Are private citizenship markets self-defeating?

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Publication date: 27 December 2025
DOI: http://dx.doi.org/10.5324/eip.v19i2.5968

Some authors have advocated the creation of private citizenship markets, whereby individual citizens would be allowed to sell their citizenship to foreigners. There seems to be an inherent contradiction in this proposal. On the one hand, the right to sell citizenship presupposes the state's right to exclude foreigners from citizenship, which, in turn, is grounded in citizens' right to collective self-determination. On the other hand, private citizenship markets, by allowing each citizen to unilaterally decide on the admission of new members, would sidestep the democratic process by which members of the political community define who the collective is. This violates citizens' right to collective self-determination, and therefore undermines the state's right to exclude. This article aims to rescue private citizenship markets from the 'self-defeating' objection. In short, it argues that private citizenship markets do not necessarily violate citizens' right to collective self-determination because they do not privatize the state's right to exclude, but only its right to include. As long as the selling of citizenship by individual members of society is legally sanctioned by the state, it does not violate citizens' right to collective self-determination, and therefore does not undermine the state's right to exclude, any more than family reunification does. If anything, the objection shows that the right to exclude is not absolute, not that the privatization of the right to include undermines it. The argument has important implications for other cases of unilateral inclusion, especially sham marriages.

Keywords: immigration; selling citizenship; private citizenship markets; right to include; right to exclude; self-determination.

Introduction

Some authors have advocated the creation of private citizenship markets, whereby individual citizens would be allowed to sell their citizenship to foreigners. The idea is to make citizenship and its attendant rights alienable by allowing people to enter into voluntary agreements involving the transferal of citizenship in a commercial transaction. Although the particular details of this proposal have not been fully worked out by their proponents, private citizenship markets would basically enable foreigners to buy membership in another political community from its current citizens, thereby opening up a new route for naturalization in addition to existing legal channels for migration. To illustrate, suppose Ana is a citizen of the United States and Brian is a citizen of Sri Lanka. Brian is interested in becoming a citizen of the United States, but his chances of doing so through ordinary legal channels are few and far between. Ana, for her part, is not particularly fond of Sri Lanka, but since she is short of cash, she is willing to give up her US citizenship in exchange for, say, 100,000 US dollars. Brian is happy to pay that amount for Ana's citizenship. Today, this kind of transactions are illegal, let alone binding. But in a hypothetical private citizenship market, Ana would be allowed to sell her citizenship of the United States to Brian in exchange for the latter's citizenship plus the agreed amount of money.

In a recent article, Lior Erez (2023) has made a persuasive argument against private citizenship markets. The argument goes something like this:

(P1) The right to sell citizenship presupposes the state's right to exclude foreigners from citizenship.

(P2) The state's right to exclude foreigners from citizenship is grounded in citizens' right to collective self-determination.

(P3) Private citizenship markets violate citizens' right to collective self-determination.

(C) Therefore, private citizenship markets undermine the state's right to exclude foreigners from citizenship.

Call this the 'self-defeating' objection to private citizenship markets. The basic idea behind this argument is that "[p]rivate citizenship markets hollow out the justification grounding the state's right to exclude form [sic] citizenship, and that, in turn, undermines the basis for the right to sell citizenship" (Erez 2023: 1098).

> A private market in citizenship is, in effect, a privatization of the state's right to exclude. It is the transferal of the state's discretionary power over admission (and its right to determine the criteria for admission) to the hands of disaggregated individuals. By doing so, it undermines the original public justification of the state's right to exclude, that is, democratic self-determination. In other words, it takes what is essentially and inherently a public good (citizenship), and transfers its provision into private hands. In doing so, it creates a new normative situation in which each individual holds a portion of the right to exclude and include, and for each a power to unilaterally subject others to new duties (Erez 2023: 1093).

The argument is a response to the proposal made by authors like Muaddi (2006), Johnson (2018), Freiman (2019), and Bengtsson (2023) to allow individuals to swap their citizenship with foreigners in exchange for money. This proposal is distinct from that of Borna & Stearns (2003), Hidalgo (2016), and others who argue instead for *public* citizenship markets, that is, the selling of citizenship by the state to foreign investors (the so-called "golden" passports/visas).[1] Whereas examples of the latter can be found in a number of states and have attracted the attention of legal and political theorists (e.g., Shachar & Hirschl 2014; Tanasoca 2016; Shachar 2017; Mavelli 2018), the former only exist in the minds of a handful of libertarians. This is probably why only Erez has so far bothered to provide an argument against private citizenship markets. However, if sound, his argument would entail that states should not allow individual citizens to sell their membership in the polity if they want to preserve their right to exclude. The aim of this article is to show that private citizenship markets are not self-defeating.[2] In short, my argument is that private citizenship markets do not undermine the state's right to exclude because the selling of citizenship by individual members of society is a legitimate exercise of the state's power-right to include. As long as it is legally sanctioned by the state, the privatization of the power to include need not violate citizens' right to collective self-determination.

Before I proceed, let me briefly state three assumptions my argument makes. First and foremost, I assume that states have a legal right to exclude foreigners from citizenship. At the end of the day, the right to sell citizenship presupposes the state's right to exclude foreigners from citizenship. Note that the right to exclude non-members from citizenship is not the same as the right to exclude would-be immigrants from the territory (Fine 2010: 342–343).[3] When states exclude non-members from citizenship, they do not bring about any normative change in the legal position of the latter. This will have important implications for my argument, especially for the conceptualization of the right to exclude and its relationship with the right to include. Second, while there is no state which does not control its borders, it is commonplace for states to grant long-term (authorized) residents citizenship.[4] Although citizenship markets are in principle compatible with open borders—namely, by allowing anyone to enter the state but restricting their access to citizenship—, I presume that there would not be much incentive for foreigners (save for the very rich ones who wanted to skip the residency requirement) to pay for citizenship if they could obtain it after a relatively short period of residence, especially if borders were open to everyone and immigrants had access to most of the rights enjoyed by citizens.[5] Whereas the case for public citizenship markets hinges entirely on states having a right to exclude—if it turns out that states do not have a right to exclude, "selling citizenship may be impermissible in practice because it is wrong for states to sell what they should give away for free" (Hidalgo 2016: 236)—, private citizenship markets could still exist even in the absence of a right to exclude, because citizens would not be obligated to give up their citizenship for free. A different question is, again, whether foreigners would be willing to pay for it. Finally, just as foreigners do not have a moral right to immigrate (Tiedemann 2024), I am assuming that citizens do not have a unilateral right to bring anyone into the polity (cf. López-Guerra 2020). Both the right to immigrate and a broad right to invite would de facto rule out the prospect of selling citizenship by making it so unattractive an option as to become a lucrative market.

The right to exclude and the right to include

There are some ambiguities in Erez's argument that need to be dispelled. The most problematic one is the assertion that private citizenship markets amount to "a privatization of the state's right to exclude" (Erez 2023: 1093). To be accurate, private citizenship markets do not privatize the state's right to exclude—at least no more than the practice of international adoption confers on parents the right to exclude foreign children—, but only the right to *include*. It may be objected that when states (or, in the case of private citizenship markets, individual citizens) include some people, they are thereby excluding everyone else, in the same way that when I give you my last slice of bread, I am excluding the rest of humanity from it. It is true that for me to be able to sell you the slice of bread, I need to be able to exclude other people (including you) from it. But, needless to say, citizenship is not like a slice of bread. Citizenship is a legal status that exists only because states recognize it.[6] In this sense, states do not need to exclude foreigners from citizenship because the latter cannot include themselves in the legal relationship that citizenship establishes. In other words, foreigners lack the power to alter their legal position with respect to other states. By contrast, states do need to control their borders carefully if they want to prevent the entry of unauthorized migrants. It is important to appreciate the moral difference that inclusion in the citizenry makes. When a state grants citizenship, it is creating a legal bond with the new member which entails a bundle of rights and corresponding duties on both sides.[7] Conversely, when a state refuses to grant citizenship to foreigners, it is not effecting any change in their legal position. They remain in the same normative situation that they were before the refusal took place.

There is yet another ambiguity concerning the state's right to exclude. Is it a claim-right or a liberty-right?[8] This question is crucial because if states had a claim-right to exclude, citizens and foreigners would be under a duty not to engage in practices that undermine it. But if Erez is right that the selling of citizenship by individual citizens "undermines the legitimacy of the state's right to exclude" (2023: 1096), then private citizenship markets might be incompatible with the state's claim-right to exclude, because by selling citizenship they would sidestep the democratic process by which members of the political community define who the collective is. By contrast, if the right to exclude is understood as a liberty-right, the potential targets of exclusion are not bound in any way by the decision. The state has a legitimate right to exclude, but this fact has no bearing, in and of itself, on how others must act (Bosniak 2016: 193). On the liberty account, the state's right to exclude and the individual right to include could perfectly coexist.[9] Although the right to exclude has traditionally been understood as a claim-right (for an exception, see Lægaard 2010), we should resist this characterization for at least two reasons. The first is that it would imply that foreigners are under a corresponding duty not to include themselves in the citizenry.[10] This makes no sense, because, as we have just seen, foreigners lack the ability to effect any legal change in the relationship with the state.

Another reason for rejecting the states' putative claim-right to exclude is that if it were understood in this way, "states would have the right against interference to make and implement *morally wrong* immigration decisions" such as the use of racist selection criteria and the exclusion of people with urgent needs (Akhtar 2024: 167) as well as the moral claim to enforce the duty of non-interference against outsiders (whether other states, the migrants themselves, or international bodies). The claim-right to exclude would not be restricted to those cases where "excluding someone is either morally permissible or only pro tanto wrong. If that were the position, it would be hard to see how the question of outside interference might even arise" (Akhtar 2023: 6). In contrast, the liberty-right to exclude only implies that states are under no duty not to exclude non-members. The latter is mute about whether others (be they citizens or foreigners) must comply with these states' admission decisions. However, as I noted before and elaborate further below, respect for the self-determination of citizens entails that foreigners should not interfere with the legitimate admission decisions of other countries. On the other hand, from the fact that states are under no duty not to exclude non-members, it does not follow that they may use any exclusion criteria whatsoever.[11] In short, just as foreigners have no right to interfere with the legitimate admission decisions of other countries, these countries have no right to implement morally wrong immigration policies.

At this point, one might retort that if foreigners should not interfere with other states' legitimate admission decisions, that is because (1) foreigners have the duty not to include themselves in the citizenry and (2) states have a claim-right to exclude. That would contradict what I just said. In order to avoid confusion, it might be helpful to distinguish between two aspects of self-determination: one is the right to determine the composition of the demos (*self-composition*), and the other is the capacity to legislate for oneself without external interference (*self-rule*) (Lægaard 2013: 659; see also van der Vossen 2015). My claim is only that foreigners are unable to include themselves in the collective of citizens unilaterally, that is to say, to affect the latter's self-composition; not that they cannot interfere with citizens' self-rule. While foreigners lack the ability to effect any legal change in their relationship with other states, and so cannot affect their self-composition, they can have a potentially destabilizing impact on the democratic process of other states. It is precisely because there is such a risk that foreigners should abstain from meddling in citizens' self-rule and respect the legitimate admission decisions that derive from the exercise of their right to collective self-determination.[12] By contrast, foreigners do not have an analogous duty not to include themselves in the citizenry for the simple reason that they lack the ability to do so. Recall, on this point, that admission into citizenship is not the same as admission into the territory. Foreigners can be excluded from citizenship without thereby being excluded from the territory. By the same token, foreigners can unilaterally include themselves in the territory, but they cannot unilaterally include themselves in the citizenry. As for the second point, insofar as foreigners have no ability to unilaterally include themselves in the citizenry and alter its composition, states do not need a claim-right to exclude foreigners from citizenship in order to retain control over their self-composition.

So far, I have only explained why the right to exclude is not a claim-right. I have said nothing about why we should conceive of it as a liberty-right. I believe that the right to exclude is best understood as a liberty-right because it allows us to explain why the unilateral exclusion of foreigners is not necessarily problematic despite it being (ex hypothesi) illegitimate from a democratic point of view. If one agrees with Abizadeh (2008: 45) that in order to be legitimate, "the coercive exercise of political power [must] be democratically justified to all those over whom it is exercised, that is, [that] justification is owed to all those subject to state coercion", then it follows that states lack legitimate authority to exclude foreigners unless the exclusion is democratically justified to them. Put differently, in order for foreigners to have a duty to comply with other states' right to exclude, its exercise needs to be democratically justified to them. On this account, foreigners having a moral right not to be coerced without democratic justification is incompatible with states exercising their right to exclude unilaterally. This poses a problem for those who believe that states have a claim-right to exclude. On the one hand, states cannot enforce their right to exclude unilaterally without violating foreigners' right not to be coerced without democratic justification. On the other hand, foreigners have no duty to comply with other states' right to exclude when this right is exercised unilaterally.

By contrast, if the right to exclude is understood as a liberty-right, foreigners' having a right not to be coerced without democratic justification would not be a problem for states' unilateral exercise of their right to exclude. This is because whether coercion against an agent acting in a certain way is problematic depends on whether the agent has a moral right to act in that way. If the agent has no moral right to the act in question because it violates another's rights, the latter has a prima facie right to use unilateral coercion against the former. For example, if one country wages an aggressive war against another, no one would deny that the attacked country has a right to defend itself, let alone suggest that it has to democratically justify its countermeasures. This is because the invading country had no moral right to launch the attack.[13] By the same token, if there is no moral right to immigrate, states' unilateral exclusion of foreigners need not be problematic despite it being illegitimate from a democratic point of view (Steinhoff 2022: 18–20). The right to immigrate is morally prior to the right not to be coerced without democratic justification. In other words, the right not to be coerced without democratic justification becomes relevant only after we have determined whether foreigners have a moral right to immigrate. The problem with characterizing the right to exclude as a claim-right is that it gets things the other way around: it infers that states have no unilateral right to exclude from the fact that foreigners have a moral right not to be coerced without democratic justification, when the fact of the matter is that only after we have determined whether states have a unilateral right to exclude, which depends in turn on whether or not foreigners have a prior moral right to immigrate, can we know whether foreigners may be coerced without democratic justification. This problem could be avoided if the right to exclude were understood as a liberty-right. For if states have a liberty-right to exclude, it follows that foreigners have no moral right to immigrate, and hence no moral right not to be coercively excluded without democratic justification.

I acknowledge that the above argument begs the most important question, namely whether states have a unilateral right to exclude or, on the contrary, foreigners have a moral right to immigrate. However, I do not think we need to settle that question, for two reasons. First, if foreigners had a moral right to immigrate, there would be no point in discussing private citizenship markets, since the right to sell citizenship presupposes that states may permissibly exclude foreigners both from citizenship and territory. Of course, states could open their borders while restricting (long-term) immigrants' access to citizenship. In this way, they would retain control over membership without denying foreigners a moral right to immigrate. But, needless to say, that would compromise their democratic character. Second, and most importantly, we should not conflate the different parts of the right to exclude nor the legal with the ethical aspects of this right. The article is concerned with the exclusion of foreigners from citizenship, not with their exclusion from the territory. We do not even need an argument for the moral right of states to exclude foreigners from citizenship.[14] It suffices that they have the power to regulate access to membership, however qualified or conditional its exercise might be. This is because the question is whether states have a legal right to confer citizenship, not the ethical issues surrounding the exercise of this right. No advocate of open borders, to the best of my knowledge, disputes the legal authority of states over membership. This does not mean that states have free rein over membership matters, but it does mean that they hold the reins over these matters. There is no contradiction in saying that states have a legal right to regulate access to membership but that this right is constrained by principles of justice (Higgins 2013: 146–147). We should keep "the question of who ought to make a decision" separate from "the question of whether a given decision is justifiable" (Carens 2013: 219). Indeed, in order to argue that states are morally required to open their borders and facilitate access to citizenship, it needs to be the case that they have a legal right to control their borders and regulate access to membership.

In conclusion, if states have a legal right to exclude foreigners from citizenship, it is *not* because they have a claim-right to exclude such that foreigners have a correlative duty not to include themselves in the citizenry—there is no point in holding someone under a duty not to do something she cannot do, and it would be perverse to suggest that states have a moral right against interference to implement morally wrong immigration policies as well as the moral claim to enforce the duty not to interfere with these policies—; it is *not* because they have a unilateral right to control their borders such that foreigners have no moral right not to be coerced without democratic justification—the right to immigrate is morally prior to the right not to be coerced without democratic justification—; it is *not* because they have a liberty-right to exclude unwanted immigrants such that foreigners have no prior moral right to immigrate—the question of admission into the territory is independent from the question of admission into citizenship—; *nor* is it because they have a moral right to regulate access to membership, such that foreigners, even those who have been living in the country for a long time, may be excluded from citizenship—from the fact that states have the legal authority to regulate access to membership, it does not follow that there are no ethical limits on the exercise of this right. Rather, if states have a legal right to exclude foreigners from citizenship, *it is because they have the legal power (not) to confer citizenship in the first place.* The key question then is whether the privatization of this power would undermine states' right to exclude. It is to this question that I now turn.

Why private citizenship markets are not self-defeating

I have argued that when it comes to citizenship, there is no such thing as a claim-right to exclude non-members. This is because foreigners lack the power to transform their legal relationship with other states. The regulation of membership is a prerogative of states; only they have the authority to confer the status of citizen on foreigners. For this reason, the states' right to confer citizenship on foreigners (i.e., the right to include) is best understood as a power-right.[15] This right entitles citizens as a group to decide the terms on which citizenship will be granted to foreigners (within the bounds of the right to exclude[16]), and it is part of the state's broader right to regulate access to membership. In other words, the right to include is an incidence of (citizens' liberty-right to collectively exercise) the state's power-right to regulate access to membership. As Beckman (2014: 399–400) argues, "[a] liberty-right to that effect entails the ability to extend legal power to others, simply by granting people currently excluded the right to participate in the making of collective decisions." This means that foreigners (with the likely exception of refugees) are not entitled to be included in the citizenry—that is, they do not have a claim-right to citizenship—, but it also means that they are under no duty not to try to be included.

The latter may seem to imply that foreigners are in principle allowed to engage in practices that undermine the state's right to exclude. However, as we have seen, respect for the self-determination of citizens morally precludes foreigners from acting in ways that violate the legitimate admission decisions of other states, where legitimacy is cashed out both in terms of decisions that result from the democratic process of these states and that do not wrongfully discriminate against non-members. On the other hand, just as foreigners have a duty not to include themselves in the citizenry against the law—for example, by engaging in sham marriages or otherwise deceiving immigration authorities—out of respect for citizens' right to collective self-determination, citizens have a duty not to include foreigners were this to undermine the self-determination of their countries of origin—for example, by facilitating capital flight, causing brain drain, or enabling tax avoidance (Erez & Banai 2025). In this sense, citizens' liberty-right to include is limited by their duty to exclude, which correlates with foreigners' claim-right to collective self-determination. In conclusion, just as foreigners must respect the self-determination of citizens, citizens must respect the self-determination of foreigners.

The power-right to include is usually thought to be held by citizens collectively. As Beckman (2014: 405) points out, in a democracy, individual members lack the legal power to *unilaterally* determine the legal position of other individuals,[17] but members of the state as a group (i.e., collectively) do have the legal power (and, in some cases, the legitimacy) to determine the legal position of everyone subject to collective decisions. This power can be exercised by individual citizens bestowed with public authority, as when state officials marry two people or register newborn children as citizens; or alternatively, by individuals who, despite not holding public authority, have been officially appointed or legally authorized to perform an action with similarly transformative effects, for example, clerks acting as marriage officiants, citizens acting as election officials, or relatives acting as the legal guardians of their incapacitated dependents.

It goes without saying that legally binding decisions such as these should not be made by individual citizens acting on their behalf. But this does not mean that individual citizens cannot exercise public powers. Public powers can be delegated to individual citizens and other private parties without undermining the legal bases of the authority from which those powers emanate. In fact, it is not uncommon for citizens to serve as jury members. Similarly, private dispute settlement mechanisms, at least those authorized by the state, do not undermine the latter's judicial powers; and commercial banks routinely create money without thereby undercutting the central bank's control over the currency.[18] What matters is (1) that the exercise of these sovereign powers is collectively authorized by the citizens of the state (usually through their democratically elected representatives), such that the individual is not acting unilaterally, and (2) that the delegated powers are exercised within the bounds set by the sovereign. Accordingly, to the extent that private citizenship markets result from the exercise of citizens' right to collective self-determination and operate under the auspices of the state, they need not undermine its right to exclude.

It is important to distinguish formal from informal citizenship markets for the purposes of determining whether the practice of selling citizenship undermines the state's right to exclude. Only the former are backed up by the state, whereas the latter escape its purview and usually go against the law (Niño Arnaiz 2024: 336). This makes a morally significant difference. To illustrate, let us compare sham marriages with private citizenship markets. When foreigners gain citizenship through sham marriage, "they sidestep the political process by which members of the political community can define who the collective is. This contravenes the right of collective self-determination itself" (Song 2019: 66). By contrast, if states instituted formal citizenship markets, the selling of citizenship by individual members of society would not "sidestep the political process", and therefore need not undermine the state's right to exclude. The same goes for family reunification. As long as it is publicly authorized, I do not see how the decision of citizens to marry foreign partners and sponsor family members living abroad "contravenes the right of collective self-determination". If so, the objection to private citizenship markets cannot simply be that they constrain the right to exclude, for there are other exercises of the state's power-right to include by individual citizens that constrain the right to exclude as well. All the objection shows is that the state's right to exclude is not absolute, not that the privatization of the right to include undermines it.

In response to a similar objection,[19] Erez (2023: 1096) argues that unlike family reunification, "[p]rivate citizenship markets […] do not involve establishing a meaningful relationship between seller and buyer." This is correct, but it misses the mark (or rather, it gets things the other way round), for the objection is not that private citizenship markets are in principle permissible because other exercises of the right to include by individual citizens are permissible, but rather that if private citizenship markets are impermissible because they privatize the right to include—recall that, for Erez, the problem with private citizenship markets is not that they are markets, but that they are private (i.e., that they move the power to include "from the public to the private" [Erez 2023: 1097])—, then other exercises of the right to include by individual citizens such as family reunification would be impermissible as well in that they too move the power to include "from the public to the private". By conflating private citizenship markets with other forms of privatization of the right to include that are considered morally permissible and compatible with the state's right to exclude, the 'self-defeating' objection throws the baby out with the bath water.

To sum up, just like the right to exclude, the right to include is held by the collective, not by citizens individually considered. However, public powers can be legitimately exercised by individual citizens who have been collectively authorized. This is the case of private citizenship markets. As long as it is sanctioned by the state, the privatization of the right to include need not violate citizens' right to collective self-determination.[20] This is emphatically not the case of sham marriages, which are outright prohibited by the state. As a result, when foreigners (and, for that matter, citizens) engage in sham marriages, "they sidestep the political process by which members of the political community can define who the collective is" (Song 2019: 66). For this reason, unlike private citizenship markets, sham marriages *do* violate citizens' right to collective self-determination, and therefore undermine the state's right to exclude.

Conclusion

In this article, I have challenged the third premise of the 'self-defeating' objection to private citizenship markets, according to which the selling of citizenship by individual citizens violates the right to collective self-determination on which the state's right to exclude rests. Contrary to Erez, I have argued that private citizenship markets do not violate citizens' right to collective self-determination because they do not amount to a privatization of the state's claim-right to exclude, but only to a privatization of its power-right to include. In a private citizenship market, an individual who sells his citizenship to a foreigner would not be bypassing the democratic process. Rather, he would be wielding a legal power that has been previously conferred on him by the state and therefore would be doing so in a publicly sanctioned way. I acknowledge that the right to include is not absolute and can be outweighed by citizens' duty to exclude. However, this duty correlates with foreigners' claim-right to collective self-determination. It is not a duty that citizens owe to each other by virtue of their right to collective self-determination. The only limits that the latter places on citizens' individual exercise of the power to include are given by the laws of the state qua public expression of their collective will. As long as private citizenship markets are collectively authorized by the citizens of the state, they do not violate their right to collective self-determination, and therefore do not undermine the state's right to exclude. In conclusion, private citizenship markets are not self-defeating.

Notes

[1] According to Erez (2023: 1097), "the case against private citizenship markets is independent from the general case against selling citizenship. The reason for [this] is that the problem with private markets in citizenship is not that they are markets (i.e., that citizenship is being sold), but that they are private (i.e., that the discretionary power to decide whether, and to whom to sell, is moved from the public to the private)."

[2] I remain agnostic about other arguments for and against private citizenship markets. The limited scope of this article is justified in part because my aim is to reopen the debate on private citizenship markets that Erez sought to foreclose. His argument is intended to be a "normative argument-stopper" (Southwood & Goodin 2021: 968): if the 'self-defeating' objection succeeds, principled arguments for or against private citizenship markets will be rendered irrelevant, for states cannot devise private citizenship markets without at the same time undermining the very bases on which they rest.

[3] For prominent defenses of the state's right to exclude unwanted immigrants, see Wellman (2008), Blake (2013), Miller (2016), and Song (2019), among others. However, none of these authors defends states' right to exclude (long-term) immigrants from citizenship, at least those who are legal residents.

[4] Bosniak calls this the "hard-outside/soft-inside" citizenship model: "whereas citizenship embodies a universalist ethic within the community, it is exclusionary at the community's edges" (Bosniak 2006: 99).

[5] Leaving economic incentives aside, the most important concern about restricting (long-term) immigrants' access to citizenship is that it would create a two-tiered society with a permanently disenfranchised class. This goes against the basic principles of democracy and justice. For an argument along these lines, see Walzer (1983: 53ff).

[6] This fact is acknowledged by Erez (2025: 7): "citizenship only exists through official state recognition."

[7] By the same token, it is also possible for a state to denationalize (or, more frequently, denaturalize) citizens, thereby giving rise to a new normative situation. However, this prerogative is limited by more demanding legal and moral constraints, such that it remains permissible "only in the narrowest of circumstances" (Lenard 2022: 381).

[8] A claim-right is a right which imposes duties on others regarding the right-holder. If A has a claim-right to X, then others have a correlative duty to (respect or provide) X. For example, if you have a claim-right that I do not harm you, I have a duty not to harm you. In contrast, a liberty-right is a right which does not impose duties on other parties, but rather gives the right-holder permission to perform an action. If A has a liberty-right to X, then A has no duty not to do X, and B has no

duty to (respect or provide) X. For example, if you have a liberty-right to smoke in the bar, you are free to do so if you wish, but others are under no duty to assist you with that or to ensure that you can do it.

[9] To be clear, the story is a bit more complicated than that. In particular, from the fact that the right to exclude is a liberty-right, it does not follow that citizens may include whomever they wish, nor does it follow that foreigners may interfere with other states' legitimate admission decisions. This is because the right to include is an incidence of the states' power-right to regulate access to membership, which is itself grounded on citizens' claim-right to collective self-determination. Consequently, individual citizens cannot exercise their right to include as they see fit, but must instead comply with the laws of the state as the expression of citizens' collective will. This rules out sham marriages, as I will argue below. The right to include is also limited by foreigners' claim-right to collective self-determination (Kwan 2021). However, in this case, the limits are not set by the laws of the host state, but rather by the conditions that enable self-determination in the countries of origin. In conclusion, even if the liberty-right to exclude is mute about how others should act, the claim-right to collective self-determination of both citizens and foreigners sets limits on how each of them may act with respect to the other. For a more detailed discussion of the internal and external limits on the right to include, see Erez & Banai (2025).

[10] There is an ongoing debate as to whether or not foreigners have a duty to obey immigration laws. For opposing views in this debate, see Hidalgo (2015) and Huemer (2019) on one side, and Yong (2018) and Miller (2023) on the other. However, this question pertains to territorial admission, which is different from the one under consideration here, namely whether foreigners can unilaterally include themselves in the *citizenry*.

[11] This is familiar from other cases of freedom of association. For example, from the fact that a company is under no duty to hire new workers, that is, from the fact that it has the liberty-right to hire, it does not follow that it may reject job applicants on the basis of their skin color.

[12] One might worry that I have misunderstood Lægaard's (2013) distinction between self-rule and self-composition. His point was precisely that self-determination qua self-rule does not entail self-composition. If so, how can foreigners' interfering with a state's legitimate admission decisions, which primarily concern its self-composition, compromise its self-rule? It is true that a state's admission decisions may affect its self-composition insofar as the admitted migrants are (eventually) granted citizenship, but this does not show that foreigners' interfering with a state's legitimate admission decisions does not compromise its self-rule. For one thing, both the decision to admit someone into the territory and into citizenship *flow from* citizens' right to collective self-determination, in particular from their self-rule. It is because citizens have a right to *legislate for themselves* that they have a right to make and enforce legitimate admission decisions. And it is because citizens have a right to legislate for themselves *without external interference* that foreigners should abstain from interfering with a state's legitimate admission decisions. The capacity to legislate for oneself without external interference (i.e., self-rule) would be severely impaired if outsiders could impose their will on a state's legitimate admission decisions. To say that an external agent's interference with a country's legitimate admission decisions does not compromise its citizens' self-rule would be akin to saying that

the United States' interference with Mexico's legitimate admission decisions does not compromise Mexican self-rule. If the United States' interference with Mexico's legitimate admission decisions would compromise Mexican self-rule, it is not only because the forcibly admitted migrants would (eventually) be granted citizenship and thus be entitled to participate in Mexico's democratic process, but mainly because the decision of whom to admit both into the territory and citizenship is part and parcel of citizens' right to make and enforce rules, in this case, rules concerning admission into the territory and citizenship. For another, the objection conflates admission into the territory with admission into citizenship. This difference is discussed in the main text in what follows.

[13] One might complain that this example is misleading because coercion in self-defense is not unilateral, nor are peaceful migrants engaging in any act of aggression, for that matter. In response, let us modify the example so that the act in question is neither coercive nor morally wrong. Suppose that country A implements an economic policy that significantly disrupts the economy of country B. The policy in question consists in subsidizing domestic producers so that they can expand to other countries and increase their global market share. The policy is not coercive vis-à-vis other countries, nor is it inherently immoral. However, the economic disruption caused by this policy could severely harm other countries' economies. In response to A's policy, country B might decide to impose tariffs or quotas on the importation of goods from A. Although this is a coercive measure (as it threatens exporters with sanctions if they do not pay the tariffs or respect the quotas), it could be justified on the grounds of protecting B's economy. Unless we presuppose that manufacturers in A have a prior moral right to export their products to B free from tariffs and quotas, B's unilateral imposition of tariffs or quotas need not be problematic even though it is not democratically justified to the citizens of A.

[14] The difference between legal and moral rights lies in their source and efficacy: the former are enshrined in positive law and depend for their exercise on enforcement by competent authorities, whereas the latter are grounded in normative principles alone and may be asserted even in the absence of institutional recognition.

[15] Note that I am talking here about the right to include, not the right to exclude. As a reviewer for this journal correctly pointed out, if we follow Hohfeld's characterization of power-rights as the capacity to modify one's own or another's normative status, then the right to exclude does not qualify as a power-right. This is because exclusion from membership does not alter foreigners' legal position, thus maintaining their normative status intact.

[16] This means that citizenship should not be granted at the discretion of the government and its officials or according to whatever criteria. Indeed, foreign residents who meet all the requirements are morally and, in many countries, even legally entitled to citizenship; and immigrants have a moral right not to be wrongfully discriminated against by a state's admission decisions (Lim 2023; Akhtar 2024; cf. Wellman 2008: 139).

[17] There cannot be individual rulers in the making of collective decisions, if by rule we mean the capacity to make and enforce legal norms (Beckman 2014: 404).

[18] Some of the above examples involve the delegation of powers through private rather than public law. However, I do not think that the nature of the law affects the main point of the analogy, which is to underscore that states routinely delegate the exercise of public powers to private actors, since what matters is not whether

the delegation occurs through private or public law, but rather that citizens collectively authorize the exercise of such powers by individual citizens in a democratic process, as would presumably be the case of private citizenship markets.

[19] "If the problem with private citizenship markets lies in the privatization of the power to decide on the boundaries of membership, these two cases [birthright citizenship and naturalization by marriage] would be susceptible to it as well" (Erez 2023: 1096).

[20] What about the privatization of the state's right to exclude? Would it avoid violating citizens' right to collective self-determination if it were collectively authorized? A full answer to this question is beyond the scope of this article. Nevertheless, there are such glaring differences between exclusion and inclusion that it is reasonable to expect that the privatization of the former would violate citizens' right to collective self-determination in a way that the privatization of the latter would not. For one thing, the privatization of the right to exclude would confer on individual citizens a sort of veto power over collective decisions regarding the admission of new members, just as the right to private property usually does with respect to the wishes of the collective as to how a piece of property is to be used. Taken to the extreme, the privatization of the right to exclude would amount to a denial of citizens' right to collective self-determination as far as the collective determination of the "self" is concerned (what I referred to above as 'self-composition'). It is true that private citizenship markets would give "each [individual citizen] a power to unilaterally subject others to new duties" (Erez 2023: 1093). Nevertheless, this power is nowhere close to the power to exclude others from citizenship. It is one thing to include someone in the polity unilaterally; it is quite another to exclude *anyone* from the polity unilaterally. Moreover, as Blake (2013: 119) aptly notes, the individual right to include can sometimes outweigh the collective right to exclude, as in the context of inclusion by birth. If so, once again, the problem with private citizenship markets cannot simply be that citizens may unilaterally impose new duties on other citizens, for there are other cases of individual citizens exercising their right to include that also impose new duties on others. In the end, if private citizenship markets are impermissible, it is not because they privatize the right to include.

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