

Summer 2022

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Recommended Citation

Jonathan Barrett, *Duty-free “Apocalypse Insurance”: Revisiting Peter Thiel’s New Zealand Citizenship*, 45 HASTINGS INT’L & COMP. L. Rev. 69 (2022).

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Duty-free “Apocalypse Insurance”: Revisiting Peter Thiel’s New Zealand Citizenship

JONATHAN BARRETT*

ABSTRACT

New Zealand has often been imagined as a place of refuge in the event of social, ecological, economic or another catastrophe. The Covid-19 pandemic drew heightened attention to the desirability of access to a remote and temperate country. For ‘preppers’ of Silicon Valley, such access represents a form of apocalypse insurance. Google co-founder Larry Page was able to enter the country, when it was effectively sealed off to outsiders, to secure medical treatment for his child. To the surprise of many, who have been waiting months if not years for their residency applications to be processed, his investor category class right to residency was processed in a matter of weeks. But the ultimate apocalypse insurance policy was issued in secret to Peter Thiel, who was able to gain citizenship, and so a New Zealand passport, without meeting the usual residency requirements.

This essay examines this extraordinary grant of citizenship in the context of neoliberal immigration policies. It contrasts the privilege extended to Thiel with the usual experience of people immigrating to New Zealand, who must reside for at least five years in the country, and thereby establish themselves as citizens who belong within the political community. Metaphors and analogies are used to elucidate the unequal and unconscionable preference Thiel enjoyed.

*The essay builds on Dr. Barrett’s previous work that applies human rights law and equity to practical situations. He previously focused on publication in Australasian and European journals, including the European Intellectual Property Review, the Media and Arts Law Review, the British Tax Journal, the Queen Mary Journal of Intellectual Property, the Australian Journal of Human Rights, and the South African Journal on Human Rights. Articles are also forthcoming in the Columbia Journal of Law and the Arts and NYU’s Tax Law Review.

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INTRODUCTION

The Covid-19 epidemic and other social upheavals have highlighted the attraction of New Zealand as a safe haven,¹ archetypically for Silicon Valley entrepreneurs. In the light of renewed interest in “apocalypse insurance,” this essay revisits the secret granting of New Zealand citizenship to Peter Thiel.

A. *New Zealand*

New Zealand, a fertile and temperate archipelago,² lies 2000 kilometers southeast of Australia, its nearest neighboring land mass. Given its remoteness and distance from Europe and North America, the country has long been imagined as a place where people might survive the destruction of Western civilization and start afresh.³ During the Covid-19 crisis, the country, which has a population of roughly 5 million people living in a geographical area approximately the same size as the United Kingdom (67 million population) or Japan (126 million population),⁴ has, at the time of writing, been able to isolate itself from most of the world,⁵ lockdown its people for short periods,⁶ and, as a consequence, has suffered fewer than 50

1. Internally, the country is commonly referred to as ‘Aotearoa New Zealand’ or ‘Aotearoa’ – (land of the) long white cloud. While this author prefers ‘Aotearoa New Zealand’ as an identifier in order to reflect the country’s bi-cultural foundation, that name does not yet have official internal or external standing and, therefore, “New Zealand” is used in this essay. For a discussion of the origins and use of “Aotearoa”, see Philip Matthews, *The Battle Over Aotearoa*, DOMINION POST, July 31, 2021, at B2.

2. Along with many small islands spread over a large area of the southern Pacific Ocean, the country comprises three main islands – Te Ika-o-Maui (North Island), Te Wai Pounamu (South Island) and Rakiura (Stewart Island).

3. “In the 1870s the artist Gustave Dore depicted Macaulay’s New Zealander visiting future London [in ruins]. In the accompanying text Jerrold wrote, “Macaulay’s dream of the far future, with the tourist New Zealander...contemplating ‘The glory that was Greece – The grandeur that was Rome.’” See *The New Zealander*, UNIV. OF OTAGO, https://www.otago.ac.nz/library/exhibitions/ruins/case_ten.html. To the understandable concern of indigenous Maori, the country has commonly evoked utopian possibilities for Europeans. See e.g., SAMUEL BUTLER, *EREWON* (1872).

4. More than three-quarters of the country’s population live in the North Island. See, *Three in four New Zealanders live in the North Island*, STATS NZ (Oct. 25, 2017), <https://www.stats.govt.nz/news/three-in-four-new-zealanders-live-in-the-north-island>.

5. As at August 9, 2021, quarantine-free travel was only possible between New Zealand and the Cook Islands, a Pacific nation, which, although independent of New Zealand, is voluntarily part of the realm of New Zealand. A so-called bubble which allowed quarantine-free travel between New Zealand and Australia was suspended after the latter country suffered an outbreak of the delta version of the Covid-19 virus. See *NZ government suspends quarantine-free travel with Australia for at least eight weeks*, R.N.Z. (July 23, 2021), <https://www.rnz.co.nz/news/national/447527/nz-government-suspends-quarantine-free-travel-with-australia-for-at-least-eight-weeks>.

6. *Timeline: The year of Covid-19 in New Zealand*, R.N.Z. (Mar. 24, 2021), <https://www.rnz.co.nz/news/national/437359/timeline-the-year-of-covid-19-in-new-zealand>.

Covid-19-related deaths.⁷

More generally, Nick King and Aled Jones's research indicates that New Zealand is the country most likely to have the "nodes of persisting complexity" which would allow survival after a cataclysmic event, such as environmental, financial, or social collapse.⁸ It is understandable, therefore, that "preppers" for such a collapse, notably wealthy entrepreneurs of Silicon Valley, might see guaranteed access to New Zealand as a form of "apocalypse insurance."⁹ With the connivance of the New Zealand government, the ultra-libertarian venture capitalist, Peter Thiel, secretly achieved that goal in 2011. In the light of heightened interest in apocalypse insurance, this essay revisits the grant of citizenship to Thiel and places the narrative in the context neoliberal immigration policies. In contrast, a model of citizenship based on belonging, equality and reciprocity is presented.

B. Neoliberalism in New Zealand

New Zealand is a unitary state. Its unicameral Parliament is the supreme law-making body whose Acts are not subject to judicial review. Before the introduction of the mixed member proportional representation electoral system ("M.M.P.") in 1996,¹⁰ the first-past-the-post or winner-takes-all electoral system delivered "unbridled power" to the winning political party.¹¹ This authority to legislate on any matter without restraint allowed governments to "make the fastest law in the west"¹² and enabled the fourth Labour administration (1984-1990) to institute a radical neoliberal experiment,¹³ which, in essence, aimed to commercialize government and

7. *COVID-19: Current cases*, MINISTRY OF HEALTH (Dec. 15, 2021), <https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-data-and-statistics/covid-19-current-cases>.

8. Nick King & Aled Jones, *An Analysis of the Potential for the Formation of 'Nodes of Persisting Complexity'*, SUSTAINABILITY 13(15), 8161 (2021).

9. See *infra* note 61 on New Zealand's investor visas. At December 2021, the number of investor visa application had increased from 816 from 338 in February 2021. See Tom Hunt, *Wealthy foreigners looking for NZ visas*, DOMINION POST, Dec. 22, 2021, at 2.

10. Under M.M.P., electors have two votes. The party votes decide the overall number of seats a party has in Parliament on a proportional representation basis. Electoral votes determine additional Members of Parliament on a first past the post basis for electoral districts. See, *What is MMP?*, ELECTORAL COMMISSION, <https://elections.nz/democracy-in-nz/what-is-new-zealands-system-of-government/what-is-mmp/>.

11. See *generally*, GEOFFREY PALMER, UNBRIDLED POWER? AN INTERPRETATION OF NEW ZEALAND'S CONSTITUTION AND GOVERNMENT (1979).

12. DAVID MCGEE, PARLIAMENTARY PRACTICE IN NEW ZEALAND 394 (4th ed. 2017).

13. See *generally*, JANE KELSEY, THE NEW ZEALAND EXPERIMENT: A WORLD MODEL FOR STRUCTURAL ADJUSTMENT? (1997).

society.¹⁴ The second wave of neoliberalism, entrenched by the fourth National government (1990-1999), sought to establish an incontrovertible distinction between low-earning workers and social beneficiaries, with coruscating social effects.¹⁵ However, in New Zealand, a distinction between taxpayers and social beneficiaries is technically meaningless since a social beneficiary pays income tax on all of their income.¹⁶ They also pay a comprehensive value-added tax on almost everything they consume.¹⁷

The neoliberal objective is for markets to be imagined everywhere;¹⁸ to create a “utopia of a pure, perfect market takes place through the transforming and *destructive* action of all the political measures . . . aimed at *putting into question all the collective structures* capable of obstructing the logic of the pure market.”¹⁹ In New Zealand, almost “every significant area of public policy . . . was refashioned or reengineered.”²⁰ For Jonathan Boston and Chris Eichbaum, the neoliberal revolution did not only seek to revitalize an economy that was admittedly sclerotic “but also to transform the hearts and minds of citizens. The goal, in other words, was a ‘cultural revolution’: to end the long dominance of egalitarian and communitarian

14. *See generally*, BRIAN EASTON, *THE COMMERCIALISATION OF NEW ZEALAND* (1997).

15. Melissa Hackell, *Taxpayer Citizenship and Neoliberal Hegemony in New Zealand*, 18 J. POLITICAL IDEOL. 129 (2013). In 1991, the so-called “Mother of All Budgets” stripped thousands of people, many of whom had lost their jobs due to the liberalization of the economy, of social benefits. On the one hand, the scars of this “beneficiary bashing” have run deep but, on the other hand, neoliberalism and tolerance for inequality became normalized. M.M.P. may have smoothed the sharp edges of the policies of the 1980s and early 1990s but has also prevented governments so inclined to counter neoliberalism. In 2020, a Labour government, led by Jacinda Ardern, was elected with an absolute majority, and also enjoyed the support of the more radical Green Party. In the 2021 budget, Minister of Finance, Grant Robertson, in raising social benefits, expressly sought to finally reverse the cuts of 1991. Much more is needed to alleviate poverty and to promote equality in New Zealand, but Robertson’s statement was an important reassertion of Marshallian citizenship (see *infra* note 39). Robertson met his future husband, who was a Polynesian bus driver, when they both played for the same all-gay rugby side. While this anecdote may appear to be nothing more than tittle tattle, it says much about the tolerance and aspirations of much of contemporary New Zealand society.

16. Income Tax Act 2007 CF 1.

17. *See generally*, Goods and Services Tax Act 1985, <https://www.legislation.govt.nz/act/public/1985/0141/latest/whole.html>. New Zealand is said to have the purest value-added tax system. *See e.g.*, Adrian Sawyer, *VAT reform in China: Can New Zealand’s Goods and Services Tax provide helpful guidance?* 4 J. CHINESE TAX & POL. 92, 93 (2014).

18. David Harvey, *Neo-Liberalism as Creative Destruction*, 88 GEOGRAFISKA ANNALER. SERIES B, HUMAN GEOGRAPHY 145 (2006).

19. PIERRE BOURDIEU, *ACTS OF RESISTANCE: AGAINST THE TYRANNY OF THE MARKET* 96 (1998)

20. Jonathan Boston & Chris Eichbaum, *New Zealand’s Neoliberal Reforms: Half a Revolution*, 27 GOVERNANCE 373, 373 (2014).

values and usher in a neoliberal orthodoxy.”²¹

Richard Bedford notes that the neoliberal experiment “created a policy environment that favored much higher levels of immigration, especially of people whose mix of education, assets, work experience and English-language ability” might contribute to economic growth.²²

M.M.P. has, in practice, required the lead governing party to obtain the support of a least one minority party and therefore has tended to temper 1980s-style dogma.²³ Nevertheless, neoliberal economic fundamentals are seemingly entrenched, including migration policies aimed at promoting economic growth.

C. Duty

Two meanings of the word ‘duty’ used in the title are relevant to this essay. The first denotes a tax that is typically payable when goods are moved across borders.²⁴ Duties may be levied either to raise revenue or to protect domestic industries.²⁵ In either case, they distinguish between domestic and foreign manufacturers. Although removal of trade barriers was a key feature of the Washington Consensus,²⁶ tariffs have not been eliminated and, indeed, during the Trump administration, were occasionally increased.²⁷ In distinguishing between domestic and foreign enterprises, customs duties differentiate between those who are members of a particular political community and those who do not belong.

The movement of valuable things between countries may be duty-free because they remain in a free port, a kind of fiscal limbo that is not fully included within the laws of the jurisdiction in which it is situated. According to Ron Corver, free ports “are warehouses in free zones,

21. *Id.* at 374.

22. Richard Bedford, *International Migration and Globalization: The Transformation of New Zealand's Migration System Since the mid-1980s*, in SOVEREIGNTY UNDER SIEGE? GLOBALIZATION AND NEW ZEALAND 129, 135 (Robert G. Patman and Chris Rudd eds., 2016).

23. Boston & Eichbaum, *supra* note 20 at 375.

24. Glossary of Tax Terms, ORGANISATION OF ECONOMIC COOPERATION AND DEVELOPMENT (2019), <https://www.oecd.org/ctp/glossaryoftaxterms.htm>.

25. L.D. Wulf, *Customs Administration*, in THE INTERNATIONAL HANDBOOK OF PUBLIC FINANCIAL MANAGEMENT (R. Allen, R. Hemming R and B.H. Potter, eds., 2013).

26. Sarah Babb and Alexander Kentikelenis describe the Washington consensus as “a coordinated campaign for the global diffusion of market-oriented policies”. See Sarah Babb and Alexander Kentikelenis, *Markets Everywhere: The Washington Consensus and the Sociology of Global Institutional Change*, 47 ANNU. REV. SOCIOLOGY 521 (2021).

27. Geoffrey Gertz, *Did Trump's tariffs benefit American workers and national security?*, BROOKINGS (Sept. 10, 2020), <https://www.brookings.edu/policy2020/votervital/did-trumps-tariffs-benefit-american-workers-and-national-security/>.

which . . . have . . . become popular for the storage of substitute assets, including art . . . often on a permanent basis.”²⁸ Jurisdictions that host free ports confer an extraordinary financial privilege on the typically super-wealthy owners of the stored artworks and other collectables. Objects concealed in free ports become detached from their usual use – jewelry is not worn, wine is not consumed, and artworks are not viewed, either privately or publicly. Filmmaker and theorist Hito Steyerl, who has analyzed duty-free art, describes free ports as “a luxury no man’s land, tax havens where artworks are shuffled around from one storage room to another once they get traded.”²⁹ John Zarobell notes that free ports are a boon for speculators,³⁰ but they are not the only users of free ports, which are thought to facilitate criminal and terrorist activities.³¹ Artworks are commonly a currency of liquid capitalism in which “capital itself is now weightless, free of spatial confinement.”³² In this essay, duty-free art is proposed as a metaphor for wealthy investors being granted citizenship in extraordinary circumstances. Akin to artworks in free ports, they are allowed to be in the host country but, because they do not belong in the way that other citizens do, are not *within* it.

The second meaning of duty contemplated is the reciprocal of right and is used here in relation to the bundle of interdependent claims and obligations that usually constitute citizenship. The asymmetrical exchange of rights and duties also indicates a person’s belonging to a particular political community and assenting to basic national values. In New Zealand, those values include the rule of law, equality, and honesty.³³ Furthermore, as the first country to extend the franchise both to indigenous men and all women, democracy is a critical national value.³⁴

28. Ron Corver, *Money Laundering and Tax Evasion Risks in Free Ports*, EUROPEAN PARLIAMENT (Oct. 2018), 5, [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/627114/EPRS_STU\(2018\)627114_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/627114/EPRS_STU(2018)627114_EN.pdf).

29. HITO STEYERL, *DUTY FREE ART: ART IN THE AGE OF PLANETARY CIVIL WAR* 81 (2017).

30. See generally JOHN ZAROBELL, *ART AND THE GLOBAL ECONOMY* (2017).

31. Corver, *supra* note 28, at 5.

32. Chris Kutarna, *Liquid Capitalism: Making Sense of Davos*, THE GLOBALIST (Jan. 24, 2018), <https://www.theglobalist.com/capitalism-inequality-world-economic-forum-davos>.

33. Stephen Levine, *Political values*, TE ARA – THE ENCYCLOPEDIA OF NEW ZEALAND (June 20, 2012), <http://www.TeAra.govt.nz/en/political-values>.

34. “Simon Winchester observes with evident admiration: As well as being the last place on the planet to be found. New Zealand was also the first country on the planet to install as its chosen political system the most genuine kind of democracy, with voting rights early on extended to both sexes and all residents – indigenous peoples included – quite regardless of their ethnicity. And further: Maori men were in fact given the vote in 1867, fully twelve years before their white counterparts, making New Zealand the first settler state in the world to give

These two meanings of duty meet – analogously and factually – in the case of New Zealand’s extraordinary grant of citizenship to Thiel, for whom the normal physical presence requirements for citizenship applicants were waived. According to Ayelet Shachar and Ran Herschl, “important lessons about the current state of citizenship can be learned by examining *who* is given the red-carpet treatment, and on *what basis*.”³⁵ This essay seeks to identify such lessons from Thiel’s story and to add anecdotal color to the literature on passport selling.³⁶

The essay is structured as follows: after this Introduction, Part II sketches a basic model of citizenship grounded in belonging, equality, and reciprocity; identifies how people generally become citizens of a particular state; and outlines key provisions of New Zealand’s citizenship law. Part III extracts salient points from journalist Matt Nippert’s dogged investigation into Thiel’s gaining New Zealand citizenship and situates this story in the context of neoliberal migration policies. The aim here is to demonstrate that the grant of citizenship to Thiel was incompatible with traditional theory, policy, and law on citizenship, and, indeed, New Zealand’s espoused national values. Part IV borrows the terminology of Giorgio Agamben to speculate on the idea of *homo sacrissimus* (most sacred man) as a privileged exception to the usual norms of citizenship, and an antithesis to the bare life (*la vita nuda*) of the non-citizen (*homo sacer*). Conclusions are then drawn.

I. CITIZENSHIP

This part of the essay sketches a basic model of citizenship based on belonging, equality, and reciprocity, and situates key provisions of New Zealand’s citizenship policy and law in the neoliberal context.

A. *Basic Model of Citizenship*

In analytical jurisprudence, a right is dependent on the existence of a corresponding duty³⁷ but, when speaking of rights here, a broad range of asymmetrical claims and obligations is envisaged; only some of which are legal in nature. For example, it is reasonable to expect a person who enjoys

the vote to its indigenous population – and almost a century before Australia next door gave the vote to her aboriginals.” SIMON WINCHESTER, *LAND: HOW THE HUNGER FOR OWNERSHIP SHAPED THE MODERN WORLD* 323-4 (2021).

35. Ayelet Shachar & Ran Hirschl, *On Citizenship, States, and Markets*, 22 J. POL. PHIL. 231, 231 (2014).

36. Rainer Bauböck, *DEBATING TRANSFORMATIONS OF NATIONAL CITIZENSHIP* (2018).

37. Wesley N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 26 YALE L.J. 710 (1917); Glanville Williams, *The Concept of Legal Liberty*, 56 COLUM. L. REV. 1129 (1956).

the rights of citizenship to vote. That expectation manifests as a legal rule in Australia because of its compulsory voting requirement,³⁸ but not in New Zealand, where an eligible person must register on the electoral roll but need not vote.³⁹

In his paradigm account, Thomas Marshall defined citizenship as “a status bestowed on all those who are full members of a community. All those who possess the status are equal with respect to the rights and duties with which the status is endowed.”⁴⁰ In this view, citizenship has a civil element (rights, such as freedom of expression, that are necessary for individual freedom), a political element (the right to participate in the exercise of political power), and a social element (varying from some share in the social product to a right to share in the full cultural and social heritage and to live the life of a civilized being according to the standard prevailing in society).⁴¹ Engin Isin and Bryan Turner describe this status as “belonging to a society through the entitlements associated with service.”⁴² For example, a citizen owes a duty to pay tax when they can and enjoys a right to receive social benefits when they need them. Marshall’s conception of citizenship is arguably bounded by group, time, and place (white, working-class men in post-war era developed countries); nevertheless, the Marshallian model has attained a normative status,⁴³ and provides a basic, workable model of citizenship based on belonging, equality, and reciprocity of rights and duties that many people in economically developed countries would recognize.⁴⁴

A binomial of inclusion/exclusion defines viable political communities,⁴⁵ so that members expect to be included in a consideration of comprehensive contribution and benefit, but for others to be generally excluded. This idea has particular resonance for taxation-welfare. Taxpayers must imagine an asymmetrical, impersonal, and general duty of reciprocity owed to and by people when they “will never know most of their fellow-

38. Commonwealth Electoral Act 1918 (Cth) s 245 (Austl.).

39. Electoral Act 1993, s 82 (N.Z.).

40. T.H. Marshall, *Citizenship and Social Class* 28 (1950).

41. See generally T.H. Marshall, *The Right to Welfare and Other Essays* (1981). See also articles 22-27 of the Universal Declaration of Human Rights, G.A. Res. 217 (III) A, Universal Declaration of Hum. Rts. (Dec. 10, 1948).

42. Engin F. Isin & Bryan S. Turner, *Investigating Citizenship: An Agenda for Citizenship Studies*, 11 *CITIZENSHIP STUD.* 5 (2007).

43. Virginia Mantouvalou, *Workers Without Rights As Citizens at the Margins*, 16 *CRITICAL REV. INT'L SOC. AND POL. PHIL.* 366–382 (2013).

44. For evidence that the Marshallian model does not apply in developing and transition countries, see Jørgen Møller and Svend-Erik Skaaning, *Marshall Revisited: The Sequence of Citizenship Rights in the Twenty-first Century*, 45 *GOV. AND OPPOSITION* 457 (2010).

45. Michael Walzer, *Welfare, Membership and Need*, in *LIBERALISM AND ITS CRITICS*, 200 (Michael J. Sandel ed., 1984).

members, meet them, or even hear of them, yet in the minds of each lives the image of their community.⁴⁶ The spatial reach of deep reciprocity is, in fact and, probably, from necessity, imaginatively coterminous with the confines of the nation.

A connection has long been drawn between citizenship, or at least democratic participation, and taxpaying.⁴⁷ However, the United States is the only economically advanced jurisdiction to tax the worldwide income of non-resident citizens;⁴⁸ other countries invariably use a tax residency criterion for taxing worldwide income.⁴⁹ For example, if a New Zealand citizen is not a New Zealand tax resident because they live permanently in the United States, New Zealand will only tax their income which has a source in New Zealand.⁵⁰ This predominant basis for taxation may weaken the nexus between taxpaying and voting: for example, in Australia, only citizens may vote,⁵¹ but anyone who meets that country's tax residency requirements must pay income tax on their worldwide there.⁵² In New Zealand, however, the reciprocal bond between the duty to pay income tax and the right to vote is arguably stronger because permanent residents, who can also expect to be tax residents,⁵³ may vote.⁵⁴

46. Benedict Anderson, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* 903 (Rev. ed., 1991).

47. For a nutshell history of the nexus between taxation and representation, see Richard Murphy, *THE JOY OF TAX: HOW A FAIR TAX SYSTEM CAN CREATE A BETTER SOCIETY* 19-25 (Random House, 2015). See also Stephen Utz, 'Chartism and the Income Tax', *Faculty and Article Papers*, 486, 192 (2013).

48. INTERNAL REVENUE SERV., U.S. DEP'T OF THE TREASURY, PUB. NO. 54, *TAX GUIDE FOR U.S. CITIZENS AND RESIDENT ALIENS ABROAD* (2020). The claim is sometimes encountered that Eritrea also taxes on a citizenship basis. See e.g., Kyle Pomerleau, *How Countries Define Their Income Tax Borders*, TAX FOUNDATION (June 1, 2015), <https://taxfoundation.org/how-countries-define-their-income-tax-borders-0/>. However, it seems that Eritrea's Recovery and Rehabilitation Tax is an attempt to raise a levy of 2% on the country's diaspora. See *The 2% Tax for Eritreans in the diaspora: Facts, figures and experiences in seven European countries*, DSP GROEP (June 2017), https://www.dsp-groep.eu/wp-content/uploads/The-2-Tax-for-Eritreans-in-the-diaspora_30-august-1.pdf.

49. *Rules Governing Tax Residence*, ORG. ECON. COOP. AND DEV., <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/>.

50. Income Tax Act 2007, s BD 1(4) (N.Z.).

51. Commonwealth Electoral Act 1918 (Cth) s 93 (Austl.).

52. *Id.*

53. Income Tax Act 2007, s YD 1(2) and (3) (N.Z.). *Commissioner of Inland Revenue v. Diamond* [2015] NZCA 613. A person stops being a tax resident if they spend 325 consecutive days outside the country (and does not retain a permanent place of abode). See Income Tax Act 2007, *supra* note 53, at s YD 1(5).

54. Electoral Act 1993, s 73 (N.Z.). A permanent resident (non-citizen) loses their right to vote if they are absent from New Zealand for 12 consecutive months. *Id.* at s 80(1)(b).

If a person is a tax resident in two states, for example, a United States citizen has a permanent place of abode in New Zealand, a double tax agreement, if one exists, gives the country with which the taxpayer has the closer connection primary taxing rights.⁵⁵ Paying tax on one's worldwide income in a particular state indicates a unique connection with that state in a way that one does not have the same association with any other political community.

B. Becoming a Citizen

The principles of *ius soli* ("right of the soil," i.e., citizenship by virtue of being born in a particular territory) and *ius sanguinis* ("right of blood," i.e., citizenship from one's parents' connection to a particular territory) provide the traditional grounds for citizenship claims and, of course, inequitable anomalies.⁵⁶ A person may also become a citizen of a country through naturalization.

In common with Australia and Canada, New Zealand allows would-be employees, who have the requisite points (based on qualifications, age and so forth),⁵⁷ to take up permanent residence, and, after a prescribed period, to apply for citizenship. Liberalized immigration rules have led to Auckland, the country's commercial capital, to become one of the world's most super-diverse cities, along with Sydney and Vancouver.⁵⁸ A cosmopolitan outlook and particular belonging are by no means mutually exclusive.⁵⁹ Immigrants are not expected to forsake their original cultures, but they are expected to belong within New Zealand.⁶⁰

55. Convention between New Zealand and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, N.Z.-U.S., art. 4(2), Nov. 2, 1983, art 4(2).

56. See generally Gerard-René de Groot & Olivier Vonk, *Acquisition of Nationality by Birth in a Particular Territory or Establishment of Parentage: Global Trends regarding Ius Sanguinis and Ius Soli*, 65 NETH. INT'L L. REV. 319 (2018).

57. *Points Indicator for Skilled Migrant Expression of Interest*, N.Z. IMMIGR. (2021), <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/tools-and-information/tools/points-indicator-smc-28aug>.

58. Steven Vertovec et al., Keynote Lecture at the 2018 International Metropolis Conference, Sydney: Superdiversity (2021).

59. For a discussion of the "false opposition" between a cosmopolitanism imaginary and particular belonging, see Craig Calhoun, *'Belonging' in the cosmopolitan imaginary*, 3 ETHNICITIES 531 (2003).

60. "The New Zealand Police, for example, has encouraged members of diverse groups to join by incorporating turbans for Sikh male officers and hijabs for Muslim female officers into police uniforms." See Madeleine Keck, *New Zealand Introduces Hijabs into Official Police Uniform*, GLOBAL CITIZEN (Nov. 18, 2020), <https://www.globalcitizen.org/en/content/new-zealand-police-introduces-hijabs/>. On the problems refugees, in particular, face in establishing belonging in bi-cultural, multi-ethnic

Like many other countries, New Zealand also operates an immigrant investor program (“IIP”).⁶¹ IIPs are common, experimental, and diverse but are invariably aimed at attracting wealth and cultivating economic engagement.⁶² According to Alan Gamlen and his co-authors, IIPs “exchange national membership rights for financial and human capital, monetizing the allure of countries to immigrants – an intangible asset which might be thought of as a country’s ‘destination appeal.’”⁶³ In addition to the rule of law, and political and social stability that countries, such as Australia and Canada, also offer immigrants, New Zealand’s physical isolation may have particular destination appeal. Nellie Bowles, for example, identifies a Silicon Valley stereotype of “the venture capitalist with a bunker in New Zealand.”⁶⁴

No option exists for gaining New Zealand citizenship without first having held permanent residency for five years, except through Ministerial concession. Most migrants gain permanent residency by satisfying the points-based skills test, which typically requires obtaining employment before migration. Qualifying investors may also obtain permanent residency without having to satisfy onerous presence in the country requirements.⁶⁵

New Zealand, *see generally* Amber Kale et al., ‘*I am a New Zealand Citizen Now – This I My Home*’: *Refugee Citizenship and Belonging in a Post-colonializing Country*, 33(3) J. REFUG. STUD. 577 (2020).

61. *Acceptable investments: investor visas*, N.Z. IMMIGR. (2021), <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/tools-and-information/business-and-investment/investor-categories>.

62. *See generally* Alan Gamlen et al., *Citizenship as Sovereign Wealth: Re-thinking Investor Immigration*, 10 GLOB. POL’Y 527 (2019).

63. *Id.* at 528.

64. Nellie Bowles, *I Used to Make Fun of Silicon Valley Preppers. Then I Became One*, N.Y. TIMES (Apr. 25, 2020), <https://www.nytimes.com/2020/04/24/technology/coronavirus-preppers.html>.

65. “Due again to the efforts of investigative journalists, in August 2021 it was revealed that in early January 2021, New Zealand dispatched an air ambulance to Fiji to take Larry Page, the billionaire co-founder of Google, and his child to Auckland to enable the child to receive specialist medical treatment that was unavailable in Fiji. Questions were asked why, when the country was inaccessible to non-residents, Page could enter. New Zealand Immigration initially denied that Page is a New Zealand resident, then days later revealed that he had applied for investor class residency in November 2020, and this was granted soon after he arrived in New Zealand. While there is no suggestion of impropriety in Page’s residency application – and it is stressed that he has not been granted Thiel-style citizenship – the speed at which his application was granted was notable, especially since points-based applications for permanent residency have essentially been put on hold during the Covid-19 pandemic.” *See* Sarah Robson, *Google boss Larry Page secured New Zealand residency under wealthy investor category*, R.N.Z. (Aug. 7, 2021), <https://www.rnz.co.nz/news/national/448674/google-boss-larry-page-secured-new-zealand-residency-under-wealthy-investor-category>. The humorist, Joe Bennett, probably represented the views of many New Zealanders and applicants waiting to for their residency applications

They may also receive special treatment. The Investor 1 Resident Visa (Investor Plus) requires an applicant to keep at least NZD10 million (USD7 million) invested in an acceptable investment in New Zealand for three years, but the applicant only needs to be physically present in the country for at least 44 days of each of the last two years of the investment.⁶⁶ After three years, permanent residency may be granted, and the applicant has no further obligation to be physically present in the country. However, gaining citizenship and a passport requires a permanent resident to be physically present in New Zealand for a significant number of days for each of the five successive years.

Shachar and Herschl characterize “expedited access to membership of the body politic” as “Olympic citizenship.”⁶⁷ It is, indeed, *access* to membership, not membership of the political community as such. Rachel Simon-Kumar notes the “long-term implications, especially in the context of ‘belonging,’ as the state rushes to capitalize on economic expediency and hasten high-income migrants. . .high-income migrants now transcend the need to ‘belong’ to society, as long as they contribute economically. . .ability to integrate or settle is secondary to the financial contributions they make.”⁶⁸ Simon-Kumar’s specific concerns for New Zealand align with general reservations that “government-facilitated transactional visions of citizenship may ultimately erode the ties that bind and what it means to belong to a political community.”⁶⁹ Certainly, New Zealand grants permanent residents rights, such as the right to vote, that other countries reserve to citizens, but, if an investor wishes to obtain a passport, the physical presence requirement, effectively ensures that they first live within the country and so, it may be expected, develop some sentiment for and lived experience of belonging within the New Zealand political community.

For Shachar and Herschl, IIPs generally raise “serious ethical quandaries” but they usually require applicants to meet “standard residency and naturalization requirements. . .but the unfettered cash-for-passport

to be processed when he wrote: “It’s not good for them to think they can buy us. And it’s not good for us to be the [omitted] of the South Pacific. Time to give them their money back, revoke their residency and tell them politely but firmly that if they want to come in they can queue up like everybody else.” See Joe Bennett, *First the Moon and then NZ*, DOMINION POST (Aug. 11, 2021), at 23.

66. *Information about Investor 1 Resident Visa*, N.Z. IMMIGR. (2021), <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/investor-plus-investor-1-resident-visa>.

67. *Supra* note 35, at 232.

68. Rachel Simon-Kumar, *Neoliberalism and the New Race of Politics of Migration Policy: Changing Profiles of the Desirable Migrant in New Zealand*, 41 J. ETHNIC AND MIGRATION STUD. 1172, 1186 (2015).

69. *Supra* note 35, at 233.

programs are far more extreme and blatant than the traditional investment programs. They contribute to some of the most disturbing developments in 21st century citizenship, including the emergence [of] new forms of inequality and stratification.”⁷⁰

According to Rainer Bauböck and Sarah Wallace Goodman, “[n]aturalisation is the most densely regulated and most politicised aspect of citizenship laws.”⁷¹ In ethnically diverse, postcolonial societies, such as New Zealand, naturalization rules that allow people without a blood or birth connection to take up residency and eventually to be granted citizenship require scrupulous construction and administration, particularly in light of past exclusionary racist policies.⁷² New Zealand citizenship law is entirely statute based. Crafting and applying those laws and regulations are difficult and politically fraught, but it is clear that, in a state governed by the rule of law, granting citizenship should not be an ad hoc barter, conducted in secret, between a wealthy individual and a cabal of government Ministers.

C. Citizenship Act 1977

The Minister of Internal Affairs is empowered to authorize the grant of New Zealand citizenship to a person who is aged over sixteen, has full capacity and satisfies the Minister as to certain requirements.⁷³ The applicant must be entitled to live in New Zealand indefinitely under the terms of the Immigration Act of 2009. This essentially means that the applicant must have the status of permanent resident. The applicant must also have been physically present in New Zealand for a minimum period before the application is made, that is: at least 1,350 days during the five years immediately before the date of the application, and for at least 240 days in each of those five years.⁷⁴ An applicant must also intend to permanently reside in New Zealand, have a good character and sufficient knowledge of the responsibilities and privileges attaching to New Zealand citizenship, and

70. *Id.* at 246.

71. *See generally* Rainer Bauböck & Sarah Wallace Goodman, Naturalisation, EUDO CITIZENSHIP POLICY BRIEF NO. 2 (2011), <http://hdl.handle.net/1814/51625>.

72. *See, e.g.*, Sue Yong & Rob Vosslamber, *Race and Tax Policy: The Case of the Chinese Poll Tax*, 20 J. AUST. TAX. 147 (2018) (on New Zealand’s notorious Chinese poll tax).

73. Citizenship Act 1977 §8 (N.Z.).

74. This physical presence requirement guarantees that a person who applies for citizenship is a New Zealand tax resident because they spend more than 183 days in the country. A tie breaker provision in a double taxation agreement may prevent New Zealand from taxing the income of the applicant sourced in the treaty party state but not income from any other country. *See* MODEL TAX CONVENTION ON INCOME AND ON CAPITAL: CONDENSED VERSION, ORGANISATION OF ECONOMIC COOPERATION AND DEVELOPMENT (2017), https://doi.org/10.1787/mtc_cond-2017-en.

sufficient knowledge of the English language.

Notwithstanding the stipulated residency periods, the Minister may grant citizenship if they are “satisfied that granting a certificate of New Zealand citizenship to the applicant would be *in the public interest because of exceptional circumstances of a humanitarian or other nature relating to the applicant.*”⁷⁵

Does this provision confer on the Minister unlimited discretion to grant citizenship? The explanatory memoranda to the Bill precursory to the 1977 Act and the 2005 amending Act provide no guidance, and there appears to be no case law on the issue. However, Steven Franks, a public lawyer and then, an MP for the libertarian ACT party, stated in the second reading of the Identity (Citizenship and Travel Documents) Bill of 2005 that led to the current statutory wording:

The citizenship provisions appear to specify quite strict conditions for the Minister to grant citizenship. . . I am not sure where the Minister’s discretion is. . . I cannot see an express authority to grant where it would be in the public interest because the person seeking citizenship is an incredibly good catch for New Zealand—a very well-qualified person, or an enormously entrepreneurial person, or someone whose drive and ambition have shone through in what that person has done, or someone whose inventive talents have been well displayed. I ask whether there is something else that would make such a person a special case, because, certainly, the provisions we see in this part that allow the Minister to grant citizenship in special cases—all the powers that the Minister has to grant citizenship in special cases—are very narrow.⁷⁶

Franks’ interpretation is persuasive, and it is submitted, therefore, that a narrow interpretation of the discretion should be adopted; otherwise, the Minister would have *carte blanche* to grant citizenship for reasons not contemplated by the framework and informing principles of the Act. The other grounds for a special grant are more compassionate in nature (‘misery’ in Franks’ terminology) and they include waiving the requirement to be older than sixteen, a grant if their parents were New Zealand citizens at the time of the applicant’s birth, humanitarian reasons or if a person would otherwise be left stateless.⁷⁷ There is no provision in the legislation that empowers the Minister to grant citizenship on the grounds that an extremely wealthy

75. Citizenship Act 1977 § 9 (emphasis added) (N.Z.).

76. *Identity (Citizenship and Travel Documents) Bill — Second Reading, Instruction to Committee, In Committee, HANSARD* (Apr. 12, 2005), https://www.parliament.nz/en/pb/hansard-debates/rhr/document/47HansD_20050414_00001649/identity-citizenship-and-travel-documents-bill-second.

77. Citizenship Act 1977 § 9(1) (N.Z.).

individual wishes to have an irrevocable right to a bolt hole in the event of the country where they generate their wealth disintegrating.

II. CITIZEN THIEL

This part of the essay sets out the narrative of Thiel's gaining New Zealand citizenship and juxtaposes his values against New Zealand's espoused values.

Despite Thiel failing to satisfy the residency requirements and not expressing an intention to permanently reside in New Zealand, he was granted citizenship. It is unlikely that the public would ever have known about Thiel's gaining citizenship without Nippert's investigation,⁷⁸ which revealed that Thiel spent just 12 days in New Zealand in the five years before he was granted citizenship—that is less than one per cent of the minimum period usually required under the Citizenship Act. Had he not bought an estate in Wanaka, Central Otago, it is likely Thiel would only have been liable for income tax in New Zealand on his income generated there – almost certainly a negligible amount. But, even if he is considered a New Zealand tax resident by virtue of having a permanent place of abode in New Zealand,⁷⁹ Thiel has a far stronger association with the United States, and so his worldwide income, rather than his New Zealand source income, is taxable there. The obvious point is that Thiel has not established even a semblance of the belonging to New Zealand that migrants, including investor-migrants, are required to establish by permanently residing in the country for five years and, most likely, paying the bulk of their worldwide

78. The full investigation was published as Matt Nippert, *Citizen Thiel*, N.Z. HERALD (Feb. 1, 2018), <https://www.nzherald.co.nz/indepth/national/how-peter-thiel-got-new-zealand-citizenship/>, but Nippert had been working on the project for some time. Under New Zealand's Overseas Investment Act 1995 § 7(2), an "overseas person" is an individual who is neither a New Zealand citizen nor ordinarily resident in New Zealand. If Thiel had never been ordinarily resident in New Zealand, neither he nor any corporation in which he owned more than 25% of the shares could buy "sensitive land" (e.g. more than five hectares of farmland) without government permission. In 2015, Second Star Ltd, a New Zealand company wholly owned by Thiel bought a large estate near Wanaka, Central Otago, in the South Island, without going through the usual overseas investment application process. Investigations showed that Thiel did not need permission to purchase the land because he had secretly become a New Zealand citizen in 2011. See Matt Nippert & Anne Gibson, *Facebook billionaire Peter Thiel a Kiwi citizen, owns Wanaka estate*, N.Z. HERALD (Jan. 25, 2017), <https://www.nzherald.co.nz/business/facebook-billionaire-peter-thiel-a-kiwi-citizen-owns-wanaka-estate/YYEZNV6YMDN7A73ZFBUPPNWAJY/>. United States-based writers have taken Nippert's investigation to a wider audience: see, e.g., Ryan Mac, *The Many Contradictions Of Peter Thiel's New Zealand Citizenship*, FORBES (Feb. 1, 2017), <https://www.forbes.com/sites/ryanmac/2017/02/01/the-many-contradictions-of-peter-thiels-new-zealand-citizenship/?sh=1f48c5301317>.

79. Income Tax Act 2007 § YD 1 (N.Z.).

tax obligation in that country.

Ostensibly on the advice of officials, the Minister decided that it would be in “the public interest because of exceptional circumstances of . . . [an]other nature relating to the applicant” to grant Thiel citizenship.⁸⁰

Nippert’s investigation demonstrates that the principal motivation for granting Thiel’s citizenship was precisely what Franks argued ought to be in the legislation but concluded was not, and that was waiving the rules for exceptional entrepreneurs who might benefit New Zealand businesses. (Thiel already had a special investor category visa and so had a right, albeit a revocable right, to reside in New Zealand.) A secondary motive appears to have been to reward Thiel for a NZD1 million (USD700,000) donation to the Christchurch earthquake recovery fund.⁸¹ Nippert’s deft analysis of the attempts to disassociate the donation from the citizenship grant, and Thiel’s lawyers’ leak to the media of their client’s quiet charity is a masterful exercise in exposing cant.

There is no suggestion that Thiel donated to the then-governing National Party in order to obtain citizenship or otherwise. Political donations in New Zealand are highly regulated and, above low levels, public information: for example, a donation of more than NZD50 (USD35) from an overseas donor must be reported to the Electoral Commission.⁸² While wealthy residents or groups of residents may seek favorable policy outcomes through party donations, the Electoral Commission, law enforcement agencies and the media are alert to such a possibility.⁸³

Bauböck and Goodman observe “[p]ublic ceremonies with newly naturalized citizens can highlight the value of citizenship and celebrate the openness of the country towards newcomers.”⁸⁴ A ceremony provides the opportunity for both representatives of the state and the new citizen to affirm their loyalty and to express their having fully joined the political community to which they now belong. Section 11(2) of the Citizenship Act provides:

80. Nippert, *supra* note 78. Nathan Guy was the relevant Minister at the time. Guy is a farmer with an undergraduate degree in agricultural studies. It is implausible that Guy might have devised the idea for granting Thiel citizenship. Before he entered politics, then-premier John Key had been a highly successful currency trader for Merrill Lynch in New York. His closest advisor, Steven Joyce became wealthy from investing in talk-back radio stations. They were experienced deal-makers. See *infra* note 93 on the so-called Hobbit law.

81. Nippert, *supra* note 78.

82. *Party donations and loans by year*, ELECTORAL COMM’N, <https://elections.nz/democracy-in-nz/political-parties-in-new-zealand/party-donations-and-loans-by-year/>.

83. Phil Harris, *Book Review*, J. PUBLIC AFFAIRS 7: 125-126 (2007) (reviewing NICKY HAGER’S *THE HOLLOW MAN: A STUDY IN THE POLITICS OF DECEPTION* (2006)).

84. Bauböck & Goodman, *supra* note 71 at 10.

“Unless the Minister agrees otherwise, the oath or affirmation must be taken or made at a public citizenship ceremony.” This requirement for a public ceremony was introduced in 2005 to ensure that new citizens engaged in an open and patriotic performance. The law recognizes that the oath and conferral of citizenship should not be a bureaucratic function akin to registering a corporation; rather it should represent joining and being welcomed into a new political community. The Minister “approved Thiel’s request application on June 30, 2011, and a month later, in a *private* ceremony at the New Zealand consulate in Santa Monica in California, the technology billionaire swore on the Bible to become Citizen Thiel.”⁸⁵

It is reasonable to assume that, along with many other successful Silicon Valley entrepreneurs and hedge fund managers, in pursuing New Zealand citizenship, Thiel was taking out “apocalypse insurance.” Evan Osnos reports:

Reid Hoffman, the co-founder of LinkedIn and a prominent investor, recalls telling a friend that he was thinking of visiting New Zealand. “Oh, are you going to get apocalypse insurance?” the friend asked. “I’m, like, Huh?” Hoffman told me. New Zealand, he discovered, is a favored refuge in the event of a cataclysm. Hoffman said, “Saying you’re ‘buying a house in New Zealand’ is kind of a wink, wink, say no more.”⁸⁶

The National-led government under John Key’s premiership (2008-2016) demonstrated a willingness to underwrite this insurance policy in exchange for a premium – the promise of Thiel aiding New Zealand businesses.⁸⁷ While accounting software firm Xero, founded by Rod Drury, reportedly benefited from Thiel’s involvement before citizenship was granted, Nippert concludes that Thiel’s interest in aiding New Zealand businesses soon waned after he became a citizen.⁸⁸

Carl Schmitt proposed that sovereignty vests in whoever decides the exception.⁸⁹ A cabal of Ministers decided that Thiel’s citizenship should be

85. Nippert, *supra* note 78 (emphasis added).

86. Evan Osnos, *Doomsday Prep for the Super-Rich*, NEW YORKER (Jan. 22, 2017), <https://www.newyorker.com/magazine/2017/01/30/doomsday-prep-for-the-super-rich>. See also, Mark O’Connell, *Why Silicon Valley Billionaires are Prepping for the Apocalypse in New Zealand*, GUARDIAN (Feb. 15, 2018), <https://www.theguardian.com/news/2018/feb/15/why-silicon-valley-billionaires-are-prepping-for-the-apocalypse-in-new-zealand>.

87. Without, hopefully, laboring the analogy, in British-heritage jurisdictions, stamp duty was typically payable on the issuance of an insurance policy. Thiel neither paid any such fiscal duty, nor does he in practice owe civic duties. The idea, for example, that Thiel might serve on a jury in the Wanaka District Court is fanciful. Nippert, *supra* note 78.

88. Nippert, *supra* note 78.

89. See generally Carl Schmitt, *POLITICAL THEOLOGY: FOUR CHAPTERS ON THE CONCEPT OF SOVEREIGNTY* (2005).

an exception, but it is reasonable to ask – who crafted the terms of this exception? The likely answer to that question is Thiel and his legal advisors.

It is, perhaps, understandable that impoverished, less developed countries might sell citizenship without a residential qualifying period,⁹⁰ but New Zealand is an Organisation of Economic Cooperation and Development member and reportedly the seventh most prosperous country in the world;⁹¹ it also prides itself on its governance by the rule of law,⁹² and its reputation for transparency and being relatively corruption-free.⁹³ However, just as the Key government sacrificed worker protections in order to heavily secure tax subsidized filmmaking in New Zealand,⁹⁴ so it appears to have made citizenship without residency tradable. As Key justified the concessions made to Warner Brothers to secure the making of *The Hobbit* trilogy in New Zealand: “It was commercial reality. We did the business”.⁹⁵

Thiel did not, technically, buy his passport; rather it was granted because of government perceptions of his exceptional human and social capital. Nevertheless, Luca Mavelli links Thiel’s story to Malta’s overt

90. Joe Myers, *Countries where you can buy citizenship*, WORLD ECON. F. (July 28, 2016), <https://www.weforum.org/agenda/2016/07/countries-selling-citizenship>.

91. See, e.g., John Anthony, *NZ 7th most prosperous but ...*, DOMINION POST (Nov. 26, 2019).

92. See e.g., Austin Forbes, *The rule of law and New Zealand lawyers*, N.Z.L.J. 42 (Mar. 2011).

93. See, e.g., Clare Curran, *Continued effort needed against corruption*, BEEHIVE.GOV.T.NZ (Feb. 22, 2018), <https://www.beehive.govt.nz/release/continued-effort-needed-against-corruption>. An example of how seriously the potential for corruption is taken is provided by a man who entered New Zealand on a study permit and was later granted a work visa. Despite having been in the country for seven years, a drunken attempt to bribe a police officer, when stopped for driving under the influence, led to his deportation. See *Singh* [2021] N.Z.I.P.T. 505244 (N.Z.).

94. Under New Zealand law, only employees may join a trade union and bargain collectively. See Employment Relations Act 2000 part 3. In *Bryson v Three Foot Six Ltd* [2005] NZSC 34, the Supreme Court, the country’s highest court, found that the contract for a film worker was in substance an employment contract, despite being the worker being contractually labelled as an independent contractor. It was claimed that a unionized workforce would jeopardize Warner Brothers filming *The Hobbit* movies in New Zealand (Three Foot Six Ltd is wholly owned by New Line Productions Inc., part of Warner Bros.). The Key government amended the definition of ‘employee’ in the Employment Relations Act 2000 §6 to exclude film workers unless a written employment agreement specifically provides that a particular film worker is an employee. Helen Kelly, *The Hobbit Law*, 17(4) INT’L UNION RTS. 4 (2010). Almost NZD200 million (USD140 million) in income tax rebates were granted to secure the making of *The Hobbit* movies in New Zealand. Ben Heather, *\$191m in public grants paid to Hollywood for Hobbit trilogy*, STUFF (Sept. 9, 2015), <https://www.stuff.co.nz/entertainment/71878242/191m-in-public-grants-paid-to-hollywood-for-hobbit-trilogy>.

95. New Zealand Press Agency, *Key on Hobbit deal: ‘It was commercial reality. We did the business’*, NAT’L BUS. REV. (Oct. 31, 2010).

passport selling scheme⁹⁶ and argues that “citizenship-by-investment programs are only *one* manifestation of a process of the neo liberalization of citizenship that transcends mere commodification and prompts entrepreneurial states to evaluate and include or exclude migrants according to their capital endowments.”⁹⁷ To reiterate, in New Zealand there is no direct path to citizenship through investment. A person must first become a permanent resident—and, of course, under neoliberal policies, the grounds for obtaining such status may be ethically dubious – but citizenship requires a period of factual residency. That is why the grant of citizenship to Thiel, notwithstanding his absence from the country during the requisite period, was indefensible.

While many are likely to view Malta’s selling passports as tawdry if not repugnant,⁹⁸ Dmitry Kochenov defends the decision on the grounds of Malta’s democratic prerogative, notwithstanding the consequences for its fellow European Union members.⁹⁹ From a legal positivist perspective, this defense is plausible – a recognized lawmaker may make ethically dubious laws provided the proper process is followed. However, the grant of citizenship to Thiel was an executive decision that appears to lie beyond the statute which, in the absence of any residual Crown prerogative, exclusively governs the conferral of citizenship in New Zealand.

Because the grant of citizenship was based on Thiel’s personal characteristics and qualities, it is pertinent to consider those characteristics and qualities. Thiel was born in Germany but became a naturalized United States citizen. He founded PayPal and was an early investor in Facebook.¹⁰⁰ As an investor, he may not have a Midas touch but, his being able to redeem an initial USD750,000 investment in Facebook for more than USD1.3 billion on its public listing,¹⁰¹ practically erases any investment failures he may have experienced.

Thiel apparently became enamored with New Zealand when taking a

96. See generally, Sergio Carrera, *The Price of EU Citizenship: The Maltese Citizenship-for-Sale Affair and the Principle of Sincere Cooperation in Nationality Matters*, 21(3) M.J.E.C.L. 406 (2014).

97. Luca Mavelli, *Citizenship for Sale and the Neoliberal Political Economy of Belonging*, 62 INT. STUD. Q. 482, 487 (2018).

98. See generally, Chris Armstrong, *The Price of Selling Citizenship*, in DEBATING TRANSFORMATIONS OF NATIONAL CITIZENSHIP 25 (Rainer Bauböck, ed., 2018).

99. See generally, Dmitry Kochenov, *Citizenship for Real: Its Hypocrisy, Its Randomness, Its Price*, in DEBATING TRANSFORMATIONS OF NATIONAL CITIZENSHIP 25 (Rainer Bauböck, ed., 2018).

100. Gian Volpocelli, *What is Libra? Facebook’s cryptocurrency, explained*, WIRED (Aug. 14, 2019), <https://www.wired.co.uk/article/facebook-libra-cryptocurrency-explained>.

101. Nippert, *supra* note 78.

jet boat trip on the Shotover river near Queenstown, the country's adventure tourism capital. He presumed, it seems, that the license to thrill-seek was indicative of a libertarian society.¹⁰² Key understood the national culture better and, notwithstanding the neoliberal structure of the economy, famously described all New Zealanders as having a "socialist streak."¹⁰³ An alert libertarian might have questioned how committed to individualism New Zealand might be since, in addition to free hospital treatment and a unique centralized drugs purchasing agency,¹⁰⁴ it is the only country in the world to have socialized personal injury torts beyond the workplace.¹⁰⁵ New Zealand's nationalization of personal injury claims may have contributed to the growth of the country's adventure tourism industry,¹⁰⁶ which commonly experiences unnecessary injuries and deaths.¹⁰⁷ But lax regulation of workplace health and safety is not tantamount to libertarian ideology in practice, it is simply a manifestation of a "she'll be right" attitude among workers and management, and poor enforcement by regulators.¹⁰⁸

New Zealand commonly touts its progressive credentials, such as the

102. *Id.*

103. Kate Chapman, *Key admits "socialist streak" comment*, STUFF (Aug. 26, 2011), <http://www.stuff.co.nz/national/politics/5509870/Key-admits-socialist-streak-comment>. An old joke entails a New Zealand political scientist explaining the country's two main political parties to an American peer – "the Labour Party is equivalent to the Democrats, whereas the National Party is equivalent to the Democrats". The Green Party lies to the left of Labour and ACT to the right of National – each party currently holds 10% of the seats in the unicameral Parliament.

104. While free hospital treatment is not unusual internationally, New Zealand's Pharmac is apparently the only national agency in the world that decides which medicines to fund, and manages a fixed budget for those medicines. *See* New Zealand Public Health and Disability Act 2000 §48 (N.Z.).

105. In exchange for state-provided compensation and rehabilitation, a person who suffers a personal injury cannot, as a rule, sue the person who injures them. In effect, New Zealand has eliminated personal injury torts by socializing them. The Accident Compensation Corporation, the state-owned insurer and administrator controls the full process. *See generally*, Accident Compensation Act 2001. A less libertarian way of engaging with personal injury and responsibility is hard to imagine. Needless to say, safety belts are compulsory in New Zealand, and, it is understood, along with Australia, New Zealand is one of only two countries that require adults to wear safety helmets on bicycles.

106. *See generally*, Tim Bentley, Keith Macky & Jo Edwards, *Injuries to New Zealanders Participating in Adventure Tourism and Adventure Sports: An Analysis of Accident Compensation Corporation (ACC) Claims*, 119(1247) N.Z. MED. J. 1 (2006), https://www.researchgate.net/publication/6604663_Injuries_to_New_Zealanders_participating_in_adventure_tourism_and_adventure_sports_an_analysis_of_Accident_Compensation_Corporation_ACC_claims.

107. *See, e.g.*, Debbie Jamieson, *Nightmare Series of Failures Led to US Sky Diver's Death in Queenstown*, STUFF (May 23, 2019), <https://www.stuff.co.nz/business/better-business/112939380/nightmare-series-of-failures-led-to-us-sky-divers-death-in-queenstown>.

108. *See, e.g.*, Doug Tennent & Dew James, *Pike River*, N.Z.L.J. 161 (May 2013).

1840 Treaty of Waitangi between the British Crown and indigenous Māori, which was greatly ignored or abused until the mid-1970s and being the first country to have a 40-hour working week.¹⁰⁹ Although New Zealanders now work more hours than Australians, for less money, and do so less productively.¹¹⁰ Nevertheless, it is an objective fact, memorialized by suffragette Kate Sheppard's image on the NZD10 note and pedestrian crossings in central Wellington, that New Zealand women were the first to vote in national elections.¹¹¹ It is apposite, then, to note Thiel's notorious article for a Cato Institute publication in which he decried the mistake of the United States in extending the vote to women in 1920.¹¹² In Thiel's view, "the vast increase in welfare beneficiaries and the extension of the franchise to women . . . have rendered the notion of 'capitalist democracy' into an oxymoron."¹¹³ While Thiel later clarified that he did not support disenfranchisement of women, he also stated "I no longer believe that freedom and democracy are compatible."¹¹⁴

Libertarians, such as Friedrich Hayek, Robert Nozick and Richard Epstein,¹¹⁵ have presented well-reasoned philosophical and practical arguments for their cause. Thiel is not, however, a follower of principled and pragmatic libertarianism. Indeed, like many others of his ilk, his seminal influence is Ayn Rand, the so-called philosopher queen of Silicon Valley.¹¹⁶ Nick Bilton, having noted that "Thiel . . . is also a self-declared Rand

109. *Labour Day Celebrates 8-Hour Working Day*, N.Z. PARLIAMENT (Oct. 19, 2018), <https://www.parliament.nz/en/get-involved/features/labour-day-celebrates-8-hour-working-day>.

110. *See generally*, Paul Conway & Lisa Meehan, *Productivity by the Numbers: The New Zealand Experience*, N.Z. PRODUCTIVITY COMM'N (Sept. 20, 2013), <https://www.productivity.govt.nz/research/productivity-by-the-numbers-2013>.

111. *See, e.g.*, MEGAN HUTCHING, *LEADING THE WAY: HOW NEW ZEALAND WOMEN WON THE VOTE* (2010).

112. Peter Thiel, *The Education of a Libertarian*, CATO UNBOUND (Apr. 13, 2019), <https://www.cato-unbound.org/2009/04/13/peter-thiel/education-libertarian>.

113. *Id.*

114. *Id.*

115. *See, e.g.*, F.A. HAYEK, *THE ROAD TO SERFDOM* (1944); ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* (1974); Richard A. Epstein, *Taxation in a Lockean World*, 4(9) SOC. PHIL. & L. 49 (1986); Richard A. Epstein, *Property, Speech, and the Politics of Distrust*, in *THE BILL OF RIGHTS IN THE MODERN STATE* 41 (Geoffrey R. Stone, Richard A. Epstein & Cass R. Sunstein, eds., 1992). Epstein wrote and presented frequently for the neoliberal New Zealand Business Roundtable which had a strong influence on government policy in the 1980s and 1990s. Megan Cook, *Employer and Business Organisations*, Te Ara – The Encyclopedia of New Zealand (Mar. 11, 2010), <http://www.TeAra.govt.nz/en/employer-and-business-organisations>.

116. *See, e.g.*, Masha Gessen, *The Persistent Ghost of Ayn Rand, the Forebear of Zombie Neoliberalism*, NEW YORKER (June 6, 2019); LISA DUGGAN, *MEAN GIRL: AYN RAND AND THE CULTURE OF GREED* (2019).

devotee,” observes:

At their core, Rand’s philosophies suggest that it’s O.K. to be selfish, greedy, and self-interested, especially in business, and that a win-at-all-costs mentality is just the price of changing the norms of society. As one start-up founder recently told me, “They should retitle her book *It’s O.K. to Be a Sociopath!*” And yet most tech entrepreneurs and engineers appear to live by one of Rand’s defining mantras. The question isn’t who is going to let me; it’s who is going to stop me.¹¹⁷

Was granting citizenship to a person, who holds views so incompatible with New Zealand’s ostensible national values, really in the public interest?

It is clear that Thiel does not consider himself a resident of New Zealand. For example, his address, as sole shareholder for Second Star Ltd is a suite in Hollywood West, California.¹¹⁸ More significantly, he has begun to use his wealth to support radical right-wing politicians in the United States.¹¹⁹ Thiel appears to have no interest in the politics of either his birth or putative bolt country, which is likely to be a relief to both those countries. New Zealand borrowed its M.M.P. electoral system from Germany¹²⁰ with an eye to tempering neoliberal, and, conversely, overly collectivist government policies:¹²¹ both countries tend toward centrist, consensus-oriented government incompatible with the views of Thiel and his political beneficiaries.

III. *HOMO SACRISIMUS* AND DUTY-FREE CITIZENSHIP

Collectables have become liquid commodities which, despite their ostensible uniqueness, may be considered fungible in the eyes of the super-wealthy. Artworks may be shifted in packing cases from free port to free port, and thereby dislocated from the fundamental purpose of art – to be viewed. Analogously, citizenship may become a hedging instrument without the civic substance that is constituted by genuine belonging and the reciprocal exchange of ordinary rights and duties. This observation, of course, only applies to the super-wealthy. The financial benefits of duty-free

117. Nick Bilton, *Silicon Valley’s Most Disturbing Obsession*, VANITY FAIR (Oct. 5, 2016), <https://www.vanityfair.com/news/2016/10/silicon-valley-ayn-rand-obsession>.

118. Significant information about New Zealand registered corporations can be found, without charge, by searching the Companies Register at <https://companies-register.companiesoffice.govt.nz/>.

119. See, e.g., Isaac Isenstadt, *Rise of a Megadonor: Thiel Makes a Play for the Senate*, POLITICO (May 17, 2021), <https://www.politico.com/news/2021/05/17/peter-thiel-senate-megadonor-488799>.

120. Hilde Coffé, *MPs’ Representational Focus in MMP Systems. A Comparison Between Germany and New Zealand*, 54(4) J. REPRESENTATIVE DEMOCRACY, 367 (2018).

121. See generally, GEOFFREY PALMER & MATTHEW PALMER, BRIDLED POWER (2004).

art can be enjoyed by a select few, whereas the general public are denied access to cultural artifacts cached in storage. It is not suggested that such cultural denial is tantamount to the misery suffered by refugees, but they are both features of contemporary distributions of wealth and entitlements. When borders around the world are closed to most would-be migrants, negotiable citizenship, without the duties of citizenship, is a privilege claimable only by an elite among the few. This part of the article, borrowing the language of Giorgio Agamben, suggests that the people who enjoy that privilege, who are invariably men, may be described as *homo sacrissimus* (most sacred man).

A. *The Right to Rights*

In *Perez v Brownell*,¹²² Chief Justice Warren observed “[c]itizenship is man’s basic right for it is nothing less than the right to have rights.”¹²³ This statement has empirical support. Indeed, notwithstanding occasional international interventions in the name of human rights, notably in Bosnia during the 1990s,¹²⁴ actionable human rights are greatly reserved in practice for citizens within their own countries.¹²⁵ Hannah Arendt captures this paradox of *universal* human rights when she says:

The Rights of Man, after all, had been defined as “inalienable” because they were supposed to be independent of all governments; but it turned out that the moment human beings lacked their own government and to fall back upon their minimum rights, no authority was left to protect them, and no institution was willing to guarantee them.¹²⁶

Similarly, Jacques Rancière observes:

[H]uman rights cannot be the rights of the human as human, the rights of the bare human being . . . the bare, apolitical human has no rights, since in order to have rights one needs to be ‘other’ than a mere ‘human.’ ‘Citizen’ is the historical name for this ‘other than human.’¹²⁷

Furthermore, according to Jean-François Lyotard “[t]he citizen is the

122. 356 U.S. 44. (1958).

123. *Id.* At 64.

124. See, e.g., Jane Olson, Lois Fielding, Holly Burkhalter & Douglas Cassel Jr., *Bosnia, War Crimes, and Humanitarian Intervention*, 15 WHITTIER L. REV. 445 (1994).

125. Migrant and refugee rights are often practically unenforceable: for example, “European borders have been militarized with aggressive controls, fences and border patrols, with little consideration for human dignity.” See *At Europe’s Borders, Migrants and Refugees are Denied Their Basic Human Rights*, OXFAM INT’L (2021), <https://www.oxfam.org/en/europes-borders-migrants-and-refugees-are-denied-their-basic-human-rights>.

126. HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 291-92 (3d ed., 1967).

127. JACQUES RANCIÈRE, *AESTHETICS AND ITS DISCONTENTS* 118 (2004).

human individual whose right to address others is recognised by those others.”¹²⁸

It is often overlooked, but Article 29 of the Universal Declaration includes a general duties affirmation so that “[e]veryone has duties to the community in which alone the free and full development of his personality is possible.” This provision implies that both rights and duties are bound by the limits of the political community. Once more, belonging to a particular community is the critical consideration.¹²⁹

Giorgio Agamben distinguishes between the human person living the bare life (*la vita nuda*) and the rights bearing citizen (*civis*).¹³⁰ In order to illustrate bare life, Agamben draws on the concept of the outlaw (*homo sacer*) under Roman law – a criminal who has been exiled from their community and so may be killed by community members at will.¹³¹ The analogy is problematic because, while migrants and refugees may face horrific hazards,¹³² unlike outlaws, they have not been expelled from the community, rather they have not been granted the opportunity to enter and belong within that community.

Agamben further claims that, today, the camp, rather than the city is the fundamental biopolitical paradigm of the West.¹³³ Patricia Owens explains this view:

Agamben argues that refugees can be seen as the ultimate ‘biopolitical’ subjects: those who can be regulated and governed at the level of population in a permanent ‘state of exception’ outside the normal legal framework – the camp. In camps, he argues, refugees are reduced to ‘bare life’: humans as animals in nature without political freedom.¹³⁴

128. Jean-François Lyotard, *The Other's Rights*, in *THE POLITICS OF HUMAN RIGHTS* 181, 182 (Obrad Savić, ed., 1999).

129. On a right to equal belonging, see ELENA DRYMIOTOU, *HUMAN RIGHTS, CONSTITUTIONAL LAW AND BELONGING: THE RIGHT TO EQUAL BELONGING IN A DEMOCRATIC SOCIETY* (2018).

130. See generally GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* (1998).

131. Peter Fitzpatrick, *Bare Sovereignty: Homo Sacer and the Insistence of Law*, 5(2) *THEORY & EVENT* 1, 3 (2001); Roman law's *capitis diminutio* (decrease of personality) or civil death appears to have been a far more widespread practice, temporally and spatially, than Agamben's *homo sacer*: see e.g., Hal Foster, *Ghosting*, 43(15) *LONDON REV. OF BOOKS* 17, 17-18 (July 29, 2021).

132. See, e.g., Niamh McIntyre and Mark Rice-Oxley, *It's 34,361 and Rising: How the List Tallies Europe's Migrant Bodycount*, *GUARDIAN* (June 20, 2018), <https://www.theguardian.com/world/2018/jun/20/the-list-europe-migrant-bodycount>.

133. See generally, AGAMBEN, *supra* note 130.

134. Patricia Owens, *Reclaiming 'Bare Life'?: Against Agamben on Refugees*, 23(4) *INT. REL.* 567, 568 (2009).

Certainly, many millions of people, as refugees and deemed illegal migrants, experience the exclusion from citizen rights (and duties) that Agamben asserts.¹³⁵ Perhaps that outcome is an inevitability of our sense of belonging or non-belonging to particular political communities, but it is not the usual experience of most people in economically developed countries, who have formal civil and political rights and some claims to social benefits in the Marshallian way.¹³⁶

New Zealand's treatment of Thiel indicates another category of human being beyond the *civis/homo sacer* binomial, rather the *homo sacrissimus* (most sacred man) category including those who may claim privileges beyond usual citizens' rights but not owe the usual duties of citizenship. Furthermore, rather than the camp, their milieu is likely to be an isolated estate, with or without a bunker.¹³⁷

CONCLUSION

This essay has used Steyerl's concept of duty-free art as an analogy for the debasement and financialization of citizenship, albeit only for the utmost wealthy. As duty-free art is physically in a jurisdiction but is not fully within it or subject to all relevant laws, so investor residents and citizens may have a right to be in a particular country but may not be within the political community. Additionally, Agamben's *civis/homo sacer* binomial has been extended to demonstrate how purchased or bartered citizenship may confer extraordinary rights without owing the usual duties owed by traditional citizens.

Perhaps, the grant of citizenship to Thiel will prove to be a once-only aberration, although it is situated within a broader context of countries continuing to believe that conferring residency or citizenship on wealthy individuals will have multiplier effects on economic growth. In response to predictions for a Covid 19-induced economic downturn, Drury, the founder

135. Cf. MICHAEL HARDT & ANTONIO NEGRI, *COMMONWEALTH* 8 (2009) on a binomial comprising the "biopolitical power of the multitude" and the "republic of property."

136. Significant numbers of homeless people in major Western cities may experience an existence that is comparable to that of people in refugee camps but their experience is not normal. While, for example, the growth in homelessness in Los Angeles and the civic response may be shocking, homeless people constitute a minority (about 1.67% of the city's population). See, e.g., Josh Marcus, *Los Angeles Criminalizes Being Homeless in Almost Every Area of City with New Ordinance*, INDEPENDENT (July 30, 2021), <https://www.independent.co.uk/news/world/americas/los-angeles-eric-garcetti-homeless-b1894023.html>. It is, then, implausible to claim that the usual state of existence in the West is the camp, even if the experience of the minority is appalling and inexcusable.

137. See, e.g., Sam Shear, *Peter Thiel's New Zealand Estate Lies Neglected as Coronavirus Drives Preppers Into Hiding*, C.N.B.C. (May 15, 2020), <https://www.cnbc.com/2020/05/15/peter-thiel-new-zealand-estate.html>.

of Xero, in which Thiel previously held shares, proposed that 1,000 people prepared to invest NZD50 million (USD35 million), should be granted immediate citizenship. Economists widely condemned the idea, and it gained no obvious political traction.¹³⁸

Even if Thiel's case proves to be an aberration, the extraordinary concession extended to him highlights the privileges the super-wealthy may enjoy over other potential residents and citizens, and New Zealanders should be grateful to Nippert's investigative journalism, as a feature of a free media,¹³⁹ for making future governments wary of engaging in such a sordid trade.¹⁴⁰ Unlike the permanent residents from diverse ethnic backgrounds and cultures who spend years building a life in the country before they go through the celebratory and affirmative citizenship ceremony, and commit themselves to New Zealand's values, Thiel had not been *within* New Zealand. He did not belong, he was not treated equally, and, by being principally connected to the United States does not share the reciprocity of other citizens. The decision to treat him as *homo sacrissimus* and to underwrite his apocalypse insurance policy was shameful and indefensible but consonant with a neoliberal conception of marketable citizenship.

138. Susan Edmunds, *Global Rich Should Build Houses in NZ – Drury*, DOMINION POST (Apr. 24, 2020), <https://www.pressreader.com/new-zealand/the-dominion-post/20200424/281758451434507>.

139. Thiel funded Hulk Hogan's law suit that bankrupted Gawker media, apparently in revenge for a Gawker website outing Thiel as gay. According to Maya Kosoff: "Retribution was clearly on Thiel's mind as he discussed the possibility of 'bribery, theft, bugging, and e-mail hacking, among other potential crimes,' in order to exact his revenge." See Maya Kosoff, *The Thiel-Gawker Saga Takes an Even Darker Turn*, VANITY FAIR (Feb. 26, 2018), <https://www.vanityfair.com/news/2018/02/the-thiel-gawker-saga-takes-an-even-darker-turn>.

140. The Key government also granted Kim Dotcom permanent residency in 2010, despite his long history of dubious dealings. See Chris Keall, *Kim Dotcom: the ultimate timeline*, NAT'L BUS. REV. (Mar. 28, 2017), <https://www.nbr.co.nz/article/kim-dotcom-ultimate-timeline-ck-p-179008>. The current government had its own immigration scandal in its grant of permanent residency to Karel Sroubek, a Czech drug smuggler. See Matthew Rosenberg & Paul Mitchell, *Jailed drug-dealer escapes deportation as Government grants him NZ residency*, STUFF (Oct. 8, 2018), <https://www.stuff.co.nz/national/108155476/jailed-drugdealer-escapes-deportation-as-govt-grants-him-nz-residency-behind-bars>. The errors made regarding Sroubek's residency seem better attributed to incompetence than deal-making gone wrong.
