

SHAM MARRIAGES, CITIZENSHIP MARKETS, AND IMMIGRATION RESISTANCE

MATRIMONIOS DE CONVENIENCIA, MERCADOS DE CIUDADANÍA Y RESISTENCIA MIGRATORIA

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Abstract: The morality of sham marriage has been largely overlooked in the ethics of immigration. The aim of this article is to fill this gap by defending sham marriages both as a sort of private citizenship market and a form of immigration resistance. Sham marriages are pro tanto morally permissible because they are a free and mutually beneficial exchange and do not undermine the institution and value of marriage. Moreover, this pro tanto permissibility is not defeated by the infringement of other rights or outweighed by competing interests and considerations. The first part assumes that states have a right to exclude unwanted immigrants, but holds that such a right is limited by the right of citizens to marry foreign partners. Sham marriages constitute an informal citizenship market, and as such they are immune to the standard objections raised against their formal counterparts. The second part rejects that states have a right to exclude, arguing that foreigners may enter into sham marriages with citizens to bypass unjust immigration restrictions. In this case, the monetary exchange that takes place in sham marriages is not problematic, for citizens have no antecedent duty to marry unauthorized migrants.

Resumen: La moralidad de los matrimonios de conveniencia ha sido ampliamente ignorada por la ética de las migraciones. El objetivo de este artículo es subsanar esta omisión defendiendo los matrimonios de conveniencia como un tipo de mercado de ciudadanía y una forma de resistencia migratoria. Los matrimonios de conveniencia son moralmente permisibles en la medida en

que se trata de un intercambio libre y mutuamente beneficioso que no socava la institución y el valor del matrimonio. Además, su permisibilidad pro tanto no se ve cuestionada por la violación de otros derechos o socavada por intereses o consideraciones opuestas. La primera parte del trabajo presupone que los Estados tienen derecho a excluir a los inmigrantes no deseados, pero sostiene que dicho derecho está limitado por el derecho de los ciudadanos a contraer matrimonio con personas extranjeras. Los matrimonios de conveniencia constituyen un mercado de ciudadanía informal, y como tales son inmunes a las objeciones que se suelen esgrimir contra los mercados de ciudadanía formales. La segunda parte rechaza que los Estados tengan derecho a excluir a los inmigrantes, y defiende que los extranjeros pueden contraer matrimonio con ciudadanos para eludir así las restricciones a la inmigración injustas. En este caso, el intercambio monetario que tiene lugar en los matrimonios de conveniencia no es problemático, puesto que los ciudadanos no tienen ninguna obligación previa de casarse con los migrantes no autorizados.

1. Introduction

Political philosophy has only recently begun to discuss the ethics of immigration in non-ideal circumstances (Reed-Sandoval, 2016, 2020). One of its branches is the “ethics of immigration enforcement”, which discusses the permissibility of and the limits to the strategies states routinely use to control admission into their territory (Mendoza, 2017: chap. 5; Hosein, 2019: chap. 3; Lister, 2020). These include, but are not limited to, carrier-sanctions, refugee camps, immigrant detention, extraterritorial border controls, and racial profiling. Another branch is what we might call the “ethics of immigration resistance”, which discusses the actions that individuals (both citizen and foreign) are allowed and sometimes even required to undertake to challenge states’ right to exclude (Hidalgo, 2019a; Aitchison, 2023). The most common themes here are human smuggling, clandestine migration, border rescue, and sanctuary.

In this article I will focus on what might be considered both a sort of citizenship market and a form of immigration resistance, namely sham marriage. Broadly speaking, a sham marriage is a legal union between two people (usually a citizen and a foreigner) entered into solely for the purposes of obtaining an immigration-related benefit, be it a residence permit or citizenship rights. It allows foreigners to gain admission into a country and (eventually) access to citizenship by marrying a citizen in exchange for a sum of money or whatever else is agreed between them. These type of marriages are usually juxtaposed to so-called genuine or bona fide marriages.

It may be considered a sort of citizenship market because it involves the selling of citizenship by private individuals. Although the right to include is exercised mainly by states, it can also be exercised by private corporations when they sponsor foreign workers and by citizens when they bring in family members living abroad. On the other hand, it is a form of immigration

resistance because it consists in the deception of immigration authorities to gain admission into the country and (eventually) access to citizenship. The sham spouses defy the state's right to exclude by making a fraudulent use of a legal migration channel, in this case citizens' right to marry foreign partners.

The article is structured as follows. The second section defends the permissibility of sham marriages. The third section argues that sham marriages constitute a sort of informal citizenship market, which are immune to the standard objections raised against their formal counterparts. The fourth section vindicates sham marriages as a form of immigration resistance. The fifth section concludes.

2. In defense of sham marriages

My defense of sham marriages is based on the following three premises:

1. Citizens have a right to marry foreigners.
2. When citizens marry foreigners, the latter become eligible for permanent residency and/or citizenship.
3. Sham marriages (a) are a free and mutually beneficial exchange and (b) do not undermine the institution and value of (bona fide) marriage.

I take the first two premises to be relatively uncontroversial. The third premise is more difficult to establish, but I think it can be done safely. Together, these premises make up a *pro tanto* case for the permissibility of sham marriage, but they do not conclusively show that sham marriages are *all-things-considered* permis-

sible. This may be either because sham marriages violate other rights or because they are outweighed by competing interests and considerations. I will come back to that later. First, let us consider each premise in turn.

As far as the first premise is concerned, even the staunchest advocates of the right to exclude grant that citizens have a right to marry foreigners grounded in their right to freedom of association (Wellman and Cole, 2011: 92 fn. 3). This right "is based on the fundamental right to form intimate relationships of one's choosing" and "is an essential one for personal autonomy and in the development and exercise of what Rawls calls the 'moral powers'" (Lister, 2010: 721). So, even if a state has a sweeping right to exclude, it must allow its citizens to bring in their foreign-born partners and family members. "[T]he right in question here is the right of a current citizen to bring in an outsider, and not the right of an outsider to enter" (2010: 729).

The second premise is a corollary of the first. As Lister (2010: 729, emphasis added) argues:

It is part of the nature of family life that it can almost always be only lived in a satisfactory way if its members [...] are able to live in close proximity. This, however, is possible only if states allow their citizens to bring in their non-citizen partners and family members and make available *permanent residence* (and hence eventually *full citizenship*).

This possibility is afforded by the immigration laws of many countries. For example, the United States allows the partners of U.S. citizens or lawful permanent residents to become lawful permanent residents in the United States. The so-called "marriage-based green card" confers on

foreign partners several benefits, including the right to apply for U.S. citizenship after a certain period of residence. Similarly, Australian citizens and permanent residents can bring their prospective spouses to Australia before getting married. The “prospective marriage visa” allows offshore applicants to enter the country for 9 months with a view to marrying their Australian partner, after which they can apply for a “partner visa” to become permanent residents and (eventually) Australian citizens.

The third premise has two parts: the first claims that sham marriages are free and mutually beneficial, and the second states that they do not undermine the institution and value of (bona fide or genuine) marriage. I will focus on the second part, since I take the first to be self-evident: if foreigners (and, for that matter, citizens) did not expect to benefit from the exchange, why would they agree to it?¹ The second part refers to an important interest that might defeat the pro tanto permissibility of sham marriage, namely the interest in preserving the integrity and social meaning of marriage. If, say, allowing siblings to get married would pervert the integrity and social meaning of marriage, then we should not allow siblings to get married. Similarly, it might be argued that sham marriages, despite being mutually beneficial and voluntary, undermine the institution of marriage. If committing marriage fraud undermines the institution of marriage, that is a good reason to prohibit sham marriage and even to prosecute those who enter into one.

1 A different question is whether the exchange is exploitative for either of the parties involved, a question that will be dealt with in the next section.

However, there are two reasons why sham marriages do not necessarily undermine the institution and value of marriage. First, the legal validity of marriage depends entirely on the recognition by the state, not on the recognition by other individuals. As such, the fact that many people do not approve of same-sex marriage does not make it any less legally valid vis-à-vis the state. Similarly, the fact that many people disapprove of sham marriage does not make it any less legally valid vis-à-vis the state—provided, of course, that the state is unaware of the underlying motives of the spouses. Second, the value of marriage is inward-looking (i.e., it concerns only the parties involved) and independent of the value of other marriages, such that the disvalue of a particular marriage does not detract from the value of another. In this sense, the fact that there are arranged marriages does not diminish the value of marriages that have been freely entered into. Similarly, the fact that there are sham marriages need not taint bona fide or genuine marriages.

One might object that rights must be genuinely exercised in the pursuit of the good they are meant to protect, otherwise the good in question risks being corrupted, and the very right that we are exercising undermined. Some goods are intrinsically valuable, such that viewing them instrumentally—as means rather than ends—comes at a loss of their value. For example, if you want to become a parent, you should do so out of concern for the future child’s wellbeing, and not just because you feel lonely or need a new lease on your life, even if the latter would suffice to motivate yourself to take adequate care of her. This is because childrearing is valuable in and of itself on account of the relationship established by the parent and the

child. Similarly, it might be thought that the right to marry must be exercised in the pursuit of a meaningful and valuable loving relationship, given that the point of marriage is precisely the legal recognition and protection of meaningful and valuable loving relationships. The worry is that if the right to marry is not exercised in a proper way, as is the case when people enter into a sham marriage, the institution of marriage will lose much of its value, and will increasingly be viewed as a convenient transaction rather than as an engagement based on commitment and mutual care.

This is a strong argument, but it rests on an implausible understanding of rights. Rights do not impose duties on the right-holder, but only on the duty-bearer². Thus, if I have a claim right to X, you have a correlative duty to X; and if I have a liberty right to Y, you have a correlative duty to allow me to or not to prevent me from Y. In the case of childrearing, you must take adequate care of the child not because your right to have children entails such duty—indeed, there is no such a right—, but rather because the child has a right that her parent take adequate care of her.

2 If there are limits to rights, it is not because rights come with duties, but because other people's rights impose duties on us, just as our rights impose duties on them. It may be the case that people need to meet certain conditions in order to qualify for a right (for example, they must be, say, over 16 years old to get married), but I cannot see how having the "right" motives is necessary to qualify for a right. It is enough that one does not have the "wrong" motives, where wrongness is cashed out in terms of rights violation. Thus, if you want to buy a gun—suppose that there is a conditional right to own guns—, you do not need to prove that you want it for the right motives (whatever these are); it suffices that you do not have the wrong ones in mind, in the sense that you do not intend to use the gun to harm others.

In the case of marriage, you have duties to your partner correlative to the claims she has against you, but I do not think the latter include the right to have a meaningful and valuable loving relationship with you. If she has no right to marry you and you may divorce her at any time, then a fortiori she has no right to a meaningful and valuable loving relationship with you. Thus, even if sham marriage may distort the good of marriage by valuing it in the wrong way, to the extent that people have no right to a meaningful and valuable loving relationship, they have no right to the undistorted good of marriage.

Maybe your compatriots have a claim against your entering into a sham marriage. This might be because the permissibility of sham marriages is outweighed by competing interests and considerations. I have already considered an important interest that might be said to outweigh their permissibility—namely, the interest in preserving the institution and value of marriage—, but I have rejected this possibility. However, it is still possible that sham marriages are all-thing-considered impermissible because they violate other people's rights. Whose rights could sham marriages violate? Surely not the rights of those who freely enter into them. If they are to violate anyone's rights, then, it must be the rights of other citizens³. But is there really a right that people marry for "genuine", as opposed to instrumental or spurious, reasons?

To see why there is no such a right, consider the following two cases of marriage

3 Discussing the rights of foreigners (i.e., those who do not migrate) in relation to "brain drain" would take me too far afield. Fortunately, others have convincingly done so before. See, for instance, Tesón (2008) and Oberman (2013).

fraud—the only difference being that this time both parties are citizens. The first case involves a pair of friends who get married so that one of them can adopt a child. Let us stipulate that single parents are not allowed to adopt. In this case, it seems morally permissible (and even praiseworthy) for the friend to marry the would-be parent. The second example concerns a man who is drafted into the army. Given that his country does not allow citizens to object on conscientious grounds, the only way he can skip military service is by getting married, so he asks an acquaintance to marry him in order to avoid conscription. In both cases, we would think that the parties acted permissibly.⁴ Why is marriage between a citizen and a foreigner any different?

The only relevant difference that I can see could explain why sham marriages are impermissible is that the state has a right to exclude. But remember that the right to exclude is not absolute. Citizens have a pro tanto right to get married with their foreign partners.⁵ In order to assess whether the right to exclude rules out sham marriage, we need to know what good or interests are protected by exclusion. The right to exclude is said to be grounded in one or more of the following values: freedom of association (Wellman, 2008; Steinhoff,

2022), the right to avoid unwanted obligations (Blake, 2013, 2020), collective ownership (Pevnick, 2011), democratic self-government (Song, 2017, 2019), domestic social justice (Cafaro, 2015; Macedo, 2018), and national identity (Miller, 1995; Meilander, 2001). Let me sketch out each argument in turn:

- *Freedom of association*: citizens have a right not to associate with foreigners grounded on their right to freedom of association.
- *The right to avoid unwanted obligations*: citizens have a right to avoid unwanted obligations imposed by foreigners when they have no reason to become so obligated.
- *Collective ownership*: the state is a collective enterprise that citizens contribute to and over which they acquire ownership rights that entitle them to exclude foreigners.
- *Democratic self-government*: citizens have a right to collective self-determination which includes the right to determine membership in the demos.
- *Domestic social justice*: citizens have a right to exclude foreigners when doing so is necessary to protect the domestic poor and/or preserve (the necessary preconditions for) the welfare state.
- *National identity*: citizens have a right to exclude foreigners when doing so is necessary to preserve national identity, or at least to retain some degree of control over how it evolves.

The question is not whether sham marriages violate or are outweighed by these values, but whether they do/are so in a

4 I do not think that introducing money into the equation would alter our moral intuitions. However, I will not consider this argument here.

5 It goes without saying that this right does not include marriage for criminal purposes. For example, if the foreign partner is a suspected terrorist who is planning to attack the country, the citizen has no right to bring him in. Similarly, if he has a highly contagious disease that would pose a serious health risk, it may be permissible to deny him entry. But these exceptions also apply to bona fide or genuine marriages.

way that bona fide marriages do/are not. If sham marriages are impermissible because, say, they undermine domestic social justice, to the extent that bona fide marriages between a citizen and a foreigner also undermine domestic social justice, they would be impermissible too. So, in order to establish the impermissibility of sham marriages, we need to point to a difference with bona fide marriages in their effect on the above values.

I lack the space to defend this claim at length, but it seems to me that bona fide marriages violate citizens' right to avoid unwanted obligations, collective ownership, domestic social justice, and national identity in just the same way as sham marriages do. First, immigration through sham marriage imposes new unwanted obligations on citizens, but so does immigration through bona fide marriage⁶. Second, when the foreign sham spouse becomes a citizen, she acquires ownership rights over state institutions in just the same way as when a foreign bona fide partner be-

comes a citizen. Third, poor compatriots and/or the welfare state can be adversely affected by foreigners no matter whether the latter gained admission through a bona fide or sham marriage. Fourth, national identity is transformed irrespective of the genuine or spurious nature of the marriage. By contrast, freedom of association and democratic self-government do seem to entail the impermissibility of sham marriages.

Let me begin with freedom of association. It has been argued that, in matters of immigration, freedom of association only protects the rights of citizens who are in an intimate relationship with foreigners. As Lister (2010: 728) writes, "[v]arious types of associations are protected by these rights, but in general, the more intimate a relationship, the less discretion a state has in limiting it". Even Luara Ferracioli (2016, 2022: chap. 5), who favors an expansive interpretation of the right to family reunification, argues that only relationships that are irreplaceable, socially valuable, and meaningful to people's lives qualify for reunification⁷. Given that sham

6 Blake (2013: 219 fn. 43) might respond that citizens do have an obligation to acquire new obligations when it comes to the admission of citizens' foreign partners. The problem is that we do not know what new obligations citizens have an obligation to acquire. It is an open question whether the obligations bona fide marriages impose on citizens are actually wanted. Surely, the fact that bona fide marriages are legally sanctioned is a sign of their *prima facie* authorization by the state, but it does not conclusively show that the new obligations that come with them are indeed wanted by the citizenry. More importantly, it makes no sense to say that citizens have an obligation to acquire the new obligations imposed by the foreign partners of current citizens when their relationships are genuine because these new obligations are *wanted*. For one thing, how can there be an obligation to acquire new wanted obligations? This is akin to saying that I am obligated to pay the taxes I want to pay.

7 This is because immigration imposes costs on the rest of society, so simply caring about a relationship is not enough. The relationship must be valuable both to the citizen herself and to the society at large so that the former is entitled to impose some of the costs arising from this relationship on the latter (Ferracioli, 2016: 564, 2022: 103-104). This is a convincing response, but where exactly should we draw the line between relationships that may legitimately impose costs on citizens and those that cannot? Merely saying that citizen-citizen relationships may impose costs on other citizens but citizen-foreigner relationships cannot impose such costs will not do. It would beg the question to say that relationships where both parties are citizens can impose costs on other citizens whereas relationships where one of the parties is a foreigner cannot, for what

marriages are not conducive to the establishment of meaningful and valuable relationships, they should not be protected by freedom of association in the immigration context, at least not to the same extent as intimate associations. So, whereas bona fide marriages are protected by freedom of association, sham marriages are not.

In response, note that when two people do no harm to others in exercising their freedom of association, there is a presumption that they be free to associate, so it is not enough to say that such an association does not protect sufficiently weighty interests. What needs to be shown is that such interests are outweighed by competing ones. For example, it is not enough to say that a chess club protects only trivial interests. Given that they do not harm anyone, there must be a weightier interest at stake in order to prevent them from associating. In the absence of a competing interest, they must be allowed to associate even for the sake of trivial interests.

Is citizens' collective freedom of association a sufficiently weighty interest to trump citizens' individual freedom of association? I do not think it is. However, if we are to defend the state's right to exclude on that basis, we must think so. Otherwise, citizens would be free to invite any foreigner for whatever associative purpose, be it doing business, having sex, praying together, rallying for a political candidate, and so on. These are some of the interests that advocates of open borders mention as grounds for the right to immigrate (Carens, 2013: 239). But recall that in

needs to be determined is precisely whether the fact that one of the parties to the relationship is a foreigner matters to whether such relationships can impose costs on other citizens in a way that relationships where both parties are citizens can.

this section I am assuming that there is no such a right, but only a limited right to invite foreign partners and family members. So, saying that "it is impermissible to invoke a certain doctrine of valuable relationships in order to limit the freedom of consenting adults to associate with each other" (López-Guerra, 2020: 320) will not do.

My response rests on an empirical and a normative claim. The first affirms that the state has no ability to determine with certainty which marital relationships are genuine, or what counts as a genuine marriage in the first place. Compare this to the case of refugees: even if there is an internationally agreed upon definition of refugees⁸, asking asylum seekers too much evidence in support of their case is dangerous, for it risks leaving many genuine refugees out. If this is true of such a legally determinate concept as refugee, then it must also be true of such an indeterminate legal category as marriage⁹. The second reason is that we better abstain from making normative judgments about the validity of a given marriage. We are already quite skeptical of the state telling us what counts as a valuable relationship and ascribing rights accordingly. This skepticism is compounded in the case of intimate relationships, where determining their authenticity would entail a severe infringement of personal privacy. A similar worry arises in deportations proceedings: how can immigration officials determine

8 This is not to say that philosophers agree on the definition of refugee.

9 To say that marriage is a legally indeterminate category may sound preposterous. However, one need only look at the myriad forms that marriage takes in different countries to realize that there is no internationally agreed upon definition of marriage.

whether a person has sunk deep roots in her country of residence other than by inquiring about her private life? Asserting confidently the authenticity of one's claims in such intricate personal matters is not only difficult, but also dangerous and unduly invasive.

As for democratic self-government, sham marriages undermine this value in a way that bona fide marriages do not. In particular, "[w]hen would-be immigrants enter or remain in a country without authorization [as it happens when they gain admission 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). This is not the case of bona fide marriages, which are usually democratically authorized by the citizenry¹⁰. The democratic self-government argument may work against sham marriages, but it lacks the resources to criticize a ban on family migration. For example, if a country democratically decides that it will no longer grant (as many) family migration visas because it wants to focus on attracting high-skilled workers, citizens with foreign partners cannot but reluctantly accept this decision. By the same token, if a country democratically decides to create a citizenship market, there can be no complain from a democratic point of view. In short, by insisting that the collective has the right to democratically determine its own composition, the present argument rules out sham marriages but

opens the door to other controversial immigration policies.

In conclusion, sham marriages are pro tanto morally permissible because they are a free and mutually beneficial exchange and do not undermine the institution and value of marriage. Moreover, this pro tanto permissibility is not outweighed by some of the most pressing conflicting interests and competing considerations. First, even if sham marriages may distort the good of marriage by valuing it in the wrong way, people have no right to a meaningful and valuable loving relationship with others, so they have no right to the undistorted good of marriage. Second, citizens have no claim against sham marriages, just as they have no claim against other cases of fraudulent marriage. And third, sham marriages do not impinge on the values that ground the state's right to exclude any more than bona fide marriages between a citizen and a foreigner do.

3. Sham marriages as a citizenship market

Even if they have not been implemented yet, private citizenship markets have been criticized on a number of grounds¹¹. In surveying the standard objections to for-

10 Even if citizens do not cast a vote on every single marriage, they do have a say in the legal channels through which foreigners can gain admission, including marriage.

11 In contrast, *public* citizenship markets have a long record that dates as far back as the 1980s (Shachar, 2017: 794). The difference between public and private citizenship markets is that whereas in a public citizenship market it is the state which sells citizenship, in a private citizenship market it is citizens themselves who sell it, for example, by swapping their citizenship with foreigners in exchange for money. Sham marriages are a sort of private citizenship market because they involve the selling of citizenship by individual citizens.

mal citizenship markets, I do not mean to endorse or reject them. Rather, my purpose is to show that, even if successful, these objections do not tell against sham marriages. To understand why, we must distinguish between formal and informal citizenship markets. The former are backed up and regulated by the state, whereas the latter escape its purview and usually go against the law. Because sham marriages constitute an *informal* citizenship market, they are immune to the standard objections raised against their *formal* counterparts. This is because the message the state conveys when it engages in selling citizenship is clearly different from the one conveyed by private individuals when they engage in this practice. The state, as the upholder of the public interest and equality among citizens, must abstain from those practices that would contravene its legally mandated functions. This explains why the state must remain neutral between different conceptions of the good. By contrast, individuals are allowed to pursue their own conceptions of the good and engage in those activities conducive to them.

The first objection to formal citizenship markets is the so-called commodification objection, which has been advanced by Shachar and Hirschl (2014) and Tanasoca (2016, 2018: chap. 4), among others. This objection holds that some things should not be for sale because their intrinsic value is incompatible with the market. For example, it is widely accepted that children should not be for sale because a market in parenting clashes with the very logic of childrearing, which is associated with selfless care for the child. By the same token, it might be argued, citizenship should not be for sale because a market in citizenship clashes with the very

logic of citizenship, which is associated with civic duties, democratic participation, reciprocity, equal rights, joint responsibility, and actual membership in the state. In contrast, citizenship markets express the idea that citizenship is a function solely of the size of one's wallet, irrespective of the ties one has to the country. A market approach to citizenship means that citizenship will only be valued instrumentally, for what it can accrue to the buyer, rather than for the participation in a joint venture whose fate is inextricably linked to her own wellbeing. In conclusion, the worry is that citizenship markets would corrupt the value and very meaning of citizenship.

This is a very powerful argument against formal citizenship markets (cf. Erez, 2023a), but I think it does not apply to sham marriages qua informal citizenship market. To see why, let us begin with Hidalgo's (2016a) defense of public citizenship markets. According to him, "[i]f it is permissible for a state to deny foreigners access to citizenship, then it is *prima facie* permissible for this state to sell citizenship to these foreigners if this transaction is voluntary and does not violate anyone's entitlements" (Hidalgo, 2016a: 224). When considering the commodification objection, he puts the example of a golf club. Suppose that I own a golf club. As its legitimate owner, I am morally entitled to exclude everyone else from my golf club. In other words, I have no obligation to admit would-be members. This is important, for states usually claim the right to exclude prospective immigrants. So, just as I can refuse to admit new golf players, so can states refuse to admit foreigners. Hidalgo further argues that membership in a golf club is analogous to membership in a state in the sense that both confer its members equal status and a series of

rights. Accordingly, “[i]f the club can permissibly sell instrumentally valuable entitlements and symbolic markers of membership and equal status [...], then at first glance it is hard to see why it would be intrinsically wrong for states to sell these goods to foreigners” (2016a: 231).

In this example, Hidalgo overlooks (or rather, downplays) a crucial difference between a golf club and a state: membership in the latter is a precondition for the enjoyment of basic rights and freedoms as well as a domain of equality among its members, whereas membership in the former is not—for example, some members may be granted more rights than others by virtue of their seniority or receive additional benefits for paying a higher fee. He says that “the benefits of citizenship are *greater* than the benefits of membership in a golf club” (Hidalgo, 2016a: 231), as if the difference between a state and a golf club were a matter of the degree of the importance of their respective benefits¹². Contra Hidalgo, I believe that the difference between the importance of membership in a state and a golf club is not one of *degree*, but rather one of *kind*. Membership in a state is an entitlement; membership in a gold club is not¹³. Moreover, golf clubs

are protected by freedom of association, whereas states are not¹⁴. Individuals are free to associate to form their own club, but they are not free to associate to form their own state. For these reasons, I submit, membership in a gold club may be sold, but membership in a state cannot.

What does all this have to do with sham marriage? Marriage is akin to membership in a golf club: neither marriage nor golf clubs are necessary for the protection of basic rights (at least those of adults¹⁵), and both are protected by freedom of association. But then, if marriage is like a

right to immigrate, it may seem that one cannot complain about citizenship markets. However, one need not assume that there is a right to immigrate in order to criticize citizenship markets on commodification grounds. For the problem with citizenship markets is not so much that they deny citizenship to foreigners in general as that they deny it to some foreigners in particular—namely, those with effective and genuine ties to the country of residence (Shachar, 2011)—*while* they grant it to others who have no ties to the country other than the money they have invested.

14 The argument from freedom of association works in the case of voluntary, intimate, and purpose-specific associations, whose consensual nature, privacy, and mission depend on their very ability to exclude unwanted others; but I do not think it does in the case of compulsory, impersonal, and generic associations such as states, where the above values are not at stake. A golf-club, a group of friends, or a university have a right to exclude unwanted others because the unilateral incorporation of new members would disregard current members’ consent, invade their privacy, and compromise the association’s constitutive mission, respectively. By contrast, citizens do not consent to membership in the state, and immigration does not typically affect their privacy or else undermine the normal functioning of state institutions and its core constitutional principles.

15 The fact that fulfilling children’s rights usually lies with their family may in part explain why children cannot be put up for sale.

12 He suggests that “the goods that accompany membership in states do not seem fundamentally different *in kind* from the goods that accompany membership in the golf club” (Hidalgo, 2016a: 231).

13 Hidalgo responds that his is a conditional argument: *if* citizenship in a state is not an entitlement, then it is permissible for the state to sell it. The upshot seems to be that *only* if citizenship is an entitlement are citizenship markets problematic, because they exclude foreigners (especially poor ones) from an entitlement. Given that he believes that there is a right to immigrate (Hidalgo, 2019b), he can criticize citizenship markets. By contrast, if one believes that there is no

golf club in these important respects, why can citizens not get married with foreigners in exchange for money just as they can buy membership in a golf club? The problem, one might respond, is that the good being sold in the case of sham marriage is not membership in the marriage itself, but membership in the state. Therefore, if citizenship cannot be put up for sale, foreigners should not be allowed to get married with citizens in exchange for money as a way of gaining admission to and/or citizenship in another country. The paradox arises from the contradictory facts that marriage is a secondary association (and as such it is open to commodification) *and* provides admission into a primary association, in this case the state (which is not open to commodification)¹⁶. Unless we are ready to accept that the protection of basic rights may depend on the size of one's wallet, citizenship—the right to have rights—cannot be put up for sale (Tanasoca, 2016: 187). Otherwise, we run the risk of creating a two-tiered society where the rich and the talented (regardless of their formal status) are granted more rights than citizens (Mavelli, 2018: 487-488), in the process stripping citizenship of its substantive content. There are three main problems with this argument, though.

The first is that membership in a state can be sold without making the protection of basic rights conditional on the ability to pay. Standard citizenship allocation rules such as *jus sanguinis*, *jus soli*, and naturalization already grant membership irrespective of one's riches. Cash-for-passport

schemes only provide an *additional* route to citizenship. As far as I can tell, there is no inherent incompatibility between the two; they can peacefully coexist as long as citizenship by investment functions as a complement to, rather than as a substitute for, citizenship by birthright or naturalization. Moreover, people who buy their way into citizenship through investment programmes do not seek the protection of basic rights, but the enjoyment of additional rights (privileges, if you wish) and the expanded opportunities that this citizenship affords them. This is unlikely to be the case of foreigners who enter into a sham marriage, who are presumably in a precarious situation—why else would they resort to sham marriage? The fact that they are willing to pay for citizenship reveals the shortcomings of standard citizenship allocation rules and the failure of citizenship to deliver on its promise; it does not speak against sham marriages *per se*. In fact, sham marriages are the third-best for people whose country of origin does not provide them with adequate options and whose country of destination does not allow them to gain access and/or citizenship through standard channels.

The second problem with the above argument is that membership in a state already depends to a considerable extent on morally arbitrary facts beyond one's control such as birthplace, descent, and (to some extent) skills. So, unless one can point to a morally relevant distinction between these and money, I cannot see why citizenship should not depend on the latter any more than it currently does on the former. Making the protection of rights contingent on the possession of "valuable" human capital is no less problematic than making it contingent on the possession of sizeable financial capital (Erez, 2021), not least if

¹⁶ The paradox may be dissolved by denying that marriage is a secondary association. If marriage is necessary for the protection of basic rights, it counts as a primary association, in which case membership in it cannot be sold.

we consider that one is strongly correlated with the other. Shachar and Hirsch (2014: 251) have argued in response that we must distinguish skill- from investment-based admission criteria in that “the latter depend on the alienability and transferability of purely fungible funds, [whereas] the former focus on the distinctive skills, talents, or abilities «encapsulated» in the recruited migrant herself who moves to the new country”. Human capital, unlike financial capital, “is non-transferable and non-alienable; it is part of the self” (2014: 251). But why does it follow from this that skill is a legitimate reason for inclusion? As Douglas MacKay (2016: 137) rightly points out, so are sex, race, religion, and sexual orientation an important “part of the self”, and we do not thereby conclude that they constitute legitimate reasons for inclusion or exclusion.

The third problem with the commodification objection to citizenship markets is that equality among *actual* citizens is not predicated on the equality among *potential* citizens. As such, it is perfectly compatible to hold that the state may select among prospective migrants with the claim that all those who are admitted into the country “must be set on the road to citizenship” (Walzer, 1983: 60; Miller, 2008). In fact, the number of rights granted to migrants is said to depend on the number of migrants admitted (Ruhs and Martin, 2008). If the worry is instead that the mode of *distribution* will inevitably alter the *character* of citizenship, in the sense that people who buy citizenship are more likely to treat it as an instrumental good (Tanasoca, 2016: 179, 2018: 70-71), the state can (and indeed often does) establish a minimum residency requirement for new members in order to qualify for citizenship. This may not guarantee that

immigrants (and, for that matter, citizens) make appropriate use of citizenship and value it non instrumentally, but it will at least dissuade those foreigners who only want it for the sake of tax benefits and for investment-related purposes. At any rate, this is presumably not the case of those who engage in sham marriage. Most of them already reside in the country (and if they do not, they have to wait some time before they can apply for citizenship), and the reason why they are willing to pay for citizenship is to be able to remain in or gain admission into the country.

A second objection to formal citizenship markets claims that they have a corrosive effect on democracy. First, selling citizenship violates democratic equality by concentrating the power in the hands of the rich and placing the duties on the shoulders of the poor (Tanasoca, 2016: 191, 2018: 78). Second, a market approach to citizenship overlooks the importance of citizenship for democracy. The latter, it might be argued, requires citizens to share certain values, trust each other, care about the common good, play an active role in society, and so on. By contrast, the investor’s relationship with the political community is eminently contractual and purely instrumental, vulnerable to the ups and downs of the market, and thus unlikely to “prevent the citizen-investor from defecting (with all his capital) when times are hard” (Tanasoca, 2016: 182, 2018: 65). In Shachar’s (2017: 805) words:

Citizenship as we know it [...] is comprised of *political* relations; as such, it is expected to both reflect and generate notions of participation, co-governance, risk-sharing, and some measure of solidarity among those constituting the body politic. It is difficult to imagine how these democratic and reciprocal commitments can be preserved under

circumstances in which insiders and outsiders are distinguished merely by their ability to pay a certain price.

Do sham marriages similarly display an instrumental approach to citizenship, with the subsequent erosion of democracy? Unlike cash-for-passport schemes, sham marriages do not undermine civic virtues and democracy for the simple reason that most foreigners who engage in this practice are not motivated by profit maximization, but rather by their ties to the country of residence and/or an interest in residing there. Additionally, by entering into a sham marriage, they are not renouncing their citizenship duties in their home countries (at least no more than any other migrant); if anything, they are acquiring new duties to another country. Indeed, many of them will have relatives abroad and feel strongly attached to their home countries, so it is reasonable to think that they will keep sending money even after they gain citizenship. In sum, citizens through sham marriage are very much unlike citizens through investment. They are just like any other formerly unauthorized migrant, except for the fact that they had no other option to regularize their status.

The third objection to sham marriages points to their unfairness. As Shachar (2017: 804) argues in relation to formal citizenship markets, given the high levels of wealth inequality across the world, allowing rich individuals to buy citizenship is unfair to the millions of would-be migrants who are systematically denied admission merely because they happen to be poor. The unfairness of sham marriage can be framed in terms of exploitation or in terms of arbitrariness. In the former case, the complaint is that citizens take advantage of migrants' precarious situation by charging them prices that they

would not otherwise be willing to pay. In the latter, the complaint is that citizens of rich countries benefit, through no merit of their own, from the value of their citizenship when they enter into a sham marriage with foreigners who, through no fault of their own either, must bear the brunt of having been born in a poor country. The underlying worry is that citizens of "affluent states are actively seeking to benefit from the prevailing unjust distribution of social and economic opportunities to further their own economic interests" (Ip, 2020: 137).

In response, note that sham marriages are no more (luck) inequalitarian than other immigrant selection and exclusion criteria usually thought to be permissible¹⁷. For example, skilled migration programmes and financial requirements, to mention but two, discriminate on the basis of academic and economic criteria, which are strongly correlated with one's inherited socioeconomic status (Ball-Blakely, 2022: 596). Secondly, even if sham marriages are a byproduct of global inequality, they do not exacerbate that inequality, as Shachar (2018: 7-8) claims formal citizenship markets do. To the contrary, unlike "golden visa" holders, those who enter into sham marriage as a way of gaining admission into a rich country are mostly poor migrants who are thereby expected to substantially increase their earnings

17 For example, Carens (2003: 108) considers an immigrant's potential economic contribution a "criterion that seems morally permissible", and MacKay (2016: 137) likewise contends that "HIC [high-income countries] may—in principle—favor skilled prospective immigrants". For a contrary view, see Lim (2017, 2023), Egan (2020), and Ball-Blakely (2022). For a more nuanced, albeit still favorable, view to skill-based and economic selection criteria, see Ip (2020).

and improve their living standards. As for the claim of exploitation, the problem is that by outlawing sham marriages, the state is actually “removing the very option that the exploited party values most highly (as indicated by their desire to choose that option over all of the other alternatives).” So, “[u]nless the state bundles its interference with the contract with the provision of additional and better options, the interference actually makes the exploited party worse off” (Freiman, 2019: 130). At the end of the day, the only reason why unauthorized migrants enter into sham marriages is that they lack a legal option to gain admission to and/or citizenship in the country in the first place. In any case, the exploitation objection does not undermine my argument, because states cannot exclude people who qualify as refugees, understood in a broad sense as those whose rights or needs are not adequately protected at home (Blake, 2013: 125-126)¹⁸.

The fourth objection to formal citizenship markets posits that they undermine the state’s right to exclude. According to Lior Erez (2023b: 1096), “[b]y privatizing immigration decision-making, they [would-be immigrants] are now subjected to the private will of each seller, and not to the legitimate democratic will of the body politic. This undermines the legitimacy of the state’s right to exclude, which is a constitutive [aspect] of the right to sell.” The right to sell citizenship presupposes the right to exclude foreigners from citizenship, which is grounded in citizens’ right to collective self-determination. The worry is that if each citizen can unilaterally de-

cide on the admission of new members by marrying or refusing to marry foreigners at will, the right to collective self-determination, and thereby the very state’s right to exclude, will be rendered void. In conclusion, to the extent that private citizenship markets are incompatible with the state’s right to exclude, they are self-defeating.

This objection does not apply to sham marriages qua informal citizenship markets, because the sale of citizenship that takes place in a sham marriage does not amount to a privatization of the state’s right to exclude any more than the administration of justice by private individuals who take matters into their own hands amounts to a privatization of the state’s right to administer justice. When citizens break the law, the state cannot be said to abdicate its legitimate functions, at least insofar as it takes reasonable steps to prevent citizens from breaking the law. At a more fundamental level, the objection rests on the implausible assumption that sovereign powers such as the right to exclude cannot be exercised by private parties without undermining the legal bases of those powers¹⁹. For example, private dispute settlement mechanisms, at least those authorized by the state, do not undermine the latter’s judicial powers. Similarly, private banks routinely create money without thereby undercutting the central bank’s control over the currency. Even if private citizenship markets were at odds with the right to exclude, this right is not absolute, as evidenced by the right of citizens to marry foreign partners and sponsor family members living abroad. If so,

18 One need not adopt such an expansive definition of refugee to hold that states cannot exclude destitute or necessitous migrants (see, for example, Walzer, 1983; Miller, 2016; Song, 2019).

19 To be accurate, private citizenship markets do not privatize the right to exclude, but only the right to *include*. This casts even more doubt on the objection that private citizenship markets undermine the state’s right to exclude.

the objection to private citizenship markets cannot simply be that they constrain the right to exclude.

Finally, I would like to consider a specific objection to sham marriages as an informal citizenship market. One might argue that even though markets can and do exist beyond the state, functional and fair markets cannot exist without the institutional background provided by the state. Therefore, if my defense of sham marriages succeeds, we might need to institutionalize them, in which case the aforementioned objections against formal citizenship markets might also apply to sham marriages. In response, note that this section has taken for granted that states have a right to exclude, and consequently that sham marriages are forbidden by law. In this sense, sham marriages are akin to human smuggling: it is only because some people have no access to legal channels of migration that they resort to illegal ones. As such, their very existence depends on their prohibition. It is therefore an oxymoron to speak about institutionalized or legal sham marriages, just as it is an oxymoron to speak about institutionalized or legal human smugglers—we call the latter commercial airlines or transportation companies. But what if there were no *moral* right to exclude? To the extent that states continue to exercise their *legal* right to exclude, sham marriages would still make sense, but this time as a form of immigration resistance.

4. Sham marriages as immigration resistance

In the previous section I have granted that there is a right to exclude, but I have

argued that this right is not absolute. For example, citizens are entitled to bring in their foreign partners and close family members. This premise, together with the one that sham marriages do not necessarily undermine the institution and value of bona fide marriage, led me to conclude that sham marriages are *pro tanto* permissible. I then argued that sham marriages constitute an informal citizenship market, and as such they are immune to the objections raised against their formal counterparts. But sham marriages can also be a form of immigration resistance, depending on our background assumptions regarding the morality of border controls. It is commonplace to assume that states have a right to exclude. However, this view is not shared by everyone. Some people claim that most (if not all) immigration restrictions are unjust.

There are two main ways of arguing for the claim that immigration restrictions are unjust. One involves asserting that immigration is a human right (Oberman, 2016) and that borders should generally be open (Carens, 2013; Sager, 2020). If states have no right to exclude, it follows that most immigration restrictions (i.e., those not necessary to prevent rights violations or avert serious consequences) are unjust both in principle and in practice (Hidalgo, 2016b: 183-184). Call this the *direct* argument for the injustice of border controls. The other consists in showing that even if states have a right to exclude in principle, the actual operation of border controls and other immigration enforcement mechanisms renders states' right to exclude impermissible in practice (Mendoza, 2015; Schmidt, 2022). As Sager (2017: 48) argues, "even if there are reasons at the *level of principle* that states' claims to regulate migration outweigh

the competing claims of many people to migrate, *practical difficulties* in avoiding dominating migrants in the process of enforcing migration controls make them unjust”²⁰. Call this the *indirect* argument for the injustice of border controls²¹.

The upshot of the direct and indirect arguments for the injustice of border controls is that people are entitled to resist actual immigration restrictions (Hidalgo, 2015, 2019b). Open borders might not be a feasible policy option in the here and now, but there are certainly important moral implications for how individuals ought to act in the actual non-ideal world. What are those implications? Javier Hidalgo suggests that “it is sometimes permissible for foreigners to evade, deceive, and use defensive force against borders agents” (2015: 458) and even that “citizens are often morally required to disobey immigration laws” (2016b: 184). The second implication is arguably more controversial than the first, since it requires us to assume (1) that citizens contribute to (as opposed to merely allow) an injustice to foreigners by complying with immigration policies, and (2) that there is an obligation not to contribute to injustice even despite

the threat of steep sanctions imposed by the state.

Fortunately, I do not need to rely on either of these assumptions to defend the permissibility of sham marriages as a form of immigration resistance, for no one claims that citizens are morally required to marry unauthorized migrants in order to help them obtain legal status. Freedom of association in the marital realm is considered too important a right to be sacrificed even for the sake of such a morally demanding duty as resisting immigration injustice. And if there is no moral requirement to marry unauthorized migrants, then a fortiori there can be no moral requirement to enter into a sham marriage with them. However, to the extent that an agent can withdraw a benefit from another, it may be permissible for her to offer it in exchange for money. This argument has been put forward in the context of human smuggling. According to Hidalgo (2016c: 315, 2019b: 145; see also Müller, 2021: 144-145):

If it is permissible for potential smugglers to refrain from transporting refugees to other states without compensation, then it is *prima facie* permissible for smugglers to transport refugees in return for compensation if (i) these refugees consent to this interaction, (ii) refugees benefit from interacting with smugglers, and (iii) this interaction avoids violating the rights or entitlements of other agents.

By the same token, we can say that if it is permissible for citizens to refrain from marrying unauthorized migrants without compensation, then it is *prima facie* permissible for citizens to marry unauthorized migrants in exchange for money if (1) the migrants consent to this exchange, (2) they benefit from the exchange, and (3)

20 I have challenged this view in Niño Arnaiz (2024). However, one need only endorse one of the arguments for the injustice of border controls to accept the permissibility of sham marriages as a form of immigration resistance.

21 Another way to argue for the illegitimacy of actual immigration restrictions is to posit that states have no unilateral right control their own borders, because every instance of state coercion must be democratically justified to those over whom it is exerted. Given that border controls coerce outsiders as well as insiders, they must be democratically justified to both (Abizadeh, 2008).

the exchange avoids violating the rights or entitlements of others. This is known as the “non-worseness claim”: “[i]nteraction between *A* and *B* cannot be worse than non-interaction when *A* has a right not to interact with *B* at all, and when the interaction is mutually advantageous, consensual, and free from negative externalities” (Zwolinski et al., 2022). The basic idea is that if by engaging in a (commercial) transaction with you I do not harm your interests as compared to a scenario where the transaction does not take place, and I have no antecedent duty to engage in that transaction with you, then the transaction is morally permissible provided that it is voluntary, beneficial for the two of us, and does not violate anyone else’s rights.

It is clear that unauthorized migrants consent to sham marriage and benefit from the exchange. The condition that the exchange avoids violating the rights or entitlements of others is admittedly more controversial, but if what I have said so far is correct, sham marriages do not violate the right to exclude any more than bona fide marriages, nor are they outweighed by competing interests and considerations. The case of human smuggling is more problematic because smugglers expose migrants to various risks and they are in a better position to help them, so it might be thought that they have a moral obligation to do so. But in the case of sham marriage no such risk is involved, and all citizens are equally situated with respect to would-be immigrants, in the sense that they are in no better position than other citizens to engage in sham marriage. Moreover, the smuggled are usually in a much more desperate situation than ordinary unauthorized migrants. Accordingly, if commercial human smuggling is morally permissible, then so are for-profit sham marriages.

One might reply that even though citizens have no antecedent duty to marry unauthorized migrants, they should not make money out of it. By assuming that there is a human right to immigrate (or at least no moral right to exclude), I might have raised the bar of morality too high. Citizens who refuse to marry unauthorized migrants might be accused of complicity with the state’s unjust immigration restrictions, but those who marry unauthorized migrants in exchange for money are actively benefiting from this injustice. I argued before that freedom of association in the marital realm is of utmost importance, and therefore should not be sacrificed for other ends, no matter how pressing. But if immigration policies are unjustly harming migrants, as advocates of open borders suggest, then they should put their money where their mouth is. Suppose that in the slavery era, the only “legal” way slaves could become free was by marrying citizens. In that case, we might think that citizens had a (second-best) moral obligation to marry slaves. By the same token, should not modern-day abolitionists bear the modest risk of entering into a sham marriage with unauthorized migrants in order to help them regularize their status? If doing nothing in the face of blatant injustice is bad enough, taking advantage of an injustice is definitely perverse. The upshot is that (1) by upholding an unjust immigration regime, all citizens in general are complicit in an injustice; and (2) by engaging in sham marriage, some citizens in particular are benefitting from an injustice. I take up each objection in turn.

In response to the complaint about complicity, note that there is a big difference between committing an injustice and doing nothing in the face of an injustice. Citizens who refuse to marry unauthorized

migrants may be complicit in an injustice in the sense that they are doing nothing to combat it, but only in a very weak sense are they committing an injustice. In fact, it is false that citizens who refuse to marry unauthorized migrants are thereby complicit in an injustice. For one thing, even if for many unauthorized migrants entering into a sham marriage is the only way to obtain legal status, citizens have multiple (both legal and illegal) ways to fight unjust immigration restrictions, and it is by no means clear that marrying unauthorized migrants is the most (cost-)effective one. Immigrant advocacy groups and non-governmental organizations do a very important job in supporting migrants, including unauthorized ones. Collaborating with these initiatives is thus a good way in which citizens can discharge their duties to resist immigration injustice, but there are many others.

The second charge is more serious than the first, for it would entail that sham marriages are morally impermissible. Citizens who work under labor market regulations that prevent unauthorized migrants from taking up jobs may indirectly benefit from the lack of foreign competition (van der Vossen and Brennan, 2018: 34), but citizens who marry unauthorized migrants for a profit are *actively* benefiting from an injustice. It is important to distinguish actively benefiting from an injustice from directly contributing to an injustice, though. It is surely wrong to actively benefit from an injustice, but it is much worse to actively benefit from an injustice that one is directly contributing to. If citizens were directly contributing to unjust immigration restrictions and then making a profit out of it through sham marriage, they should not only avoid engaging in sham marriage, but they should also refrain from directly

contributing to the injustice in the first place. However, to the extent that ordinary citizens are not themselves directly responsible for the unjust immigration restrictions, there is no blanket moral prohibition against their engaging in sham marriage, but only a pro tanto reason not to do so. In this case, the moral wrongness of benefiting from immigration injustice through sham marriage must be balanced against the benefits that might accrue for unauthorized migrants from this practice.

As Aloyo and Cusumano (2021: 143) have convincingly argued in the context of exploitative human smuggling, the wrongness on the part of the smuggler “must be weighed against the autonomy and respect for the potential migrant who should be able to make her own life choices, even under such bad-choice situations.” In the same vein, the wrongness of citizens’ benefiting from unjust immigration restrictions through sham marriage must be weighed against the benefits in terms of expanded opportunities for unauthorized migrants who engage in this practice. At the end of the day, no one knows their interests better than themselves. For this reason, “[e]ven if this decision were made under far from perfect conditions, it seems fairer to allow someone to choose what she thinks is their best way [among those currently available to her] to advance her life aims than it is to restrict them [without any alternative]” (2021: 142).

In short, given that states will not open their borders anytime soon, sham marriages are a permissible form of resistance in the face of unjust immigration restrictions. The fact that citizens enter into sham marriage in exchange for money does not call into question their pro tanto moral permissibility as long as

(1) migrants consent to the exchange, (2) benefit from the exchange, and (3) the exchange does not violate the rights and entitlements of others. Moreover, this pro tanto permissibility is not defeated by the fact that citizens are failing to discharge their positive duties to resist unjust immigration restrictions nor outweighed by the fact that citizens actively benefit from an injustice by engaging in sham marriage.

5. Conclusion

In this article I have defended the permissibility of sham marriages both as a sort of private citizenship market and a form of immigration resistance. Sham marriages are pro tanto morally permissible because they are a free and mutually beneficial exchange and do not undermine the institution and value of bona fide marriage. Moreover, this pro tanto permissibility is not defeated by the infringement of other rights or outweighed by competing interests and considerations. The first part assumed that states have a right to exclude unwanted immigrants, but argued that such right is limited by the right of citizens to marry foreign partners. Sham marriages constitute an informal citizenship market, and as such they are immune to the standard objections raised against their formal counterparts. The second part rejected that states have a right to exclude, arguing that foreigners may enter into sham marriages with citizens to bypass unjust immigration restrictions. In this case, the monetary exchange that takes place in a sham marriage is not problematic, for citizens have no antecedent duty to marry unauthorized migrants.

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