

# THE VALUE OF YOUR ANCESTORS: GAINING “BACK-DOOR” ACCESS TO THE EUROPEAN UNION THROUGH BIRTHRIGHT CITIZENSHIP

MICHAEL D. MORITZ\*

## TABLE OF CONTENTS

INTRODUCTION .....	232
I. THE MEANING OF CITIZENSHIP.....	234
II. CONCURRENT DEVELOPMENTS INFLUENCING EU CITIZENSHIP ...	237
A. The Emergence of Dual Citizenship.....	237
1. Twentieth Century Developments.....	237
2. Dual Citizenship Today.....	240
B. Transnational Europe .....	243
1. The European Union and EU Citizenship .....	243
2. Guaranteed Freedom of Movement.....	244
3. The European Union’s Eastward Expansion.....	247
III. BIRTHRIGHT CITIZENSHIP .....	248
A. Citizenship Through Ethnicity and Heritage.....	248
B. Restitution Citizenship.....	252
IV. BIRTHRIGHT CITIZENS OF THE EUROPEAN UNION.....	256
V. ASSESSING BIRTHRIGHT CITIZENSHIP ACROSS AN EVOLVING EUROPE .....	261
A. Tackling Inconsistency Across the European Union.....	262
B. A Cause for Change? Ethnic Return Migration Without the Return.....	265
CONCLUSION.....	268

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\* Duke University School of Law, J.D./LL.M. in International and Comparative Law expected 2016; Duke University, B.A. 2013. I would first like to thank Professor Laurence Helfer for his invaluable advice and feedback on this Note. Additional thanks are in order to Professors Peter Spiro and Ayelet Shachar for their input. I lastly thank some unknowing supporters: I am a freelance genealogist, in which capacity I have helped hundreds of individuals trace their heritage to Europe; some of these individuals have done so specifically in order to acquire EU citizenship. Thus, I must thank those new EU citizens for unknowingly piquing my interest in this topic.

## INTRODUCTION

In 1994, John O’Flannery, an American living in California, learned that he was eligible for Irish citizenship because his grandmother had been born in Ireland.<sup>1</sup> He proceeded to acquire Irish citizenship, and then his wife and children followed suit.<sup>2</sup> In 2006, John’s daughter, Carol, explained that an Irish passport allowed her to work legally in Italy and Austria.<sup>3</sup> Meanwhile, one of her sisters relied on her Irish citizenship to buy property in Italy, and John and his wife considered doing the same to retire there.<sup>4</sup> No one in the family displayed any intent to return to, reside in, or buy property in Ireland.

The case of the O’Flannery family illustrates a novel twenty-first century development in the European Union (EU): individuals are acquiring citizenship from their ancestral homelands and using their new nationalities not to obtain the privileges and shoulder the burdens of that country, but instead to secure the economic benefits of EU citizenship. As a result, thousands of non-Europeans are able to gain access to European nations with which they have no connection through a “back door”—because of the EU’s freedom of movement across its member states, gaining citizenship to one member state makes access available to all.

Europe experienced drastic changes in the twentieth century, and with them came three key developments that have led to the new citizenship phenomenon addressed in this Note. Two of the developments occurred at the transnational level. The first is the recent acceptance of dual citizenship. Throughout history, dual citizenship was unlawful, and its conception was generally frowned upon. But by the new millennium, the concept had begun to garner acceptance, especially after the European Court of Justice’s decision in *Micheletti v. Cantabria*,<sup>5</sup> which permitted an individual to retain two nationalities. The second is the development of a transnational Europe, most notably, the EU’s recent eastern expansion to include nations from behind the former Iron Curtain. The transnational character of the continent has been furthered by the guaranteed freedom of movement between the EU’s now twenty-eight member states. The third development has occurred on the domestic level: nations have adopted national citizenship laws based on ancestry and heritage, as well as laws that grant

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1. Gretchen Lang, *When Roots Translate Into a 2d Passport*, N.Y. TIMES (Sept. 29, 2006), <http://www.nytimes.com/2006/09/29/style/29iht-areturn.2977035.html>.

2. *Id.*

3. *Id.*

4. *Id.*

5. Case C-369/90, *Micheletti v. Cantabria*, 1992 E.C.R. I-4239.

“restitution citizenship” to remedy past state wrongs. I refer to these collectively as models of “birthright citizenship.”

The amalgamation of these three factors—only first realized in the past few years—has created a new class of individuals in Europe: birthright citizens who lack a genuine link or affinity to the country of their acquired nationality. As this Note will show, this new class of persons claims citizenship based not on traditional concepts of “ethnic return migration,” but rather as a means to access the economic perquisites of the EU; they seek not access to their motherland, but to the Union as a whole. In the absence of any common European citizenship standards, and thus with each member state free to choose its own approach, the trend of transnational EU birthright citizens will continue to grow as long as economic prospects remain plausible across the European continent.

Part I of this Note reviews foundational understandings of citizenship as a practical and legal term, and lays out the key divide between the principles of *jus soli* and *jus sanguinis*.

Part II addresses the two transnational developments that occurred during the end of the twentieth century and the beginning of the twenty-first. The first is the emergence of dual citizenship, which is only now starting to garner international acceptance. The second is the newfound connectedness of Europe. With the twenty-first century acceptance of Soviet and other Eastern European nations into the EU, the Union now includes twenty-eight member states and has grown to connect East and West. The third is the development of EU citizenship and the pivotal rights to move, reside, and work freely in all member states that it entails.

Part III addresses developments in European citizenship laws since the Second World War. It first discusses nations that have adopted citizenship laws based on one’s ethnicity, emphasizing laws that look beyond the nationality of one’s parents. Next addressed is restitution citizenship, which is divided between laws based on the loss of territory and those seeking to remedy governmental wrongs.

Part IV analyzes who is taking advantage of the new legal framework produced by the conjunction of birthright citizenship laws and the EU freedom of movement. Generally, the beneficiaries are non-EU residents with a provable historical link to Europe who live in, and intend to gain citizenship from, a nation that allows dual citizenship. Two of the most prominent populations seeking EU citizenship are those in Latin America and in Israel. Latin Americans are able to take advantage of ancestral connections mostly with Spain, whereas Israelis look more towards the new EU nations in Eastern Europe.

Part V concludes by assessing birthright citizenship within the context of the EU. I argue that those who are taking advantage of the new legal framework are utilizing the EU as its own entity, by moving to the most advantageous nation within the EU, regardless of the country through which citizenship was acquired. As a result, the new framework challenges the historical understanding of citizenship and its associated responsibilities. Ultimately, this Note suggests limitations on restitution citizenship and emphasizes the recent nature of this phenomenon, calling for further research by the EU to better understand the population transfers and economic effects that these new citizenship rules have brought upon the Union.

## I. THE MEANING OF CITIZENSHIP

There are multiple layers to the meaning of citizenship, the first of which is its practical meaning. This is the way in which individuals “participat[e] in public life (which is broader than political life), in their states of citizenship, where public life includes both civil society and those spheres traditionally understood as private.”<sup>6</sup> Governing this practicing citizenry is the state, which “seeks to create ‘a stably coherent population’ with a shared political allegiance and sense of ‘solidarity, symbolic identification, and community.’”<sup>7</sup>

The United States Citizenship and Immigration Services agency (USCIS) explains to prospective citizens through naturalization that applying for citizenship is a “significant” decision: “Citizenship offers many benefits and equally important responsibilities. By applying, you are demonstrating your commitment to this country and our form of government.”<sup>8</sup> USCIS lays out seven rights and nine responsibilities embedded in the meaning of citizenship. Included in the rights are not only those codified in the Bill of Rights (*e.g.*, expression, worship, fair trial), but also the ability to elect public officials and to run for elected office.<sup>9</sup> The

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6. Kim Barry, *Home and Away: The Construction of Citizenship in an Emigration Context*, 81 N.Y.U. L. REV. 11, 24–25 (2006) (alteration in original) (footnote omitted) (quoting Bart van Steenberg, *The Condition of Citizenship: An Introduction*, in *THE CONDITION OF CITIZENSHIP* 1, 2 (Bart van Steenberg ed., 1994)) (internal quotation marks omitted).

7. *Id.* at 24 (citing DEREK HEATER, *WHAT IS CITIZENSHIP?* 174 (1999)); Peter H. Schuck, *Membership in the Liberal Polity: The Devaluation of American Citizenship*, in *IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA* 51, 65 (William Rogers Brubaker ed., 1989)).

8. *Citizenship Rights and Responsibilities*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/citizenship/learners/citizenship-rights-and-responsibilities> (last visited Mar. 11, 2015).

9. *Id.*

countervailing responsibilities include supporting and defending the Constitution, staying informed and participating in the democratic process, paying taxes, and serving on juries or in the nation's defense as necessary.<sup>10</sup> These responsibilities evoke John F. Kennedy's famous words, "[M]y fellow Americans: ask not what your country can do for you—ask what you can do for your country."<sup>11</sup>

Beyond the practical is the legal definition of a citizen: a person who gains recognition as a fully participating member of a country's society. The legal significance of citizenship has two tiers: one domestic and the other international.<sup>12</sup> On the domestic level, as alluded to above, citizenship concerns the duties and obligations an individual has to his society. Citizenship theorist Ayelet Shachar has compared these to property rights, signifying one's citizenship as a "bundle of rights." Property rights, she explains, "gain meaning only when they are connected to a system of law and governance that can enforce them."<sup>13</sup> Under citizenship laws, "what each citizen holds is not a private entitlement to a tangible thing, but a *relationship* to other members and to a particular (usually national) government that creates enforceable rights and duties."<sup>14</sup> And, even today, allocating citizenship is exclusively within the government's purview: "Securing full membership in the political community remains one of the few goods that even the mightiest economic conglomerate cannot offer to a skilled migrant or a talented athlete; only governments can allocate the precious property of citizenship."<sup>15</sup>

On the international stage, citizenship separates insiders from outsiders—it is used by countries "to delimit [individuals] . . . who as a rule are nationals of *other* States."<sup>16</sup> Additionally, citizens can call on their state for protection or intervention under certain circumstances,<sup>17</sup> and they generally maintain the right to return from abroad to their own country.<sup>18</sup>

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10. *Id.*

11. John F. Kennedy, President of the U.S., Inaugural Address (Jan. 20, 1961).

12. Barry, *supra* note 6, at 21.

13. Ayelet Shachar, *Earned Citizenship: Property Lessons for Immigration Reform*, 23 YALE J.L. & HUMAN. 110, 123 (2011) [hereinafter Shachar, *Earned Citizenship*].

14. *Id.* at 125.

15. Ayelet Shachar, *Picking Winners: Olympic Citizenship and the Global Race for Talent*, 120 YALE L.J. 2088, 2105 (2011).

16. PAUL WEIS, NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW 250 (1956) (emphasis added).

17. Barry, *supra* note 6, at 22.

18. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art. 13 (Dec. 10, 1948).

Most countries use one of two principles to determine citizenship by birth. The first is *jus soli*, or “right of the soil.” Under the purest form of this system, a child becomes a citizen of the country in which that child is born.<sup>19</sup> This English common law principle expanded to colonial jurisdictions around the world and is still the basis of the United States’ citizen-by-birth laws.<sup>20</sup> One benefit of *jus soli* regimes is that children of new immigrants are automatically incorporated into the new country with citizenship rights. Therefore, this system is often viewed as the “democratic and inclusive” model of citizenship acquisition.<sup>21</sup>

Opposing *jus soli* is the principle of *jus sanguinis*, or “right of the blood.” This principle is rooted in the French Civil Code of 1803, which, in light of the French Revolution, tried to depart from the country’s feudal past and a tradition resembling *jus soli*.<sup>22</sup> Instead, the new principle of *jus sanguinis*, bearing a connection to Roman times, spread across Europe, “link[ing] citizens to each other and to their joint political enterprise through membership in the nation state.”<sup>23</sup> A modern example of this pure form is Hungary’s citizenship law, under which “[t]he child of a Hungarian citizen shall become a Hungarian citizen by birth.”<sup>24</sup> Birthplace is irrelevant. *Jus sanguinis* is therefore often seen as exclusionary. Regardless

19. This tradition originated in medieval England, where “‘ligeance’ and ‘true and faithful obedience’ to the sovereign were owed by a subject from birth.” AYELET SHACHAR, *THE BIRTHRIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY* 114 (2009). As Lord Edward Coke stated in a famous English opinion, “for as soon as he is born he oweth by birth-right ligeance and obedience to his Sovereign.” *Calvin’s Case* (1608) 77 Eng. Rep. 377, 382 (K.B.); 7 Co. Rep. 1 a, 4 b.

20. See Immigration and Nationality Act of 1952, Pub. L. No. 82-414, § 301(a)(1), 66 Stat. 163, 235 (codified as amended at 8 U.S.C. § 1401(a) (2012)) (stating a national at birth will include “a person born in the United States, and subject to the jurisdiction thereof”). A child can also gain American citizenship at birth even if born abroad if certain conditions are met, depending on the nationality of the parents and the amount of time they had lived in the United States. See *id.* § 301(a) (3)–(7), 66 Stat. at 235–36 (codified as amended at 8 U.S.C. § 1401(c)–(g) (2012)).

21. SHACHAR, *supra* note 19, at 115. Although the United States continues to maintain such a broad policy, other common law nations, including England, have limited such broadness: in England, a descent component has been added, so that automatic citizenship is only conferred upon children born within English territory if the child is born to a citizen or permanent resident. *Id.* at 116.

22. *Id.* at 120.

23. *Id.* The spread in Europe coincides with the great period of nationalism that engulfed the continent, especially at the time of the 1848 revolutions. Thus, it is possible that due to Europe’s growing imperialism into Africa and Asia (correlating with increased nationalism), European nations found the principle of *jus sanguinis*, one based on one’s heritage, an enticing option in the colonization process (through which “outsiders” might have been brought back to the mainland). See *id.* at 120–21 (discussing how *jus sanguinis* accommodates people “deemed . . . as the nation’s scattered sons and daughters whose return the home country patiently awaits”).

24. 1993. évi LV. törvény a magyar állampolgárságról (Act LV of 1993 on Hungarian Citizenship) art. 3(1) (Hung.), translated in *ACT LV of 1993 on Hungarian Citizenship*, EUR. UNION DEMOCRACY OBSERVATORY ON CITIZENSHIP (Jan. 1, 2009), [http://eudo-citizenship.eu/National\\_DB/docs/HUN%20Act%20LV%20of%201993%20\(as%20of%20Jan%202009,%20English\).pdf](http://eudo-citizenship.eu/National_DB/docs/HUN%20Act%20LV%20of%201993%20(as%20of%20Jan%202009,%20English).pdf).

of being born in a country, a person cannot gain citizenship—in the principle’s purest form—if he is not a member of the country’s ethnic or historic population.<sup>25</sup> European countries nonetheless generally maintain the *jus sanguinis* approach, which made it possible to develop citizenship laws based on heritage, one of the key elements of the evolution towards today’s new class of birthright citizens.

## II. CONCURRENT DEVELOPMENTS INFLUENCING EU CITIZENSHIP

Dual citizenship was viewed negatively for most of Western history. It was seen not only as unworkable, but as “an evil” that could cause conflict between nations. Seemingly equally untenable was a unified Europe. Both of these developments nonetheless occurred in the latter years of the twentieth century, and came vividly to life in the beginning of the twenty-first century. Given these developments, outsiders gaining citizenship to an EU nation gain not only access to that nation, but to twenty-eight nations across the European continent.

### A. The Emergence of Dual Citizenship

With the framework of citizenship in mind, one might now begin to question what it means to be a dual citizen under the pure forms of *jus sanguinis* and *jus soli*. How can one have multiple citizenships if his or her citizenship is solely determined by place of birth? Conversely, how can one have multiple citizenships if he or she simply inherits his or her parents’ citizenship? Absent such global movement as began in the late nineteenth century and exploded in the twentieth, these issues would have remained merely theoretical. Before the great wave of migration to the United States, and before freedom of movement in Europe, these problems were presumably uncommon. But today, dual citizenship has much greater significance.

#### 1. Twentieth Century Developments

Historically, maintaining multiple citizenships was impossible. The United States, for example, prohibited dual citizenship as early as 1795 with the passage of a Naturalization Act, which stated that any individual becoming a citizen must “renounce forever all allegiance and fidelity to any

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25. Ayelet Shachar has proposed a third category of birthright citizenship, which she calls *jus nexi*, or citizenship based on rootedness. She proposes that “[i]nstead of making citizenship turn solely on the initial, almost frozen-in-time moment of entry, some proximity or nexus must be made between taking root and pursuing full membership status in the polity and an actual share in its rights and obligations.” Shachar, *Earned Citizenship*, *supra* note 13, at 122.

foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty whereof such alien may, at the time, be a citizen or subject.”<sup>26</sup> As dual citizenship scholar Peter Spiro wrote, “the key feature of this account is the serious threat that dual nationality posed to world order.”<sup>27</sup>

Much of the difficulty over dual citizenship stemmed from mandatory military service, as dual citizenship was feared to create conflicting obligations between nation states. If a person was a citizen of France and Germany, for instance, this brought about a “physical impossibility of performing simultaneously the rights and duties of citizenship in different geographical locations.”<sup>28</sup> If that dual citizen were required to fight against his other country of citizenship, he would be breaking his obligations to at least one of the nations.

But, in practice, this did not cause much concern. Under natural law, a person had “perpetual allegiance, under which birth allegiance to the sovereign was indissoluble,” and as long as migration remained an “epiphenomenon,” the issue was more theoretical.<sup>29</sup> As travel between nations began to surge, however, especially with cross-Atlantic travel, the concern over traitorous individuals again arose: “Dual nationals represented instability in a world in which the downside risks of instability were serious, in an era in which there were no brake triggers on the way to war.”<sup>30</sup>

Europe maintained its stance against dual citizenship for most of the twentieth century. The continental position came to light in the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, organized and written by the League of Nations. The preamble makes the Convention’s purpose clear: “[I]t is in the general interest of the international community to secure that all its members should recognise that every person should have a nationality and should have one nationality only.”<sup>31</sup> The Convention recognized “accordingly that the ideal towards which the efforts of humanity should be directed in this domain is the

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26. Naturalization Act of 1795, ch. 20, 1 Stat. 414 (1795). This language of renunciation is still in place today in the United States for naturalization. See *Naturalization Oath of Allegiance to the United States of America*, U.S. CITIZENSHIP & IMMIGRATION SERVS. (June 25, 2014), <http://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america>.

27. Peter J. Spiro, *Dual Citizenship as Human Right*, 8 INT’L J. CONST. L. 111, 112 (2010) [hereinafter Spiro, *Dual Citizenship*].

28. NISSIM BAR-YAACOV, DUAL NATIONALITY 265 (1961).

29. Spiro, *Dual Citizenship*, *supra* note 27, at 113.

30. *Id.*

31. Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, pmbl., Apr. 12, 1930, 179 L.N.T.S. 89.

abolition of all cases . . . of double nationality.”<sup>32</sup> The Convention thus laid out methods for countries to determine the *sole* nationalities of individuals in their territories and abroad.<sup>33</sup>

It was not until the 1990s that a large shift came, aided greatly by the abandonment of conscription. With the end of the Cold War, many European nations decreased their armed forces: Belgium and the Netherlands started the trend in 1996, and after another decade, thirteen other states had followed suit.<sup>34</sup> Along with similar restructuring of various nations’ tax systems, “[d]omicile, rather than citizenship,” had become “increasingly important as a determinant of obligations owed to states.”<sup>35</sup>

The European Court of Justice (ECJ) also played a pivotal role in this evolution, especially with its landmark 1992 decision in *Micheletti v. Cantabria*.<sup>36</sup> Mario Vicente Micheletti was from Argentina (with Argentine citizenship), but he had acquired Italian nationality (through his parents’ birth in Italy) in order to work in Spain as a dentist.<sup>37</sup> Micheletti subsequently applied for permanent residence in Spain because, thanks to his new Italian passport, he had become a European Community national with the ability to work in Spain.<sup>38</sup> Spain, however, denied Micheletti residence because under Spanish law, Micheletti’s sole nationality was that of his former residence, Argentina.<sup>39</sup>

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32. *Id.*

33. *Id.* Another European convention was passed in 1963 by the Council of Europe, entitled the Convention on Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality. The preamble to this convention stated again that “cases of multiple nationality are liable to cause difficulties and that joint action [should be taken] to reduce as far as possible the number of cases of multiple nationality.” Convention on Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, pmbl., May 6, 1963, E.T.S. No. 043. This convention appeared to conclude that the largest difficulty with dual nationality was the competing conscription requirements in “[c]onsidering it desirable that persons possessing the nationality of two or more Contracting Parties should be required to fulfil their military obligations in relation to one of those Parties only.” *Id.*

34. Karl W. Haltiner & Tibor Szvircsev Tresch, *New Trends in Civil-Military Relations: The Decline of Conscription in Europe 2* (paper presented at the Inter-University Seminar on Armed Forces and Society, Chi., Ill., Oct. 26–28, 2007), <http://www.vtg.admin.ch/internet/vtg/de/home/schweizerarmee/sorganisation/hkaneu/milak/militaerwissenschaftliche/militaersoziologie/publikationen.parsys.93405.downloadList.13761.DownloadFile.tmp/513haltinerszvircsevnewtrendsincivilmilitaryrelations.pdf>.

35. Peter J. Spiro, *A New International Law of Citizenship*, 105 AM. J. INT’L L. 694, 733 n.272 (2011) [hereinafter Spiro, *A New International Law of Citizenship*].

36. Case C-369/90, *Micheletti v. Cantabria*, 1992 E.C.R. I-4239.

37. *Id.* at I-4260.

38. *Id.*

39. *Id.* at I-4261.

The ECJ was required to interpret Article 52 of the European Economic Community (EEC) Treaty, which states that freedom of establishment is granted to all persons who are “nationals of a Member State.”<sup>40</sup> In interpreting this seemingly straightforward Article, the Court stated: “it is not permissible . . . to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality.”<sup>41</sup> Therefore, “Member States *are not entitled* to challenge [a citizen’s] status on the ground that the person[] concerned might also have the nationality of a non-member country which, under the legislation of the host Member State, overrides that of the Member State.”<sup>42</sup> Ultimately, the Court held that member states were barred “from denying a national of another Member State who possesses at the same time the nationality of a non-member country entitlement to that freedom on the ground that the law of the host State deems him to be a national of the non-member country.”<sup>43</sup>

*Micheletti* was significant, as the ECJ essentially held that countries must overlook their own citizenship laws in determining a person’s nationality. If a person can prove nationality of any member of the European Community, then the individual shall be recognized as a member of the European Community regardless of having another nationality as well. As such, the ECJ impliedly recognized the principle of dual citizenship and laid the foundation for the birthright citizenship phenomenon analyzed herein.

## 2. Dual Citizenship Today

The European tide formally turned in 1997 with the European Convention on Nationality. Unlike the prior European conventions, which had all condemned dual citizenship, the 1997 Convention noted “the desirability of finding appropriate *solutions to consequences* of multiple nationality and in particular as regards the rights and duties of multiple nationals.”<sup>44</sup> This was a clear change in rhetoric from the earlier conventions: dual citizenship was a part of society, and its consequences must no longer be eliminated, but rather, understood and accepted. Among other developments, the Convention required states to accept the multiple nationalities of children born with more than one, as well as those of

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40. *Id.* at 1-4262.

41. *Id.*

42. *Id.* at 1-4263 (emphasis added).

43. *Id.*

44. European Convention on Nationality, pmbl., Nov. 6, 1997, 37 I.L.M. 47 (emphasis added).

persons who acquired an additional nationality through marriage.<sup>45</sup> This Convention was deemed a “watershed,” being the “first multilateral undertaking that protects dual nationality.”<sup>46</sup> This so-called “partial protection of dual citizenship . . . shifted the discourse to one that accounts for the interests of the individuals, not just of states.”<sup>47</sup>

In 2009, a team led by University of Lucerne Professor Joachim Blatter combined, analyzed, and assessed data from nine global surveys regarding dual citizenship administered over the previous several years. The group’s studies “reveal a clear global trend: the acceptance of dual citizenship has strongly risen in the last twenty to thirty years.”<sup>48</sup> The team found that, of the 189 countries analyzed, in the early twenty-first century, eighty-seven showed “a rather positive stance” towards dual citizenship, whereas only seventy-seven showed a more negative stance.<sup>49</sup> More specifically, they found that seventy-three countries fully accept dual citizenship, while only fifty-three countries outright reject it.<sup>50</sup> And with regard to the EU, the authors ultimately concluded that fourteen EU states fully accept dual citizenship.<sup>51</sup> Since the Blatter et al. study, there has been even further acceptance of dual citizenship in Europe. In October 2013, Latvia amended its Citizenship Law to permit dual citizenship,<sup>52</sup> and in May 2015, the Lithuanian parliament backed plans to hold a referendum on dual citizenship, which has been proposed for October 2016.<sup>53</sup>

Germany illustrates well the evolving acceptance of dual citizenship. Germany was traditionally in the European mainstream regarding dual citizenship—its Constitutional Court in 1974 had denounced the status “as an evil that should be avoided or eliminated in the interest of states as well as the interests of the affected citizen.”<sup>54</sup> Until 1999, one could be German, and only German, by one of two routes: through German nationality

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45. *Id.* art. 14.

46. Spiro, *A New International Law of Citizenship*, *supra* note 35, at 734.

47. *Id.*

48. Joachim K. Blatter et al., *Acceptance of Dual Citizenship: Empirical Data and Political Contexts* 4 (Univ. of Lucerne Inst. of Political Sci., Working Paper Series, “Glocal Governance and Democracy,” No. 02, 2009), <http://www.alexandria.unisg.ch/EXPORT/DL/51171.pdf>.

49. *Id.* at 3.

50. *Id.* at 10.

51. *Id.* at 56–65 (noting that the EU States that fully recognized dual citizenship as of 2009 include Bulgaria, Cyprus, Finland, France, Greece, Hungary, Ireland, Italy, Portugal, Romania, Slovakia, Slovenia, Sweden and the United Kingdom).

52. *Considerable Interest Seen in Latvian Dual Citizenship*, BALTIC COURSE (Sept. 24, 2013), <http://www.baltic-course.com/eng/legislation/?doc=81026>.

53. *Lithuania’s Seimas Backs Proposal to Hold Dual Citizenship Referendum*, BALTIC COURSE (May 5, 2015), <http://www.baltic-course.com/eng/legislation/?doc=105762>.

54. Spiro, *A New International Law of Citizenship*, *supra* note 35, at 736 n.294.

(*Staatsangehörigkeit*), or by being a member of the German *Volk* residing outside of Germany but with family origins from within its territory (*Volkszugehörigkeit*).<sup>55</sup> But by 1999, Germany had gone through decades of significant mass migrations, especially from Turkey, filling the country with “a large population of second- and third-generation non-nationals excluded from the political community, and to the ever-burgeoning requirements of European integration.”<sup>56</sup> Thus, in its 1999 reform, Germany created numerous statutory exceptions to its previous law requiring that one relinquish all former nationalities before naturalizing as a German.<sup>57</sup> Germany’s progression since its 1999 reform reveals a stark change: between 2000 and 2008, over half of all naturalizing Germans were allowed to retain their former nationalities through one of these exceptions.<sup>58</sup>

Germany additionally had in place a specific limitation to dual citizenship, called the *Optionspflicht*, which made first-generation German nationals who obtained nationality through *jus soli* (introduced in the 1999 reform) choose before their twenty-third birthday the nationality they would prefer to keep: German or another nationality of their parents.<sup>59</sup> However, in December 2014, a new law took effect stating that young Germans no longer had to choose. Under the new law—estimated by German Integration Commissioner Aydan Özoguz, herself of Turkish descent, to impact half a million young people in Germany—a child can maintain dual citizenship, so long as by his or her twenty-first birthday the child had resided in Germany for eight years and had either been schooled or received vocational training there for at least six years.<sup>60</sup> Thus, a nation that merely forty years ago called dual citizenship an “evil” has evolved to now permit “outsiders” to maintain their foreign nationalities *and* be concurrently German.

Whereas earlier generations considered dual citizenship a “moral abomination,” in today’s world, nineteen out of the top twenty countries for

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55. Enikő Horváth & Ruth Rubio-Marín, “*Alles oder Nichts*”? *The Outer Boundaries of the German Citizenship Debate*, 8 INT’L. J. CONST. L. 72, 75 (2010).

56. *Id.* at 78.

57. *Id.* at 79.

58. *Id.* See also Susanne Worbs, *Die Einbürgerung von Ausländern in Deutschland* 26 (Bundesamt für Migration und Flüchtlinge, Working Paper No. 17, 2008), [http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/WorkingPapers/wp17-einbuengerung.pdf?\\_\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/WorkingPapers/wp17-einbuengerung.pdf?__blob=publicationFile).

59. *Id.* at 80.

60. Naomi Conrad, *Dual Citizenship Law Takes Effect in Germany*, DEUTSCHE WELLE (Dec. 19, 2014), <http://www.dw.de/dual-citizenship-law-takes-effect-in-germany/a-18143002>. The law, however, is not retroactive, and those who had to decide previously do not now get to retain dual citizenship. *Id.*

naturalization at least tolerate dual citizenship.<sup>61</sup> As Professor Peter Spiro explains, “[d]ual citizenship is an irreversible incident of globalization. Its acceptance appropriately recognizes multiple national identities in a more mobile world.”<sup>62</sup>

## B. Transnational Europe

The aftermath of the Second World War left Europe in a state of turmoil. For the prior decade, and for the second time in two consecutive generations, the continent was pitted against itself. In the following years, however, Western Europe came together and formed a so-called “community” of nations, which later became the European Union. In the seventy years since the last World War, Europe has taken unbelievable strides, combining East and West in the now twenty-eight nation European Union. Crucial to EU unity is the EU’s guarantee to its citizens of free movement. Combining the EU freedom of movement with the acceptance of dual citizenship is where we begin to understand how immigrants are benefiting from this concomitance to make use of the transnational continent.

### 1. The European Union and EU Citizenship

The European Union has its origins in the European Coal and Steel Community, an economic alliance between a mere six countries—Belgium, France, Germany, Italy, Luxembourg, and the Netherlands—that began in the 1950s.<sup>63</sup> With the 1957 Treaty of Rome, the “common market” European Economic Community (EEC) was created.<sup>64</sup> The modern name of the European Union eventually came into being in 1992, with the Maastricht Treaty, which called for a “common market and an economic and monetary union” between the European nations.<sup>65</sup>

One of the key provisions of the Maastricht Treaty is its creation of a citizenship of the Union. The Treaty’s provision, codified in the Treaty on the Functioning of the European Union (TFEU), proclaimed: “Citizenship of the Union is hereby established. Every person holding the nationality of

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61. Peter J. Spiro, Op-Ed., *The Evolving Acceptance of Dual Citizenship*, L.A. TIMES (Oct. 29, 2014), <http://www.latimes.com/opinion/op-ed/la-oe-spiro-dual-citizenship-advantages-20141030-story.html>.

62. Peter J. Spiro, Op-Ed., *Dual Citizenship: As It Should Be*, N.Y. TIMES (July 18, 2012), <http://www.nytimes.com/roomfordebate/2012/05/14/can-dual-citizens-be-good-americans/dual-citizenship-as-it-should-be>.

63. *The History of the European Union*, EUR. UNION, [http://europa.eu/about-eu/eu-history/index\\_en.htm#40](http://europa.eu/about-eu/eu-history/index_en.htm#40) (last visited Mar. 16, 2015).

64. *Id.*

65. Treaty on European Union, art. G(2), Feb. 7, 1992, 1992 O.J. (C 191) 1.

a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.”<sup>66</sup> TFEU Article 20(2) lays out the four components of the newly defined European Citizenship, the most visible of which is that all EU citizens have the right to move and reside freely within the entire Union.<sup>67</sup>

At first, certain scholars considered EU citizenship “invented as a status without clear contents and which is an open-ended concept strengthened by the presumption of being fundamental.”<sup>68</sup> Member states cautiously looked upon EU citizenship as something additional, not as a replacement for national citizenship.<sup>69</sup> This new concept was a “naked European citizenship,” a citizenship that was “divested of all the surrounding majestic discourses, . . . a skinny legal construct, which operates by grafting the logic of membership onto a limited set of economic and labor rights in the European market.”<sup>70</sup> Since its introduction, however, the Court of Justice of the European Union, among others, has further legitimized European citizenship by developing case law to establish such citizenship as a “fundamental status” of European Union law.<sup>71</sup>

## 2. Guaranteed Freedom of Movement

The origin of the European freedom of movement and residence comes from the treaties founding the EEC in the 1950s, which included the freedom of movement of qualified industrial workers among the six

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66. Treaty on the Functioning of the European Union, art. 20(1) 25 Mar. 1957, 298 U.N.T.S. 3, 4 Eur. Y.B. 412.

67. *Id.* art. 20(2). The additional components include the right to vote for and stand as candidates in European Parliament and municipal elections, the right to be protected by diplomatic and consular authorities of any EU country, and the right to petition to the European Parliament and apply to the European Ombudsman. *Id.*

68. KRISTINE KRŪMA, EU CITIZENSHIP, NATIONALITY AND MIGRANT STATUS, AN ONGOING CHALLENGE 127 (2014).

69. *Id.* at 418. Jacob Weiler, a prominent international law scholar, considered EU citizenship especially strange: “The traditional, classical vocabulary of citizenship is the vocabulary of the State, the Nation and Peoplehood.” Joseph Weiler, *Introduction: European Citizenship – Identity and Differentity*, in EUROPEAN CITIZENSHIP: AN INSTITUTIONAL CHALLENGE 1, 1 (Massimo La Torre ed., 1998). He additionally called it “little more than a cynical exercise in public relations on the part of the High Contracting parties.” Joseph H. H. Weiler, *European Citizenship and Human Rights*, in REFORMING THE TREATY ON EUROPEAN UNION, THE LEGAL DEBATE 57, 65 (Jan A. Winter et al. eds., 1996).

70. FRANCESCA STRUMIA, SUPRANATIONAL CITIZENSHIP AND THE CHALLENGE OF DIVERSITY: IMMIGRANTS, CITIZENS AND MEMBER STATES IN THE EU 2 (2013).

71. KRŪMA, *supra* note 68, at 5–6.

founding nations.<sup>72</sup> Such movement was intended for economic reasons only, but the scope has evolved since the 1970s. This change was due primarily to the European Court of Justice, which “gradually shifted policy from protecting primarily free movement of *workers* to the free movement of *persons*.”<sup>73</sup> The Maastricht Treaty’s creation of an EU citizenry ultimately guaranteed this right to all through its guaranteed right of freedom of movement and residence.<sup>74</sup>

Effective for all EU nations as of April 2006, EU Directive 2004/38/EC<sup>75</sup> codified numerous EU developments to clarify and to strengthen the rights of freedom of movement and residence.<sup>76</sup> The goal of the Directive was thus to “create a single legislative act” with the purpose of “remedying this sector-by-sector, piecemeal approach to the right of free movement and residence.”<sup>77</sup>

“The right to reside in another EU country is your fundamental and personal right . . . . This basically means that once you meet the conditions, you have the right to reside from that moment and your right is not granted to you by a decision of the host EU country.”<sup>78</sup> To move from one EU country to another, all that an EU citizen needs is a national ID card or passport.<sup>79</sup> No residence permits are required for EU citizens—they were abolished by the Directive.<sup>80</sup> An EU citizen is guaranteed the ability to reside in any EU country for three months without any conditions other than having an identity card or passport,<sup>81</sup> and if the EU citizen is seeking employment and has a genuine chance of finding work, the citizen can stay six months,<sup>82</sup> or even longer.<sup>83</sup> After the first three months, if a citizen is

72. Saara Koikkalainen, *Free Movement in Europe: Past and Present*, MIGRATION POL’Y INST. (Apr. 21, 2011), <http://www.migrationpolicy.org/article/free-movement-europe-past-and-present>.

73. *Id.*

74. TFEU, *supra* note 66, art. 20(2).

75. Directive 2004/38/EC, of the European Parliament and of the Council of 29 April 2004 on the Right of Citizens of the Union and their Family Members to Move and Reside Freely within the Territory of the Member States Amending Regulation (EEC) No. 1612/68 and Repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, 2004 O.J. (L 158) 77 [hereinafter Directive 2004/38/EC].

76. *Id.* pmb1. (3).

77. *Id.* pmb1. (4).

78. EUR. COMM’N, FREEDOM TO MOVE AND LIVE IN EUROPE: A GUIDE TO YOUR RIGHTS AS AN EU CITIZEN 16 (2013), [http://ec.europa.eu/justice/citizen/document/files/guide-free-mo-2013\\_en.pdf](http://ec.europa.eu/justice/citizen/document/files/guide-free-mo-2013_en.pdf) [hereinafter EU FREEDOM OF MOVEMENT GUIDE].

79. Directive 2004/38/EC, *supra* note 75, art. 5(1).

80. EU FREEDOM OF MOVEMENT GUIDE, *supra* note 78, at 18. However, family members who are not EU citizens will have a residence card that shows their family relationship to an EU citizen. Directive 2004/38/EC, *supra* note 75, art. 9(1).

81. Directive 2004/38/EC, *supra* note 75, art. 6(1).

82. *Id.* art. 7(3)(c).

working (including self-employment) in the new EU country, then the citizen “ha[s] the right to reside without any conditions other than being a worker or self-employed person.”<sup>84</sup> Students also retain this right, as long as they continue to be enrolled in an educational establishment following a course of study or vocational training (plus maintaining insurance and sufficient financial resources).<sup>85</sup> Even if a citizen is expelled because the citizen failed to keep up with the minimal requirements of the freedom of movement, barring extreme circumstances, the citizen is free to return to that country as long as the post-three-month requirements are satisfied.<sup>86</sup>

Not only do EU citizens have the right to free movement, but so do their family members, *even if* they are not nationals of any EU member state.<sup>87</sup> This includes one’s spouse, registered partner, descendants (children, grandchildren, etc.), and ascendants (parents, grandparents, etc.).<sup>88</sup> As long as the citizen continues to meet his or her conditions, family members have the right to reside with the citizen in that country.<sup>89</sup> And even if the EU citizen dies, the citizen’s non-EU family members will generally be allowed to remain, as long as they had been in the country for a year prior to the individual’s death.<sup>90</sup>

The EU’s freedom of movement has been deemed “one of the most visible and cherished advantages of the European Union for individual citizens.”<sup>91</sup> A public opinion poll taken by the European Commission asking Europeans what the EU meant to them found that the freedom to travel, study and work anywhere in the EU was the *most important* consideration, ranked number one in a long list including the Euro, peace, and democracy.<sup>92</sup> Similarly, fifty-six percent of European citizens found freedom of movement to be the most positive achievement of the EU.<sup>93</sup> According to the European Commission, EU citizens make more than one

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83. EU FREEDOM OF MOVEMENT GUIDE, *supra* note 78, at 13.

84. *Id.* at 15; see Directive 2004/38/EC, *supra* note 75, art. 7(1)(a).

85. Directive 2004/38/EC, *supra* note 75, art. 7(1)(c).

86. EU FREEDOM OF MOVEMENT GUIDE, *supra* note 78, at 22.

87. Directive 2004/38/EC, *supra* note 75, art. 6(2).

88. *Id.* art. 2(2).

89. *Id.* art. 7(2).

90. *Id.* art. 12.

91. EU FREEDOM OF MOVEMENT GUIDE, *supra* note 78, at 5.

92. *Public Opinion in the European Union*, STANDARD EUROBAROMETER, Spring 2013 at 1, 64.

93. Eur. Comm’n, Comm’n from the Comm’n to the Eur. Parliament, the Council, the Eur. Econ. & Soc. Comm. and the Comm. of the Regions, *Free Movement of EU Citizens and their Families: Five Actions to Make a Difference*, art. 1.1, COM (2013) 837 final (Nov. 25, 2013) [hereinafter *EC Free Movement Report*].

billion trips between the EU countries every year,<sup>94</sup> and at the end of 2012, 14.1 million European citizens were residing in other member states.<sup>95</sup>

### 3. The European Union's Eastward Expansion

Until 2004, the European Union remained a “club” of fifteen nations from Western Europe.<sup>96</sup> In that year, ten new nations were added from the former Soviet Bloc in the single largest expansion of the European Union.<sup>97</sup> In May 2004, the EU's population increased by twenty-eight percent to more than five hundred million individuals with the accession of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovenia and Slovakia (as well as Malta and Cyprus).<sup>98</sup> Since then, three more Eastern nations—Bulgaria, Romania, and Croatia—have joined the EU, expanding the Union to its current twenty-eight nation membership.

With the expansion of the EU, the effects of the freedom of movement have grown substantially. One reason for this is the grave difference in wealth between Eastern and Western Europe, which many expected to cause mass migrations.<sup>99</sup> Thus, a transitional period was put in place to quell such migratory patterns,<sup>100</sup> but by 2011, all 2004 entrants had full guarantees across the EU, and the same was established for Romanian and Bulgarian citizens in January 2014.<sup>101</sup>

As expected, many Eastern Europeans flocked west. A study by the University of Oxford's Migration Observatory highlighted the impact on the United Kingdom. The group found that whereas between 1991 and 2004, the amount of EU citizens migrating to the United Kingdom hovered around 50,000 individuals, upon the accession to the Union of the Eastern nations, that number jumped by 100,000 persons annually, with the number in 2010 being just over 150,000 EU citizens migrating to the United

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94. EU FREEDOM OF MOVEMENT GUIDE, *supra* note 78, at 5.

95. *EC Free Movement Report*, *supra* note 93, art. 1.2.

96. SAMANTHA CURRIE, MIGRATION, WORK AND CITIZENSHIP IN THE ENLARGED EUROPEAN UNION 1 (2008).

97. *Id.*

98. *Id.*

99. Koikkalainen, *supra* note 72. For instance, in 2003, Latvian citizens, as nationals of the poorest among the new States, were only one-eighth as wealthy as the average paid worker in the EU's original fifteen member states. *Id.*

100. In order to ameliorate concerns regarding a rapid influx of immigration from the eastern states, the EU implemented a seven-year transitional period over which each nation could establish its own policies regarding when to fully open the door to their EU compatriots. Only three countries—Ireland, Sweden, and the United Kingdom—opened their borders immediately. *Id.*

101. *Id.*

Kingdom.<sup>102</sup> Meanwhile, the countries with the lowest net stock of EU migrants were Poland and Romania, sending out, respectively, about 1.5 and 2 million citizens more than they were receiving.<sup>103</sup> And the Eastern European countries have felt this impact. For example, between 2004 and 2007, around two million Poles were “temporarily residing” in other EU member states, amounting to more than five percent of the nation’s population.<sup>104</sup>

Thus, the combination of the European Union’s eastward expansion in the beginning of the twenty-first century and the EU’s guarantee that citizens can move and reside freely in any EU nation has expanded the scope of a transnational Europe. As a result, outsiders have access to a much larger territory than previously imagined.

### III. BIRTHRIGHT CITIZENSHIP

Both the acceptance of dual citizenship and the transnationalization of Europe are twenty-first century phenomena. These concurrent developments have brought forth a novel externality upon the European Union: outsiders can now gain EU citizenship without giving up their own nationalities. *And* they can move freely between all the countries once citizenship has been achieved. Thus, the desirability of being an EU national has increased significantly.

EU citizenship is determined by the citizenship laws of individual member states. This signifies that each EU nation still has the right to determine its own laws regarding who can become a citizen of that country. This Part analyzes individual member states’ birthright-based citizenship laws and addresses the domestic legal frameworks through which individuals have been able to take advantage of their heritage to gain access to the EU’s benefits.

#### A. Citizenship Through Ethnicity and Heritage

Every country in Europe has some degree of a *jus sanguinis* principle embedded in its citizenship laws.<sup>105</sup> But within the model of citizenship

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102. MIGRATION OBSERVATORY AT U. OXFORD, THE EU SHUFFLE: HOW DOES FREEDOM OF MOVEMENT IN THE EU AFFECT MIGRATION TO AND FROM THE UK? 2 (2012), <http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Commentary-EU%20shuffle.pdf>.

103. *Id.* at 5.

104. Koikkalainen, *supra* note 72.

105. This has been determined by analyzing each country’s citizenship laws, all of which were found through the European Union Democracy Observatory on Citizenship’s database. *See Country Profiles*, Database, EUR. UNION DEMOCRACY OBSERVATORY ON CITIZENSHIP, <http://eudo-citizenship.eu/country-profiles> (last visited Mar. 17, 2015).

through descent, there are significant variations between the approaches different countries take. The first category is the simplest and purest form of *jus sanguinis*: if a child is born to a citizen of a nation, that child is a citizen of that nation. The second category takes the pure form and includes a residency and/or birth requirement, mandating some physical connection through birth or residence to the homeland. And a third category seeks to incorporate a nation's diaspora through two different approaches: those targeting an *ethnic* diaspora, and those targeting a *colonial* diaspora.

The first division found in *jus sanguinis* laws in Europe is a differentiation between birth in a country and birth abroad. The purest *jus sanguinis* models are those that do not differentiate. Many European countries have such provisions, which are incredibly simple and straightforward. In France, for example, “[a] child is French if one of the child’s parents is French.”<sup>106</sup> However, many others differentiate between children born in the country and those born abroad. Whereas birth within a country to citizens of that country will result in automatic nationality, when a child is born abroad, nations often mandate registration of the child within a certain number of years in order to make that child a citizen of the parents’ country of origin.<sup>107</sup> For example, Germany’s new citizenship law states that persons born abroad to citizens who had been born abroad on or after January 1, 2000, and residing abroad, must be registered within the first year of the child’s life; otherwise, the child will lose German citizenship.<sup>108</sup>

Such abroad-based nationality laws have grown especially complex, as evidenced by Belgium’s birthright citizenship regime. A person born before 1967 is a Belgian citizen from birth if that person is the legitimate child of a father (only) who was a Belgian citizen.<sup>109</sup> Someone born between 1967 and 1984 is a Belgian citizen if the previous conditions were met before 1985 (*i.e.*, being legitimated or being acknowledged by a Belgian citizen after being born out of wedlock), or if the option listed next is met, making that person a citizen only as upon January 1, 1985.<sup>110</sup> If a

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106. CODE CIVIL [C. CIV.] art. 18 (Fr.).

107. See *Comparing Citizenship Laws: Acquisition of Citizenship*, Database, EUR. UNION DEMOCRACY OBSERVATORY ON CITIZENSHIP, <http://eudo-citizenship.eu/databases/modes-of-acquisition> (last visited Mar. 17, 2015) (listing systematically the twenty-seven ways in which an individual can acquire citizenship, including children who are born both in a country and abroad).

108. Staatsangehörigkeitsgesetz [StAG] [Nationality Act], July 22, 1913, as amended, BUNDESGESETZBLATT, Teil I [BGBl. I] at 1802, § 4(4) (Ger.).

109. *Born to a Belgian Parent*, KINGDOM OF BELG.: FOREIGN AFFAIRS, FOREIGN TRADE & DEV. COOPERATION, [http://diplomatie.belgium.be/en/services/services\\_abroad/nationality/being\\_granted\\_belgian\\_nationality/born\\_to\\_a\\_belgian\\_parent](http://diplomatie.belgium.be/en/services/services_abroad/nationality/being_granted_belgian_nationality/born_to_a_belgian_parent) (last visited Mar. 17, 2015).

110. *Id.*

child was born after January 1, 1985, then the child would only become Belgian if born in Belgium to a Belgian parent, or if born abroad, either (1) the child had a Belgian parent born in a Belgian territory before 1960 or 1962 (depending on the territory), (2) the Belgian parent was born abroad and makes a declaration within five years of the child's birth requesting a grant of Belgian nationality, or (3) under the previous option, a child's Belgian parent failed to submit the declaration, and that child has thus become stateless.<sup>111</sup> This tedious progression emphasizes the increasing steps certain nations have been taking to reduce the continuity of their citizenship by those abroad. This is presumably because citizenship, as emphasized in Part I, contains a link to the nation and carries with it a set of duties and obligations. As generations move abroad, it is increasingly unlikely that those descendants will be able to maintain such obligations towards a country far away.

Nonetheless, many European countries—often to the south and east, perhaps suggesting a correlation to domestic fiscal and labor needs—have chosen an approach opposite to Belgium, in which they attempt to connect with their diasporas abroad. The most meaningful citizenship laws for the purpose of today's transnational EU citizens are those based not on one's parents' nationalities, but rather on one's heritage. One of the clearest and most lenient examples comes from Ireland. The Irish Nationality and Citizen Act states that a person can be naturalized “where the applicant is of Irish descent or Irish associations.”<sup>112</sup> Having “Irish associations” is defined as being “related by blood, affinity or adoption to a person” who is presently an Irish citizen, or who is deceased and was at the time of death an Irish citizen, or entitled to have been one.<sup>113</sup> In practice, this generally means that anyone (and their relatives) with a parent or grandparent born in Ireland can acquire Irish citizenship,<sup>114</sup> although once a person acquires Irish citizenship, the chain can potentially restart and continue to future generations, based on the individual's circumstances.<sup>115</sup> Some newer EU

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111. *Id.*

112. Irish Nationality and Citizenship Act 1956 (Act No. 26/1956), art. 16(a).

113. *Id.* art. 16(2).

114. *Irish Citizenship Through Birth or Descent*, CITIZENS INFO. (Dec. 3, 2014), [http://www.citizensinformation.ie/en/moving\\_country/irish\\_citizenship/irish\\_citizenship\\_through\\_birth\\_or\\_descent.html](http://www.citizensinformation.ie/en/moving_country/irish_citizenship/irish_citizenship_through_birth_or_descent.html).

115. *See Citizenship Through Descent*, IRISH NATURALISATION & IMMIGRATION SERV., <http://www.inis.gov.ie/en/INIS/Pages/WP11000024> (last visited Mar. 17, 2015) (“If you are of the third or subsequent generation born abroad to an Irish citizen (in other words, one of your parents is an Irish citizen but none of your parents or grandparents were born in Ireland), you may be entitled to become an Irish citizen by having your birth registered in the Foreign Births Register; this depends on whether

states appear even more lenient. In Croatia, up to great-grandchildren (and their spouses) of a Croatian emigrant are permitted to obtain Croatian citizenship,<sup>116</sup> while the broadest of all seems to be Bulgaria, whose law simply states that a person of Bulgarian origin can be naturalized as a Bulgarian.<sup>117</sup>

The last traditional category of citizenship law is that which reaches out to a country's colonial diaspora. Spain's laws are illustrative.<sup>118</sup> As early as 1951, Spain passed a law allowing dual nationality agreements with Latin American countries, and by 1969, Spain—still a military dictatorship—had exempted Latin American and Filipino immigrants from getting work permits, giving them access to social rights enjoyed only by Spanish citizens.<sup>119</sup> And while typical non-EU aliens must reside in Spain for ten years before naturalization, those from Latin America and the Philippines are subject to only a two-year residency requirement.<sup>120</sup> Much of this is believed to be a result of Francisco Franco's push for global connections based on a "romantic recognition of *hispanidad*," and that as a result, "state officials assumed that Spain had . . . a 'spiritual mission' to make these linkages and preferences."<sup>121</sup> This seems to have been the general consideration across Europe regarding its diaspora populations: according to Skrentny et al., whereas in Asia ethnic preferences had often been seen as a motive tied to economic benefits, in Europe the extension to

your parent through whom you derive Irish citizenship had himself or herself become an Irish citizen by being registered in the Foreign Births Register *before you were born.*")

116. Zakon o hrvatskom državljanstvu (Law on Croatian Citizenship), June 26, 1991, art. 11.

117. Law on Bulgarian Citizenship, Nov. 18, 1998 (SG 136), art. 15(1). It is unclear whether in practice Bulgaria's law is more conservative, like those that are aforementioned, by having limitations on the distance of one's ancestry.

118. Another example comes from France, where a person can be naturalized without any waiting period if that person "belongs to the French cultural and linguistic unit, where he is a national of territories or States whose official language or one of the official languages is French." C. CIV. art. 21-20 (Fr.). The only requirement is that French be the person's mother tongue, or that the person had attended at least five years of school that was taught in French. *Id.*

119. John Skrentny et al., *Defining Nations in Asia and Europe: A Comparative Analysis of Ethnic Return Migration Policy*, in DIASPORIC HOMECOMINGS: ETHNIC RETURN MIGRATION IN COMPARATIVE PERSPECTIVES 44, 60 (Takeyuki Tsuda ed., 2009).

120. *Id.* Italy has a very similar requirement: whereas there is a ten-year requirement generally for non-EU citizens, Italy only imposes a three-year residency requirement for those who have a parent or grandparent who was born in Italy. See *Citizenship*, MINISTERO DEGLI AFFARI ESTERI E DELLA COOPERAZIONE INTERNAZIONALE, [http://www.esteri.it/mae/en/italiani\\_nel\\_mondo/serviziconsolari/cittadinanza.html](http://www.esteri.it/mae/en/italiani_nel_mondo/serviziconsolari/cittadinanza.html) (last visited Mar. 17, 2015).

121. Skrentny et al., *supra* note 119, at 61.

the diaspora has always appeared, at least outwardly, to be something more romantic.<sup>122</sup>

## B. Restitution Citizenship

Since the Second World War, an increasing number of citizenship laws have been based on the principle of restitution.<sup>123</sup> In other words, countries are passing laws that target a specific historic wrong against a specific group and permit that group to once again attain citizenship of its former nation. Two categories of restitution-based citizenship laws have come into place. The first category regards a historical injustice done by others. Although claimed as an act by “others,” in practice, this is often a government’s somewhat misleading phraseology of giving citizenship to those who lost it in the past because the country had lost territory—“on account of others”—through a war. Conversely, the second category regards historical injustices by one’s own state, causing a group of its population to be ousted. As becomes evident, the second category has extended to laws that are much more remote and unpredictable as time goes on.

Germany appears to be the first country to have enacted modern legislation for restitution. Ethnic Germans had for centuries lived in countries east of modern-day Germany.<sup>124</sup> After the Second World War, due to anti-Nazi and anti-German sentiments, about 12.5 million ethnic Germans were driven out of or fled their homes in Eastern Europe and the Soviet Union. Although almost eight million of them were able to enter West Germany by 1949, 3.5 million ethnic Germans were trapped in the

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122. *Id.* at 65. This conception appears too optimistic. Often times, these laws were enacted in countries with struggling economies. Although these nations might outwardly portray themselves as doing nothing more than what is “right” or “just,” it appears that there is an underlying consideration of fiscal necessity.

123. There seems to have been only one restitution-based citizenship law enacted before the Second World War, which was in France and dates back to the French Revolution. On December 15, 1790, a law was passed targeting exiled Huguenots, which stated: “All persons born in a foreign country who descend in any degree from a French man or woman expatriated for religious reasons are declared French nationals [*naturels français*] and will benefit from rights attached to that quality if they return to live in France, establish their domicile there and take the civic oath.” *Loi du 15 décembre 1790* [Law of December 15, 1790], art. 22 (Fr.) (translated by the author). The law was ultimately revoked in 1945. For the French text of the law and its associated history, see *Rétablissement de la liberté religieuse*, MUSÉE VIRTUEL DU PROTESTANTISME, <http://www.museeprotetant.org/notice/retablissement-de-la-liberte-religieuse> (last visited Mar. 17, 2015).

124. Daniel Kanstroom, *Wer Sind Wir Wieder? Laws of Asylum, Immigration, and Citizenship in the Struggle for the Soul of the New Germany*, 18 *YALE J. INT’L L.* 155, 164 (1993). Much of this population resided in Prussia, a formerly German-speaking territory that mostly became part of Poland, and in Latvia, where there had been large German settlements for centuries. See, e.g., E. C. Helmreich, *The Return of the Baltic Germans*, 36 *AM. POL. SCI. REV.* 711 (1942).

East.<sup>125</sup> As a result, Germany passed Article 116(1) of its Basic Law to provide its *Aussiedler* (“out-settler”) population a right to naturalization, and with it, the ability to return and resettle in Germany.<sup>126</sup> The language of Article 116(1) grants the right of return to *Vertriebener* (“expellees”),<sup>127</sup> which was codified to include those facing some sort of expulsion or pressure in Eastern European nations.<sup>128</sup> A 1953 statute then extended the interpretation of 116(1) beyond Eastern Europe to “whoever in their homeland has acknowledged German nationality and can confirm it through characteristics like parentage, language, upbringing or culture.”<sup>129</sup> Between 1950 and 1998, almost four million ethnic Germans returned to Germany through Article 116(1).<sup>130</sup>

A more recent development has occurred in Hungary, where, in 2010, the country amended its Citizenship Act to permit ethnic Hungarians living abroad with knowledge of the Hungarian language to acquire Hungarian citizenship.<sup>131</sup> This act targeted ethnic Hungarians residing in neighboring Romania, Slovakia, Serbia and Ukraine, where large portions of those nations’ territories were once part of the Kingdom of Hungary before the First World War. Such legislation thus gave ethnic Hungarians the opportunity to re-nationalize as Hungarians.<sup>132</sup>

The previous examples emphasize new citizenship based on supposed injustices of others. The alternative category of birthright citizenship laws is that which is based on the injustices of the individual’s *own* government. The first example comes, again, from Germany’s Basic Law Article 116,

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125. *Id.* at 165.

126. *Id.*

127. GRUNDGESETZ [GG] [BASIC LAW], May 23, 1949, BGBl. I, art. 116(1) (Ger.), *translation at* [http://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html#p0721](http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0721).

128. Bundesvertriebenengesetz [BVFG] [Federal Law on Refugees and Exiles], May 19, 1953, BGBl. I at 201, § 1 (Ger.).

129. *Id.* § 6(1).

130. Barbara Dietz, *Ethnic German Immigration from Eastern Europe and the Former Soviet Union to Germany: The Effects of Migrant Networks* 1 (Inst. for the Study of Labor, Discussion Paper No. 68, 1999), <http://repec.iza.org/dp68.pdf>. Germany, however, altered the law in practice after the fall of the Soviet Union, as countless “ethnic Germans” could no longer even speak German or show any true connection to Germany; apparently due to this seeming lack of affinity, by 2000, the number of *Aussiedler* permitted to enter Germany had decreased to only 100,000 annually. DAVID ROCK & STEFAN WOLFF, COMING HOME TO GERMANY?: THE INTEGRATION OF ETHNIC GERMANS FROM CENTRAL AND EASTERN EUROPE IN THE FEDERAL REPUBLIC 111–12 (2002).

131. Mónika Ganczer, *Hungarians outside Hungary – The Twisted Story of Dual Citizenship in Central and Eastern Europe*, VERFASSUNGSBLOG (Oct. 8, 2014), <http://www.verfassungsblog.de/en/hungarians-outside-hungary-twisted-story-dual-citizenship-central-eastern-europe>.

132. The neighboring countries, however, were not so pleased with Hungary’s newfound patriotism. Slovakia quickly responded by changing its formal practice to refuse dual nationality, now claiming that Slovaks who acquire Hungarian nationality will lose Slovakian nationality. *Id.*

the second provision of which permits the renaturalization of Jews persecuted in Germany between 1933 and 1945.<sup>133</sup> The largest group of claims originates from the “Eleventh Decree to the Law on Citizenship of the Reich,” passed on November 25, 1941, which stated that Jews living outside Germany could no longer be German citizens.<sup>134</sup> To re-obtain German citizenship, there is a simple two-page form that former German Jews or their descendants are required to fill out. In addition, the family must merely supply vital records of the person born in Germany and establish the familial link to applying descendants.<sup>135</sup>

Similarly, Spain has taken a few recent steps to come to terms with aspects of its own difficult past. In 2007, Spain passed the Historical Memory Law targeting its Spanish diaspora.<sup>136</sup> For the period of 2008 to 2011, descendants abroad could claim Spanish citizenship if a parent was Spanish by birth or if a grandparent lost or was forced to renounce Spanish nationality after being exiled by the Franco regime.<sup>137</sup> In the mere four-year window of availability, about 503,000 requests for Spanish citizenship were submitted, of which ninety percent came from Latin America.<sup>138</sup> As of the beginning of 2014, about 300,000 of the applications for citizenship had been approved.<sup>139</sup>

Lastly, Spain and Portugal have recently taken the concept of restitution citizenship a few steps further by announcing plans to grant citizenship (and permit dual citizenship) to descendants of Jewish families who were expelled from the Iberian Peninsula during the Inquisition in the late fifteenth century. In November 2012, 520 years after the Jews of Spain

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133. GG [BASIC LAW], May 23, 1949, BGBI. I, art. 116(2) (Ger.)

134. *Restored Citizenship*, GERMAN MISSIONS IN THE U.S., [http://www.germany.info/Vertretung/usa/en/05\\_Legal/02\\_Directory\\_Services/02\\_Citizenship/\\_Restored.html](http://www.germany.info/Vertretung/usa/en/05_Legal/02_Directory_Services/02_Citizenship/_Restored.html) (last visited Mar. 18, 2015). Claims are also based to a lesser extent on another law, passed by Germany in 1933, which gave the government the ability to deprive citizenship to all those who naturalized in Germany between 1918 and 1933. Much of this was an attempt to evacuate Eastern European Jews and political threats, including Communists and various university professors. Gesetz über den Widerruf von Einbürgerungen und die Aberkennung der deutschen Staatsangehörigkeit [Law on the Revocation of Naturalization and the Cancellation of German Citizenship], July 14, 1933, REICHSGESETZBLATT, Teil I [RGL. I] at 480, § 1(1) (Ger.).

135. *Restored Citizenship*, *supra* note 134.

136. Ley de Memoria Histórica [Law of Historical Memory] (B.O.E. 2007, 310) (Spain).

137. Cristina J. Gortázar Rotaecche, *Identity, Member States Nationality and EU Citizenship: Restitution of Former European Nationals v. Naturalisation of New European Residents?*, in THE RECONCEPTUALIZATION OF EUROPEAN UNION CITIZENSHIP 15, 24 (Elspeth Guild et al. eds., 2014).

138. CARMEN GONZÁLEZ ENRIQUEZ, ELCANO ROYAL INST., THE PRICE OF SPANISH AND EUROPEAN CITIZENSHIP 2–3 (2014), [http://www.realinstitutoelcano.org/wps/wcm/connect/a175338042cc32dd8b5cff21e143ff92](http://www.realinstitutoelcano.org/wps/wcm/connect/a175338042cc32dd8b5cff21e143ff92/ARI4-2014_Gonzalez_Enriquez_price_spanish_and_european_citizenship.pdf?MOD=AJPERES&CACHEID=a175338042cc32dd8b5cff21e143ff92)

139. *Id.* at 3.

had been expelled, Spain announced an attempt to finally “redress the injustice” by granting citizenship through an expedited process to such Jewish descendants.<sup>140</sup> There were concerns at the time that Spain would continue its policy of demanding forfeiture of foreign citizenships,<sup>141</sup> but the clause was eventually dropped in 2014.<sup>142</sup> The bill was approved by the Spanish government in June 2015 and took effect in October 2015.<sup>143</sup> Spain is implementing numerous limitations on the bill: applicants must (1) be certified by the Spanish Federation of Jewish Communities, (2) prove their Sephardic connection and connection to the Ladino language, (3) speak Spanish, and (4) show affiliation to Spain by passing a Spanish history test or by supporting Spanish charities.<sup>144</sup> Even with such limitations, Spain expects up to 200,000 Sephardic Jews to apply for citizenship upon the law’s enactment.<sup>145</sup>

In January 2015, Portugal followed Spain’s lead, when its Cabinet approved a law to offer dual citizenship to descendants of Sephardic Jews.<sup>146</sup> Portugal, who claims its sole purpose of granting citizenship is to “redress a historic wrong,” laid out standards similar to Spain for descendants to meet, such as demonstrating “a traditional connection” through “family names, family language, and direct or collateral ancestry” to the Portuguese Sephardic Community.<sup>147</sup> These Spanish and Portuguese requirements are most likely an attempt to quell concerns that Jews (or even non-Jews) without the lasting Sephardic connection would try to take

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140. Efrat Neuman, *A Tale of Two Passports*, HAARETZ (Apr. 15, 2013), <http://www.haaretz.com/news/remembrance-and-independence-2013/a-tale-of-two-passports.premium-1.515608>.

141. *Id.*

142. Conor Gaffey, *Spain Offers Citizenship to Descendants [sic] of Jews Who Fled Inquisition*, NEWSWEEK (Mar. 26, 2015), <http://www.newsweek.com/spain-offers-citizenship-descendants-jews-who-fled-inquisition-316964>.

143. Max Kutner, *Spain Expects Up to 200,000 Jews to Ask for Citizenship*, NEWSWEEK (June 16, 2015), <http://www.newsweek.com/spain-expects-200000-jews-apply-citizenship-343586>.

144. Gaffey, *supra* note 142. Some commentators have spoken critically about Spain’s “severe” limitations. For instance, Soeren Kern explained: “[t]he final version of the law . . . is so complicated and introduces so many hurdles to obtain Spanish citizenship that most prospective hopefuls are likely to be deterred from even initiating the applications process. Indeed, the law in its current form ensures that very few of the estimated 3.5 million Sephardic Jews in the world today will ever become Spanish citizens.” Soeren Kern, *Spain’s Law on Citizenship for Sephardic Jews “Does Not Right a Wrong”*, JEWISH PRESS (July 16, 2015), <http://www.jewishpress.com/indepth/analysis/spains-law-on-citizenship-for-sephardic-jews-does-not-right-a-wrong/2015/07/16>. Spain, however, could in no way take on an addition 3.5 million individuals overnight, so the limiting factors are a rational choice to nonetheless promote reconciliation.

145. Kutner, *supra* note 143.

146. *Portugal Approves Citizenship Plan for Sephardic Jews*, N.Y. TIMES (Jan. 29, 2015), [http://www.nytimes.com/aponline/2015/01/29/world/europe/ap-eu-portugal-sephardic-jews.html?\\_r=0](http://www.nytimes.com/aponline/2015/01/29/world/europe/ap-eu-portugal-sephardic-jews.html?_r=0).

147. *Id.*

advantage of these citizenship laws<sup>148</sup>—Joshua Weitz, a biologist at Georgia Tech University, has claimed that *all* of today’s global Jewish population has at least one ancestor from Spain,<sup>149</sup> and the same might be said for neighboring Portugal as well. Nonetheless, between the end of January and the beginning of March 2015, more than five thousand descendants contacted the Jewish Community of Oporto, Portugal to enquire into the new law.<sup>150</sup> After the first month, the first twenty-one applicants—residing in nations as diverse as China, Australia and Panama—were already approved for citizenship.<sup>151</sup>

As these examples reveal, it has become quite alluring for people to begin looking into their heritage in order to determine whether some ancestor was linked to Europe. It should, therefore, come as no surprise that a growing number of websites have started to publicize the topic and its economic and financial benefits. For instance, one site’s catchy headline reads, “Great-Grandpa May Hold Your Key to EU Citizenship.” As the webpage begins, “[a]fter all these years, could your great-great-great-grandparents (may they rest in peace) be about to hand you citizenship in Hungary, and, with it, the legal freedom to live and do business in any of the 27 countries of the European Union?”<sup>152</sup> The incentive is evident. And one does not have much to do in order to earn such a right; one simply has to thank his forebears.

#### IV. BIRTHRIGHT CITIZENS OF THE EUROPEAN UNION

Who are the new players taking advantage of this timely phenomenon? They are individuals who generally share three characteristics. First, they are non-EU residents. Second, they have some historical link to an EU member state. Third, they (a) reside in one country, and (b) have a hereditary link to another country, both of which recognize dual citizenship. The people who satisfy these three elements are able to gain entry into the EU workforce, schools and tax system by doing nothing

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148. These provisions have prevented me from acquiring Spanish citizenship. Even though I have traced a line of my ancestry to pre-Inquisition Spain, my family does not practice in the Sephardic tradition, nor does my family maintain any true connection to Spain. As a result, I am seemingly barred from acquiring Spanish citizenship under the new law.

149. *Spain and the Jews: 1492 and All That*, ECONOMIST (Feb. 22, 2014), <http://www.economist.com/news/europe/21596963-offer-right-past-wrong-may-not-lead-huge-influx-people-1492-and-all>.

150. *Portugal: Thousands Enquire Over Jewish “Return Rights”*, BBC NEWS (Mar. 4, 2015), <http://www.bbc.com/news/blogs-news-from-elsewhere-31728750>.

151. *Id.*

152. *Great-Grandpa May Hold Your Key to EU Citizenship*, SOVEREIGN INVESTIGATOR (Oct. 9, 2012), <http://thesovereigninvestor.com/asset-protection/are-you-eligible-for-second-passport>.

more than claiming and proving a historical link that they possess by chance.

Logically, the vast majority of people that can satisfy these three conditions will be located in countries where European nations developed strong colonial ties, and to which Europeans continued to immigrate. One of the most evident is the United States, the melting pot nation, where more than half of the population claimed on the 2000 census to have ancestry from a European country.<sup>153</sup> Similar high ratios are found in Canada, where two thirds of the population identified as having European ancestry;<sup>154</sup> Australia's estimate has even been seen as high as eighty-five percent.<sup>155</sup> Latin America also plays a prominent role, not only because of its traditional colonial European heritage with Spain and Portugal, but also because of twentieth century developments that drew other Europeans to Latin America as well.<sup>156</sup>

The nation that gives us the best case study in understanding this new phenomenon, however, is Israel: as of 2010, about 344,000 Israelis living in Israel had dual citizenship with an EU nation.<sup>157</sup> Given that dense population of dual citizens, Princeton graduate student Yossi Harpaz, with the help of Tel Aviv University, was able to conduct a widespread survey of the justifications behind such numbers. Through this in-depth survey of Israelis, which generally correlates to the other diaspora communities, the rationale for acquiring an EU passport comes to light.

Foremost, individuals are gaining EU passports for economic advantages. Based on his research, Harpaz listed five economic reasons why Israelis are obtaining second passports, the majority of which can be applied cross-border: (1) the EU freedom of movement, (2) access to European universities with the potential for reduced tuition, (3) facilitated access to the United States through its Visa Waiver Program, and to certain Arab countries that will not let in Israelis, (4) eligibility to purchase real

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153. ANGELA BRITTINGHAM & G. PATRICIA DE LA CRUZ, *ANCESTRY: 2000, CENSUS 2000 BRIEF 3* (2004), <http://www.census.gov/content/dam/Census/library/publications/2004/dec/c2kbr-35.pdf>.

154. *NHS Profile, Canada, 2011*, STATISTICS CAN., <http://www12.statcan.gc.ca/nhs-enm/2011/dp-pd/prof/details/page.cfm?Lang=E&Geo1=PR&Code1=01&Data=Count&SearchText=Canada&SearchType=Begins&SearchPR=01&A1=All&B1=All&Custom=&TABID=1> (last visited Apr. 28, 2015).

155. Brian P. McEvoy et al., *Geographical Structure and Differential Natural Selection Among North European Populations*, 19 *GENOME RES.* 804, 805 (2009).

156. David Cook-Martín has studied at length these developments in South America, specifically in Argentina, where thousands have sought to attain European passports based on their heritage. See generally DAVID COOK-MARTÍN, *THE SCRAMBLE FOR CITIZENS: DUAL NATIONALITY AND STATE COMPETITION FOR IMMIGRANTS* (2013).

157. Yossi Harpaz, *Rooted Cosmopolitans: Israelis with a European Passport – History, Property, Identity*, 47 *INT'L MIGRATION REV.* 166, 170 (2013).

estate in certain countries that restrict such activities to citizens, and (5) to facilitate claims for restitution of property in connection with the Second World War.<sup>158</sup>

Recent surges in passport applications highlight the clear economic value of EU citizenship because of its freedom of movement. As one Shoshana in Israel stated, around 2000 she decided to look into getting Hungarian passports based on ancestry for herself and her three children.<sup>159</sup> Hungary joined the EU in 2004, and “[i]t was then that people started talking about the European Union. And we thought it’s a good idea: if we have a European passport, then the kids can study, work, whatever they want. We’ll open up new horizons for them.”<sup>160</sup> Such a mentality has been seen elsewhere. Suzanne Mulvehill of Lake Worth, Florida, whose mother was born in Romania, similarly explained:

With an EU passport, I can live and work in 27 countries. . . . With a U.S. passport, I can live and work in one. . . . I recognized for the first time in my life that being American had its limits . . . and that if I really wanted to become what I call a global citizen, then I needed to tap into all my resources to expand my ability to serve entrepreneurs not just in Lake Worth, which is one town, and not just in Florida or in America or in North America, but the globe.<sup>161</sup>

Similarly, James Harlow, a Californian descendant of Sephardic Jews intended to apply for Portuguese citizenship because his Silicon Valley business has been trying to expand abroad; EU citizenship “offers an entry into a huge market.”<sup>162</sup>

The extension of the EU to Eastern Europe has made these benefits valuable to a far greater number of individuals. For instance, South American billionaire Germán Efromovich, owner of Colombia’s national

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158. *Id.* at 180. Most of these rationales are highlighted in the O’Flannery example in this Note’s Introduction. One daughter utilized the citizenship to work legally in Italy and Austria, another bought property in Italy, and the parents were considering doing the same. Lang, *supra* note 1. Financial interests also appealed to countless Argentines during their economic collapse in 2001, when it was reported that the lines outside the Italian and Spanish consulates in Buenos Aires were stretching for blocks so that people could acquire passports. Daniel Schweimler, *Argentines Head for EU*, BBC NEWS (Sept. 17, 2008), [http://www.bbc.co.uk/worldservice/learningenglish/newsenglish/witn/2008/09/080917\\_argentina\\_eu\\_passports.shtml](http://www.bbc.co.uk/worldservice/learningenglish/newsenglish/witn/2008/09/080917_argentina_eu_passports.shtml). Additionally, new EU member states Estonia, Lithuania and Poland had all reported large increases in passport applications at their embassies in Argentina. *Id.*

159. Harpaz, *supra* note 157, at 180.

160. *Id.* at 179.

161. Andrew Abramson, *With U.S. in Slump, Dual Citizenship in EU Countries Attracts Americans*, PALM BEACH POST (June 8, 2008), <http://www.freerepublic.com/focus/news/2028048/posts>.

162. *Portugal Approves Citizenship Plan for Sephardic Jews*, *supra* note 146.

airline Avianca, wanted to buy Portugal's largest airline, TAP. However, he ran into a problem with European corporate law, which limits a non-EU citizen's investment stake of an airline company to forty-nine percent.<sup>163</sup> Conveniently for Efromovich, his parents were born in Poland before fleeing to South America.<sup>164</sup> As the son of Polish immigrants, he was able to take advantage of Poland's heritage laws and become a Polish citizen.<sup>165</sup> Although he ultimately lost his bid to purchase TAP, Efromovich has pursued numerous other ventures in Europe, including potential stakes in Italy's Alitalia and Poland's LOT Airlines, stating that he "must boost the presence of [his] airlines in Europe."<sup>166</sup> None of this would be possible without the EU's eastward expansion, Poland's birthright citizenship laws, international acceptance of dual nationality, and the benefits of EU citizenship, all of which are necessary—and none of which are sufficient—for such European business ventures.

The number of people applying for second passports is significant. In the four years that descendants of Spaniards exiled during the Franco regime could apply for passports between 2008 and 2011, more than half a million individuals applied for passports, of which over 300,000 have already been approved.<sup>167</sup> And in the decade since Eastern Europe's accession to the EU, about 60,000 Israelis have applied for citizenship from those countries,<sup>168</sup> while 100,000 Israelis maintain dual German citizenship.<sup>169</sup> Similarly, during the first three months that Latvia allowed dual citizenship at the end of 2013, over 1,300 individuals applied, the largest numbers coming from the United States, Canada, Australia, Russia and Israel.<sup>170</sup> Lastly, between the end of January and the beginning of March 2015, over five thousand descendants globally had contacted the Portuguese Jewish Community regarding Portugal's new Inquisition law.<sup>171</sup>

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163. Henrique Almeida, *Brazilian Efromovich Seeks Polish Passport to Buy Portugal's TAP*, BLOOMBERG (Nov. 15, 2012), <http://www.bloomberg.com/news/articles/2012-11-15/brazilian-efromovich-seeks-polish-passport-to-buy-portugal-s-tap>.

164. *Id.*

165. Clive Minchom, *Efromovich Brothers Bidding to Buy 50 Jets for Brazilian Airline Avianca Brasil*, JEWISH BUS. NEWS (Feb. 14, 2014), <http://jewishbusinessnews.com/2014/02/14/efromovich-brothers-bidding-to-buy-50-regional-jets-for-brazilian-airline-avianca-brasil>.

166. *Avianca Boss, German Efromovich, Eyes Either Alitalia or LOT*, CH-AVIATION (Dec. 18, 2013), <http://www.ch-aviation.com/portal/news/24207-avianca-boss-german-efromovich-eyes-either-alitalia-or-lot>.

167. Enriquez, *supra* note 138, at 2–3.

168. Harpaz, *supra* note 157, at 166.

169. *Id.* at 169.

170. *1,385 Persons Have Applied for Dual Citizenship Since October in Latvia*, BALTIC COURSE (Jan. 27, 2014), <http://www.baltic-course.com/eng/analytics/?doc=86849>.

171. *Portugal: Thousands Enquire over Jewish "Return Rights"*, *supra* note 150.

Thus a clear trend comes to light: people are taking advantage of the EU's freedom of movement and evolving citizenship laws to gain a second passport.

Many view these second passports as a type of insurance policy, giving their families the comfort of knowing that if the political or economic situations in their countries of residence worsen, they have the ability to go elsewhere.<sup>172</sup> Yet, as Daniel Garcia of Argentina explained, especially because of Spain's questionable economy, “[f]or now I am staying here. . . . I am doing it to be able to travel and to have the passport.”<sup>173</sup>

Most significantly, many are accumulating such nationalities not to return to their ancestral homeland, but to go to neighboring countries. Take Sebastian, an Argentine who acquired Estonian citizenship because his grandfather had been born there. He did it for access to the European Union. Meanwhile, “it does feel strange being Estonian. He doesn't speak the language, has never been to Tallinn and knows little about the Baltic state's history or customs.”<sup>174</sup> In a similar situation is Liz Fink, a Ph.D. student in French history at New York University, who received German citizenship through her grandfather so that she could live in Paris: “It's funny, but I got German citizenship to live in France.”<sup>175</sup>

Such results were confirmed in the Israeli study on dual citizens, which found that such EU citizens “did not see themselves as German, Polish, or Hungarian in any way, as reflected in respondents' insistence that they were ‘100 percent Israeli.’”<sup>176</sup> As one interviewee explained, “the Israeli passport reflects my citizenship and my identity, the European passport is just for practical use.”<sup>177</sup> As a result, there is an absence of any allegiance to that European nation: “Israelis with citizenship in Central and Eastern European countries typically exhibited no interest in political engagement with their external states, neither as voters from abroad nor as an ‘ethnic lobby’ in Israel.”<sup>178</sup> As of 2012, fifty-five percent of Israelis applying for Polish citizenship were the grandchildren of the Polish

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172. Harpaz, *supra* note 157, at 185–87.

173. *Spanish Exiles' Latin America Families in Passport Rush*, BBC NEWS (Dec. 28, 2011), <http://www.bbc.co.uk/news/world-europe-16342340>.

174. Schweimler, *supra* note 158.

175. Katie Engelhart, *Why a Growing Number of Descendants of Holocaust Victims are Seeking EU Citizenship*, MACLEAN'S (May 1, 2013), <http://www.macleans.ca/news/world/the-old-country>.

176. Harpaz, *supra* note 157, at 193.

177. *Id.*

178. *Id.* at 194.

national.<sup>179</sup> Meanwhile ninety-five percent of the applicants did not speak any Polish, and “[m]ost applicants admit that they do not seek to immigrate to Warsaw, but hope to become citizens of the EU.”<sup>180</sup>

How many people actually *move* to Europe once they have their second passport? Considering how new this phenomenon is—most countries’ citizenship changes have occurred within the past five to ten years—very little information is available. Nonetheless, two small examples give us a hint that this is a growing phenomenon. First, in Spain, where Latin Americans receive preferential treatment for naturalization based on their shared history of *hispanidad* (only two years of residence in Spain to become a citizen as opposed to ten years for non-Hispanics<sup>181</sup>), there has been a significant influx: between 2004 and 2012, over half a million Latin Americans went to Spain and received citizenship by residing there for two years.<sup>182</sup> As a second example, an estimated 15,000 Israelis have emigrated to live in Berlin alone.<sup>183</sup> From these small samples, it is not possible to clearly analyze the scope of immigrants gaining second passports and actually moving to Europe; it is simply too early to tell what many of the new law’s impacts will be. This study is particularly challenging because, once in Europe, these individuals are presumably using their European passports, and are, therefore, being monitored simply as fellow Europeans—the data will not necessarily reflect that they are outsiders. Nonetheless, this is clearly a growing trend that warrants further statistical research over the next decade as the different laws gain effect and popularity.

## V. ASSESSING BIRTHRIGHT CITIZENSHIP ACROSS AN EVOLVING EUROPE

A few concerns are raised when considering these new citizens of the European Union. First, they highlight the unpredictability of individual countries’ laws and their unforeseen, potentially negative, consequences. Second, this new brand of birthright citizenship challenges the traditional understanding of ethnic return migration—that people return to the country

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179. Itamar Eichner, *Israelis Line Up for Polish Citizenship*, YNETNEWS (June 29, 2012), <http://www.ynetnews.com/articles/0,7340,L-4243495,00.html>.

180. *Id.*

181. Skrentny et al., *supra* note 119, at 66.

182. Andreu Domingo & Enrique Ortega-Rivera, *Acquisition of Nationality as Migration Policy*, in DEMOGRAPHIC ANALYSIS OF LATIN AMERICAN IMMIGRANTS IN SPAIN 29, 40 (Andreu Domingo et al. eds., 2015).

183. Donald Snyder, *Jews Stream Back to Germany*, JEWISH DAILY FORWARD (Apr. 8, 2012), <http://forward.com/articles/154277/jews-stream-back-to-germany>.

of their ancestry and remain in that country. This Part thus provides suggestions to the EU aimed at ameliorating such uncertainty. The EU should, first, study this phenomenon to determine whether a uniform policy regarding birthright citizenship legislation is needed. This additional research will bring to light the benefits and risks of these developments. If the risks appear to outweigh the benefits, EU nations should limit the use of reparation citizenship laws, limiting them—if maintaining them at all—to *recent* “wrongs.”

#### A. Tackling Inconsistency Across the European Union

There is no unitary policy on citizenship for the European Union, and as a result each nation is free to enact its own citizenship regime. As demonstrated in Part III, divergent outcomes across the EU have resulted. With the inclusion of the freedom of movement in EU citizenship, nations have lost control over the persons gaining entry due to EU citizenship from another country, a country whose policies may not be approved in their new country of residence. An example comes from the United Kingdom, where “[h]undreds of thousands of migrants are taking advantage of soft European Union rules to get jobs in Britain by the back door.”<sup>184</sup> Between 2004 and 2015, the number of non-Europeans with EU citizenship employed in Britain increased from 78,000 to 264,000, while nine percent of EU citizens living in the U.K. were born outside of Europe.<sup>185</sup> Another example arose in Romania, where through its new birthright citizenship law, more than a quarter-million Moldovans were able to acquire Romanian citizenship.<sup>186</sup> Moldova is not a member of the EU. As a result, Romania’s laws caused alarm in Western Europe, where the thought prevailed that regardless of Moldova being held outside of the European Union, more than 225,000 of its citizens now have the full right to take advantage of all the EU’s benefits.<sup>187</sup> As the German newspaper *Der Spiegel*’s headline read:

Romania’s president wants to increase his country’s population and is using an odd means to do so. The country is generously bestowing hundreds of thousands of Romanian passports on impoverished

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184. Ian Drury, *Soft EU Rules Let 265,000 Move Here*, DAILY MAIL (July 15, 2015), <http://www.dailymail.co.uk/news/article-3163157/Soft-EU-rules-let-265-000-Foreign-nationals-outside-Europe-getting-citizenship-using-laws-travel-UK.html>.

185. *Id.*

186. Costica Dumbrava, *Rolling Back History: The Romanian Policy of Restoration of Citizenship to Former Citizens*, CITIZENSHIP IN SOUTHEAST EUR. (Apr. 15, 2013), <http://www.citsee.eu/citsee-story/rolling-back-history-romanian-policy-restoration-citizenship-former-citizens>.

187. *Id.*

Moldovans. They are gratefully accepting the offer from the EU member state and are streaming into Western Europe to work as cheap laborers.”<sup>188</sup>

Meanwhile, certain politicians in Western Europe demanded something be done about the influx.<sup>189</sup>

These results are likely not what European nations envisioned when enacting their birthright citizenship laws; nor were they likely anticipated byproducts of the EU guarantee of freedom of movement at its inception. In considering whether the European nations truly *want* such effects as are being received, it is worth considering another new phenomenon, the premise of which warrants another paper entirely: investment citizenship. As of now, Malta and Cyprus grant citizenship to investors who give the country between 800,000 and 5 million euros, depending on the circumstances.<sup>190</sup> There are additional investment programs in other European nations, but individuals are merely granted permanent residence or temporary residence permits, not citizenship.<sup>191</sup> Much of this investment citizenship, unsurprisingly, is a recent phenomenon that has been viewed as a response by struggling economies after the financial crisis to stimulate financial growth.<sup>192</sup> One might argue that if countries are extending benefits to people without any national connection on the condition that they contribute investment, receiving countries should not care if new European citizens residing in their countries lack any affiliation to that country, so long as those individuals are contributing to society. But as of now, only two small nations grant full citizenship, and they have received significant pushback. For instance, in 2014, the European Parliament voted that EU citizenship could not have a “price tag.” The Parliament stated that “[o]utright sale of EU citizenship undermines the mutual trust upon which the Union is built,” and “Parliament also stresse[d] that the rights conferred by EU citizenship, such as the right to move and reside freely within the

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188. Benjamin Bidder, *Romanian Passports for Moldovans: Entering the EU Through the Back Door*, SPIEGEL (July 13, 2010), <http://www.spiegel.de/international/europe/romanian-passports-for-moldovans-entering-the-eu-through-the-back-door-a-706338.html>.

189. *Id.*

190. Jean Philippe Chetcuti, *EU Citizenship in Malta & Cyprus*, CHETCUTI CAUCHI (Feb. 10, 2015), <http://www.ccmalta.com/publications/eu-citizenship-in-malta-cyprus>.

191. Madeleine Sumption & Kate Hooper, *The Golden Visa: “Selling Citizenship” to Investors*, MIGRATION POL’Y INST. (Dec. 18, 2013), <http://www.migrationpolicy.org/article/issue-no-3-golden-visa-selling-citizenship-investors>.

192. *Id.*

EU, should not be treated as a ‘tradable commodity.’”<sup>193</sup> Thus, it cannot be said that Europe as a whole is willing to tolerate such minimal connections; rather, it strongly suggests that European nations most likely *prefer* maintaining the personal affinities associated with traditional citizenship.

Perhaps all of this is just a natural component of globalization. Christian Joppke proposes that we are moving “[b]eyond nationhood,”<sup>194</sup> where EU citizenship is “postnational citizenship in its most elaborate form.”<sup>195</sup> Joppke suggests that we are now living in the age of “citizenship light,” where “[t]he future of citizenship is bound to be light, and lighter still with the help of ‘Europe.’”<sup>196</sup> Nonetheless, although the framework of citizenship might be lightening, the implications of such migrations are not diminishing.

The EU should thus work through Eurostat to understand and quantify the growing number of access-oriented birthright citizens. Such an analysis would most accurately be captured by assessing individuals who (1) were born outside of the EU, (2) possess citizenship to an EU nation, and (3) are living in an EU nation other than their nation of citizenship. If such a study finds the numbers significant, the EU might consider implementing a standardized procedure for birthright citizenship. Presently, national citizenship laws remain decentralized, as EU member states are reluctant to adopt uniform immigration policies. On the immigration front, it is understandable that European nations would not want a unified policy, as, for instance, southern EU member states have very different immigration concerns than those in the north. For this reason, policies regarding immigrant naturalization will probably remain decentralized. But in some areas of mutual concern (family reunification, students/researchers, and long-term third-country nationals) common policies have progressed.<sup>197</sup> Birthright citizenship is only a small piece in the puzzle, and since *all* countries are affected by each country’s birthright citizenship regime, there is an increased possibility that the Union could find common ground for agreement in this field.

In the aftermath of the financial crisis, the number of birthright citizens living and moving around Europe will likely continue to grow. Yet, a study into this phenomenon might find that birthright citizens are actually

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193. European Parliament Press Release IPR32932, EU Citizenship Should Not Be For Sale at Any Price, Says European Parliament (Jan. 16, 2014).

194. Christian Joppke, *The Inevitable Lightening of Citizenship*, 51 EUR. J. SOC. 9, 19 (2010).

195. *Id.* at 21.

196. *Id.* at 29.

197. INT’L ORG. FOR MIGRATION, LAWS FOR LEGAL IMMIGRATION IN THE 27 EU MEMBER STATES 13 (2010), [http://publications.iom.int/bookstore/free/IML\\_16.pdf](http://publications.iom.int/bookstore/free/IML_16.pdf).

economically benefitting the EU as a whole. Many (or most) of these individuals are moving to Europe for the financial gain, so they will be contributing to the wellbeing of the Union. Meanwhile, these individuals might later decide to give back to the nations that gave them the opportunity for growth in the first place—the “other” nation whose passport they are using. Thus, it is plausible that the EU might find these laws beneficial and choose to keep them in place. Nonetheless, this Part has raised numerous concerns for the EU to consider, and the Union must now determine whether this subject warrants action.

#### B. A Cause for Change? Ethnic Return Migration Without the Return

The concept of returning to one’s “homeland” has been called ethnic return migration.<sup>198</sup> And in Europe, most of the policies regarding ethnic returns have been outwardly based on romanticism. Europe “appeal[s] to blood-based kinship and the emotions that go with it,” and that appears to be “an end in itself.”<sup>199</sup> Whereas in Asia, there have been economic justifications for such legislation, Europe has stayed away from such rhetoric: “European policies appear especially romantic or even irrational, as economic justifications are absent or muted and the policies do not clearly link the co-ethnics into the economy.”<sup>200</sup> For example, although many question such authenticity,<sup>201</sup> Portugal stated this year that “[l]ike Spain, . . . its sole reason for granting citizenship is to redress a historic wrong.”<sup>202</sup>

As explained in Part IV, this new class of citizens is doing something new: going to countries other than the countries from which they are acquiring citizenship. And they often maintain no affinity to the second citizenship nation. The unique (and perhaps problematic) situation of such individuals is that they contravene what it traditionally means to be a citizen. According to Professor Rogers Brubaker, since the French Revolution, there has been a general understanding regarding the functionality of citizenship: (1) it is a “general membership status based on equality before the law;” (2) it requires “active political citizenship,” while

198. See generally DIASPORIC HOMECOMINGS: ETHNIC RETURN MIGRATION IN COMPARATIVE PERSPECTIVES (Takeyuki Tsuda ed., 2009).

199. Skrentny et al., *supra* note 119, at 65.

200. *Id.*

201. See, e.g., Suzanne McGee, *Economic Boost? Sephardic Jews Contemplate a Return to Spain*, GUARDIAN (Nov. 26, 2014), <http://www.theguardian.com/money/2014/nov/26/sephardic-jews-spain-economics> (“[Spain’s] plan raises the question as to whether the policy has more to do with love – or the struggling country’s search for investment.”); *Spain and the Jews*, *supra* note 149 (claiming that Spain “also wants to lure investment and talent”).

202. *Portugal Approves Citizenship Plan for Sephardic Jews*, *supra* note 146.

being maintained as a “general status” for all; (3) it develops “sharpened boundaries” between different nations; and (4) it codifies state membership.<sup>203</sup> This new class of birthright citizens does not *belong* to the nation from which they acquire a passport. Instead, the passport is merely a ticket of entry into the EU. As the examples above illustrate, of which far more exist, these individuals are removing the nationhood from citizenship.

As a result, the entire concept of ethnic return migration has now resulted in two opposing sides with differing interests moving in opposite directions. The nations either have an interest merely in connecting with their population abroad or with ameliorating past wrongs. Both are internal; both are based on affinity. But, often, the people taking advantage of such laws are doing something unique: they are making such passports an *external* benefit, a benefit that will reach twenty-eight nations, and not just the one (if at all) through which they have gained entry into the Union. This is a new brand of birthright citizenship based instead solely on access, without the traditional affinity.

The role of birthright citizenship laws in the poorer EU nations, especially in Eastern Europe, is particularly problematic because these are generally the nations where people are bypassing the affinity-based purpose of those laws, and simultaneously failing to support their “new” homes. Even if the investment citizens mentioned above move elsewhere, they are at least forced to make a substantial financial contribution to the citizenship-granting country. Although many birthright laws, in contrast, are deemed “romantic,” it is unlikely that the enacting nations would disregard *any* economic benefits. Thus, in order to guarantee *some* domestic aid, Eastern European nations should incorporate residency requirements; much of Western Europe already does this.<sup>204</sup> Not only would this assist the nation financially, but it would also likely decrease the exploitation of that country’s laws. Although such actions might decrease the total number of new citizens, incorporating a short residency requirement might actually give further domestic support, as some of those individuals now being required to reside in the country might actually choose to stay.

Further, the new restitution-based laws, specifically those from Spain and Portugal, illuminate another difficulty. These laws have opened a Pandora’s Box for the EU filled with minimal predictability, based on a

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203. William Rogers Brubaker, *The French Revolution and the Invention of Citizenship*, 7 FRENCH POL. & SOC’Y 30, 30, 47 (1989).

204. However, this might have to wait until after the Second World War generation is gone, as many of these laws appear to have a reparation-based component to them.

wide array of possible historical misconduct that might be righted. With Spain and Portugal's recent attempts to pass citizenship laws to "make up for" their medieval Inquisitions, it is uncertain where this path ends. The difficulty with the effectuation of laws based on such remote "wrongs" is that they bring about significant line-drawing problems. Should Spain and Portugal also grant citizenship to any Muslim who can prove descent from the Spanish *Moriscos* expelled with the Jews?<sup>205</sup> For that matter, should England pass a citizenship law under which any descendant of a Puritan forced to flee to the New World can gain English citizenship?<sup>206</sup> Each minority is important, and each minority has its own set of difficult moments in history. At some point, however, EU nations must have some standard by which they can control inflow. And until, if ever, we realize a borderless citizenship akin to Joppke's citizenship light theory, such control remains necessary.

If the EU studies this issue and finds that steps must be taken, there is a line that can be drawn: EU nations could exclude reparation citizenship laws based on distant wrongs. Limitations like affinity or language tests are a start, but they are probably not sufficient. One potential limitation is to delineate wrongs based on limited ancestry, similar to the approach taken in many countries, such as Ireland, where citizenship can be granted only as far back as one's grandparent.<sup>207</sup> The primary purpose of this limitation is to increase the likelihood that new citizens will actually feel and maintain a connection with the country, which would likely lessen back-door exit into neighboring nations. Additionally, such limitations would increase the probability of the individual actually *knowing* and *understanding* the event for which that person is receiving restitution.<sup>208</sup>

205. See Lisa Goldman, *Spain's Offer of Citizenship to Sephardim Raises Questions*, AL JAZEERA (June 17, 2015), <http://america.aljazeera.com/articles/2015/6/17/whats-behind-spains-offer-of-citizenship-to-jews.html> ("If the motivation was simply to reverse the Alhambra Decree of 1493, many have asked why the citizenship offer was not extended to the descendants of Muslims expelled under the same edict."); Gil Shefler, *Spanish Muslims, or Moriscos, Seek Parity with Jews Expelled from Spain*, WASH. POST (June 5, 2014), [http://www.washingtonpost.com/national/religion/spanish-muslims-or-moriscos-seek-parity-with-jews-expelled-from-spain/2014/06/05/3dbf2c78-ece1-11e3-b10e-5090cf3b5958\\_story.html](http://www.washingtonpost.com/national/religion/spanish-muslims-or-moriscos-seek-parity-with-jews-expelled-from-spain/2014/06/05/3dbf2c78-ece1-11e3-b10e-5090cf3b5958_story.html) ("Now, with Spain's initiative to offer Sephardic Jews a path to citizenship, some Morisco descendants have called on Madrid for similar treatment: if not the same rights, then at least recognition of their heritage.").

206. For a basic history of the various religious groups that fled Europe to the New World, see *Religion and the Founding of the American Republic, America as a Religious Refuge: The Seventeenth Century*, LIBRARY OF CONG., <http://www.loc.gov/exhibits/religion/rel01.html> (last visited Apr. 8, 2015).

207. See *supra* Part III.A.

208. It should be mentioned that not all Sephardic Jews actually *want* Spanish citizenship, even with long-cherished ties to Spain. For example, journalist Josh Nathan-Kazis, a Sephardic Jew who traced his lineage back to the Spanish Inquisition, went to Spain to explore his Spanish heritage and to

For instance, under this approach, Germany's citizenship law for Jews would stay in place because the survivors are still living, and so are their descendants who *knew* the survivors and understood their hardships. Five centuries from now, however, it is unlikely that Germany's policy will still be in place; at some point, it will likely be phased out as the connectedness phases out. This is not to say that what Spain and Portugal are doing is *wrong*; in fact, it feels quite right. But from a legal perspective, these actions have significant unforeseen consequences.<sup>209</sup> There are many ways to recompense an individual; granting citizenship, however, might not be the best action in such situations.<sup>210</sup>

## CONCLUSION

This Note brings to light a very new phenomenon developing in Europe, sparked by late twentieth century developments. First, dual citizenship, once considered illegal, is now accepted across the globe and especially in Europe. Second, Europe has become transnational through the creation of the European Union, the twenty-first century inclusion of the former Eastern Bloc, and the all-important right of an EU citizen to move and reside freely in any EU nation. Meanwhile, countries continue to develop citizenship laws based on birthright, whether through heritage or as restitution for an internal or external "wrong." These three factors have, together, led thousands of non-Europeans to become re-acclimated with the Old World of their ancestors' European past by gaining a second citizenship to one of twenty-eight EU member states.

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enquire into receiving Spanish citizenship. By the time he left Spain, he realized he did not really *feel Spanish* and elected not to seek Spanish citizenship. For Nathan-Kazis' detailed account of his experience, see Josh Nathan-Kazis, *My Spanish Inquisition: A Reporter Exercises His Right of Return*, JEWISH DAILY FORWARD (Jan. 26, 2014), <http://forward.com/articles/191376/can-sephardic-jews-go-home-again—years-after>.

209. This is heightened by the freedom of movement. If such laws were passed in nations outside of the EU, this would be less of a concern, as the individuals gaining citizenship would only gain access to the one nation that had wronged them. This only becomes a difficult scenario because of the freedom of movement, which burdens twenty-seven other nations with individuals that would not be able to gain access but for these distant connections.

210. The United States, for example, passed a bill under which the U.S. government paid out \$1.25 billion in restitution to the survivors of the Japanese internment camps established during the Second World War. Each surviving individual received a tax-free payment of \$20,000. Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903 (codified as amended at 50 U.S.C. app. § 1989 (2000)); see also *\$20,000, Apology Voted for WWII Japanese Internees: Bill Ready for Reagan Signature*, L.A. TIMES (Aug. 4, 1988), [http://articles.latimes.com/1988-08-04/news/mn-10462\\_1\\_japanese-american-internees](http://articles.latimes.com/1988-08-04/news/mn-10462_1_japanese-american-internees). Whether this amount is adequate is another consideration in entirety, but in the case of Spain or Portugal, where five hundred years have passed for the Sephardic descendants and where most no longer truly hope to return, it is unlikely that many of these descendants would reject such restitution.

The novelty is that an affinity for their homeland no longer underlies these citizens' interest; instead their interest is tied to access. These birthright EU citizens are thus altering the traditional understanding of what it means to be a citizen and of the responsibilities citizenship has traditionally required. The EU now needs to take the lead and research this field as time goes on and as these new citizenship laws emerge in order to understand the quantity of non-EU citizens gaining access through this "back door" and what impact this has on the EU nations' economies and labor markets. Although there are some concerns associated with the phenomenon, it is plausible that the EU might nonetheless find a net economic benefit to the Union and choose, as a result, not to act further. In the meantime, however, it is time to start researching your family tree.