

AYELET SHACHAR

Picking Winners: Olympic Citizenship and the Global Race for Talent

ABSTRACT. Across the globe, countries are promoting strategic or expedited passport grants, whereby membership is invested in exceptionally talented individuals with the expectation of receiving a return: for Olympic recruits, this means medals. The spread of the talent-for-citizenship exchange, with “Olympic citizenship” as its apex, is one of the most significant innovations in citizenship practice in the past few decades. In this emerging competitive environment, countries have come to realize that their exclusive control over the assignment of membership goods is a major draw. This realization has turned citizenship itself into an important recruiting tool. The Olympic citizenship dynamic highlights the growing influence of the economic language of human capital accretion in shaping targeted recruitment policies that are designed to attract top performers, whether in the sciences, arts, or athletics. In the process, it is our very understanding of citizenship that is undergoing a radical alteration. This Feature explores the analytical, normative, and comparative dimensions of Olympic citizenship, identifying the major players and interests at stake, assessing the national and international implications of such profound transformations, and highlighting the dark underbelly to the rise in Olympic citizenship grants. It concludes by developing possible new ways to address the challenges that Olympic citizenship creates, including proposed transnational responses to ameliorate concerns about exploitation and the unearned advantages that attach to the unregulated practice of cross-border talent poaching in pursuit of national glory.

AUTHOR. Professor of Law Political Science & Global Affairs; Canada Research Chair in Citizenship and Multiculturalism, University of Toronto Faculty of Law. This study of the transformation of citizenship in the context of today’s global race for talent, highlighting the intersection of sports and nationality, required identifying and navigating a far less traveled terrain than most academic articles do. In developing these ideas, I benefited greatly from conversations with Bruce Ackerman, Rogers Smith, Ryan Balot, Ed Iacobucci, Kevin Davis, Peter Spiro, Peggy Radin, and David Miller. Thanks are also due to Kate Brookson-Morris, Insiya Essajee, Atrisha Lewis, Victoria McCaffrey, and Jonathan Schachter for outstanding research assistance; Victoria Degtyareva, Laura Saffdie, and the staff of *The Yale Law Journal* for terrific editorial suggestions. My greatest gratitude is owed to Ran Hirschl for sprouting the germ of the idea that became this Feature. I could not have written this work without his acumen and tremendous generosity of input and advice. Previous versions were presented at the Sovereignty and Cosmopolitan Alternatives Conference at the University of Pennsylvania, and the Annual Meeting of the American Society of International Law.



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In our increasingly globalized and competitive world, citizenship is being rewritten, and radically so. This is evident along multiple axes: the revival of cultural and religious markers of inclusion/exclusion,¹ the revamping of border control,² the securitization of citizenship,³ and the more active role played by both sending and receiving countries in bringing economic considerations to bear on labor migration policies,⁴ to mention but a few notable examples. The focus of my discussion is on this last category, zooming in primarily on the international mobility of the highly skilled. Here, terminology for the accretion of human capital, once the exclusive purview of economists and head-hunting firms, has infiltrated and transformed the realm of citizenship. Recognizing that “[t]he key element of global competition is no longer the trade of goods and services or flows of capital, but the competition for people,”⁵ countries seeking to attract Nobel Prize contenders, gifted technology wizards, acclaimed artists, promising Olympians, and other high-demand migrants have come to realize the attractive power of citizenship. This represents a significant shift in the conception of citizenship—turning an institution steeped with notions of collective identity, belonging, loyalty, and perhaps even sacrifice into a recruitment tool for bolstering a nation’s standing relative to its competitors. The striking transformation of citizenship is the subject of this inquiry.

Consider the case of Becky Hammon, a superstar point guard from the American heartland. Although she finished as runner-up for the Most Valuable Player title in the WNBA in 2007, Hammon was not short-listed for the U.S.

1. See, e.g., CHRISTIAN JOPPKE, *VEIL: MIRROR OF IDENTITY* (2009); Liav Orgad, *Illiberal Liberalism: Cultural Restrictions on Migration and Access to Citizenship in Europe*, 58 AM. J. COMP. L. 53 (2010); Ayelet Shachar, *State, Religion and the Family: The New Dilemmas of Multicultural Accommodation*, in SHARI’A IN THE WEST 115 (Rex Ahdar & Nicholas Aroney eds., 2010); Leti Volpp, *The Culture of Citizenship*, 8 THEORETICAL INQUIRIES L. 571 (2007).
2. For a concise overview of the major legislative initiatives and policy measures adopted by the United States in recent years in order to enhance border control, see CHAD C. HADDAL, YULE KIM & MICHAEL JOHN GARCIA, CONG. RES. SERV., RL 33659, *BORDER SECURITY: BARRIERS ALONG THE U.S. INTERNATIONAL BORDER* (2009). See also PETER ANDREAS, *BORDER GAMES: POLICING THE U.S.-MEXICO DIVIDE* (2000); WENDY BROWN, *WALLED STATES, WANING SOVEREIGNTY* (2010); Ayelet Shachar, *The Shifting Border of Immigration Regulation*, 3 STAN. J. C.R. & C.L. 165 (2007).
3. See generally *SECURITIZATIONS OF CITIZENSHIP* (Peter Nyers ed., 2009) (providing a comprehensive introduction to this emerging field of inquiry).
4. See U.N. Secretary General, *International Migration and Development: Rep. of the Secretary General*, U.N. Doc. A/60/871 (May 18, 2006); Kim Barry, *Home and Away: The Construction of Citizenship in an Emigration Context*, 81 N.Y.U. L. REV. 11 (2006); Ayelet Shachar, *The Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes*, 81 N.Y.U. L. REV. 148 (2006).
5. RICHARD FLORIDA & IRENE TINAGLI, *EUROPE IN THE CREATIVE AGE* 12 (2004).

women's Olympic basketball squad for the 2008 Beijing Summer Games.⁶ Instead of staying home to root for her national team, Hammon chose to pursue her lifelong dream of playing in the Olympics. Despite not being of Russian descent or a full-time resident, Hammon (who had previously played professional basketball in Russia) was fast-tracked for Russian citizenship in a process expedited by the country's officials.⁷ With her brand new passport in hand, Hammon could compete in the Olympics for Russia. There is no denying that Hammon had nothing but the most tenuous ties to Russia before she was granted citizenship in an expedited process. Yet this legal exchange made her into an official representative of the recruiting nation. Some saw this exchange as representing an emerging free-agency era in the Olympic Games: a new world order in which the athlete is at center stage, empowered by the fierce competition among national teams to attract individuals with abundant talent.⁸ Others saw it as an act of strategic behavior: placing oneself ahead of one's country.⁹ But the distributional matrix of opportunities and responsibilities that attaches to Olympic citizenship goes well beyond any specific individual. It implicates the multiple stakeholders engaged in a global race for talent: mobile and worldly top performers, sending and receiving countries, as well as various regional and international sports regulating bodies.

The case of Becky Hammon, despite the media attention it has received, is far from unique in the world of Olympic citizenship.¹⁰ Chris Kaman, center for

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6. Mark Schwarz, *Olympics Opportunity Too Much for Hammon To Pass Up*, ESPN.COM (June 5, 2008), <http://sports.espn.go.com/oly/news/story?id=3427182>.
 7. *Id.*
 8. See, e.g., Kevin Baxter, *Yanks, but on Another Team*, L.A. TIMES, June 29, 2008, at A30 ("Freedom of choice is one of the values our country stands for. . . . And we're not going to stand in the way of someone who wants to compete for another country." (quoting Darryl Seibel, chief communications officer of the U.S. Olympic Committee)); Ian Ayres, *Citizenship Flexibility at the Olympics is a Good Thing*, FREAKONOMICS BLOG (Aug. 21, 2008, 2:05 PM), <http://freakonomics.blog.nytimes.com/2008/08/21/citizenship-flexibility-at-the-olympics-is-a-good-thing/>.
 9. Hammon was subject to fierce criticism by the U.S. Olympic women's basketball team coach for putting on the Russian uniform. Hammon responded that her decision was about sports: "[T]his has never been a political statement." Harvey Araton, *Playing for Russia, With the Capitalist Spirit*, N.Y. TIMES, Aug. 16, 2008, at D7.
 10. Every Olympic Games has human dramas and legal disputes arising from national allegiance switches. The final authority to resolve such disputes lies with the Court of Arbitration for Sport (CAS). See COURT OF ARBITRATION FOR SPORT, STATUTES OF THE BODIES WORKING FOR THE SETTLEMENT OF SPORTS-RELATED DISPUTES (2010), [http://www.tas-cas.org/d2wfiles/document/3923/5048/o/code%202010%20\(en\).pdf](http://www.tas-cas.org/d2wfiles/document/3923/5048/o/code%202010%20(en).pdf) [hereinafter CAS STATUTES]. In the 2000 Summer Olympic games held in Sydney, for example, the Olympic "citizenship of

the NBA's Los Angeles Clippers since 2003, was born and raised in the United States, attended college at Central Michigan State, and (by his own admission) does not speak German. But his great-grandparents were German, a fact that entitled Kaman to acquire German citizenship. He was approached by the German sports authorities and granted a German passport in July 2008 in an expedited process, all in time to compete for the German national team in the 2008 Beijing Olympic Games.¹¹ In another instance, several weeks before the 2006 Winter Olympics in Turin, President Bush signed a congressional bill that included a special provision granting citizenship for aliens of extraordinary ability.¹² This legal maneuver allowed ice dancers Tanith Belbin, born and raised in Canada, and Maxim Zavozin, born and raised in Russia, to represent the United States.¹³ Belbin and her partner secured a silver medal for the United States.¹⁴ Zavozin went on to become a Hungarian citizen in January 2010, just in time to represent Hungary in the 2010 Winter Olympics in Vancouver.¹⁵

The United States, more than any other country in the world, has gone out of its way to perfect the technique of attracting accomplished athletes by "swapping passports in pursuit of Olympic medals."¹⁶ However, the practice

over a hundred athletes was challenged prior to the Games." *Citizenship Issues a Problem for Professional and Top-Class Sport*, MOTION-SPORTS FIN., no. 1, 2007, at 39 (quoting Lauri Tarasti).

11. See Greg Johnson, *Kaman Living Olympic Dream, Even as a German*, GRAND RAPIDS PRESS, Aug. 3, 2008, http://www.mlive.com/olympics/index.ssf/2008/08/kaman_living_olympic_dream_eve.html.
12. See S. Res. 2044, 109th Cong. (2005) (enacted).
13. See Gary Mihoces, *Ice Dancer Belbin Aces Citizenship Test*, USA TODAY, Jan. 14, 2006, at 8.
14. Associated Press, *2006 Olympic Silver Medallists Belbin-Agosto Retire* (June 10, 2010, 5:37 PM), http://www.tsn.ca/figure_skating/story/?id=324246.
15. Before obtaining citizenship, Zavozin even told reporters that "in Hungary, it's a little easier to get citizenship, and that was the decision, so that we could maybe start to compete this season." Lynn Rutherford, *New Partnership on the Horizon*, ICENETWORK (July 23, 2008), http://web.icenetwork.com/news/article.jsp?ymd=20080723&content_id=49634&vkey=ice_news.
16. Duff Wilson & Andrew W. Lehren, *Swapping Passports in Pursuit of Olympic Medals*, N.Y. TIMES, June 15, 2008, <http://www.nytimes.com/2008/06/15/sports/olympics/15citizen.html?pagewanted=print> (noting that since 1992 approximately fifty top athletes competed for other nations before becoming members of U.S. Olympic teams). This may be explained in part by the fact that unlike most other advanced industrial countries, the U.S. Olympic Committee has no continuous public funding. Instead, athletes raised in the United States must heavily rely on local, community, and corporate support. See Michael Jay Friedman, *U.S. Funding of Olympic Athletes a Private and Community Affair: Individual Citizens and Corporations Enable America's Olympic Effort* (Sept. 1, 2007), <http://www.america.gov/st/peopleplace-english/2007/September/20060209164553jmnamdeirfo.9387018.html>. The

has become more common than ever. It is no longer limited to the world's traditional sports-powerhouse nation. Jamaican-born Merlene Ottey is one of the most decorated female track athletes of all time. She has won nine Olympic medals in six Olympic Games—spanning from Moscow 1980 to Sydney 2000 (and winning numerous world championship titles in between)—all while representing Jamaica.¹⁷ In 2002, Ottey acquired Slovenian citizenship and went on to compete for Slovenia in the 2004 Olympics in Athens. Since 2004, she has represented Slovenia at international competitions.¹⁸ In 1986, the World Champion in weightlifting, Bulgarian Naim Suleimanov, was lured by Turkish officials to defect and move to Turkey. He then applied for Turkish citizenship, changed his name to Naim Süleymanoglu, and won gold medals for Turkey in the 1988, 1992, and 1996 Olympic Games. Reports suggest that the Turkish government paid approximately one million dollars to the cash-strapped Bulgarian regime to allow Süleymanoglu to compete for Turkey in the 1988 Seoul Olympics.¹⁹

And there is no end in sight to the practice. The Azerbaijan women's field hockey team caused outrage when the squad that appeared for the European Championship included no less than six South Korean players.²⁰ Officially, however, no rules were broken: the South Koreans had been given Azerbaijan passports in time to qualify for the games. Or consider the case of Italy, the host of the 2006 Torino Winter Games, which resorted to fast-tracked citizenship grants in order to build up its own squad: no fewer than ten of Italy's national hockey team players were Canadian hockey players who had not made the cut on their home team.²¹ They held only minimal ties to Italy; some of them had never visited the country. This has raised the ire of sporting

government does play a crucial role, however, in facilitating Olympic citizenship as the ultimate grantor of status.

17. See *Merlene Ottey, 50, Set To Break European Record*, BBC NEWS, July 23, 2010, <http://news.bbc.co.uk/sport2/hi/athletics/8849204.stm> (last visited Dec. 2, 2010); *Merlene Ottey-Page*, OLYMPIC.ORG, <http://www.olympic.org/en/content/Olympic-Athletes/All-Athletes/Athletes-ON-to-OZ/-MERLENE-OTTEY-PAGE/> (last visited Dec. 2, 2010).
18. *Age No Bar for Ottey as She Gets Ready for Barcelona 2010*, EUROPEAN ATHLETICS, <http://www.european-athletics.org/20th-european-athletics-championships-2010/age-no-bar-for-ottey-as-she-gets-ready-for-barcelona-2010.html> (last visited Oct. 10, 2010).
19. George Vecsey, 'Pocket Hercules,' N.Y. TIMES, July 22, 1996, http://www.nytimes.com/packages/html/sports/year_in_sports/07.22.html.
20. Owen Slot, *Buying the Flag: Kenyans are Exploited Like 'Slaves' in Talent Trade*, TIMES (London), Apr. 10, 2008, http://www.timesonline.co.uk/tol/sport/more_sport/athletics/article3716012.ece.
21. Andrea Gerlin, *Waiving the Flag*, TIME, Feb. 12, 2006, <http://www.time.com/time/magazine/article/0,9171,1158938,00.html>.

officials. The Director of the International Ice Hockey Federation was unequivocal in rejecting the practice: “[Y]ou shouldn’t be able to just grab a passport and represent a country at an event.”²² Alas, once the recruiting nation (Italy, in our example) was willing to interpret flexibly its own standard membership requirements by turning these players into citizens, the governing transnational sporting bodies had little ability to object to the passport swap. The players at issue had never represented another country at an official international competition.

The increasingly common practice of governments “picking winners” through fast-tracked, strategic grants of citizenship—what I will call Olympic citizenship—becomes acutely visible when the intersection of sports and nationality is placed center stage.²³ The significance of this new reality, the opportunities it creates, and the risks it poses have not been adequately appreciated to date. Whereas the prevailing view is to treat entitlement to membership as an idealized expression of collective identity and shared civic values, Olympic citizenship offers us an important corrective.²⁴ It shines a light on the vital capacity and increased willingness of governments—the official executors of the membership transaction—to utilize selectively the lure of citizenship when it comes to advancing what are, in essence, reach-to-the-top “leapfrogging” goals. When it comes to Olympic citizenship, rather than diminishing the importance of state control over membership entitlements, more and more countries are actively engaged in a multiplayer, multilevel game that influences their willingness to reconfigure the boundaries of political membership by engaging in form-over-substance, just-in-time citizenship grants.²⁵ This is a collective action problem that calls for a collective response: it is in the interest of each competing nation to engage in passport swaps, but it is to the detriment of the whole system of fair play and sportsmanship to permit such unregulated and aggressive talent “poaching.”

The Olympic citizenship trend thus represents the rise of a more calculated approach to citizenship in which a premium is placed on individuals with extraordinary ability or talent, detaching it from the conventional genuine-ties interpretations. In this new era, governments have come to recognize that the

22. *Id.*

23. See *infra* Part III.

24. The focus on collective identity for “standard” applicants is exemplified by revamped citizenship tests across Europe and North America. See, e.g., Amitai Etzioni, *Citizenship Tests: A Comparative, Communitarian Perspective*, 78 POL. Q. 353 (2007); Christian Joppke, *Comparative Citizenship: A Restrictive Turn in Europe?*, 2 LAW & ETHICS HUM. RTS., art. 6, 2008, at 1.

25. See *infra* Parts III-V.

power to issue fresh membership affiliation is one of their biggest assets in a competitive global environment. On this account, the ability to employ discretionary, fast-tracked citizenship grants is a crucial addition to the policy toolbox of advancing the host country's stature, influence, and visibility in the world arena. Indeed, membership goods increasingly serve as a commodity in the hands of issuing governments, allowing them to shore up their respective human capital reservoirs by going on a cross-border shopping spree.²⁶ Once citizenship is reconfigured as a tradable asset that official agents of the state can flexibly barter, it can almost immediately be put to use in recruiting willing athletes and other top performers.²⁷

What makes the debate about Olympic citizenship especially pressing is its visibility and symbolism. Tensions are brewing not only because of the combination of poaching exceptional talent for the sake of advancing a relative national advantage in a fiercely competitive global environment but also because of the intuition that, unlike ordinary professions, certain public service jobs—think elected politicians, top diplomats, or high-ranking military generals—are more closely tied to an expression of sovereignty and collective identity. Few are concerned with the citizenship status of national team trainers and coaches; many national sport teams in Africa, Asia, Latin America, and Europe are trained by “hired gun” coaches.²⁸ But when it comes to those who actually wear the national uniform and perform at the frontline—in the stadium, government, or battlefield—the sensitivity of the citizenship aspect is notably higher.

Olympic citizenship thus offers us a rare window to explore the most foundational tensions and questions about the future of citizenship in an increasingly globalized and interconnected world. It tests our deepest intuitions about the meaning and content of the relationship between the individual and the state that she officially represents. It further compels us to

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26. In the sporting arena, this entails attracting top muscle and talent, enticing ambitious athletes with the promise of a fresh passport, excellent training facilities, a chance to join the national team, and, in some cases, material rewards.
 27. This extraordinary use of government prerogative is often dressed up in business-as-usual attire, perhaps in order to avoid pushback by local volunteers, supporters, and other stakeholders. See Duff Wilson & Andrew W. Lehren, *Swapping Passports in Pursuit of Olympic Medals*, N.Y. TIMES, June 15, 2008, at D1 (discussing the U.S. Olympic Committee's assertion that it does not “recruit” athletes).
 28. To provide just one indication of how prevalent the global mobility of coaches has become, consider the fact that in the 2010 FIFA World Cup in South Africa, twelve out of thirty-two qualifying national teams were trained by foreign coaches. See FIFA, *Foreign Managers on a Mission* (June 10, 2010), <http://www.fifa.com/worldcup/archive/southafrica2010/news/newsid=1232750/index.html>.

take a hard look at how these market-oriented and calculated citizenship grants are turning membership bonds that in the past might have focused on notions of collective identity and allegiance into far more instrumental bargains. The consequent emergence of a transfer market draws upon a strategic, perhaps even opportunistic, perception of citizenship as a prized reward that can be used to lure those with abundant talent whom the recruiting nation covets.

And herein lies the greatest paradox: it is for a country's sense of collective pride and national reputation that its government officials are willing to expedite citizenship for those with exceptional talent. This practice potentially leads to situations in which individuals serve as sports ambassadors for a nation to which they have nothing but the flimsiest of links, and in certain cases, on whose territory they might have never even set foot. Yet, this erosion of citizenship-as-membership via country-hopping is done in the name of promoting the national interest of the recruiting state. The advent of Olympic citizenship thus curiously demonstrates both the erosion and the revitalization of a country's control over its membership boundaries along more strategic lines, for it takes agency and governmental action to attract and retain in the era of globalization those highly skilled migrants whom other countries may equally wish to lure to their respective jurisdictions.²⁹ This remarkable shift and its potentially far-reaching implications for notions of citizenship, our understanding of state adaptability, and active participation in transforming membership goods into tightly controlled "assets" is the central theme of my investigation.

Having outlined the basic conundrums of Olympic citizenship and provided illustrative examples, I then turn to theorize the talent-for-citizenship exchange upon which it rests, before delving into citizenship theory and history in order to show that Olympic citizenship—with its blatant focus on picking winners—differs from more conventional understandings of political membership. I then articulate the competing values at stake: freedom, fairness, and community. The fast-accelerating talent hunt across borders clearly permits greater opportunity and mobility for a select echelon of the "best and brightest" who have risen to the top in the domains of science, technology, arts, business, and sports, but at what cost to other values and commitments? To address this puzzle, I will chart the international framework governing Olympic citizenship, elucidating its multilevel institutional structure and highlighting the crucial role played by transnational governing bodies in

29. This shift in the role of states is identified by Saskia Sassen in *LOSING CONTROL? SOVEREIGNTY IN AN AGE OF GLOBALIZATION* (1996). In the context of migration policy, see CATHERINE DAUVERGNE, *MAKING PEOPLE ILLEGAL: WHAT GLOBALIZATION MEANS FOR MIGRATION AND LAW* (2008).

defining and enforcing membership eligibility rules. I then turn to ascertain the broader ethical concerns associated with passport swaps, especially as they play out for individuals who have gained expedited membership without any ties (or only minimal ties) to their adopted countries. By taking stock of the major players engaged in these talent-for-citizenship exchanges: exceptionally talented individuals, their source country, the adopting country, and regional and international regulatory bodies, we can identify the core interests, rights, and potential obligations that the players hold toward each other.

This leads me to explore the promise of legal innovation and institutional design toward alleviating some of the most glaring shortcomings of today's unrestrained talent hunt across borders. In our brave new world, citizenship remains exclusively controlled by government officials (meaning that it cannot be sold or traded by individuals on the open market). But in their hands, it too easily comes to serve as a prized commodity in an international barter for talent. In response to these multiple considerations, I sketch the contours of what I label the fair play mobility principle, which encourages a significant degree of freedom of mobility and action for individuals and governments, while at the same time placing them within justifiable limitations. The key here is the realization that in the world of Olympic citizenship, a competitor's eligibility to represent the new country after they have engaged in country hopping is, in effect, determined as a result of decisions at both the domestic and transnational levels. This last point is crucial: the existence of an already developed cross-border web of governance and regulation of world sports is, as I explain below, both distinctive and promising. It opens the door for new design options (developed in the final part of my discussion) that are simply unavailable in most other migration circumstances, where there is no overarching global regime of regulation. This is yet another manifestation of Olympic citizenship serving as a vanguard for much larger changes yet to come.

I. THEORIZING THE TALENT-FOR-CITIZENSHIP EXCHANGE

The spread of the talent-for-citizenship exchange, with Olympic citizenship as its apex, is one of the most consequential innovations in citizenship practice in the past few decades. Yet it has received only scant attention in academic circles despite its growing prominence in the real world of law and policymaking. In economic scholarship, there have been a few discussions occasionally raising the idea that political membership should be treated like

any other tradable asset—even sold to the highest bidder.³⁰ But these ideas have not taken flight and few authors mention them more than in passing. Recent studies show that most people express strong ethical reservations at the prospect of turning citizenship into a mere formal legal status secured via an expedited government transaction in exchange for performed services, rejecting the idea that “love of country” can be bought with money or its in-kind substitutes.³¹

In legal academia and the political science literature, there is an even larger void. We have not begun to assess the desirability of such changes; the basic analytical framework for evaluating this important global trend has yet to be established. This Feature aims to close the gap. It explores the analytical, normative, and comparative dimensions of Olympic citizenship, placing it in the broader distributional context by identifying the major players and interests at stake, assessing the national and international implications of such profound transformations, and highlighting the sticky situations that accompany the rise of Olympic citizenship. By probing the high stakes and ethical quandaries of the global race for talent, it becomes possible to identify and critically assess the rise of a more calculated understanding of citizenship in which a premium is placed on individuals with extraordinary ability or talent. The framework that I develop here accounts for the multiple stakeholders engaged in the global race for talent, while placing due emphasis on the crucial role played by states and their officials in facilitating the transaction.³² It further develops possible amendments and innovations that can address the core issues.

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30. See, e.g., Gary S. Becker, Op-Ed., *An Open Door for Immigrants—The Auction*, WALL ST. J., Oct. 14, 1992, at A14; Julian L. Simon, Op-Ed., *Auction the Right To Be an Immigrant*, N.Y. TIMES, Jan. 28, 1986, at A25.
 31. See Shaheen Borna & James M. Stearns, *The Ethics and Efficacy of Selling National Citizenship*, 37 J. BUS. ETHICS 193, 197 (2002). For a critical assessment of the economic argument in favor of commodifying citizenship, see AYELET SHACHAR, *THE BIRTHRIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY* 54-61 (2009).
 32. This framework of analysis fits well with the theoretical view of states as agents that are both influenced by the context in which they operate and partake in shaping it. See BRINGING THE STATE BACK IN (Peter B. Evans et al. eds., 1985). In the field of immigration studies, contributors such as Aristide Zolberg and James Hollifield have argued for bringing the state back in. See, e.g., James F. Hollifield, *The Politics of International Migration: How Can We ‘Bring the State Back in’?*, in *MIGRATION THEORY: TALKING ACROSS DISCIPLINES* 137 (Caroline B. Brettell & James F. Hollifield eds., 2000); Aristide R. Zolberg, *Matters of State: Theorizing Immigration Policy*, in *THE HANDBOOK OF INTERNATIONAL MIGRATION: THE AMERICAN EXPERIENCE* 71 (Charles Hirschman et al. eds., 1999). The rationale for this move is straightforward: “The most powerful agent shaping the conditions under which international migration occurs is of course the modern state.” Rainer Bauböck, *International*

The practice described here of either proactively snatching top talent from other countries or offering a soft landing for rising stars who seek to leave their home countries is, of course, not limited to elite sports. In the United States, for example, this strategy has long been utilized to advance national interests in academia, science, technology, arts, and media.³³ Consider Albert Einstein, perhaps the world's most iconic Nobel Prize laureate and knowledge migrant, who was appointed professor of theoretical physics at Princeton in 1933 and then became a U.S. citizen in 1940.³⁴ The narrative of brain gain for the United States has recently been dubbed the "Einstein principle,"³⁵ but it goes well beyond the brilliant immigrant scientist himself. Between 1901 and 1991, the Nobel Prize was awarded to one hundred researchers in the United States. Almost half of these recipients were foreign-born researchers or their children.³⁶ And the practice continues. To pick one example, the winner of the 2002 Nobel Prize in Economic Sciences was Daniel Kahneman, a renowned Israel-born social psychology professor from Princeton University. The bulk of Kahneman's pathbreaking theories in the psychology of human judgment and decisionmaking under conditions of uncertainty were developed jointly with Amos Tversky while Kahneman was a faculty member at the Hebrew University in Jerusalem, and later at the University of British Columbia.³⁷ As far as the official credits for Nobel Prizes go, however, what matters is the affiliation of the recipient at the time the award is granted; hence the laurels for this achievement went to the United States (and Princeton University, too).³⁸

Migration and Liberal Democracies: The Challenge of Integration, 35 PATTERNS OF PREJUDICE, no. 4, 2001, at 33, 35.

33. For detailed analysis, see Shachar, *supra* note 4, which identifies the rise of a global race for talent, and labels America's initial first-mover advantage as the "IQ magnet" for highly skilled migrants.
34. See *The Nobel Prize in Physics 1921: Albert Einstein*, NOBELPRIZE.ORG, http://nobelprize.org/nobel_prizes/physics/laureates/1921/einstein-bio.html (last visited Feb. 23, 2011).
35. DARRELL M. WEST, BRAIN GAIN: RETHINKING U.S. IMMIGRATION POLICY 126-32 (2010).
36. Rob Paral & Benjamin Johnson, *Maintaining a Competitive Edge: The Role of the Foreign-Born and U.S. Immigration Policies in Science and Engineering*, IMMIGR. POL'Y IN FOCUS, Aug. 2004, at 2.
37. Kahneman's work on "prospect theory" (choices among alternatives that involve risk) was developed and published jointly with Amos Tversky in the late 1970s. See *Daniel Kahneman: Autobiography*, NOBELPRIZE.ORG http://nobelprize.org/nobel_prizes/economics/laureates/2002/kahneman.html (last visited Oct. 27, 2010).
38. See *Nobel Laureates and Research Affiliations*, NOBELPRIZE.ORG, http://nobelprize.org/nobel_prizes/lists/universities.html.

America was once again rewarded handsomely for recruiting exceptional talent.³⁹

American immigration law explicitly designates extraordinary achievement as a recognized admission category. The O-1 visa, often referred to as the “genius visa,” targets individuals who possess “extraordinary ability in the sciences, arts, education, business, or athletics.”⁴⁰ In addition, the employment-based first-preference category (EB-1) offers a privileged path for a green card to those with “extraordinary ability in the sciences, arts, education, business, or athletics” who can demonstrate “sustained national or international acclaim.”⁴¹ Evidence of such truly extraordinary ability, as explained by the U.S. Citizenship and Immigration Services, includes receipt of internationally recognized prizes or awards, such as the “Pulitzer, Oscar, [or an] Olympic Medal.”⁴² Other countries have also created fast-track entry routes geared toward attracting leading researchers or industry innovators, and countries such as Canada, Australia, and Singapore increasingly center their admission policies on highly skilled migrants.⁴³

This citizenship barter takes place in a broader institutional context. Major international sporting events like the Olympics revolve around national team participation. The bestowal of citizenship is therefore crucial for unleashing the lured athlete’s potential as a boon and boost to the recruiting nation. Gaining

39. Similar patterns are found in other talent-recruiting countries. For example, four of five Nobel Prize recipients based at British universities since 2007 were from outside the United Kingdom: Cyprus-born Christopher Pissarides in 2010 for LSE, Chinese-born Charles Kao for Standard Telecommunication Laboratories (Harlow, UK) in 2009, and Russian-born Andre Geim and Konstantin Novoselov for the University of Manchester in 2010. *See id.*

40. 8 U.S.C. § 1101(a)(15)(O)(i) (2006).

41. *Id.* § 1153(b)(1)(A)(i). The EB-1 admission category allows individuals with a proven international profile to swiftly move up to the front of the line for designated green cards, putting them on the road to citizenship. America also gains world champions and Olympic medalists by recruiting exceptionally talented, foreign student-athletes that are identified and welcomed to the United States by various colleges, universities, and athletics federations. *See* JOHN BALE, *THE BRAWN DRAIN: FOREIGN STUDENT-ATHLETES IN AMERICAN UNIVERSITIES* 66-93 (1991).

42. U.S. Citizenship and Immigration Services, *Employment-Based Immigration: First Preference EB-1*, <http://www.uscis.gov> (follow “Permanent Workers” hyperlink; then follow “Employment-Based Immigration: First Preference EB-1” hyperlink) (last visited Oct. 25, 2010).

43. *See* Shachar, *supra* note 4, at 154-55; *see also* DEVESH KAPUR & JOHN MCHALE, *GIVE US YOUR BEST AND BRIGHTEST: THE GLOBAL HUNT FOR TALENT AND ITS IMPACT ON THE DEVELOPING WORLD* (2005); Simon Hartmann & Margarita Langthaler, *The Race for the Best: A European Perspective on the Brain Drain*, in *EUROPEAN SOCIAL WATCH REPORT 2009: MIGRANTS IN EUROPE AS DEVELOPMENT ACTORS: BETWEEN HOPE AND VULNERABILITY* 14 (2009).

the legal status of a citizen is a precondition for representing the new country; it is a formal eligibility requirement set by the Olympic Games' governing bodies.⁴⁴ Without it, participation is impossible, regardless of how outstanding an athlete the recruit is. This sets up the unique parameters of Olympic citizenship: the goal is to reach the Olympics, and the path must include a citizenship grant by the recruiting nation as well as recognition by the relevant sporting governing bodies that such a passport swap is valid for the purposes of participating in international events under the new country's flag.

Whereas unskilled or semiskilled workers seeking a better future for themselves and their families increasingly find it difficult to gain even mere admission into a desired destination country as temporary migrants (let alone a right to stay),⁴⁵ the highly skilled and gifted speed through the gates of citizenship.⁴⁶ In this bifurcated market, elite sportsmen and women—the recipients of Olympic citizenship—sit at the high table of the much courted. As global sporting events have become a showcase for national success and reputation building, countries are investing immense resources to advance their respective national brands. Just-in-time citizenship grants offer a major addition to the policy toolbox that facilitates this kind of conspicuous consumption set up by established and newly rich countries.⁴⁷

44. Olympic Charter r. 42.1.

45. See DEVESH KAPUR, *DIASPORA DEVELOPMENT AND DEMOCRACY: THE DOMESTIC IMPACT OF MIGRATION FROM INDIA* 2-3 (2010) (describing different streams of labor migration). Among high-income countries, the growing trend is to admit low- and semi-skilled workers as temporary entrants under a time-limited visa, with the expectation that the emigrant return to her home country upon the expiry of the short-term permission to seek employment in the host country. It remains to be seen whether these new “guest worker” programs become plagued by the same difficulties that led to the eventual abolishment of similar policies in the United States in the 1960s and in Germany in the 1970s. See Martin Ruhs, *The Potential of Temporary Migration Programmes in Future International Migration Policy*, 145 INT’L LAB. REV. 7 (2006) (providing a thoughtful analysis of the promise and pitfall of these temporary migration programs).

46. Responses to an oversupply of potential immigrants have favored the talented over the low-skilled. See Jim Heskett, *Should Immigration Policies Be More Welcoming to Low-Skilled Workers?*, HARV. BUS. SCH. WORKING KNOWLEDGE (Dec. 2, 2009), <http://hbswk.hbs.edu/item/6326.html>; see also Brenda S.A. Yeoh, *Bifurcated Labour: The Unequal Incorporation of Transmigrants in Singapore*, 97 TIJDSCHRIFT VOOR ECONOMISCHE EN SOCIALE GEOGRAFIE 26 (2006). For an innovative alternative framework for regulating cross-border labor migration, see Jennifer Gordon, *Transnational Labor Citizenship*, 80 S. CAL. L. REV. 503 (2007).

47. See THORSTEIN VEBLÉN, *THE THEORY OF THE LEISURE CLASS* 52-75 (Random House, Inc. 2001) (1899) (describing lavish spending on “conspicuous” goods and services for the core purpose of displaying status, wealth, and power). I am grateful to Ran Hirschl for directing me to this source.

Olympic citizenship is the tip of the iceberg of a larger trend. Across the globe, countries are fiercely vying to outbid one another in an effort to attract extraordinary talent to their respective national shores. In this competitive environment, countries have come to realize that their exclusive control over the assignment of membership goods is a major draw. This realization has turned citizenship itself into an important recruiting tool. Countries are promoting strategic or expedited passport swaps, whereby membership is invested in exceptionally talented individuals with the expectation of a return on the investment.⁴⁸ The motivation behind such passport swaps may be the glory of sports and scientific achievement (and the laurels endowed upon the winning nation—the Olympic Games and Nobel Prize Ceremonies are two of the most prestigious and globally recognized trademarks of excellence), but such glory is facilitated by a far less sporting, market-oriented conception of citizenship.

In granting this type of instant membership, countries caught in the global talent hunt are subtly, yet persistently, eroding the basic idea that representatives of a country should be members of that society in some meaningful way. By turning the grant of citizenship into a calculated instrument for unleashing the potential of the sought-after athlete, scientist, or artist to perform in international meets under the new country's flag, governments are willing to reconfigure the boundaries of political membership in order to gain the net positive effect associated with these superstars among the highly skilled. While falling short of officially selling citizenship or passports, several nations (the United States included) have tailored specialized immigration categories to cater to foreign investors or businessmen who are willing to transfer significant assets to the receiving country.⁴⁹ In short, Olympic citizenship is a powerful and charged example of a much broader trend: the global race for talent.

This exchange is not unfamiliar to the world of immigration. We can think of the traditional labor-migration as such an exchange: invest your toil and

48. In the sports world, the expected return is the athlete's top performance in international events under the new nation's flag.

49. See 8 U.S.C. § 1153(b)(5)(C)(i) (2006) (providing one million dollars as the minimum investment amount for employment-based admission under the EB-5 preference category). These investor categories represent only a small stream of admissions, but they reflect a conceptual change in the logic of membership, potentially turning the market into a purveyor of access to citizenship and its accompanying benefits in lieu of the state. Importantly, it is unlawful for an individual to sell, reproduce, or purchase citizenship papers, under penalty of fine or imprisonment. See 18 U.S.C. §§ 1425-1427 (2006); see also SHACHAR, *supra* note 31, at 54-61 (analyzing and criticizing the argument in favor of commodifying citizenship).

sweat in the new country, and in return you will gain access to the country's membership goods in due course. This is a Lockean-like narrative, updated to the reality of a modern economy, whereby the "property" gained by such labor is not a parcel of land but a share and stake in the political community, by gaining entitlement to the prized reward of citizenship. When we encounter the Olympic citizenship narrative, however, we witness a reversal of the arrows of the old story: today, government officials proactively use their exclusive control over membership grants to attract and recruit candidates with extraordinary talent to the body politic as formal members, based on the expectation that the bestowment of status on the lured athlete (or scientist, performing artist, and so on) improve the admitting nation's medal standing or relative advantage.

Importantly, this competitive behavior has not resulted in countries' loss of control over their own membership boundaries. Rather, it has created a more complex playing field in which state officials increasingly design human capital recruitment policies across borders, tailoring incentive packages to attract willing athletes; these packages include the key component of fast-tracked membership grants. This development challenges both the postnational claim that citizenship is losing ground and meaning and the more standard analysis of political membership as primarily reflecting an idealized expression of collective identity and belonging.⁵⁰ Neither of these influential perspectives can fully explain the rise of Olympic citizenship with its unique mixture of allegiance and commodification, state and market forces, membership and selectivity, as well as mobility and distribution on a global scale.

II. CITIZENSHIP MATTERS

To understand fully the scope, nature, and distinctive characteristics of Olympic citizenship, a brief discussion of its place within the range of

50. The literature on the decline of state and demise of citizenship claim is too vast to cite fully. Major contributions in the postnational vein include DAVID JACOBSON, *RIGHTS ACROSS BORDERS: IMMIGRATION AND THE DECLINE OF CITIZENSHIP* (1996); YASEMIN NUHOĞLU SOYSAL, *LIMITS OF CITIZENSHIP: MIGRANTS AND POSTNATIONAL MEMBERSHIP IN EUROPE* (1994); and PETER J. SPIRO, *BEYOND CITIZENSHIP: AMERICAN IDENTITY AFTER GLOBALIZATION* (2008). Others have offered a more nuanced picture of the combined rise and decline of state control over borders. See, e.g., DAUVERGNE, *supra* note 29; SASSEN, *supra* note 29. The importance of collective identity is reflected in the core writings of communitarian scholars, as well as proponents of civic virtue and liberal nationalism. See, e.g., DAVID MILLER, *ON NATIONALITY* (1995); Yael TAMIR, *LIBERAL NATIONALISM* (1993); MICHAEL WALZER, *SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY* 31-63 (1983).

citizenship conceptions is required. While citizenship has seen many definitions and transformations, the basic facts are simple enough: citizenship has traditionally defined membership in a political community. Although the scale and scope of the political community have ranged from city-state to empire, citizenship has always been associated with notions of belonging and (at least since Aristotle) political relations.⁵¹ It also determines access to legal membership and its accompanying benefits.⁵² Already under Roman jurisprudence, “‘citizen’ came to mean someone free to act by law, free to ask and expect the law’s protection.”⁵³ This status entitled the citizen to “whatever prerogatives and . . . whatever responsibilities [were] attached to membership.”⁵⁴ From the French Revolution onward, the modern state began to administer and assign citizenship, which has since come to signify equality of rights and duties within the community.⁵⁵ This government-designated entitlement also tells us “who the state considers a full member, how that membership is transmitted inter-generationally, and how it can be lost, gained, and reclaimed.”⁵⁶

Even in today’s age of increased globalization and privatization, the power to provide access to, and formal membership in, the political community

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51. The emphasis on citizenship as political relations is perhaps best captured by Aristotle’s famous phrase that in democracies the citizen is both ruler and ruled in turn. See ARISTOTLE, ARISTOTLE’S POLITICS AND ATHENIAN CONSTITUTION § 1283b, at 89 (John Warrington ed. and trans., S.M. Deut & Sons Ltd. 1959) (c. 323 B.C.E.).
 52. See Irene Bloemraad, Anna Korteweg & Gökçe Yurdakul, *Citizenship and Immigration: Multiculturalism, Assimilation, and Challenges to the Nation-State*, 34 ANN. REV. SOC. 153, 154 (2008); see also Christian Joppke, *Transformation of Citizenship: Status, Rights, Identity*, 11 CITIZENSHIP STUD. 37, 38 (2007); Patrick Weil, *Access to Citizenship: A Comparison of Twenty-Five Nationality Laws*, in CITIZENSHIP TODAY: GLOBAL PERSPECTIVES AND PRACTICES 17, 17-35 (T. Alexander Aleinikoff & Douglas Klusmeyer eds., 2001).
 53. J. G. A. Pocock, *The Ideal of Citizenship Since Classical Times*, in THEORIZING CITIZENSHIP 29, 35-36 (Ronald Beiner ed., 1995).
 54. Michael Walzer, *Citizenship*, in POLITICAL INNOVATION AND CONCEPTUAL CHANGE 211, 211 (Terence Ball, James Farr & Russell L. Hanson eds., 1989).
 55. See ROGERS BRUBAKER, *CITIZENSHIP AND NATIONHOOD IN FRANCE AND GERMANY* 35-49 (1992). Up until the French Revolution, there was no explicit definition of a French citizen because the very concept of modern, national citizenship “was an invention of the French Revolution.” *Id.* at 35. However, the legal conditions for recognizing a person as French (as opposed to an alien or *aubain*) can be traced back to the earlier stage of state-building, when such conditions were important in determinations of inheritance and succession. See PATRICK WEIL, *HOW TO BE FRENCH: NATIONALITY IN THE MAKING SINCE 1789*, at 11-13 (Catherine Porter trans., 2008).
 56. See Barry, *supra* note 4, at 20.

remains the exclusive prerogative of sovereign states.⁵⁷ 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 talented athlete; only governments can allocate the precious property of citizenship.⁵⁸ And, increasingly, a growing number of countries are willing to use this power to attract the “best and the brightest,” as exemplified in the context of the discussion of Olympic citizenship grants to individuals with exceptional brawn and skill.

The adoption of such forthright talent-for-citizenship exchanges is as recent as it is transformative. It is borne out of a competitive global environment in which countries increasingly treat citizenship itself as a tradable asset, rather than as a means to promote participation and solidarity among those who count as full members. In more standard interpretations, “[c]itizenship has entailed membership, membership of the community in which one lives one’s life.”⁵⁹ By labeling certain individuals as members, citizenship opens up a host of rights, opportunities, and privileges to them. It also has the potential to play a significant role in societal struggles for equality and inclusion by those once excluded because it bears the moral and legal force of making “a claim to be accepted as full members of the society.”⁶⁰ As a multilayered ideal and institution, citizenship may provide many different goods: legal status, rights, identity, security, political voice, and the practiced

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57. There is no general international agreement on the norms and rules governing citizenship and naturalization other than to agree that this is a matter to be determined by each country’s domestic laws and policies. As article 1 of the 1930 Hague Convention asserts: “It is for each State to determine under its own law who are its nationals.” Convention on Certain Questions Relating to the Conflict of Nationality Laws, art. 1, Apr. 12, 1930, 179 L.N.T.S. 89. This principle is reasserted in article 3 of the 1997 European Convention on Nationality and has also been recognized by the European Court of Justice. See Case C-369/90, *Micheletti v. Delegacion del Gobierno en Cantabria*, 1992 E.C.R. I-4258. Even in the European Union, which has developed the most advanced form of regional citizenship in today’s world, the grant of E.U. citizenship remains derivative: one must first hold the nationality of a member state. See Consolidated Version of the Treaty on the Functioning of the European Union, art. 20, 2008 O.J. (C 115) 56.C (“Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.”).
58. For a detailed discussion of birthright citizenship and nationalization, see SHACHAR, *supra* note 31, at 111-33.
59. David Held, *Between State and Civil Society: Citizenship*, in CITIZENSHIP 19, 20 (Geoff Andrews ed., 1991); see also RICHARD BELLAMY, CITIZENSHIP: A VERY SHORT INTRODUCTION 52 (2008).
60. T.H. MARSHALL, CITIZENSHIP AND SOCIAL CLASS 8 (1950). The classic work of T.H. Marshall is perhaps the most influential work on citizenship in the post-World War II era.

experience of membership in the political community.⁶¹ This multiplicity of meanings gives rise to the ever-possible reinterpretation and renegotiation of citizenship-as-membership, its boundaries, and its values.⁶²

Olympic citizenship tests the limits of such flexibility, however, because it may represent a change not merely of degree but also of kind. It shifts the focus from membership (with its accompanying web of social relations, rights, and obligations) to the transaction of turning citizenship grants into instruments for gaining a relative advantage in a competitive environment. These concerns are particularly acute in those circumstances where the main apparent motivation for encouraging the allegiance switch lies in the recruiting country's desire to make a splash on the world stage. Here, citizenship comes to fulfill a purely instrumental role; its bestowment on the lured individual is not intended as an *ex ante* commitment to a substantive change in affiliation that may occur *ex post*. In extreme cases, cash payouts are transacted to those with athletic prowess from their new nations in order to secure the loyalty switch, bringing in to view the moral hazards that come with the "plug-in-and-use" opportunities now available to any unscrupulous nation that is willing to pull out the stops in its drive to reach the top of the podium. This raises the specter of creaming (a term familiar from the brain-drain debate)—a phenomenon in which exceptional talent is poached from poorer countries through aggressive tactics that pay little heed to communities that have significantly contributed to the athlete's development. The bartering approach of the more aggressive players in this global race for talent has raised the ire of critics: "Rather than trying the old fashioned way of cultivating home-grown talent, [some nations] just buy in."⁶³

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61. These categories appear in different formulations in numerous works on citizenship. See, e.g., JOSEPH H. CARENS, *CULTURE, CITIZENSHIP, AND COMMUNITY: A CONTEXTUAL EXPLORATION OF JUSTICE AS EVENHANDEDNESS* (2000); Barry, *supra* note 4; Bloemraad et al., *supra* note 52; Linda Bosniak, *Citizenship Denationalized*, 7 *IND. J. GLOBAL LEGAL STUD.* 447 (2000); Joppke, *supra* note 52; Will Kymlicka & Wayne Norman, *Return of the Citizen: A Survey of Recent Work on Citizenship Theory*, 104 *ETHICS* 352 (1994); Ayelet Shachar, *Earned Citizenship: Property Lessons for Immigration Reform*, *YALE J.L. & HUMAN.* (forthcoming 2011).
 62. Recent years have also seen the proliferation of arguments in favor of defining citizenship beyond the state, giving rise to visions of cosmopolitan or world citizenship. Another trend is the growing acceptance by states of dual nationality and calls for transnational political participation in sending and receiving countries by individuals that hold membership affiliations in both. See, e.g., RAINER BAUBÖCK, *TRANSNATIONAL CITIZENSHIP: MEMBERSHIP AND RIGHTS IN INTERNATIONAL MIGRATION* (1994); SEYLA BENHABIB, *THE RIGHTS OF OTHERS: ALIENS, RESIDENTS AND CITIZENS* (2004); Barry, *supra* note 4; Bosniak, *supra* note 61; Peter J. Spiro, *Dual Citizenship as Human Right*, 8 *INT'L J. CONST. L.* 111 (2010).
 63. Slot, *supra* note 20, at 9 (quoting the President of the National Athletics Association of Zimbabwe).

The competing values of freedom, fairness, and community are now fully in view. Olympic citizenship without a doubt enhances the freedom of mobility across borders for those with exceptional talent, yet serious moral quandaries abound. Are Becky Hammon and her counterparts opportunistic? Or, should they rather be encouraged to pursue their dreams by all legal means necessary? Were the immigration officials who fast-tracked her citizenship applications justified in boosting Russia's talent list by providing membership goods to her in such expedited, form-over-substance fashion? Is this a justifiable practice vis-à-vis "standard" citizenship applicants who may possess valuable, but not exceptional, talents? Will the "importation" of acclaimed athletes from abroad lead to declining investment in home-grown talent? And what about the athlete's country of origin, should it have a say or stake in such passport swaps, and if so, how, when, and by whom should the tremendous investment put into training up an Olympian be offset for established stars? Even the most brilliant athlete or scientist needs a community in order to succeed; "[p]eople don't rise from nothing" as Malcolm Gladwell so vividly illustrates in *Outliers*.⁶⁴ In Hammon's case, growing up, training and excelling in the United States has allowed her to become the exceptional athlete that she is – so much so that Russia was willing to make a travesty of its standard naturalization process just in order to secure her participation on its national team.

It hardly seems fair to train a person—be they a doctor or an athlete—only to have them "poached" by another country once they reach success (the fairness argument). Nor does the protectionist answer of restricting the mobility of highly skilled migrants in the name of assisting their home countries provide an adequate response. This is a band-aid approach that does nothing to address the root causes of the rise of the global race for talent. No less significant, it stands in tension with the freedom argument, instead "locking up" people in the polity into which they happen to have been born.⁶⁵ Greater promise lies, as I will explain the final part of this discussion, in taking stock of these new developments and envisioning more coordinated responses that maximize freedom of mobility for individuals while at the same time minimize the unfair advantage that presently attaches to opportunistic behavior by the more aggressive passport-bartering countries.

The final value at stake is that of community: it is the expectation of a substantial attachment between the individual and the country that she represents that is disappearing in the rush to fast-track citizenship grants to elite performers, regardless of whether they have developed, or intend to

64. MALCOLM GLADWELL, *OUTLIERS: THE STORY OF SUCCESS* 19 (2008).

65. I address this concern in great detail in SHACHAR, *supra* note 31.

develop, a sense of affiliation with the admitting country. This sets Olympic citizenship apart from more familiar “identity and belonging” (or ideational) interpretations of citizenship, as well as from postnational conceptions of membership that have speculated that citizenship has “outlived its usefulness.”⁶⁶ Neither of these approaches can explain the willingness, if not outright eagerness, of government officials to *invest* membership in strangers in order to turn them into citizens primarily for instrumental purposes, such as accretion of the host nation’s human capital, reputation, and glory on the world stage.

III. THE INTERNATIONAL FRAMEWORK GOVERNING OLYMPIC CITIZENSHIP

We can now see more clearly why Olympic citizenship grants that bypass even the most basic residency and affiliation-building requirements by “giving [athletes] a passport when they arrive at the airport,” as International Olympic Committee (IOC) President Jaques Rogge once lamented, challenge the most sacred tenets of citizenship-as-membership.⁶⁷ Olympic citizenship does more than that, however. The creation of a transfer market for those with exceptional talent turns migration law, “the new last bastion of sovereignty,”⁶⁸ into a multilevel game for national policymakers.⁶⁹ When it comes to registering lured athletes to compete in the Games on behalf of the admitting nation, policymakers must address *domestic* pressures by various sporting organizations, civil society associations, and individuals with a vested interest in seeing greater investment in home-grown talent, as well as respond to (or preferably preempt) the competitive recruitment efforts by their *international* counterparts. Furthermore, they must comply with eligibility rules defined by transnational organizations.⁷⁰ I now turn to an exploration of these unique

66. DORA KOSTAKOPOULOU, *THE FUTURE GOVERNANCE OF CITIZENSHIP* 5 (2008). See also *supra* note 50.

67. David Wharton, *Going Away for the Gold*, L.A. TIMES, Aug. 11, 2004, at A1.

68. Catherine Dauvergne, *Sovereignty, Migration and the Rule of Law in Global Times*, 67 MOD. L. REV. 588, 588 (2004).

69. See Eyal Benvenisti, *Exit and Voice in the Age of Globalization*, 98 MICH. L. REV. 167 (1999); Robert D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, 42 INT’L ORG. 427 (1988).

70. The competitive race for talent identified here operates as a two-level game, with both international and domestic factors interacting with each other to shape the game. Cf. Benvenisti, *supra* note 69, at 184 (analyzing treaty negotiation as a two-level game). Even if high-quality, home-grown talent is “produced” by a given country, it may become

governing bodies and the eligibility rules that determine participation in the Olympic Games.

A. Institutional Structures

At all levels of organized sports competition, whether national or international, governing bodies “establish eligibility requirements and conditions that must be satisfied for an individual to participate.”⁷¹ They also hold the corresponding power to exclude or limit participation opportunities if competitors fail to comply with the established eligibility rules.⁷² The most spectacular example of this pattern at work is found in the Olympic Movement, which is led by the International Olympic Committee: an international private nonprofit organization domiciled in Switzerland. The Olympic Charter is the Olympic Movement’s constitution, so to speak, and the IOC its “supreme authority.”⁷³

The next layer of transnational governance consists of the various International Sports Federations (IFs), which oversee the thirty-three recognized Olympic sports: currently there are twenty-six such sports included in the Summer Olympic Games and seven in the Winter Olympic Games.⁷⁴ Each IF governs a specific sport, which may include several disciplines. To provide just one illustration, the International Swimming Federation (FINA, or Fédération Internationale de Natation) regulates five disciplines: swimming, diving, water polo, synchronized swimming, and open water swimming.⁷⁵ Below them are the national Olympic committees (NOCs) and the national sports governing bodies or federations (NGBs) responsible for regulating specific Olympic sports within their respective jurisdictions in compliance with

disadvantaged when a competing jurisdiction is significantly strengthened by the recruitment of overseas elite athletes, especially where the latter can immediately be registered as eligible to compete on behalf of the new country in international sports events.

71. Matthew J. Mitten & Timothy Davis, *Athlete Eligibility Requirements and Legal Protection of Sports Participation Opportunities*, 8 VA. SPORTS & ENT. L.J. 71, 72 (2008).

72. *Id.*

73. Olympic Charter r. 1.

74. In order for a sport to be included in the Olympic Games, it must be recognized by the IOC and administered by an IF that ensures that the sport’s activities follow the Olympic Charter. See *International Sports Federations*, OLYMPIC.ORG, <http://www.olympic.org/en/content/the-IOC/Governance/International-Federations> (last visited Oct. 27, 2010).

75. The organizational and governance structure of FINA is detailed on its official website. See *Structure*, FÉDÉRATION INTERNATIONALE DE NATATION, <http://www.fina.org/H2O/> (follow “Structure” hyperlink) (last visited Oct. 25, 2010).

the relevant IF rules.⁷⁶ Examples of the latter include organizations such as British Swimming or U.S.A. Cycling.⁷⁷ These national and transnational bodies “are bound by a series of interlocking agreements to comply with the [Olympic] Charter.”⁷⁸

If we look beyond the Olympics, we find several other major sporting events that revolve around national team competition and therefore must set rules to deal with allegiance switches. Notable are the Pan American Games, the Commonwealth Games, the Asian Games, and the World Cup, in which national soccer teams from around the world assemble to compete, drawing millions of spectators and fans from across the globe. The World Cup is regulated by the Fédération Internationale de Football Association (FIFA), which has 208 member associations and has set strict regulations determining whether a player who has changed nationality is eligible to represent the new country in regional and international meets.⁷⁹ To complete the picture, we must also consider the significance of regional federations that organize and regulate soccer competition across borders in compliance with FIFA rules. Legendary soccer tournaments such as the Union of European Football Association’s (UEFA) Euro Championship or the Confederación Sudamericana de Fútbol’s (CONMEBOL) Copa América have become fixtures of world-class sporting events with vast media coverage.⁸⁰ The national teams participating in the Euro Championship or Copa América do so as official representatives of their respective countries.⁸¹ Both UEFA and CONMEBOL also run annual continent-wide soccer tournaments for commercial soccer clubs, such as the celebrated European Champions League (or Latin America’s Copa

76. See Mitten & Davis, *supra* note 71, at 76. The Paralympics Games have a similar institutional structure that governs the twenty Summer Paralympic Sports and five Winter Paralympic Sports. See Sport, INT’L PARALYMPIC COMMITTEE, <http://www.paralympic.org/Sport/> (last visited Oct. 25, 2010).

77. See BRITISH SWIMMING, <http://www.swimming.org/britishswimming> (last visited Sept. 26, 2010); USA CYCLING, <http://www.usacycling.org> (last visited Sept. 26, 2010).

78. See Mitten & Davis, *supra* note 71, at 76.

79. An overview of the federation’s institutional structure is available at *About FIFA*, FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION, <http://www.fifa.com/aboutfifa/federation/index.html> (last visited Oct. 25, 2010). I discuss FIFA’s distinctive approach in response to nation-hopping in Part V, *infra*.

80. See Martin Banks, *Football Federations Around the Globe—A Look at the World of Football*, SOCCERLENS, (Jul. 5, 2009), <http://soccerlens.com/football-federations/21388>.

81. See CONFEDERACIÓN SUDAMERICANA DE FÚTBOL, REGLAMENT COPA AMÉRICA ARGENTINA 2011, art. 1, http://www.ca2011.com/organizacao_regulamento.php (stating that “the best National Team of each affiliated National Association will be obliged to take part in” the tournament).

Libertadores), where commercial soccer clubs (such as Manchester United, Real Madrid, AC Milan, or Bayern Munich, to name but a few) compete for the top spots. These commercial clubs know no borders in their hiring practices and some have on their squads players from the four corners of the world.⁸² Unlike national teams, they resemble the North American model of professional basketball or hockey leagues, where teams are subject to overarching league regulations but are generally permitted to hire players to join their rosters irrespective of nationality.⁸³

B. The Olympic Dream

Unlike these for-profit and highly commercialized leagues, the Olympic Games spring from a different tradition. The appeal of the Games remains, in part, the idea that the athletes in the Olympics are motivated by aspirations and values that money alone cannot buy: having your name etched in history, holding a world record, or even just participating in the Games solely “for the glory of sport and the honor of our teams,” as the Olympic Oath declares.⁸⁴ This helps explain why even the most decorated professional basketball or ice hockey players negotiate leaves from their commercial leagues to practice and participate in the Olympic Games.⁸⁵ And soccer’s major international stars,

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82. For instance, AC Milan’s current roster contains players from Brazil, Colombia, Greece, the United States, Nigeria, Sweden, France, Kazakhstan, Uruguay, Sierra Leone, the Czech Republic, and Suriname, in addition to several Italians. See *AC Milan-Domestic*, UEFA.COM, <http://en.uefa.com/teamsandplayers/teams/club=50058/domestic/index.html> (last visited Dec. 2, 2010). Manchester United’s current roster includes players from the Netherlands, Senegal, Canada, Mexico, South Korea, Serbia, Brazil, and Cape Verde. See *Players and Staff: First Team*, MANUTD.COM, <http://www.manutd.com/en/Players-And-Staff/First-Team.aspx> (last visited Dec. 2, 2010).
 83. See *Union Royale Belge des Sociétés de Football Association ASBL v. Bosman*, Case C-415/93, 1995 E.C.R. I-4921; see also *100 Years of Debates Over Player Nationality and Status*, FIFA.COM, <http://www.fifa.com/newscentre/news/newsid=92624.html> (last visited Dec. 3, 2010).
 84. The original Olympic Oath, first recited on behalf of the athletes in the 1920 Antwerp Games, reflected the times: “We swear that we will take part in the Olympic Games in a spirit of chivalry, for the honor of our country and for the glory of sport.” The oath was modified in 1961, in an attempt to place athleticism above nationalism; “the honor of our countries” was replaced with “the honor of our teams.” Karel Wendt, *The Olympic Oath-A Brief History*, 3 CITIUS, ALTIUS, FORTIUS 4 (1995). Today, the oath includes a promise to respect and abide by the rules of the Games “in the true spirit of sportsmanship, for the glory of sport and the honor of our teams.” *Id.*
 85. Playing in the Olympics is a point of pride for professional athletes. Take ice hockey player Alexander Ovechkin, a Russian national and arguably the best player in the NHL, who has said that he will risk an NHL suspension to play for Russia in 2014. See *Ovechkin To Play in*

many of whom are compensated with seven- to eight-figure salaries as professional players for commercial clubs,⁸⁶ shed tears when winning (or losing) major matches in FIFA's World Cup. Fans around the globe follow the highs and lows of these efforts as the world's finest athletes strive to give their best and fulfill the Olympic motto of "Faster, Higher, Stronger" (*Citius, Altius, Fortius*).⁸⁷

For the duration of the Games, the world is, quite literally, watching; the audience for the 2008 Beijing Games stood at 4.7 billion (more than two-thirds of the global population).⁸⁸ From a gathering of 241 participants representing fourteen nations in 1896, the Games have constantly grown in scale.⁸⁹ In 2008, for example, some 10,500 competitors represented 205 countries in the Beijing

2014 Olympics No Matter What, TSN, Sept. 10, 2009, <http://www.tsn.ca/olympics/story/?id=290519>. The NHL has traditionally supported the Winter Olympics and suspends the season during the course of the Olympic Games. However, the NHL is reconsidering this position in 2014 because of the logistical issues surrounding suspending the season. See *IOC, NHL at Odds Over 2014 Olympics*, WASH. TIMES (Jan. 28, 2010), <http://www.washingtontimes.com/news/2010/jan/28/ioc-nhl-odds-over-2014-olympics/?page=1>.

86. See Kaitlin Madden, *How Much Do Top Soccer Players Earn?*, CNN.COM (June 7, 2010, 12:39 PM), <http://www.cnn.com/2010/LIVING/worklife/06/07/cb.footballers.earn.what/index.html>.
87. THE OLYMPIC MUSEUM, *THE OLYMPIC SYMBOLS* 5 (2d ed. 2007), available at http://multimedia.olympic.org/pdf/en_report_1303.pdf.
88. See *The Final Tally—4.7 Billion Tunes [sic] in to Beijing 2008*, NIELSEN, Sept. 5, 2008, http://www.nielsen.com/us/en/insights/press-room/2008/the_final_tally_.html (estimating that 4.7 billion viewed the Beijing 2008 Games—up from 3.9 billion for Athens 2004). The 2010 Vancouver Games also drew a record viewership on television as well as new media outlets such as online-streaming sites. See Kathryn Blaze Carlson, *Anatomy of a Record TV Audience*, NAT'L POST, Mar. 2, 2010, at A3 ("When the Canadian and American men's hockey teams squared off for Olympic gold on Sunday, a viewership nearly the size of this entire country tuned in south of the border. NBC is reporting that an epic 27.6 million viewers watched the afternoon game, making it the most-watched hockey broadcast of any kind since the United States faced Finland for the gold in Lake Placid in 1980. In the United States, the game drew a higher overnight rating than this year's Grammy Awards, or last year's World Series, NCAA Basketball Championship, and NBA Finals.").
89. See Jacques Rogge, *IOC President Jacques Rogge on the Youth Olympic Games*, OLYMPIC.ORG (Aug. 13, 2010), <http://www.olympic.org/en/content/Olympic-Athletes/Elite-Athletes/?articleId=96933&articleNewsGroup=-1>. Fitting with this internationalist approach, the IOC has adopted a generous definition of political self-determination. This allows territories and dependencies that under strict international law do not amount to sovereign entities to create their own National Olympic Committees and thus compete under their own flags. Notable examples of this pattern at work are Puerto Rico and Hong Kong. See *205 National Olympic Committees*, OLYMPIC.ORG, <http://www.olympic.org/en/content/National-Olympic-Committees> (last visited Oct. 25, 2010).

Summer Olympics.⁹⁰ As the only international multisport event, the Olympics have become a magnet and symbol for peaceful collaboration.⁹¹ The Games have also become an enterprise worth billions of dollars, with extensive corporate sponsorship and mass global media attention.⁹² The Games dominate headline news, the host city attracts tremendous attention, and enthusiastic fans are seen everywhere, displaying their countries' colors and traditions. For dreamers (think of John Lennon's "Imagine" and Pierre de Coubertin's "Ode au Sport"), it is in this festive and diverse fashion that the world is at one for the duration of the Olympics.

This feat does not, however, rely upon or assume a world without borders. In fact, the reverse is true. The very organization of the Games pivots around the gathering of national teams, which is not surprising given that the revival of the modern Games occurred in the late nineteenth century: a time of heightened and romantic nationalism.⁹³ The Olympics provided a collaborative opportunity for countries to compete peacefully on the sporting field, as

90. See *Olympic Relay in Beijing Climax*, BBC NEWS (Aug. 6, 2008), <http://news.bbc.co.uk/2/hi/7544252.stm>.

91. Cf. Olympic Charter, *Fundamental Principles of Olympism*, para. 2 (setting a goal for the Olympic Games to promote a peaceful society). The Olympic Flag, with its five interlaced rings superimposed on a white background with no borders, has become one of the most widely recognized symbols in the world. It was designed in the early twentieth century by Pierre de Coubertin, the founding father of the modern Olympic Games, who intended the design to be "symbolic; it represents the five continents of the world, united by Olympism, while the six colors are those that appear on all the national flags at the present time." THE OLYMPIC MUSEUM, *supra* note 87, at 3 (citation omitted).

92. This is clearly not "NASCAR-style" commercialization. The IOC forbids stadium advertising and nonsports brands on athletes' vests. See Olympic Charter r. 51.2. It also tightly restricts the use of images of Olympic events and athletes for commercial purposes. *Id.* r. 51, bylaw 1. However, not everyone approves of the close relationship between official Olympic bodies and the official corporate partners that gain exclusive worldwide marketing rights. For those who prefer numbers, there is even an index for measuring Olympic performance of companies rather than athletes. The Dow Jones Summer/Winter Games Index measures the performance of publicly traded companies that are official partners, sponsors, and suppliers of the current Olympic Games. This high-powered list of thirty-one members, with a combined market cap of \$1.5 trillion, includes some of the world's leading firms. The Olympic index includes General Electric Co., McDonald's Corp., BP PLC, Coca-Cola Co., Cisco Systems Inc., GlaxoSmithKline PLC., VISA Inc., Proctor & Gamble Co., and Dow Chemical Co. See DOW JONES INDEXES: DOW JONES SUMMER/WINTER GAMES INDEX FACT SHEET (2011), available at http://www.djindexes.com/mdsidx/downloads/fact_info/Dow_Jones_Summer_Winter_Games_Index_Fact_Sheet.pdf.

93. See generally ENCYCLOPEDIA OF ROMANTIC NATIONALISM IN EUROPE (Joep Leerssen ed., 2009).

opposed to violently on the battle field.⁹⁴ Even today, the Olympics reflect an international landscape that is still largely organized according to principles of sovereign statehood, whereby each country has primary—if no longer exclusive—jurisdiction over its territory and the people who reside there.

C. Eligibility Rules

The basic requirement pertaining to the nationality of the players as it relates to eligibility to participate in the Games (or the “Olympic” in Olympic citizenship) is spelled out in Rule 42 of the Olympic Charter, which states: “Any competitor in the Olympic Games must be a *national* of the country of the NOC [National Olympic Committee] which is entering such competitor.”⁹⁵ For those athletes born, raised, and trained in the country they wish to represent as competitors, Rule 42 poses no obstacle. Things become more complicated when we factor in cross-border mobility. Here, we can identify at least three different sets of circumstances: (1) an athlete who moved as a young child to the admitting country for non-sports-related reasons; (2) a competitor who immigrated primarily for family reunification reasons or in search of greater socioeconomic opportunities and then followed to the letter the receiving country’s standard naturalization requirements, just like any other candidate; and finally, (3) a promising Olympian who has benefited from an expedited citizenship grant despite having little if any prior connection to the recruiting country. In some extreme cases, the athlete might never have set foot in the recruiting country. In the third scenario, the athlete is recruited and fast-tracked by the admitting country’s authorities so as to ensure her compliance with Rule 42’s requirement that the competitor must be a national of the country that registers her as a member of its Olympic team. My principal concern is with this last category. It is of particular interest because it brings into sharp focus the core dilemmas at the heart of the global talent hunt: blurring allegiance with commodification, diluting citizenship-as-membership by proliferating form-over-substance grants, and conflating the language of

94. Peter Spiro, *Citizenship and the Olympics: The End of Surrogate Warfare*, OPINIO JURIS (Aug. 10, 2008, 5:30 PM), <http://opiniojuris.org/2008/08/10/citizenship-and-the-olympics-the-end-of-surrogate-warfare>.

95. Olympic Charter r. 42.1 (emphasis added). The athlete must also satisfy other relevant requirements such as compliance with other portions of the Olympic Charter and IF rules. These terms are spelled out by Rule 41 of the Charter (“Eligibility Code”). While crucially important for the good governance of the Games, these requirements are not central to my discussion here.

national pride with neoclassical economic principles that treat human capital as a factor of production able to generate significant national reputation gains.

Formally, the Olympic Charter imposes a three-year waiting period for athletes who engage in nation-hopping under a bylaw to Rule 42. The IOC, however, has discretionary authority to issue a waiver if the National Olympic Committees of both the country of origin and of the destination country, as well as the relevant International Sports Federation, grant permission.⁹⁶ What is more, a careful review of the bylaw to Rule 42 reveals that it applies only to a specific subset of passport swaps. Namely, it holds that if you change your citizenship after representing a country in the Olympic Games previously (or in other official regional or world tournaments governed by the relevant IF), you must wait three years before representing your new country.⁹⁷ This rule has the advantage of preventing the most outrageous scenarios of nation-hopping; clearly, you cannot change citizenship *during* the Olympics and continue to compete.⁹⁸ However, if the recruited athlete has not yet represented her home country at an official event, then the appropriating nation can immediately benefit from her “plug in and play” services (if she meets the respective Olympic qualifications) because the bylaw has no jurisdiction or control over this set of circumstances. This regulatory gap is what allowed Becky Hammon to join Russia’s national basketball squad in Beijing without delay.⁹⁹

In setting the rules governing eligibility for participation, the Olympic Charter only determines whether player *X* can participate in the Games on behalf of country *Y*. It has no bearing on how member states define their own

96. *Id.* r. 42, bylaw ¶ 2.

97. *Id.*

98. If disputes arise regarding the athlete’s eligibility to participate in the Olympic Games, they are submitted to the Court of Arbitration of Sport (CAS), a private, specialized arbitral body that was established by the IOC as a “supreme court for world sport” to resolve sports-related disputes. Daniel H. Yi, *Turning Medals into Metal: Evaluating the Court of Arbitration of Sport as an International Tribunal*, 6 *ASPER REV. INT’L BUS. & TRADE L.* 289, 290 n.7 (2006) (quoting the then-president of the IOC, Juan Antonio Samaranch); see also CAS STATUTES, *supra* note 10. In order to ensure that “no athlete can be left knocking on the door to the gates of the Olympic village,” the CAS operates an ad hoc division at the site of each Olympic Games. Mitten & Davis, *supra* note 71, at 79 n.25. The ad hoc division provides “expedited” and “binding” adjudication regarding eligibility. *Id.* These decisions are usually made within twenty-four hours of filing a request for arbitration. See Richard H. McLaren, *Introducing the Court of Arbitration for Sport: The Ad Hoc Division at the Olympic Games*, 12 *MARQ. SPORTS L. REV.* 515, 523 (2001). Unlike national tribunals, the CAS can provide an immediate and effective remedy because the various Olympic bodies and International Sports Federations are bound by its decisions regarding eligibility. See Mitten & Davis, *supra* note 71, at 79.

99. Schwarz, *supra* note 6.

citizenship laws at the national level.¹⁰⁰ This leeway permits countries to tender citizenship grants if they so wish. The desire to strengthen the national team creates a strong incentive to treat the process as a mere formality. Even European countries which typically impose demanding citizenship tests upon their standard applicants, involving longer residence periods for example,¹⁰¹ significantly relax the rules when it comes to these top performers.¹⁰² But this is only part of the picture. Governing bodies like the IOC play a crucial, albeit indirect, role in Olympic citizenship by defining the rules that shape eligibility and nationality requirements for the Games, as in Rule 42. The existence of this transnational layer of regulating Olympic citizenship is crucial for thinking creatively about sports and nationality in a world of increased mobility, a point to which I return later in this discussion. At this stage suffice it to say that the regulatory framework in place is better than none, but still contains legal loopholes that permit countries utilizing fast-tracked citizenship grants to benefit almost immediately from their not-so-sportsmanlike actions.

An even more lax regime is found in the Competition Rules of the International Association of Athletics Federations (IAAF), the world governing body of track-and-field athletics. Rule 5 states that an athlete must wait three years from the date of acquisition of new citizenship before representing his or her new country, but that this waiting period can be reduced to twelve months upon request by the athlete and with the agreement of the relevant national federations.¹⁰³ A recent empirical review of allegiance swaps demonstrates that, in practice, the waiting period is usually reduced in accordance with the IAAF rule.¹⁰⁴ This creates the potential for some of the most questionable instances

100. At present, international law and respect for each polity's sovereignty and autonomy entail that domestic procedures govern each country's immigration and naturalization decisionmaking.

101. See RAINER BAUBÖCK & SARA WALLACE GOODMAN, EUROPEAN UNION DEMOCRACY OBSERVATORY OF CITIZENSHIP, EUDO CITIZENSHIP POLICY BRIEF NO. 2: NATURALISATION 1-2 (Oct. 2010), <http://eudo-citizenship.eu/policy-briefs>.

102. See, e.g., Gerard-René de Groot, *Sports and Unfair Competition via Nationality Law*, 13 MAASTRICHT J. 161, 161 n.1 (2006) (providing a Dutch legal example of provisions allowing for "exceptional naturalisation" of athletes).

103. INT'L ASS'N OF ATHLETICS FED'NS, COMPETITION RULES 2010-2011, r. 5.2(c) (2009).

104. See James M. Connor & Amy L. Griffin, *The Muscle Trade: International Track and Field Athlete Mobility, Colonialism, and Development* 8 (Conference paper for the annual Conference of the Australian Sociological Association, Dec. 1-4, 2009), at 2-3, available at <http://www.tasa.org.au/conferences/conferencepapers09/papers/Connor,%20James.pdf> (finding that in the 2008-2009 period only one out of twenty-five athletes that acquired new citizenship had completed the three-year waiting period; the remaining twenty-four were able to compete for the recruiting country after one year or less).

of Olympic citizenship swaps whereby “brawn” is lured with heavy financial incentives.¹⁰⁵ These cash-induced talent-for-citizenship exchanges unmistakably blur the line between commodification and allegiance. This is perhaps best illustrated by the story of Maryam Yusuf Jamal, a middle-distance runner who was born and raised in Ethiopia by the name of Zenebech Tola. In 2005, after a failed attempt to receive political asylum in Switzerland, she received a fresh passport from Bahrain in a very short period of time. This allegiance switch proved to be a jackpot for the tiny Gulf nation: running as a competitor for Bahrain, Jamal won gold at the 2007 IAAF World Championships in Osaka, Japan. Despite hardly ever residing in her new country of citizenship, she professes to getting “a lot of support from their Federation both morally and financially.”¹⁰⁶

This is a dramatic illustration of how traditional conceptions of citizenship are being changed and challenged as part of this aggressive talent hunt; indeed, membership goods themselves become the lubricant that oils the deal. The story runs something like this: the recruited athlete fulfills her part of the bargain by bringing in medals to place in a metaphorical trophy display of the procurer nation for the world to see the achievements. In exchange, she can expect to gain financial and other benefits that come with the allegiance switch. The grant of citizenship is essential here because, without it, the athlete will find it impossible to represent her new nation in compliance with the relevant membership eligibility rules.

The guardians of the Olympic Games are especially concerned with the perception of cold-blooded commercialization and opportunistic behavior that results when athletes are lured in this way by medal-hungry countries. The IOC President Jacques Rogge has declared publicly that “[t]his is something that we should try to put into control.”¹⁰⁷ In line with this commitment, the IOC has taken a sterner position against granting waivers or exceptions to the three-year rule where the motivation for passport swaps is primarily financial,¹⁰⁸ but the challenges are still weighty given that the forces pushing in the direction of an accelerated talent hunt that knows no borders are strong and structural in a more interconnected world, especially in the sports arena. In

105. See, e.g., BALE, *supra* note 41; Wladimir Andreff, *Sport in Developing Countries*, in HANDBOOK ON THE ECONOMICS OF SPORT 308, 312 (Wladimir Andreff & Stefan Szymanski eds., 2006).

106. *Biography: From Zenebech to Maryam*, THE OFFICIAL WEBSITE OF MARYAM YUSUF JAMAL, <http://www.maryamjamal.com/Biography/BiographyManager.php?biography=8568369527>.

107. Dana Mulhauser, *On Your Marks. Set. Go Home!: Why Can't Kenyan Stephen Cherono Race for Qatar in the Olympics?*, LEGAL AFF., July-Aug. 2004, at 10.

108. *Id.*

this regard, much-prized athletic stars represent a hypercategory in the new race for talent. In this race, no country is an island, and none wants to be left behind.¹⁰⁹

IV. THE GLOBAL RACE FOR TALENT AND *LEX SPORTIVA*

Olympic citizenship is the tip of the iceberg: a growing number of well-off countries vie to attract and retain skilled migrants with abundant talent.¹¹⁰ The pressure on competing nations to turn citizenship into a tradable good that can help secure the recruitment of the world's best and brightest is mounting as each country wants to improve its international standing; in the sporting world the goal is to beef up the recruiting nation's winning capacity and medal count. This talent-for-citizenship exchange permits the recruiting country to boost and enhance its position relative to that of its counterparts. The willingness to grant expedited membership to those with exceptional talent has become a crucial component for attracting talent in the current global race. This leads to increasing instances of reciprocal causation (how the admission moves made by one country affect the recruitment policies of another), interjurisdictional policy borrowing and emulation, and an escalating pressure to engage in targeted recruitment across borders.¹¹¹

Olympic citizenship, with its heightened focus on picking winners, represents the apex of this global race for talent. And, in a deeply profound way, it is ahead of the game. More than any other international migrants, elite athletes have something distinctive that impacts their mobility: regulation by transnational governing bodies. While other categories of skilled migrants,

109. See Shachar, *supra* note 4.

110. See *id.*; see also DEVESH KAPUR & JOHN MCHALE, GIVE US YOUR BEST AND BRIGHTEST: THE GLOBAL HUNT FOR TALENT AND ITS IMPACT ON THE DEVELOPING WORLD (2005); Simon Hartmann & Margarita Langthaler, *The Race for the Best: A European Perspective on the Brain Drain*, in EUROPEAN SOCIAL WATCH REPORT 2009, at 14, available at http://www.socialwatch.eu/wcm/documents/European_Social_Watch_Report_2009.pdf.

111. For a classic political economy account of interjurisdictional competition, which has sparked many subsequent debates, see Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956). There is also a relatively well-developed literature on policy borrowing and policy emulation, the "process [by] which knowledge about policies, administrative arrangements, institutions and ideas in one political setting (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political system." David P. Dolowitz & David Marsh, *Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making*, 13 GOVERNANCE 5, 5 (2000). I thank Jonathan Schachter for calling my attention to this source. On reciprocal causality and interdependency, see Putnam, *supra* note 69.

such as sought-after doctors, architects, or lawyers, usually need to undergo reaccreditation processes in the admitting country, the situation is different for athletes. Those who switch nationality might find the transition to another country emotionally, culturally, or personally taxing. Once the citizenship papers are issued, however, they face no official reaccreditation barriers. As we have seen earlier, the complex and intricate rules regulating recognized competitive sports are already transnational; they are produced and implemented by a complicated and multilevel web of governing bodies that are spread across the globe.

Instead of having each country set up its own domestic rules or rely on bilateral and multilateral agreements among nations,¹¹² the brilliance of sports law, which indirectly facilitates the practice of passport swaps, is that “there are internationally agreed-upon rules and regulations, and international bureaucracies to administer these rules.”¹¹³ A hundred-meter relay must follow the exact same rules and regulations whether it takes place in Berlin, Mexico City, or Beijing. An Olympic archery event always requires the distance between the archer and target to be seventy meters, whether it takes place in Sydney, Barcelona, or Rio de Janeiro (the host of the 2016 Summer Olympic Games). Otherwise, it is impossible to comprehend the logic of maintaining an official “world record” or determining whether such a record has been matched or broken. It is a world record precisely because the task at issue is subject to exactly the same conditions and requirements, no matter where or when the competition took place, thus allowing for comparable results on a worldwide scale. This is the remarkable quality of the global sporting system in general and the Olympic Games in particular. As one cultural studies expert noted many years ago, “[T]he first laws ever to be voluntarily embraced by men from a variety of cultures and backgrounds are the laws of sports”;¹¹⁴ legal scholars are now calling this development the making of a *lex sportiva*.¹¹⁵

112. If each state sets up its specific rules of regulation, mobility across borders could still be facilitated by mutual recognition agreements or nondiscrimination requirements as set up by the European Union for its member states. See Consolidated Version of the Treaty on the Functioning of the European Union, art. 18, May 9, 2008, 2008 O.J. (C 115). In most circumstances, however, the burden is placed on individuals themselves to negotiate the professional transition from one system to another.

113. BALE, *supra* note 41, at 6. At present, there are 205 national Olympic committees, each of which must comply with the IOC Charter and bylaws. MATTHEW J. MITTEN ET AL., *SPORTS LAW AND REGULATION: CASES, MATERIALS, AND PROBLEMS* 277-83 (2d ed. 2009).

114. BALE, *supra* note 41, at 8 (quoting ALI MAZRUI, *A WORLD FEDERATION OF CULTURES: AN AFRICAN PERSPECTIVE* 411 (1976)).

115. See Matthew J. Mitten & Hayden Opie, “Sports Law”: *Implications for the Development of International, Comparative, and National Law and Global Dispute Resolution*, 85 *TUL. L. REV.*

This level of global law in action far exceeds anything that we have witnessed to date in other social realms or legal arenas, including those that involve extensive cross-border activities such as trade or war. What is fascinating in the emergence of the world system of sports regulation is that international standards were not achieved at the expense of erasing national identities or turning borders into nothing. In fact, the opposite is the case. Part of what sustains the modern Olympic movement is the amalgamation of the focus on pure human achievement—regardless of the nationality or citizenship of the athletes—in tandem with the recognition and nourishment of the tendency “among many people to have special affection for athletes and teams representing *their* nations of citizenship or their nations of origin,”¹¹⁶ as “cheering one’s flag is still one of the event’s main selling points.”¹¹⁷ Yet the surge of more flexible and market-oriented notions of citizenship with respect to the Olympics (or international talent swaps more generally) may result in considerable commercialization and concentration of power in the hands of the few and the elimination of meaningful competition. Such patterns have already been witnessed in commercialized sports leagues, from hockey in North America to soccer in Europe. If similar processes occur in the Olympic context, smaller nations might be “priced out.” Some even foresee a future for the Olympic movement in which the competing teams will no longer be defined by national membership; instead, affiliation will be based on contract with a corporate sponsor. In this futuristic malutopia, gold matches featuring “Coca Cola vs. 3M” or “McDonald’s vs. Visa Inc.” would likely prevail. Few could credibly suggest that this kind of a prospect does not represent a disenchantment of the Olympic dream. Gone would be the ceremonial parade of nations, and the symbolic leverage of the Olympic Games as an oasis of collaborative and peaceful coexistence amid a world of ongoing hostility and insecurity. These considerations, both principled and prudential, help explain the forceful declarations by the guardians of the Olympics against “poaching” talent or trading in citizenship. It also informs the search for new responses.

269 (2010); Lorenzo Casini, *The Making of a Lex Sportiva: The Court of Arbitration for Sport “Der Ernährer”* (Max Planck Inst., Working Paper), available at <http://ssrn.com/abstract=1621335>.

116. JAY J. COAKLEY, *SPORT IN SOCIETY: ISSUES AND CONTROVERSIES* 421 (1998).

117. *For a Wreath, a Flag—or Cash? A Global Market in Brawn Could Challenge Olympic Chauvinism*, *ECONOMIST*, Aug. 14, 2004, at 31.

V. THE CORE PLAYERS IN THE EXCHANGE

Before turning to remedies, we need to gain a better grasp of what motivates individuals with abundant talent to leave their home countries in the first place. Which destinations do they perceive as attractive and why? What kind of incentives are offered to encourage their arrival by the admitting governments? How do instrumental, just-in-time citizenship grants transform the meaning of membership for both the local and the internationally mobile populations? Do the home countries object to or endorse such mobility? And what legal tools and policies are available to better manage the global race for talent, which correlates with movement from the poorer South to the richer North? I address these issues through a distributive legal prism that offers a particular analytic framework for considering the interests of the core participants in the Olympic citizenship exchange.

A. *The Athletes*

Athletes' motivation for obtaining Olympic citizenship is understandable: they seek the highest possible level of competition and performance. Many would agree that there is also a strong desire to represent one's country. If faced, however, with a choice between either missing the Games or taking up an expedited citizenship offer, some athletes may prefer the passport swap. This is the point that Becky Hammon emphasized in justifying her acceptance of Russian citizenship: "When I was a little girl there was no WNBA, so the Olympics was the highest thing and, in my opinion, it's still the highest thing in basketball," she told the media. "The dream of playing in the Olympics is something I've carried around with me for 30 years."¹¹⁸

The dilemma between self-advancement and the commitment to represent one's home country is not restricted to those endowed with brawn talent. It is also felt by other highly skilled emigrants, be they doctors, scientists, academics, or high-tech entrepreneurs. However, members of these professions are not in the public eye in the same fashion as these elite athletes, nor are they expected to represent both themselves and their adoptive nation at the most visible and important international sporting meet worldwide: the Olympic Games.

118. Dan Wetzel, *Hammon Just Living the American Dream*, YAHOO! SPORTS (Aug. 20, 2008, 10:50 AM), <http://sports.yahoo.com/olympics/beijing/basketball/news?slug=dw-hammoro82008>. The experience must have been bittersweet for her. Hammon got to stand on the Olympic podium, winning a bronze medal along with her Russian teammates. But it was the U.S. players who took the gold.

Without a doubt, the freedom of choice and mobility for top athletes has been significantly enhanced with the rise of a global race for talent. But they might be asked to pay with another kind of currency. In some instances, the naturalized newcomer must further give up his or her prior national affiliation. The decision to accept an offer of expedited citizenship by the soliciting nation requires the active participation of the individual athlete; in many cases, she must apply for and agree to such a grant of membership by the respective government authorities and swear allegiance to the adoptive country. This was the dilemma faced by Yuko Kawaguchi, a Japanese figure skater, who paired with a Russian skater and took the bronze medal at the 2009 World Championship. Since Japan does not recognize dual citizenship, Yuko was forced to give up her Japanese passport after she obtained a Russian one, saying that “[i]t was a very hard choice for to make. . . . People who follow sports understand that I’m not a traitor. I still consider myself Japanese. I chose to compete for Russia because I didn’t have a (good) partner in Japan.”¹¹⁹

Most athletes do not have to face such a stark choice, however. Almost half the world’s countries now permit dual citizenship.¹²⁰ This means that although athletes who take on “Olympic citizenship” march under the flag of the adoptive country in official international events, for all practical purposes they can still retain their substantive membership affiliation—both as legal status and as practiced identity—in the country of origin. For individual athletes, then, the growing market for swapping passports clearly opens new opportunities.

B. *The Recruiting Nation*

For the admitting society, international recruiting has the advantage of “instant help”: bringing in experienced players with a proven record who can immediately be put to the task of competing individually or helping the respective team as soon as their citizenship papers are in hand. Investment in homegrown talent usually requires much more time and heavy front-end

119. Gennady Fyodorov, *Kawaguchi Braves Taunts To Skate for Russia*, REUTERS, Oct. 13, 2009, <http://www.reuters.com/article/2009/10/14/us-olympics-figure-skating-kawaguchi-idUSTRE59Do1020091014?pageNumber=1>. Interestingly, Russian sports officials emphasized that “[u]nlike some nations who pay millions to lure top athletes, we didn’t buy Kawaguchi.” Instead, “she paid her own way to come to Russia and train there.” *Id.*

120. See Joachim K. Blatter, Stefanie Erdmann & Katja Schwamke, *Acceptance of Dual Citizenship: Empirical Data and Political Contexts* (Inst. of Political Sci., Univ. of Lucerne, Glocal Governance and Democracy, Working Paper Series No. 2, 2009).

costs.¹²¹ For coaches or national teams that desire immediate results, the bottom-line pressure of winning creates an incentive to engage in a worldwide “shopping spree” for talent as a means to reduce the risk of loss. We have already seen the strong desire of newly rich countries, such as Bahrain and Qatar, to make their mark and gain international prestige and reputation through global athletic success. The race for talent is also fueled by unequal spatial and geographic distribution of talent in certain fields. According to neoliberal economic principles, goods, capital, and labor must be shifted around to realize their potential; this applies equally in sports.¹²² The free-market explanation for the increasing mobility of athletes would thus highlight the mantra of maximizing utility—bringing people to the places where their talent can be fulfilled to the maximum.¹²³ But this explanation is also blind to a significant set of human-capital development factors, such as: where the improvement of talent occurred at crucial junctures in the enhancement of a young athlete’s talent; what institutional conditions permitted or inhibited her from fulfilling her potential; whether exploitation took place due to the foreign player’s desire to move to a sought-after destination country; and many other, related factors. On this account, it is easy to forget that those who move are human beings, not just record-setting “vessels” that bring glory to their teams and adoptive nations.

Reliance on passport swaps allows the recruiting nation to increase its talent pool almost immediately and without the associated costs and investment otherwise invested in a homegrown Olympian.¹²⁴ The bestowment of membership status on recruited athletes, especially those who have a serious shot at the medal podium, must be handled carefully by government officials,

121. BALE, *supra* note 41, at 98.

122. From a free-trade perspective, the ideal immigration policy is to have none at all. Economists who take a global welfare perspective typically view restrictions on international mobility as a form of tariff or protectionism: a barrier that needs to be removed. See e.g., Philip Martin, *Migration*, in GLOBAL CRISES, GLOBAL SOLUTIONS 443 (Bjorn Lomborg ed., 2004).

123. This line of argument fits well with the endorsement of a neoclassical theory of free trade, which ultimately cherishes free exit and entry of capital and labor in order to increase allocative efficiency. For examples of this rich literature, see PAUL R. KRUGMAN & MAURICE OBSTFELD, *INTERNATIONAL ECONOMICS: THEORY AND POLICY* (2d ed. 1991); Howard F. Chang, *Liberalized Immigration as Free Trade: Economic Welfare and the Optimal Immigration Policy*, 145 U. PA. L. REV. 1147 (1997); and Michael J. Trebilcock, *The Law and Economics of Immigration Policy*, 5 AM. L. & ECON. REV. 271 (2003).

124. See Slot, *supra* note 20 (quoting the president of the Kenya Athletics Federation); see also Wladimir Andreff, *The Correlation Between Economic Underdevelopment and Sport*, 1 EUR. SPORT MGMT. Q. 251 (2001); Bale, *supra* note 120.

without appearing to discount their commitment to local talent. When the political circumstances are ripe, however, they gladly stand by such actions. In one recent instance, the Canadian Minister of Immigration participated in a ceremony in which a special grant of citizenship was bestowed upon an athlete who immediately became eligible to represent Canada in the 2010 Vancouver Winter Games. When welcoming the new citizen, the Minister stated, “[o]ur citizenship is one of the most valuable things we can possess.”¹²⁵ This is a perfect summation – if ironic in its context – of the value of Olympic citizenship in today’s rapidly expanding global race for talent.

C. *The Source Country*

It often requires the investment of a whole community to train an Olympian.¹²⁶ The comparative data on nations’ sports investment in homegrown talent are telling in that respect: Germany invests the equivalent of \$250 million annually in its Olympic teams and individuals, making it a world leader in per capita investment (\$3.04). The investment has borne fruit; Germany is persistently at the top of the medal tables in major global sports events, recently finishing in second place (trailing only the U.S. team) in the medal count at the 2010 Winter Games.¹²⁷ Other countries in the Organisation for Economic Co-operation and Development (OECD) have in recent years launched public and private cooperative investment schemes to advance excellence in sports, leading to growing funding for developing Olympic-caliber athletes, coaches, and facilities.¹²⁸ In studying these investments, researchers have reported a linear relationship between money spent and total

125. News Release, Citizenship and Immigration Canada, Olympic Hopeful Kaitlyn Weaver Obtains Canadian Citizenship (June 22, 2009), <http://www.cic.gc.ca/english/department/media/releases/2009/2009-06-22a.asp>.

126. See Andrew B. Bernard & Meghan R. Busse, *Who Wins the Olympic Games: Economic Resources and Medal Totals*, 86 REV. ECON. & STAT. 413, 414 (2004) (“[D]eveloping Olympic caliber athletes requires considerable expenditure on facilities and personnel. Wealthier countries are more likely to have individuals, organizations, or governments willing to make such an investment. Wealthier countries are also more likely to have athletics as a part of schooling and to have leisure time to devote to sports.”).

127. See Olympic Medals: Gold, Silver, Bronze, VANCOUVER 2010, <http://www.vancouver2010.com/olympic-medals> (last visited Oct. 1, 2010).

128. Many countries now try to identify and invest in athletes starting at a young age as a way of focusing resources. See Roel Vaeyens et al., *Talent Identification and Promotion Programmes of Olympic Athletes*, 27 J. SPORTS SCI. 1367 (2009).

medals won at the Olympic Games.¹²⁹ For the Australian Government, for example, “an Olympic medal corresponded to an expenditure of approximately \$37 million per gold and \$8 million per medal in general.”¹³⁰ China’s quest to become the world’s top sports superpower has been accompanied by increasingly large budgets allocated to its elite sports programs. China is reported, for example, to have invested 20 billion yuan (approximately \$3 billion) to boost Olympic performance prior to the 2004 Athens Games.¹³¹ Results followed: “[T]he Chinese Olympics Delegation won 32 gold, 17 silver and 14 bronze medals; it was only second to [the] US, which had won 35 gold metals [sic].”¹³² Clearly, *ex ante* investment in talent matters a great deal when it comes to consistent Olympic success,¹³³ although the practice of *ex post* swapping of passports to attract established athletes increasingly serves as an additional route to achieve this goal. In a world of scarcity and abundance of need, not all countries are equally positioned to engage in such local investment or cross-border recruitment lavishness.

While there is considerable mobility of elite sportspersons between OECD countries,¹³⁴ the more pressing issue is a global stream of athletes moving from developing to developed countries.¹³⁵ Another commonplace pattern, which often conjures up images of passport swaps enticed by petrodollars, especially in the world of track and field, is from East African countries to the oil-rich Gulf.¹³⁶ Mirroring debates about the brain drain that adversely affects nations unable to support the infrastructure and surrounding conditions required to retain top performers, a main concern with brawn drain is that it unfairly

129. See Kieran Hogan & Kevin Norton, *The ‘Price’ of Olympic Gold*, 3 J. SCI. & MED. IN SPORT 203 (2000) (discussing the link between funding and medals won and questioning the notion that elite sporting success leads to greater mass participation).

130. Vaeyens et al., *supra* note 128, at 1368.

131. See Hua Ming, *The Hidden Cost Behind China’s Olympic Gold*, EPOCH TIMES, July 24, 2008, <http://www.theepochtimes.com/n2/content/view/1654>. It is difficult to reliably determine how these numbers were reached and, as in any nonstandardized comparative assessment, much depends on what counts as “Olympic investment” in the first place.

132. Due to this heavy investment in “Olympic glory,” China’s gold medals have been labeled “[t]he most expensive gold medals in the world.” *Id.* (quotation marks omitted).

133. On the distinctive U.S. funding structure, see *supra* note 16.

134. See Connor & Griffin, *supra* note 104, at 3.

135. These mobility pathways often reflect former colonial ties (for example, Morocco to France or Jamaica to Great Britain). *Id.* at 4-7.

136. See *Olympic Flags of Convenience*, THE SUN (London) (Aug. 7, 2008) (reflecting the public outcry against such transactions), <http://www.thesun.co.uk/sol/homepage/sport/olympics/1518444/Olympic-flags-of-convenience.html>.

depletes extraordinary talent in countries that are already struggling.¹³⁷ Africa is particularly hard hit.¹³⁸ When financial incentives are offered to lure athletes from small poor countries to switch allegiance and compete under the flag of a wealthy and trophy-hungry recruiting nation, the transaction becomes ever more crude and commodified. This practice has been heavily criticized by the source countries; some have gone as far as calling it a “poverty game.”¹³⁹ What remains undisputed is that beyond the immediate interests affecting and motivating the involved parties, such transfers remain highly charged because they blend elements of global inequality, sunken investment, and unfair competition, in addition to diminishing the interests of all competing countries in sustaining some degree of integrity in the relationship between the individual and the state she represents. If citizenship is reduced to nothing but a hefty pile of cash transferred in exchange for a switch of allegiance, then something valuable is lost in the process.

The willing athlete is treated as a free agent negotiating with the recruiting nation in a laissez-faire market, in which she can reject or accept the tendered offer, even if operating under unfavorable conditions of fear of want or other related risks. Her home country may plead with her to stay or make promises to further invest in her development as an athlete, but as a cold legal matter, it cannot force her to stay. International law declarations and many domestic constitutions pronounce that individuals have a basic right to leave their country.¹⁴⁰ If another polity offers them a route to fast-tracked citizenship, the

137. The work of Jagdish Bhagwati is now a classic in the development of the “brain drain” literature, which explores the economic and political consequences of immigration for source countries. See SKILLED IMMIGRATION TODAY: PROSPECTS, PROBLEMS, AND POLICIES (Jagdish Bhagwati & Gordon Hanson eds., 2009); William J. Carrington & Enrica Detragiache, *How Big Is the Brain Drain?* (Int’l Monetary Fund, Research Dep’t, Working Paper No. 98/102, 1998). The literature on “brawn drain” is more specialized. See BALE, *supra* note 41, at 43-44; Wladimir Andreff, *The Taxation of Player Moves from Developing Countries*, in INTERNATIONAL SPORTS ECONOMICS COMPARISONS 87 (Rodney Fort & John Fizel eds., 2004); Andreff, *supra* note 124 (identifying the “muscle drain” and providing relevant data).

138. See Slot, *supra* note 20; cf. Lalla Ben Barka, Deputy Exec. Sec’y, Econ. Comm’n for Afr., Statement at the Regional Conference on Brain Drain and Capacity Building in Africa (Feb. 22-24, 2000) (discussing “brain drain”).

139. See Fanvel Viriri, *Poverty Game: Dzingai’s Longest Run*, THE STANDARD (Mar. 28, 2009), <http://allafrica.com/stories/200903301190.html> (quoting Joseph Mungwari, president of the National Athletics Association of Zimbabwe).

140. See Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art. 13(2) (Dec. 10, 1948) (“Everyone has the right to leave any country, including his own, and to return to his country.”); see also CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 5, XIV. (Braz.); Canadian Charter of Rights and Freedoms, Part I of

home society has no formal say in the matter vis-à-vis the recruiting nation.¹⁴¹ Until recently, the main tool used by countries to avert such moves was to mount collective societal pressure against those who dared consider leaving the nation behind to advance their own individual fortunes abroad.¹⁴² The political ramifications of crossing (or “defecting across”) the old Soviet bloc divisions of East and West were a hindrance to cross-country mobility, and it required star power of the magnitude and brilliance of Mikhail Baryshnikov to overcome and gain a fresh start. The strong position against dual nationality has for the most part disappeared, however, as have the high costs of taking up a new citizenship affiliation.¹⁴³ In today’s era of globalized mobility, intimidation techniques are no longer in vogue, although societal pressures likely continue to play a significant role in the decision of whether to stay or to go.

What has clearly changed is the approach of those sending countries that have come to exploit the opportunities of international migration. Whereas in the past, emigrants were treated as lost causes, governments increasingly view them as immensely important remittance providers, generous supporters in times of crisis in the home country, foreign investors (through specialized bonds, for example), builders of transnational knowledge networks, and ambassadors of good will. This has the potential to turn the brain-drain narrative into a tale of “brain circulation,” whereby the outflow of highly skilled migrants becomes a mutually beneficial game for both sending and receiving countries.¹⁴⁴ It is difficult to assess whether empirical evidence supports this view, but it is becoming clear that not all countries are equally able to benefit from the exportation of their most skilled professionals; “the

the Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c.11, art. 6(1) (U.K.); S. AFR. CONST. 1996 § 21/2.

141. At the transnational level, however, the home country can object to granting a waiver to the three-year requirement (under Rule 42 of the Olympic Charter) if the athlete has already represented the source country in an official regional or international tournament. Under the IAAF rules, the standard wait time is also three years, but it can be reduced to a twelve-month “stand down procedure” with the agreement of both the sending and receiving countries’ federations. Most allegiance switches in athletics fall under the more expedited procedure. *See* Connor & Griffin, *supra* note 104.
142. *See* Barry, *supra* note 4.
143. Peter Spiro elegantly traces and analyzes the significance of these new dual-nationality trends. *See, e.g.*, Spiro, *supra* note 62. Previously, the emigrant risked losing pension rights or the power to own property in the old country, as well as the less tangible losses associated with severing social and emotional ties to the country that she had once known as home.
144. *See, e.g.*, DEP’T FOR INT’L DEVELOPMENT, MOVING OUT OF POVERTY – MAKING MIGRATION WORK BETTER FOR POOR PEOPLE (2007); Piyasiri Wickramasekara, *Policy Responses to Skilled Migration: Retention, Return, and Circulation* (Int’l Lab. Office, Int’l Migration Programme, Geneva, Switzerland, 2002).

weakest countries . . . suffer[] the most from the negative effects of the [brain drain], while enjoying little or no brain ‘gain.’”¹⁴⁵

Take the case of Ghana. A recent article published in the *New England Journal of Medicine* laments the fact that this resource-strapped country is losing its human-capital investments to richer nations: “It’s the same for football players as it is for doctors We have to train a lot more than will end up in Ghana, because they all leave. The football players go to Europe, and the doctors to America and the U.K.”¹⁴⁶ This reveals the paradoxical situation in which source countries increasingly find themselves in the burgeoning global talent hunt: they are losing their best athletes as a consequence of their growing success in producing players (or doctors) of an internationally competitive standard.¹⁴⁷ The pessimist will see this as proof of the lopsidedness of international migration, but the optimist may find a silver lining. Arguably, it was the experience accumulated by playing in the world’s top leagues that assisted Ghana in qualifying finally for FIFA’s World Cup in 2006, a feat that was repeated in 2009 when Ghana became the first national team from Africa to qualify for the 2010 World Cup in South Africa.¹⁴⁸ A similar story can be told about the national team from Côte d’Ivoire.¹⁴⁹

A recruited player often will play overseas in a commercial soccer club but will maintain allegiance to the national home team for purposes of participation under its flag in international tournaments. This permits star athletes an opportunity to “give back” something important to the country that they left behind. They are able to contribute to the home country in the very currency—winning a place on the world map through sporting achievement—that makes Olympic citizenship so appealing (and typically to the benefit of the recruiting nation). Yet the distinctive feature here is that, thanks to FIFA’s

145. Yariv Brauner, *Brain Drain Taxation as Development Policy*, ST. LOUIS U. L.J. (forthcoming); see also INT’L ORG. FOR MIGRATION, MIGRATION AND DEVELOPMENT: PERSPECTIVES FROM THE SOUTH (Stephen Castles & Raul Delgado Wise eds., 2008); PETER STALKER, WORKERS WITHOUT FRONTIERS: THE IMPACT OF GLOBALIZATION ON INTERNATIONAL MIGRATION (2000).

146. Fitzhugh Mullan, *Doctors and Soccer Players—African Professionals on the Move*, 356 NEW ENG. J. MED. 440, 440 (2007) (quoting Tsiri Agbenyega, dean of the medical school in Kumasi, Ghana).

147. *Id.*; see also Andreff, *supra* note 137.

148. Papa Appiah, *The Black Stars of Ghana—A Hidden Agenda* (June 19, 2010), <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=184430>.

149. Every man in its squad plays in an overseas league, but when it comes to the international tournaments, the players represent the home country. See *2010 FIFA World Cup South Africa—Côte d’Ivoire Team Profile*, MTN FOOTBALL, http://worldcup.mtnfootball.com/live/content.php?Item_ID=25942 (last visited Sept. 30, 2010).

strict “play-stay” eligibility rules that encourage continuity of national representation (in lieu of passport swaps), it is the country of origin that can profit from the success of its emigrant players when they participate in international tournaments under its flag.

In this more interconnected environment, certain countries of the South have become “nurseries” for the development of junior talent, such as the ASEC Abidjan Academy in Côte d’Ivoire. The Academy has produced “a seemingly endless conveyor-belt of stars” who have gone on to excel in the world’s best soccer leagues and clubs.¹⁵⁰ The globalization of sports has allowed these Cinderella-like stories to proliferate, but there are also countless examples of unscrupulous agents exploiting young players who have left their home countries in the hope of reaching the greener pastures of Europe and America.¹⁵¹ This has led FIFA’s president to comment angrily that leading commercial soccer clubs in the wealthier parts of the world “conduct themselves increasingly as neo-colonialists” and that “[d]ignity and integrity tend to fall by the wayside in what has become a glorified body market.”¹⁵² These are exceedingly grave concerns that echo larger patterns of global inequality.

Identifying these concerns is the first step. The next involves exploring whether worldwide sports governing bodies can become more active partners in regulating increasingly belligerent and commodified passport swaps. The unique institutional structure governing competitive global sports tournaments is, as we have seen, a tapestry of federations and sources of nongovernmental law to which participating nations agree to adhere. It is precisely the role already played by the multiple layers of local, national, regional, and international entities and rules that together constitute a global sports law system that is nowhere to be seen in other contexts of high-skilled migration. That framework shines a ray of hope toward curbing or at least mitigating the most outrageous effects of aggressive grants of Olympic citizenship. This provides an opening and opportunity to set standards for when to grant (or withhold) international recognition for purely opportunistic or profit-making allegiance swaps. In a nutshell, the idea is to curtail the unearned advantages available to those recruiting nations that aggressively barter allegiance swaps to fulfill their reputation-aggrandizing impulses. It is to this task of devising potential legal-institutional responses to which I now turn.

150. *Id.*

151. See Andreff, *supra* note 137, at 93-95.

152. *Blatter Condemns European Clubs*, BBC SPORT (Dec. 17, 2003, 10:34 GMT), <http://news.bbc.co.uk/sport2/hi/football/africa/3326971.stm>.

VI. “THROWING SAND IN THE WHEELS” OF OLYMPIC CITIZENSHIP TRANSFERS¹⁵³

The main question that we face is not whether the race for talent is here to stay. Undeniably, this is the new global reality. The mere recognition of this represents, however, only the initial stage in any serious rethinking of the tangled dynamics of Olympic citizenship. It tells us very little about how to redress its conundrums. Some may suggest that the answer lies in all-encompassing calls for banning or severely restricting the international mobility of the highly skilled. Conversely, others may endorse a pure market approach to citizenship, irrespective of the potentially corrosive effects of such a change on the societal and relational aspects of citizenship-as-membership in a shared political community. But I take Olympic citizenship to raise a different, and more complicated, challenge. In a world of high-skilled mobility, the challenge is to find a way to cope with massive global and interjurisdictional pressures, yet without giving up on the Olympic dream or the values of citizenship-as-membership. Instead of preaching either the antimobility stance that advocates banning switches of allegiance, or the antistatist position that calls for demolishing the citizenship-based structure of eligibility for participation in international sports meets, greater promise lies in adopting a more balanced approach, which incorporates and tries to mediate the values of freedom, fairness, and community. This I will label the principle of fair play mobility. It aims to maximize the freedom of mobility for individuals while at the same time minimizing the unearned advantage that presently attaches to opportunistic behavior by the more aggressive passport-bartering countries.

We have already seen that the global race for talent has generated unparalleled dynamics and innovation in the proactive recruitment policies of the major competitor countries. It has also fostered an unprecedented number of choices for athletes willing to engage in the passport swap. What have been slower to emerge are new possibilities for bilateral, multilateral, or transnational cooperation in the regulation of these international migration

153. This heading paraphrases Nobel Laureate James Tobin's vision of finding a way for nations to cope with massive international pressures (currency exchange rates in his analysis) in a world of high capital mobility by "throwing sand in the wheels" of international finance. See Barry Eichengreen, James Tobin & Charles Wyplosz, *Two Cases for Sand in the Wheels of the International Finance*, 105 *ECON. J.* 162, 163 (1995).

flows, with an eye toward a more equitable sharing of the risks and rewards that accompany cross-border talent movements.¹⁵⁴

Importantly, the “transfer market” approach adopted by governments toward Olympic citizenship is not oppositional to membership. We saw earlier that a main motivation for recruiting countries to engage in such bartering activity is to enhance national glory. Olympic citizenship thus represents a new landscape whereby immigration officials hold the power to bestow expedited citizenship and increasingly adopt market-oriented perceptions of value, which they then put to use by designing and enthusiastically implementing targeted recruitment policies to draw in the best and brightest in order to promote the admitting country’s national “brand” and its international standing. But this is a delicate equilibrium. Such partial (and government-controlled) mercantilization of the passport may advance the short-term interests of countries entangled in a fast-paced global race for talent. In the long term, however, it may erode something deeper—the basic social and political relationships we hold toward one another as citizens of the same polity—by reshaping the background conditions defining what kind and degree of connection is expected between the individual and the new political community she officially represents on the world stage.

The practice of picking winners thus affects not only those engaged directly in the passport swaps, but also the relations of trust and mutual obligation that

154. We are already witnessing some progress, but it is made primarily through voluntary agreements and charity foundations. One such example is the UK-based government-supported International Inspiration program that partners with in-country organizations in disadvantaged countries to provide general access to sports through the public school system. The significance of this initiative is that it grew out of a commitment made by the 2012 London bid team to “reach young people all around the world and connect them to the inspirational power of the Games so they are inspired to choose sports.” See *International Inspiration*, LONDON 2012, <http://www.london2012.com/get-involved/education/international-inspiration/index.php> (last visited Mar. 7, 2011). The program has an ambitious goal of reaching twelve million people in twenty developing countries. *Id.* It ties a development agenda to the hosting of the Olympic Games. Other humanitarian organizations, such as Right To Play, bring the positive message of sports to hundreds of thousands of children in communities affected by war, civil strife, and poverty. The Right To Play program in particular is distinctive in that it grew out of an idea from the Lillehammer Olympic Organizing Committee in 1992 and involves past and present Olympic athletes along with other elite sportsmen and women who guide children in troubled countries, engage in educational outreach initiatives, and serve as role models for those who may be harboring Olympic dreams. See *At a Glance*, RIGHT TO PLAY, <http://www.righttoplay.com/International/about-us/Pages/AtAGlanceCon%27t.aspx> (last visited Dec. 3, 2010); *The History of Right To Play*, RIGHT TO PLAY, <http://www.righttoplay.com/International/about-us/Pages/History.aspx> (last visited Dec. 3, 2010).

citizenship-as-membership is designed to support and sustain.¹⁵⁵ That is what makes study of the practice so urgent and significant to pursue, with possible ramifications that go far beyond the intersection of sports and nationality and its various nuances and challenges.

In addition to the reconfiguration of citizenship relations within a given society, the advance of just-in-time talent-for-citizenship exchanges also has implications for the dynamic between the sending and receiving country and among competing nations participating in the same international events. The reason is as simple as it is powerful: the relative advantage gained by talent-snatching country *A* may have an influence not only on the situation of country *B* (the athlete's home country), but also on the rest of the field, including medal-contender countries *C*, *D*, and *E*. This interjurisdictional dimension of the global race for talent and the kind of dilemmas that may arise in a world of amplified competition for talent is of particular interest. This is where the unique institutional structure governing competitive global sports tournaments—the rich tapestry of regional and international federations and eligibility rules to which participating nations agree to adhere—can make all the difference.

If the race for talent is here to stay, then we would do better to ensure that it no longer remains as unregulated as it currently is, granting tremendously valuable advantages to the countries that barter more aggressively or straightforwardly and turn the talent-for-citizenship exchange into a mercantile transaction. To this we must add the realization, drawn from the political economy and international migration literature, that the loss of human capital is unequally distributed among the world's polities and regions. The fair play mobility principle articulated above becomes ever more relevant in dire circumstances whereby well-off societies actively promote a brain and muscle drain from poorer countries, especially those with already strained resources and infrastructure.

My intention, in these closing pages, is not to offer any precise blueprint for action. Instead, the aim is to engage in an open-ended thought experiment designed to provoke discussion rather than conclude it. Because global sports law may be more advanced than any other comparable regime of transnational regulation, it offers a perfect match for this endeavor. The most interesting options are those that aim to respond to hard questions such as: how to ensure that fast-tracked grants encourage a balance between homegrown and

155. These relations involve notions of participation, cogovernance, and a degree of solidarity among those included within the body politic. Such values are arguably more difficult to uphold under circumstances in which the ability to bring fame and glory is what distinguishes an expedited grant from no admission at all.

internationally recruited talent without removing genuine national representation; how to set predefined transfer windows and solidarity transfers; how to avert patterns of serial nation-hopping; and how to provide crude guidelines for determining what counts as a sufficiently meaningful connection between the individual and the state she represents. These alternatives are more nuanced and realistic than oversimplified calls for total abolition or full deregulation of the mobility of the highly skilled. Another advantage is that we can rely on already-functioning mechanisms for governing mobility and nationality developed by the various international sports federations, which offer creative variants to the Olympic Charter's mechanistic and somewhat archaic three-year wait-period rule (itself subject to a waiver option). Taking its cues from the fair play mobility principle of maximizing individual mobility while curbing the most blatant purchase of talent by brazen nations that are willing to make a mockery of their own citizenship standards when it comes to Olympic recruits, the regulated talent-for-citizenship approach provides a foundation for more balanced, just, and inspiring solutions that are preferable to the do-it-alone, hypercompetitive tactics currently on offer.

When a nation's Olympic team can be strengthened in the final stages of preparations for the Games simply by pulling out the checkbook or bending citizenship rules, doing so not only exploits the efforts and investments that were put into training the Olympian by the home country (such as identifying talent; hiring coaches; building training facilities and community support; and allotting local, corporate, and national subsidies for sports development) but also jeopardizes the interest of all other involved parties in sustaining the Olympic dream and avoiding the perception of unfair, or bought, advantage. Ethicists may decry this development, but the reality is that the transfer market for Olympic citizenship is thriving. The beneficiaries of this global talent hunt have no good reason to retreat willingly from their advantageous practice. The ample returns that they receive in the precious currency of visible national success on the international plane means that they are unlikely to alter their behavior unless forced to do so by the losers (who are dispersed and generally less well-off than the countries that have "robbed" their best players and, consequently, are in a much weaker bargaining position) or through transnational innovation and intervention to counterbalance the more parasitic behavior of states that are making a habit of relying on lured talent.

The transnational innovation route looks most promising as an institutional matter. Operating above the immediate interests of any specific polity (however powerful it otherwise might be in the global system), it offers a relevant policy space for action. This is where *lex sportiva* is the best fit to address the collective action problems that the parties themselves may find

difficult to overcome. Just as Noble Laureate James Tobin was seeking to find a way to decrease (rather than altogether eliminate) the volatility of prices caused by speculative trading, the motivation here is to curtail aggressive passport swaps that make a mockery of fair play by developing safeguards that in effect slow down or “throw sand” in the wheels of pure form-over-substance Olympic citizenship grants.

While space constraints prohibit a detailed discussion of possible institutional designs and regulatory techniques to advance the basic principle, I will briefly elaborate on several such promising lines of thought. Primary among them is the commitment to curbing the most egregious effects of the global race for talent by revisiting the membership eligibility rules set by transnational governing bodies. Some might object that such an idea is iconoclastic, but, as I explain below, it is far less radical than may initially appear and certainly holds the promise of placing justifiable limits on the vision of unconstrained trades in citizenship.

A. Setting a Standard for Recognition of Hasty Citizenship Grants

In a competitive global environment in which a growing number of countries engage in the global race for talent, each is under increased pressure to bend its naturalization rules and provide strategic and expedited citizenship grants to foreign “imports” who have very limited, if any, connection to the new country—other than being lured by its officials to play on the national roster. Various International Sports Federations now require newly minted citizens to establish residency in their adoptive country before competing. Since there is no overarching “sporting nationality” standard, the residency requirements for those who wish to change national teams differ significantly among federations, ranging from one year (archery),¹⁵⁶ to two uninterrupted years or five years of nonconsecutive residency (equestrianism),¹⁵⁷ to three years after the establishment of permanent residence (pentathlon).¹⁵⁸

A more coordinated response to the proliferation of strategic, fast-tracked membership grants is to address directly the difficult question of what counts

156. See FÉDÉRATION INTERNATIONALE DE TIR À L'ARC, CONSTITUTION AND RULE, art. 2.4.3 (2010), available at http://archery.org/content.asp?id=1023&me_id=827.

157. See FÉDÉRATION EQUESTRE INTERNATIONALE, GENERAL REGULATIONS, art. 119 (2010), available at http://www.horsesport.org/sites/default/files/file/RULES/General_Regulations_23rd_ed_updated_1_January%202010.pdf.

158. See UNION INTERNATIONALE DE PENTATHLON MODERNE, MODERN PENTATHLON COMPETITION RULES, art. 1.18.1 (2010), available at <http://www.pentathlon.org/images/Rules/ii%201%20general%20aspects%2025%203%202010.pdf>.

as “enough” of a connection between the individual and the state conferring citizenship to compel official recognition of the athlete as a representative of the recruiting nation in international meets. When nations compete in major worldwide sporting events and some are known to resort to accelerated Olympic citizenship grants as a perfect tool to gain a competitive advantage, it is not surprising that “the right of individuals to represent a country is scrutinised.”¹⁵⁹ This logic is familiar from other contexts, such as cases of diplomatic protection, where the possession of a passport by itself is not the make-or-break consideration for determining whether other countries must recognize the proclaimed bond between the individual and the state that she claims to represent or by which she is represented.¹⁶⁰

To take this route is not to deprive countries of their right to set up and regulate domestic immigration and naturalization rules and policies; they will remain free to do so, as they are today. Instead, the idea is to revise the already-existing eligibility rules for participation in worldwide sporting competitions (such as those found in the Olympic Charter). This will permit establishing a *lex sportiva* baseline—a transnational “sporting nationality,” as it were for newly recruited Olympic citizens—against which all countries participating in the same international event will be held to account.¹⁶¹ Any such transnational eligibility regulation must remain thin and procedural because the broader issues at stake—determining who belongs to the political community—are the heart and soul of citizenship, the last *domaine réservé* of sovereign states. The sporting nationality envisioned here would operate narrowly and exclusively only to determine “whether the athlete may play for a particular country in international matches, championships and competitions such as the Olympic Games.”¹⁶² It would have no bearing on the larger web of rights and obligations established between the individual and the state according to ordinary citizenship grants, although it could make the opportunistic giving and taking of Olympic citizenship less attractive to the involved parties. To

159. See *Citizenship Issues a Problem for Professional and Top-Class Sport*, *supra* note 10, at 40.

160. This fits in line with the *ratio decidendi* of the landmark International Court of Justice holding in the *Nottebohm Case*, that for the purpose of diplomatic protection the country of residence is not bound to respect a “passport swap” issued by another. See *Nottebohm Case* (Liech. v. Guat.), 1955 I.C.J. 4 (Apr. 6).

161. See, e.g., Robert Siekmann, *Nationality and Sport*, INT’L SPORTS L.J. 2006/1-2, at 123 (defending a “sports nationality” standard). Others refer to the same idea as “athletic citizenship.” See *Citizenship Issues a Problem for Professional and Top-Class Sport*, *supra* note 10, at 40.

162. Siekmann, *supra* note 161, at 123. The more technical aspects of such a proposal are articulated by Gerard-René de Groot, *Remarks on the Relationship Between General Legal Nationality of a Person and His ‘Sporting Nationality,’* 2006 INT’L SPORTS L.J. 3.

keep matters simple and transparent, we can envision an across-the-board transnational standard for recognition of passport swaps by the IOC that entails, for example, a twelve-month mandatory residency period in the adoptive country in addition to the player officially becoming its citizen.¹⁶³ Once this period has been fulfilled, the player will become eligible to compete for the recruiting nation in international sporting events. This kind of coordinated response can increase horizontal equality and place a temporary break on the currently unruly and unregulated controls of the ferocious cross-border talent hunt.

This procedure will confine its effect to reducing just-in-time citizenship grants where the poaching nation waives any residency or other standard requirements for gaining membership precisely in order to allow the lured athlete to contribute immediately. Such a change would have no adverse effect on athletes who follow the standard procedures for naturalization in their adoptive states, which in all jurisdictions exceeds the above-mentioned twelve-month formula.¹⁶⁴ This kind of a rule could, however, curb the most outrageous examples of aggressive recruitment by making the returns less immediate and riskier.

Another creative direction for reform is to add a degree of flexibility to the eligibility rules, which currently impose a fixed quota on the number of competitors that can represent each country in each Olympic sport. The concern here is that the “quota system keeps many of the best athletes

163. This calculation would permit maximum flexibility for athletes who wish to switch allegiance and to participate in consecutive Olympic Games for another country, if and only if they have already fulfilled the minimum twelve-month cooling period. The residency requirement could be fulfilled immediately before or after naturalization.

164. To ensure fair play, the twelve-month residency requirement for transnational recognition of an allegiance swap would also apply to athletes that gain membership by reliance on various return provisions found in some countries' immigration and citizenship laws. See Ayelet Shachar, *The Law of Return*, in IMMIGRATION AND ASYLUM: FROM 1900 TO THE PRESENT (Matthew J. Gibney & Randall Hansen eds., 2005). A fully consistent application would also require dual citizens to follow the twelve-month residency requirement if they wish to represent the country in which they have not resided for an extended period of time (we can imagine a ten- or fifteen-year period as a benchmark, although this is a matter better left for determination through consultation and deliberation by the member states) or have never lived in it. The latter scenario may occur when dual citizenship is automatically acquired at birth and not as a result of immigration and naturalization. Under the current legal situation, dual citizens enjoy a privileged position (irrespective of how they gained such status): they can elect one country to represent so long as they have not officially represented another at a regional or international event organized by the relevant IF. See Olympic Charter r. 42.1.

home.”¹⁶⁵ If you happen to be a Chinese table-tennis player, for example, your toughest competition will be to secure a spot on the national Olympic team simply because the world’s top ranking ping pong players are your fellow countrymen and women. By adding “wild cards” or related competitive, merit-based, non-national mechanisms for selection (complementing rather than replacing the traditional per-country allotment), some of these mounting pressures can be reduced.¹⁶⁶ The goal would be to cool down the secondary markets for these top-class players who have not made the cut in the home country, facilitated today with instant citizenship grants.

B. Regulated Transfers and Solidarity Obligations

Yet another innovative route for devising remedies is to draw insights from the universe of regulation of mobility and nationality in commercial club sports and professional leagues. Take the case of soccer, where international transfers are plenty. In response, the governing regional and global-reach organizations, such as soccer’s FIFA and UEFA, have had to engage in innovative experimentation with mechanisms such as regulated transfer systems, compensation fees that are due when young players move, and solidarity mechanisms. For instance, in order to check unscrupulous cross-border recruitment by agents and teams, FIFA has now become the world’s leading standard-setter in placing restrictions on the mobility of junior players (defined as those under the age of eighteen), unless the minor’s family has moved to a new country for non-soccer-related purposes.¹⁶⁷ It has also adopted the strictest position against allegiance switches.

Indeed, under FIFA rules, a player who has already represented the home country in a match in an official competition may not play internationally for another national team, even if the player adopts a new citizenship.¹⁶⁸ This “play-stay” rule applies across the board, although even here discretion is granted. When compelling and exceptional individual circumstances are present, a special waiver can be granted with permission by FIFA’s Players’

165. See Ayres, *supra* note 8.

166. See, e.g., Siekmann, *supra* note 161, at 123 (suggesting that wild cards could be based on world ranking or some other effective system).

167. See FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION, REGULATIONS ON THE STATUS AND TRANSFER OF PLAYERS, art. 19, at 20 (2010) [hereinafter FIFA REGULATIONS ON THE STATUS AND TRANSFER OF PLAYERS].

168. See FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION, FIFA STATUTES: REGULATIONS GOVERNING THE APPLICATION OF THE STATUTES, art. 15(2), at 12 (2006).

Status Committee.¹⁶⁹ Nonetheless, the default position remains that nation-hopping does not grant eligibility to compete for the new country of citizenship.¹⁷⁰ The strict play-stay rule is thus more limiting to mobility than the more flexible principle of fair-play mobility that I have articulated above.

Arguably, FIFA can afford to hold such a stern position in regards to passport swaps affecting one's participation in a national team in part because its rules operate against the background of almost unrestricted international mobility for these very same sought-after players when it comes to joining the roster of top commercial football clubs. This dual structure works relatively well, permitting a significant degree of mobility to individuals as well as potentially improving the standing or human capital achievements of the home country. Recall the significant strides taken by Côte d'Ivoire and Ghana in the World Cup, discussed above. It is hard to replicate such a structure in individualized sports that have little or no market or league activity beyond international events such as the Olympics. In these situations, a strict play-stay rule is unwarranted because it is too restrictive; it may make or break an athlete's career, thus lacking proportionality as to the proper balancing of the protected interest of respecting individual mobility and the complementing obligation to reduce blatantly strategic and for-profit nation hopping.

Importantly, however, in the realm of commercial clubs that regularly enlist talent across borders, steps have also been taken to place some obligations on recruiting clubs vis-à-vis the nursery clubs in the home countries from which the "imported" players hail, especially where the latter are drawn from the world's poorer and less stable regions. These include mechanisms such as compensation for the investment and training costs incurred while improving a young player's skills and talent.¹⁷¹ These rules are enforceable against, and binding on, professional clubs in the richer nations, players' agents, and the soccer clubs in the home countries. This represents a situation that is far ahead of what we find in the Olympic citizenship context, where, as we saw earlier, a developing country like Ghana cannot expect to benefit from any solidarity mechanisms even when its most talented athletes are being lured abroad. It is ironic and telling that commercial soccer clubs now have more global distributive obligations attached to player transfers than do countries in search of Olympic glory. It is time to address this imbalance.

169. *Id.*, art. 15(3), at 12.

170. To ensure fair play, FIFA rules and regulations further compel commercial soccer clubs in all countries to release players selected by their domestic national teams to play in regional or international tournaments such as the Africa Cup or the World Cup. See FIFA REGULATIONS ON THE STATUS AND TRANSFER OF PLAYERS, *supra* note 167, annex 1, art. 1, § 2, at 26.

171. See *id.*, art. 20, at 23.

CONCLUSION

The race for talent highlights today's new global reality in which those select few emigrants with abundant talent are offered an exponentially expanded range of options for mobility, permitting them to expect that an ever-larger welcome mat will be rolled out by the competing recruiting nations in the form of heavily incentivized migration. At the same time, most other categories of international migrants are facing steeper restrictions that make even initial admission harder to obtain, let alone the holy grail of securing membership and the full package of rights and protections accompanying it.

In this new citizenship regime, governments are turning themselves into brokers of membership grants, all in the name of bringing home distinction and glory. Olympic citizenship itself has become a key bargaining chip. Ultimately, it offers something that money alone cannot buy: the chance to participate in the Games, even if that chance requires the athlete to march under the flag of an adoptive national team rather than that of her home country. This remarkable development not only transforms once-passive bureaucrats into enterprising recruiters of talent, but also infuses political relations with more market-oriented concepts and reshapes our world by selectively encouraging the mobility of the "best and brightest" across borders. Perhaps more significantly, it also dramatically redefines citizenship itself in the process.