²⁷ or what Francesca Strumia in this volume calls ‘new generation skilled migration policies’, but it cannot be seen or studied in isolation from it.²⁸

Investor citizenship also cannot be studied in isolation from the other, more exclusionary, side of this transformation: the fact that people’s life chances are in large part determined by their place of birth and the vast global inequalities in today’s world.²⁹ Investor migration obviously isn’t the great equaliser, but our understanding and evaluation of it can depend on the side from which it is analysed. Investor citizenship is akin to queue jumping for some, but the only way to enter the queue for others. For some, it is a mercantilist practice favouring winners, for others, a (minor) corrective for some structural global inequalities.³⁰ For some, investor migration is an unjustified meritocratic practice.³¹ For others, it is indeed meritocratic, yet preferable over more exclusive anti-meritocratic practices.³² In other words, our view on investor citizenship depends partly on how the problem is conceived. Is the problem that a small minority of those, who are branded out as ‘second rate’ by birth can cross national borders too unimpeded, or rather that the vast majority finds it almost impossible to cross those borders at all? Is the solution, to put it provocatively, to bring the wealthy passport poor down or everyone else up?³³ The answer may be neither or both or, quite likely, be more nuanced than the questions posed this way allow, but the questions show that our assessment of investor migration can vary depending on the wider perspective of citizenship and migration we adopt. Some of the chapters in this volume illustrate this tension.

(Doctoral Thesis, University of Amsterdam, 2018); Kochenov, ‘Interlegality – Citizenship – Intercitizenship’, in Klabbers and Palombella (eds), *The Challenge of Interlegality* (Cambridge University Press 2019) 133; Kochenov, ‘Statelessness: A Radical Rethinking of the Dominant Citizenism Paradigm’ (2024) *20 Annual Review of Law and Social Science* 117.

²² Joppke, ‘The Inevitable Lightening of Citizenship’ (2010) *51 EJS* 9.

²³ Calavita, ‘Law, Citizenship, and the Construction of (Some) Immigrant “Others”’ (2005) *30 Law & Social Inquiry* 401, 405.

²⁴ Maatsch, *Ethnic Citizenship Regimes* (Palgrave Macmillan 2011); Jessurun d’Oliveira, ‘Iberian Nationality Legislation and Sephardic Jews’ (2015) *11 EUConst* 13.

²⁵ Shachar, ‘Picking Winners’ (2010) *120 YLJ* 2088; Džankić, *The Global Market*, ch 6; Surak, ‘Global Citizenship 2.0 The Growth of Citizenship by Investment Programs’ (2016) IMC Research paper 2016/02.

²⁶ Harpaz, ‘Compensatory Citizenship’ (2019) *45 JEMS* 897.

²⁷ Surak, ‘Marketizing Sovereign Prerogatives’ (2021) *62 (2) EJS* 275–308.

²⁸ Kochenov and Surak, ‘Learning from Investment Migration’ in Kochenov and Surak (eds), *Citizenship and Residence Sales*. See also the chapter by Kochenov and van den Brink in this volume.

²⁹ Milanović, *Global Inequality* (Belknap 2018); Boatcă, *Global Inequalities beyond Occidentalism* (Ashgate 2015).

³⁰ Boatcă, *Global Inequalities beyond Occidentalism*.

³¹ See Ammann’s chapter in this volume.

³² See Ganty’s chapter in this volume.

³³ For discussion of this tension, see, eg van den Brink, ‘Revisiting Citizenship within the European Union’; Roy, ‘The “Streetlight Effect”’.

Investor migration of course not only raises foundational questions of borders, mobility and membership. The nuts and bolts of investor migration – its design, practical implementation and day-to-day operation in different countries – can raise equally important questions. How do investor migration practices differ from country to country? How can countries design their investor migration policies to be politically or economically successful? How can they address worries about money laundering, tax evasion and other risks potentially associated with the practice? How do countries, with or without investor migration schemes, adjust their citizenship and migration policies in response to investor migration practices elsewhere? Many of this volume’s contributions tackle such questions. Some do so directly, such as Jacquelyn Veraldi and Oskar Gstrein’s chapter discussing what measures countries can take to mitigate the risks of CBI practices; many others do so indirectly. These include single-country studies of Canada, Estonia, Greece and late-Imperial China, chapters discussing the EU’s response to investor migration and two comparative studies: one comparing the United Kingdom and the United States and another comparing European naturalisation requirements.

Before continuing, we should address some definitional issues around investor migration. As Kristin Surak reminds us, one definitional issue is that ‘neither “investment” nor “migration” accurately captures what goes on under the label’.³⁴ While many countries award citizenship or residence in return for an investment in, for example, property or the local economy, not all schemes allow a return on the money spent. Maltese citizenship, for example, can be obtained through a non-refundable donation to the state budget.³⁵ Moreover, while the term migration implies a change of country of residence for a certain duration, many investors do not move their principal place of abode to their new country of residence or citizenship – if they visit at all, that is. The travel and settlement freedoms that come with acquiring a passport or right to reside can be one motivation for investors, but others invest for the business, taxation or educational opportunities a passport or visa provides.³⁶ That said, it is widely agreed that investor migration includes both citizenship by investment (CBI) and residence by investment (RBI), which, according to the OECD definition, ‘allow foreign individuals to obtain citizenship or temporary or permanent residence rights on the basis of local investments or against a flat fee’.³⁷ A second definitional issue is whether CBI and RBI cover the full spectrum of investor citizenship, or whether the latter also includes business and entrepreneurial visas. Depending on their design, such visas can amount to an ‘investor-lite model’,³⁸ illustrating the difficulty of delineating investor migration from other migration practices. Such visas usually fall outside the definition of investor migration, outside our definition too.

Even on this ‘narrow’ definition, investor migration emerges as a widespread and still growing phenomenon. Although the sale of citizenship dates back to pre-modern times,³⁹ contemporary CBI practices date back to 1984 when Saint Kitts and Nevis began operating its scheme, followed by Dominica, Cambodia and Mauritius in the 1990s. The 16 other countries with CBI schemes launched them between the late 2000s and 2020, showing the rapid spread of CBI in the last two decades.⁴⁰ The popularity of RBI has equally been on the rise. According to the 2019 European Commission report on investor citizenship and residence schemes, 20 EU

³⁴ Surak, ‘Investment Migration’, 27. See also Sumption, ‘Can Investment Citizenship and Residence Programmes Be a Policy Success?’.

³⁵ Citizenship Act 1965 (MT), as amended by Acts XV and XXXVIII of 2020.

³⁶ Surak, ‘Investment Migration’, 48–52.

³⁷ As discussed in detail by Surak in this volume.

³⁸ Sumption, ‘Can Investment Citizenship and Residence Programmes Be a Policy Success?’.

³⁹ Prak, ‘Citizenship for Sale’.

⁴⁰ Surak, ‘Investment Migration’, 35–36.

Member States run such schemes. Estimates of the total number of states offering RBI schemes globally range, depending on definitional and methodological choices, between 50 and 70. In other words, no matter how one views investor migration, there is still much to learn about this practice, which allows us to gain valuable insights about the changing nature of citizenship, residence and belonging in the contemporary world.

I. STRUCTURE OF THE VOLUME

The chapters in this volume address many of the issues mentioned above, and others, from various disciplinary perspectives. The book is divided into four parts.

A. Investor Migration: Conceptualisation and Context

The first part, ‘Investor Migration: Conceptualisation and Context’, enhances our understanding of investor migration by contextualising the phenomenon. How do CBI and RBI practices relate to other, more conventional, citizenship and migration policies? What principles and ideals underlie these practices and what should that mean for our evaluation of them? And how does the fact that we live in a world of global inequality influence the practice of and our view of investor migration? These are some of the questions addressed in Part I.

William Worster’s analysis departs from the *Nottebohm* judgment of the International Court of Justice and the principle of ‘genuine link’ established in that judgment.⁴¹ This principle underlies much national and international criticism of CBI practices and the judgment is therefore often invoked to challenge such practices. Worster, however, highlights the developments in international human rights law that have taken place since *Nottebohm* and argues, in light of these developments, that states may criticise the nationality laws of other states but not easily punish individuals for these laws. Questioning someone’s nationality raises human rights issues and must be justified as a necessary and proportionate measure to promote a legitimate governmental interest. Finally, applying this legal framework to the practice of CBI, Worster concludes that non-recognition of nationalities obtained through investment is difficult to justify under international law.

Francesca Strumia compares CBI and RBI with traditional policies for selecting skilled migrants and argues that CBI and RBI, together with policies that seek to attract entrepreneurs or talented athletes, amount to ‘new generation skilled migration policies’ that differ from traditional skilled migration policies in two ways. First, while traditional policies focus on the input migrants offer in terms of education and experience into the host state’s society, new policies are rather geared toward their output in terms of financial capital or employment. Second, new programmes change the state’s role in administering immigration and citizenship law, transforming them from ‘border guards’ into ‘headhunters’. These changes, Strumia argues, contribute to the polarisation of the dual approach to border management adopted by states, which is characterised by the simultaneous opening and closure of borders, and have produced two models of membership.

⁴¹ *Nottebohm (Liechtenstein v Guatemala)* [1955] ICJ Rep. 4. For earlier discussions of the judgment see Macklin, ‘Is it Time to Retire *Nottebohm*?’ (2017) 111 *AJIL* 492; Kunz, ‘The *Nottebohm* Judgment’ (1960) 54 *AJIL* 536; van den Brink, ‘Revisiting Citizenship within the European Union’; Sloane, ‘Breaking the Genuine Link’ (2009) 50 *Harv Int’l LJ* 1.

Odile Ammann's chapter tells us a similar story but from the perspective of meritocracy. Like Strumia, she perceives CBI and RBI as policies in continuity with other policies to attract desired immigrants and citizens. The premise of her analysis is that we 'live in a world where citizenship and immigration law are justified with reference to "merit"', in which CBI and RBI 'are just the tip of the meritocratic iceberg'. She does not take this line of analysis to justify CBI and RBI schemes but rather uses it to offer a more holistic appraisal of contemporary immigration and citizenship policy. CBI and RBI are the symptoms of a wider problem, namely the use of merit as a crucial selection criterion, a concept used to justify inequality. The takeaway of her argument is, in other words, that CBI and RBI are just as problematic as other citizenship and immigration policies using this criterion.

Sarah Ganty further problematises states' reliance on merit as a way to distinguish between prospective immigrants and citizens. Whereas Ammann objects to merit on the grounds that it can entrench and exacerbate inequalities, Ganty argues that the criterion is problematic as it reproduces 'patterns of "racialisation" or "ethnicisation" of the "other"'. However, she also claims that criticism of meritocratic institutions can be racially and ethnically charged as well. Ganty uses CBI and RBI to illustrate and analyse this tension. On the one hand, CBI and RBI are eminently meritocratic and therefore run the risk of being racially and ethnically loaded, like many other investment and citizenship laws around the world. On the other hand, the fierce criticism of CBI and RBI for departing from traditional modes of obtaining citizenship shows that criticism of meritocratic practices can be just as racially and ethnically charged. If the choice is between these two evils, Ganty encourages us to favour the inclusive meritocratic rationale over the exclusive anti-meritocratic rationale.

B. Legal Regulation: Empirical and Normative Perspectives on Investor Migration

The second part, 'Empirical and Normative Perspectives on Investor Migration', dives into some legal issues surrounding investor migration. What inroads have international and European law made into the domain of citizenship and migration, and do these inroads make investor migration suspect? How do the legal and practical requirements for obtaining citizenship by investment compare with those in other naturalisation procedures? And to what extent is the regulation of investor citizenship subject to other, so far unexplored, legal constraints, such as competition or fundamental rights law? These legal questions are tackled in the second part.

In his chapter, Peter Spiro provides an anatomical analysis of one of the very few inroads international law has made into national sovereignty over the attribution of nationality: the *Nottebohm* judgment of the International Court of Justice and the principle of 'genuine link' – the principle at the heart of the case launched by the European Commission against the Maltese CBI scheme.⁴² Spiro shows not only that *Nottebohm* has been fiercely contested since the ruling, but also, looking at the practice of different international courts, that the principle of genuine link has never become an established norm of customary international law. On the contrary, it bears all the hallmarks of a jurisprudential illusion.

Matjaž Tratnik and Petra Weingerl take this analysis further and provide a meticulous analysis of the applicability of the genuine links mentioned in *Nottebohm* in the context of EU law and the different types of naturalisations that the Member States offer. They demonstrate that

⁴² *Commission v Malta* pending.

the Commission's invocation of genuine links points in the direction of a potential breach of EU law by the Guardian of the Treaties, as it does not only contravene both horizontal and vertical division of competences in the EU, but also is a frontal assault on the freedom of movement of EU citizens, thereby undermining the achievement of the key objective of the internal market.

In her chapter, Kristin Surak moves beyond the recent analysis by the Organisation for Economic Co-operation and Development (OECD) and Financial Action Task Force (FATF) to investigate whether and how residence and citizenship documents pose risks concerning identity laundering, money laundering and tax evasion. Drawing on nine years of fieldwork and a new dataset on investment migration, she shows that such risks operate through building legible profiles that are acceptable to financial institutions as evidence of a person's relationship to a jurisdiction. The analysis examines the scale of actual problems to show that the biggest risks in these domains are posed by grey-market and black-market options. Therefore, to properly address financial crime threats, attention should be directed to possibilities for acquiring citizenship or residence documents through financial means that are adjacent to investment migration programmes – such as business investor visas or documents gained through corruption. In conclusion, Surak argues for a 'problem-based approach' focused on actual harms instead of a 'programme-based approach' that starts from specific citizenship and residence schemes.

Like other chapters, the chapter by Dimitry Kochenov and Martijn van den Brink also takes the focus on the genuine links as the point of departure. According to the European Commission, the genuine links require that naturalisation be 'residence-based'. Kochenov and van den Brink study the relationship between the two most common legal concepts in European migration and citizenship law – legal residence and physical presence – thereby shedding doubt on the Commission's assumption. Their study has three findings. First, legal residence is an important requirement in ordinary naturalisation procedures, but not in many preferential naturalisation procedures. Second, legal residence does not coincide with physical presence, either in EU law or national law, and the required duration of physical presence is often significantly shorter than the required duration of legal residence. Third, national authorities often do not, and cannot, examine whether naturalisation applicants have been physically present long enough.

The three remaining chapters of the second part discuss various other legal questions that (may) arise in the regulation of investor migration. Gareth Davies examines the possibility of cartelisation in the investor migration market and asks whether this would fall within the scope of EU competition law. While this may seem like an imaginary scenario, there have been price wars between countries offering their citizenship for sale,⁴³ so Davies is right that it may be interesting for states to put a system in place that prevents the price of passports or visas from being driven too low. If an investor migration cartel is established within the EU, will Member States run into legal trouble? Davies argues that such a cartel could raise issues under EU competition law, although the law is sufficiently ambiguous that a case against cartelisation can go either way.

Jacquelyn Veraldi and Oskar Gstrein's chapter examines the underexplored tension between transparency requirements and the right to privacy in investment migration.⁴⁴ Increased transparency is one of the measures proposed to address the security risks associated with investor migration, but what if this compromises the privacy of individuals who naturalise? Veraldi

⁴³ Nesheim, 'Caribbean CIP "Race to the Bottom"' (Investment Migration Insider, 18 October 2017) www.imidaily.com/caribbean/caribbean-cip-race-bottom-time-form-cartel/.

⁴⁴ See also Kochenov, Gstrein and Veraldi, 'On the Privacy – Naturalisation Interface' (2020) 42 *Hous J Int'l L* 237.

and Gstrein argue that greater transparency seems necessary to mitigate risks associated with investor migration but that revealing the identities of individuals participating in these programmes would be bad policy. Better policy would be to introduce clear and transparent governance frameworks that improve oversight of investor migration programmes. This can achieve the transparency required regarding investor migration while respecting the privacy of the individuals involved.

Madeleine Sumption's chapter questions the economic benefits of residence by investment, drawing on a study of the United States and United Kingdom's experience. Commentators and scholars often take it for granted that RBI programmes bring economic benefits, suggesting that governments are selling their souls at a handsome price. But perhaps they are giving away their souls for free? Sumption argues that simply raising revenues is not enough to ensure an economic benefit: the investments must actually stimulate new economic activity, but applicants shy away from higher-risk investments where their money is most needed. At the same time, a financial investment is not a very precise way to identify the types of people policymakers most want to attract. Sumption suggests that policymakers interested in getting an economic benefit from RBI programmes should put more thought to what they really want to achieve and whether an investor programme is the right way to achieve it.

C. Investment Migration Regulation in Europe and the World

The third part, 'Investment Migration Regulation in Europe and the World', consists of individual and comparative case studies. The chapters in this part provide a better understanding of the regulation of investment migration in Europe and the world. They vary in the perspective chosen, from single-country to comparative studies, from contemporary to historical accounts, and from critical to more positive appraisals of investor migration but all of the chapters highlight countries and dynamics that have so far been understudied.

Luuk van der Baaren and Hanwei Li's chapter studies investment migration from China to Portugal from the perspectives of both emigration and immigration when it was at the height of its popularity. It describes how the Portuguese investment programme worked out in practice between 2012 and 2018, a peak period of Chinese interest, and explains that the programme's economic contributions were significant but different from what the government originally intended. The chapter outlines the key drivers of Chinese investor emigration, highlighting, in particular, the attractiveness of the low presence requirements, access to the Schengen Area and the option to invest in real estate. Rather than emigrating instantly, investors mostly participated in the programme as a 'backup plan', allowing them to emigrate at any time, creating a form of 'quasi-migration'. In addition, the chapter shows that the Chinese government mainly perceives investment migration as a risk and has implemented measures to curb the participation of wealthy Chinese in investment programmes.

Niovi Vavoula and Vasiliki Apatzidou's chapter discusses Greece's golden visa programme. They offer an in-depth analysis of the programme and critically assess its benefits and flaws. Despite being a highly sought-after programme by investors, it has not received much attention from scholars. This chapter outlines the legal framework governing the golden visa programme and shows how interest in it has evolved since its creation in 2013. In addition, Vavoula and Apatzidou reflect on why this programme has proved so attractive and highlight some of its flaws. Concerning the latter, they emphasise the programme's impact on the housing market, the inadequate vetting of applicants and money laundering risks.

Miriam Cohen draws our attention to a pioneer in the field of investor migration: the Canadian investor immigration programmes. Cohen provides an overview of the legal regulation of Canadian investor migration over time and an analysis of its shortcomings. Having sketched the outlines of the Canadian immigration legal framework, Cohen reviews the requirements to be met by prospective investors in the three phases of the Canadian investor migration laws. She then discusses the demise of Canadian investor migration – the programme was officially abolished in 2021 – before critically inquiring whether Canadian citizenship should be a commodity traded for an investment.

Qishi Fu's chapter focuses on internal investment migration: the curious case of investor migration from mainland China to Hong Kong. In the years Hong Kong's investor migration programme was running, from 2003–15, people from mainland China constituted the main group of applicants, even though mainland Chinese were not allowed to apply. Fu shows how applicants from mainland China were able to bypass the nationality requirement, shedding light on the interactions between different investor migration schemes around the world and especially the 'South-South connections that are part of the global market'.⁴⁵ Since there was an exception for mainland Chinese with permanent residence in a foreign country, those seeking residency rights in Hong Kong resorted to the practice of purchasing third-country permanent residence, taking advantage of convenient RBI programmes of West African and Pacific Island states, before applying for investor residence in Hong Kong. Coincidentally, interest in Hong Kong's programme thus fuelled demand for RBI schemes elsewhere.

In his chapter, Vadim Poleshchuk takes stock of Estonia's e-Residency programme 10 years after it was launched. The programme was the first in the world to offer non-residents a transnational digital identity, with the objective to develop the Estonian economy, science, education and culture. Viewed against that objective, Poleshchuk argues that the programme has been successful: it has proven economically beneficial and strengthened Estonia's image as an advanced technological country. At the same time, and contrary to the hopes of some experts, the programme did not change perceptions of citizenship, migration and belonging. Moreover, new geopolitical realities, especially the Russian invasion into Ukraine, put pressure on the supposed universality of the programme.

The final chapter of Part III takes us back to historical times. Sau Kong Lee studies the acquisition of foreign nationalities – often against a financial investment – by Chinese subjects within China during the last imperial, Qing dynasty. Adding to our growing knowledge of investor migration in pre-contemporary times,⁴⁶ the chapter examines the practice of changing subject status during the Qing dynasty to access opportunities, which later turned into a practice of acquiring foreign nationalities to obtain benefits Chinese subjects did not enjoy. Lee shows that since the Qing government treated Chinese subjects less favourably than foreign nationals, acquiring foreign nationality was the way to ensure equality of rights, opportunities and personal security.

D. Investment Migration Conundrums in the European Union

There are few places in the world where investor migration practices are more fiercely contested than in the European Union, especially due to the European Commission's ongoing legal and

⁴⁵ Surak, 'Investment Migration', 68–69.

⁴⁶ Prak, 'Citizenship for Sale'.

political fight against the sale of national and European citizenship.⁴⁷ Part IV, ‘Investment Migration Conundrums in the European Union’, takes stock of this fight, both through a critical appraisal of the Commission’s actions of the Commission and by providing new insights into the construction of the Commission’s lawsuit against Malta’s CBI scheme.

In his chapter, Hans Ulrich Jessurun d’Oliveira, the doyen of citizenship studies in Europe, analyses two reports and a recommendation by the European Commission and the European Parliament, which seek to outlaw CBI within the EU. More specifically, Jessurun d’Oliveira examines the two main arguments the Commission relies upon in its claim that CBI is contrary to EU law: the principle of genuine link and the principle of sincere cooperation. As regards the first, Jessurun d’Oliveira, echoing Peter Spiro’s chapter, argues that the principle of genuine link, as pronounced by the International Court of Justice, was problematic when it was decided and became even more problematic since: the Commission’s argument that the principle of sincere cooperation acts as a legal obstacle to CBI programmes is criticised for being incompatible with the primacy of Member States’ nationalities over EU citizenship. Ultimately, Jessurun d’Oliveira concludes, the EU should be very reluctant to interfere in the domain of nationality – not just in the context of CBI but in general – given the sensitivity of this domain and its direct connection to the national identity of Member States.⁴⁸

This view is reinforced in the chapter by Daniel Sarmiento and Guillermo Íñiguez, who provide a meticulous *tour d’horizon* of all the ECJ case law of relevance in order to show precisely that: the Commission is in breach of the principle of conferral when it attempts to misrepresent the binding automatic requirement of the mutual recognition of the Member States’ nationalities as a ground for intervention in the domain of the essential aspects of their statehood. This is all the more the case, given that flimsy *Nottebohm* logic is used, which directly contradicts the current interpretation of the Treaties offered by the ECJ in *Micheletti*. The authors agree with Advocate General Collins, who offered a very similar reading in his Opinion in *Commission v Malta*, recommending that the case be dismissed, since the Commission failed to demonstrate any breach of EU law by Malta, which sells citizenship – and also recommended that the Commission pay Malta’s costs.

Dimitry Kochenov and Elena Basheska come to similar conclusions as other leading commentators engaging with EU citizenship, including Jessurun d’Oliveira, Weiler, Sarmiento and Íñiguez and also Tratnik and Weingerl writing for this volume. While agreeing with them regarding the Commission’s actions, they appraise these actions in different terms. For them, the Commission’s attack on CBI betrays nationalist ethnocentric thinking, since the genuine links the Commission favours and defends are ultimately those established by the principle of *ius sanguinis*; indeed, as Kochenov and Basheska argue, the principle of blood connection echoes Hans Kundnani’s telling ‘Eurowhiteness’ perspective on the European Integration project.⁴⁹ They also argue that the Commission ignores the many ways in which states confer nationality on foreigners, and that many of those do not respect the genuine connections the Commission pushes for. Instead, they advise the Commission to take a more informed approach consistent with the EU’s *raison d’être* of non-discrimination based on nationality, which precludes discrimination on the basis of the grounds of acquisition of that nationality too.

⁴⁷ This fight is not limited to the European continent, as the Commission attempts to export its views – the legality of which has been questioned by AG Collins in the recent Opinion in *Commission v Malta* – also to the Caribbean and the Pacific. See eg Kochenov and Worster, ‘EU’s Neo-Colonialism’ (EU Law Live, 8 March 2022).

⁴⁸ See also Jessurun d’Oliveira, ‘Union Citizenship and Beyond’ in Cambien et al (eds), *European Citizenship under Stress* (Brill-Nijhoff 2020) 28.

⁴⁹ Kundnani, *Eurowhiteness* (Hurst 2023).

The rich postscriptum by Joseph HH Weiler concludes the discussion on investor citizenship's legality under EU law. In his view, contrary to the Commission's allegations, it is not Malta that is selling European values by offering its citizenship for sale, but rather it is the Commission that does so by seeking to outlaw the Maltese practice. For Professor Weiler, the Commission's case is an attempt to circumvent the correct constitutional procedures laid down in the Treaties and thereby redefine the relationship between EU and national citizenship. He shares with Jessurun d'Oliveira the view that the case against Malta amounts to an unconstitutional power grab, but unlike Jessurun d'Oliveira, Weiler is not opposed to more transnational regulation of national rules on the acquisition and loss of nationality. Rather, he would favour additional regulation but argues this should be left to institutions with the requisite legitimacy to regulate the issue – the EU legislative process or the *Herren der Verträge* amending the Treaties – thereby drawing our attention to the oft-ignored question of institutional choice in EU citizenship law.

The book concludes with an insider's *divertissement* showcasing in Aesopian language how law and identities are framed in contemporary Europe. The tale is a wonderful backdrop for the insightful socio-legal studies, dry black-letter legal analyses and amusing accounts of the workings of citizenship by investment that fill the rest of the book you are holding in your hands.

