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The Citizen as Other: The Case from Within for Cosmopolitan State Duties and Freedom to Migrate

Francesca Strumia*

This article considers a novel frame for state duties towards 'others' and towards migrants. Existing literature on the cosmopolitan role of the state and on the foundations of a right to migrate links relevant duties to principles of no harm to outsiders, other-regardingness, or hospitality. This article explores the possibility that we should rather justify relevant duties from the perspective of citizenship and from within the social contract between state and citizen. It advances a three-step argument in support of the idea that the state, in discharging its responsibilities to 'others', ought to be guided by the perspective of the duties it owes to its own citizens to fulfil the cosmopolitan value of their condition. The perspective 'from within' that the article thus proposes sheds novel light on the global role of the sovereign state and on the meaning of cosmopolitanism. In reconciling the former with the latter, it nudges the theory of cosmopolitan sovereignty out of an impasse. And it ultimately makes room for a conception of migration as freedom.

INTRODUCTION

The sovereign state is an inherently selfish creature. In spite of all the correctives that international commitments and global governance scripts have brought to its role, its main purpose remains protection of its own territory, its own people, and its own boundaries. 'Others', non-citizens beyond its jurisdiction, are in principle outside its institutional remit. Nonetheless, as the main actor on the international scene of an interdependent world, the state cannot ignore 'others'. It cannot ignore the 'others' it reaches through its regulatory choices. And it cannot ignore the migrant 'others' who reach for it in search of safety or opportunity. On the ability of the 21st century state to convincingly embrace duties to 'others' hangs, in good part, its potential as a force for freedom, prosperity and stability in an era of planetary threats and re-emerging axes of the just and the rogue. Hence the questions with which this article is centrally concerned: on what grounds does the sovereign state owe duties to 'others'? And in particular on what grounds does it owe duties to migrant 'others'?

The questions are not new. Various theories of sovereignty across international law and international relations focus on the duties of sovereign states

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towards 'others'.[1] And both international law and the philosophy of immigration have long questioned the grounds of a right to migrate and the duties of states that it calls for.[2] Relevant lines of inquiry ultimately all contribute, in different ways, to exploring the fit between state sovereignty and the cosmopolitan ideal that all human beings should be citizens of a single community, and thus by implication free to move unconstrained within that community.[3]

This article, however, engages both questions from a novel citizenship-driven perspective. In existing inquiries, duties to 'others' and to migrants are justified in light of human rights norms, and of moral norms such as goodwill, hospitality and other-regardingness.[4] Relevant duties are sourced, in other words, outside the relation between the state and the citizen. This article rather reconsiders state cosmopolitan responsibilities towards 'others', and relatedly state duties with respect to a right to migrate, from the perspective of the duties that the state owes to its own citizens. It advances a three-step argument to bring cosmopolitanism within the state-citizen relation: first, the national citizen ought to be looked at in his simultaneous status as member of a state community and as member of humanity at large; second, this points to a role of the state as agent for the citizens in their cosmopolitan capacity; and third this vision of the citizen status and of the state role grounds a norm of reflexive recognition of the 'other'. From this latter norm follows a duty of the state to act towards others as trustee for the citizens and surrogate for other states.

1 For a sample of a vast literature see Leah Ypi, 'Statist Cosmopolitanism' (2008) 16 *Journal of Political Philosophy* 48; Leah Ypi, *Global Justice and Avant-Garde Political Agency* (Oxford: OUP, 2012); Thomas Pogge, 'Cosmopolitanism and Sovereignty' (1992) 103 *Ethics* 48; Luis Cabrera (ed), *Institutional Cosmopolitanism* (Oxford: OUP, 2018); Richard Beardsworth, Garrett Wallace Brown and Richard Shapcott (eds), *The State and Cosmopolitan Responsibility* (Oxford: OUP, 2019); Andrew Linklater, 'Cosmopolitan Political Communities in International Relations' (2002) 16 *International Relations* 135; Anne Peters, 'Humanity as the A and Ω of Sovereignty' (2009) 20 EJIL 513; Evan J. Criddle and Evan Fox-Decent, *Fiduciaries of Humanity – How International Law Constitutes Authority* (New York, NY: OUP, 2016); Eyal Benvenisti 'Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders' (2013) 107 AJIL 295; Eyal Benvenisti 'Introduction' (2015) 16 *Theoretical Inquiries in Law*; Ben Straumann, 'Early Modern Sovereignty and Its Limits' (2015) 16 *Theoretical Inquiries in Law* 423; Sergio Dellavalle, 'On Sovereignty, Legitimacy, and Solidarity, or: How Can a Solidaristic Idea of Legitimate Sovereignty Be Justified?' (2015) 16 *Theoretical Inquiries in Law* 367; Jean L. Cohen, *Globalization and Sovereignty, Rethinking Legality, Legitimacy and Constitutionalism* (Cambridge: CUP, 2012); David Held, 'Law of States, Law of People' (2002) 8 *Legal Theory* 1.

2 For the debate in international law see Vincent Chetail, 'Sovereignty and Migration in the Doctrine of the Law of Nations – An Intellectual History of Hospitality from Vitoria to Vattel' (2016) 27 EJIL 901; James A. R. Nafziger, 'The General Admission of Aliens under International Law' (1983) 77 AJIL 804; Frédéric Mégret, 'Transnational Mobility, the International Law of Aliens, and the Origins of Global Migration Law' (2017) 111 *AJIL Unbound* 13. For the philosophical perspective, Christopher Heath Wellman and Phillip Cole, *Debating the Ethics of Immigration: Is there a Right to Exclude?* (New York, NY: OUP, 2011); Jonathan Seglow 'The Ethics of Immigration' (2005) 3 *Political Studies Review* 317; also see Luis Cabrera 'Free Movement, Sovereignty and Cosmopolitan State Responsibility' in Cabrera (ed), *ibid*.

3 See 'Cosmopolitanism' in *Stanford Encyclopedia of Philosophy* at https://plato.stanford.edu/entries/cosmopolitanism/#MoraCosm [https://perma.cc/W6MF-2C5D]; also see Cabrera, *ibid*.

4 But see, for an attempt to locate relevant duties within the social contract, Richard Beardsworth, 'Reflections on Institutional Cosmopolitanism – State Responsibility in a Globalized Age' and Richard Shapcott, 'The Responsible Cosmopolitan State', both in Cabrera (ed), n 1 above.

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The argument is a timely one as it directly addresses a peculiar conundrum facing contemporary states. On the one hand, current existential challenges that threaten humanity at large, from climate change, to energy supply to nuclear war, more than ever call for the state to act as agent for a global principal, through governance strategies and policies that embrace both a cosmopolitan moral standpoint and an enhanced idea of freedom to migrate. On the other hand, in the wake of repatriation of supply chains and divisive nationalism, the state is under pressure to focus on the particular instances of its national principal, erecting walls and closely guarding borders, to the detriment of both cosmopolitan ideals and ideas of freedom to migrate.

Cosmopolitanism from within responds to this conundrum through proposing a way to bring cosmopolitan values in dialogue with the self-interested role of the sovereign state, helping the state to serve its national and global principals in a mutually reinforcing manner. It thus both nudges the literature on state cosmopolitanism out of an impasse and contributes a fresh perspective in favour of (more) open borders to the literature on the right to migrate.

The article begins by retracing existing cosmopolitan conceptions of sovereignty and of the role of the state, and pitching the argument from within against relevant conceptions. In the second section, it explores the ramification of the argument from within in the context of international migration. The third section lays out the three conceptual steps underpinning cosmopolitanism from within. The fourth and fifth sections explore the implications of the argument from within for state concrete duties respectively towards migrants and towards a broader set of 'others'. The sixth section acknowledges and weighs the limits of the argument from within. The conclusion returns to the initial question and draws out the import of the argument from within for the very ideas of statehood, cosmopolitanism and freedom to migrate.

RETHINKING THE STATE COSMOPOLITAN ROLE FROM WITHIN: THE STATE COSMOPOLITAN RESPONSIBILITY TOWARDS ITS OWN CITIZENS

The idea that the sovereign state owes a cosmopolitan responsibility to humanity at large has never fit comfortably with the state role as the guardian of a territorially delimited and nationally defined community of citizens.[5] It is to the members of this community, indeed, that the state owes its primary responsibility,[6] while on the other hand, '[i]t is of the essence of sovereignty

5 Pogge, n 1 above, 48; also see Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge, MA: Harvard University Press, 1992) 21-23.

6 In UK public law, this responsibility finds an expression in the government prerogative to 'maintain the peace of the realm' that links back to the traditional duty of the sovereign to protect its subjects. See for example *R* v *Secretary of State for the Home Department, ex p Northumbria Police Authority* [1989] QB 26, 54.

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that power and violence can be exercised against non-members without any accountability'.[7]

It is true that over the course of the 20th century both the nature and scope of the sovereign state responsibilities towards individuals have gradually changed. On the one hand, the state has come to owe responsibilities to its own citizens on novel grounds, such as under human rights law. On the other hand, its responsibilities towards non-nationals within its jurisdiction have expanded under both domestic and international law.[8] However, duties to non-nationals beyond the state jurisdiction – that is, cosmopolitan duties towards humanity at large – have remained much less defined.

In Kant's 17th century vision relevant duties descended from a law of 'world citizenship' that treated both men and states as members of a universal community embracing all of humanity.[9] This cosmopolitan law carved out a place for duties owed to humanity at large in between the state municipal and international responsibilities.[10] Ever since, state cosmopolitan duties have maintained this interstitial character. Distinct both from municipal duties owed to a state's citizens and residents, and from international duties owed to other states in the international community, they have found their theoretical justification in rationales of hospitality, no-harm to outsiders, trusteeship and other-regardingness.

The state duty not to harm outsiders is at the heart of the literature in political theory and international relations that explores the viability of cosmopolitan sovereignty.[11] From a moral standpoint, this duty of no harm to outsiders is an extension of the republican duty of non-domination, according to which no one should be subject to arbitrary alien control.[12] If the principle of freedom as non-domination that the republican state is committed to is to be a universal one, the argument goes, then the state has a duty of 'extraterritorial non-domination'.[13] Extra-territorial non-domination requires at the very least that outsiders to the state be treated in accordance with the rule of law.[14] From a political standpoint, no-harm to outsiders requires that a balance between the pursuit of national interest and the pursuit of global interest be internalised in domestic political debates.[15]

7 Alexander Wendt, 'Why a World State is Inevitable' (2003) 9 *European Journal of International Relations* 491, 526.

8 For an argument in this sense see Linda Bosniak, 'Being Here: Ethical Territoriality and the Rights of Immigrants' (2007) 8 *Theoretical Inquiries in Law* 389, 390-392.

9 Immanuel Kant, *Perpetual Peace: a Philosophical Proposal* (London: Sweet and Maxwell, Eng tr, 1927) 34.

10 *ibid*.

11 Linklater, n 1 above; also see Andrew Linklater, 'Global Civilizing Processes and the Ambiguities of Human Interconnectedness' (2010) 16 *European Journal of International Relations* 155, 171; Thomas Pogge, 'Cosmopolitanism: a Defence' (2002) 5 *Critical Review of International Social and Political Philosophy* 89 (on the duty not to impose an unjust order upon foreigners).

12 Phillip Pettit, 'A Republican Law of Peoples' (2010) 9 *European Journal of Political Theory* 70; Shapcott, n 4 above, 90-96.

13 Shapcott, *ibid*, 98.

14 *ibid*, 99.

15 Pogge, n 11 above, 58-69; Beardsworth, n 4 above. Also see in general Ypi, *Global Justice* n 1 above.

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The role of states as 'trustees' for humanity is instead central to fiduciary theories of sovereignty in international law.[16] Relevant theories see sovereign states as joint fiduciaries of the earth's surface on behalf of all of humanity.[17] This role of agents for humanity compels sovereigns to take into account outsiders' interests in their policymaking. It is through this 'other-regardingness' that states can promote global welfare and global justice.[18]

Finally, the sovereign state's other-regarding duties are a point of focus in pluralist and relational conceptions of sovereignty across legal and constitutional theory. In its relational understanding sovereignty involves 'mutual construction and containment within a system (and international society) of sovereign states'.[19] In this system, several sovereign spheres coexist and overlap, so that the interests of people living within one of those spheres cannot be treated as alien to all the others. Each sovereign state, it follows, has other-regarding responsibilities.[20]

These different views on the cosmopolitan role of the state share in one respect. They look at cosmopolitan duties of the state as duties that are owed to 'others'. These 'others', members of humanity at large to whom the state owes a cosmopolitan responsibility, are seen as competitors of, or at least as distinct from, the citizens to whom the state owes a political responsibility.[21] The state citizens form a political community whose bounded interests must be at odds with the unbounded interests of humanity at large. This poses the sovereign state in front of a dilemma. Andrew Linklater has expressed this dilemma in compelling words: 'To give fellow-citizens special consideration seems to fly in the face of what it means to be a cosmopolitan; but to treat all human beings as our equals seems to make it difficult for us to live apart, in bounded communities which separate us from the rest of the human race'.[22]

State cosmopolitan responsibilities thus represent a disturbance to the duties that the state owes to its citizens. They cannot but be residual with respect to the latter duties. Indeed, in all the approaches considered above they find their source in rationales external to the social contract between state and citizens

16 See Peters, n 1 above; Benvenisti, 'Sovereigns as Trustees' n 1 above; Criddle and Fox-Decent, n 1 above.

17 See for example Criddle and Fox-Decent, *ibid*, 30 and 266.

18 Benvenisti, 'Sovereigns as Trustees' n 1 above, 298-300.

19 Cohen, n 1 above, 67. For a further definition in this sense and its distinction from Westphalian conceptions of sovereignty, also see Held, n 1 above, 33.

20 In pluralist accounts of sovereignty, these responsibilities take different shapes. For instance, Palombella and Klabbers in presenting their theory of interlegality refer to the need to take into account different normativities in addressing any individual legal case. See Gianluigi Palombella, 'Interlegalità. Interconnessioni tra Ordini Giuridici, il Diritto e il Ruolo delle Corti' (2018) 18 *Diritto e Questioni Pubbliche* 315, 325-326 and 332-338; Also Gianluigi Palombella, 'Theory, Reality and Promises of Inter-legality – a Manifesto' in Jan Klabbers and Gianluigi Palombella (eds), *The Challenge of Inter-legality* (Cambridge: CUP, 2019) 363, 378-382. Neil Walker, in his model of constitutional pluralism, calls for a 'highly reflexive form of democracy' that remains vigilant at all times to represent and reconcile interests within and beyond the demos: Neil Walker, 'The Idea of Constitutional Pluralism' (2002) 65 MLR 317, 336.

21 Linklater, n 1 above, 135; Miriam Ronzoni, 'The Cosmopolitan Responsibilities of Republican States – Inevitable, but Inevitably Constrained' in Beardsworth, Brown and Shapcott, n 1 above, 326-327.

22 Linklater, *ibid*, 135.

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such as goodwill, hospitality and other-regardingness, and they potentially challenge the discharge of the obligations prescribed in that contract. As a result, the concrete state duties they translate into are limited in scope and exceptional in character.

This vision of the state cosmopolitan role is however an incomplete one. It artificially carves out a state's own citizens from the idea of humanity at large. A state's citizens are no less members of humanity at large than the 'others' in whose respect state cosmopolitan responsibilities are traditionally framed. This prompts a refocus of attention on two questions to which the literature on state cosmopolitanism has remained largely oblivious: what duties does the state owe to its own citizens as members of humanity at large? And how do these duties relate to the cosmopolitan responsibilities of the state towards others?

A sketched answer to these questions – questions that reclaim cosmopolitanism from the perspective of the citizen – begins from a reflection on the duty of the state to protect and represent its citizens not only in their internal capacity, but also in their cosmopolitan and global one. In a global world, the state has a duty to safeguard the citizens' interests in being, as much as possible, on a level playing field with the rest of humanity. This duty ought to direct state action, for instance, to enable the citizens to benefit from global trade relations and resilient supply chains, to rely on stable geopolitical equilibria, to reap the benefits of planetary achievements and to find protection from planetary threats. This duty that the state owes to its own citizens to safeguard and fulfil the cosmopolitan value of their condition ought to guide in turn the state in the discharge of its cosmopolitan responsibilities to 'others'. When citizens and 'others' are looked at as members of humanity at large indeed, their interests appear much more aligned than it may seem at first sight. The 'citizen' and the 'other' are no longer competitors, but rather comrades. Citizen-regardingness emerges from this perspective as an added rationale, as well as a possible gauge, for state cosmopolitan responsibilities towards 'others'. And cosmopolitanism comes to be grounded within, rather than outwith, the state-citizen relation.

This perspective from within on cosmopolitanism complements that from without, bringing added clarity to relational, fiduciary, and cosmopolitan conceptions of sovereignty. First, it clarifies the source of the duties of other-regardingness that relational and pluralist conceptions of sovereignty leave somewhat undefined. Those duties are not grounded simply in enhanced ideas of hospitality or in good will. They are rather an implication of the regard that the state owes to its own citizens' cosmopolitan condition. Relatedly, cosmopolitanism from within points to a possible interpretation for the role of states as 'trustees for humanity'.[23] It suggests that the state's very own citizens are both trustees and beneficiaries of this fiduciary relation. This may seem to defeat the normative goal of fiduciary views of state sovereignty that is to justify state duties beyond those owed to citizens. However the key point is that the citizens are beneficiaries in their capacity as members of humanity at large. In protecting their interests in this sense, the state protects by extension the interests of the rest of humanity. An example may clarify. The Truman Little White

23 Benvenisti, 'Sovereigns as Trustees' n 1 above.

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House is a historical site and museum in Florida's Key West that has served as a holiday retreat for several US presidents. A sign in front of its gate indicates that it is 'held in trust by the state for the citizens of the world'. The sign is admittedly symbolic, however it does evoke the idea of the state role as trustee for humanity. What would a cosmopolitan from within interpretation make of it? It would suggest that in administering the Little White House estate, the state of Florida ought to act first of all as trustee for the citizens of Florida. It would have to hold it in trust for the citizens of Florida in their interests as members of humanity at large. And thus by extension it would be holding it in trust also for the interests of the rest of humanity.

In adopting this citizenship perspective, cosmopolitanism from within may seem to track arguments from the 'bottom up' or 'inside out' that have been elaborated in the literature on cosmopolitan sovereignty. For instance in Shapcott's view the interests of outsiders ought to be unilaterally recognised and entrenched in a state's domestic constitution.[24] In Beardsworth's view, state political responsibility to its own citizens ought to be reconfigured so as to prompt the state to pursue a global common good in fulfilment of the needs of its own people.[25] From one perspective, the argument explored in these pages specifies relevant arguments. It endorses the vision of the cosmopolitan state that unilaterally accepts and internalises in its domestic constitution duties towards outsiders and other states.[26] It also espouses a concrete way to 'harness the global interest to the national as auspicated in Beardsworth's account of political cosmopolitanism.[27]

The argument from within however goes further than in these accounts. These accounts still start from an antithetical conception of the citizen and the other, and from a vision of state and cosmopolitan responsibilities as in tension with one another. Hence their effort is a 'bottom-up' or 'inside-out' one precisely because it focuses on internalising cosmopolitan responsibilities as state responsibilities, in contrast with 'thick' accounts that situate institutional cosmopolitanism outside and beyond the sovereign state. The version of cosmopolitanism from within considered here relies instead on a mutually reinforcing understanding of state domestic responsibilities to the citizens and cosmopolitan responsibilities to outsiders. Hence the inside-out character of the argument is in adopting the internal perspective of the citizen as a rationale for state cosmopolitan responsibilities and as a meter for state action that directly or indirectly affects others.

One such type of state action is the adoption and implementation of migration policy. Migrants are the first and foremost 'others' at the door of the sovereign state. For this reason, international migration provides an important test ground for arguments on state cosmopolitan responsibilities. Before proceeding to search in depth the conceptual roots of the argument from within for state cosmopolitanism, the next section thus takes a pause to explore its ramifications in the domain of international migration.

24 Shapcott, n 4 above, 102.
25 Beardsworth, n 4 above, 64–78.
26 Shapcott, n 4 above, 102.
27 Beardsworth, n 4 above, 64–78.

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COSMOPOLITANISM FROM WITHIN AND INTERNATIONAL MIGRATION: PROTECTING THE CITIZENS' FREEDOM TO MIGRATE

Cosmopolitanism is hardly the currency of the discourse let alone regulation of international migration. The polarised tones of political debates on migration and its containment in the western world at the time of writing certainly do not evoke ideas of the equal moral worth of human beings. Yet migrants are the first and foremost 'others' with whom the sovereign state deals on a regular basis. What duties then does a cosmopolitan state owe to migrants, if any?

The first such duty, it would appear, is a duty of admission. Only through discharging this duty, indeed, can the state protect the 'other' in his freedom to migrate, and place him on a level playing field with the state's citizens who have an unconditional right to enter and stay within the borders of the state.[28]

This duty to admit migrant 'others' conflicts however with the central tenet of the paradigm of migration control on which the global order of sovereign states is currently premised. The state has the right to exclude foreigners. In the late 19th century language of the US Supreme Court, '[i]t is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe'.[29] This right of exclusion, whose roots can be traced back to the thinking of 17th century international law theorists, is at this point a well-established pillar of international law, and forms the ground assumption of the philosophy of immigration and of immigration law.[30]

This assumption has caused the dismissal of an idea of freedom of movement that had been anchored, at different turns of the history of thought, to natural law, to self-determination, to political dissent, and to necessity.[31] The same assumption has largely banned the vocabulary and discourse of cosmopolitanism

28 See for example International Covenant on Civil and Political Rights (ICCPR), Art 12(4); Universal Declaration of Human Rights (UDHR), Art 13.

29 *Nishimura Ekiu* v *US*, 142 US 651 (1892).

30 The US Supreme Court in particular cited Emerich de Vattel in support of the relevant maxim. For a critical reconstruction of the intellectual story of this right of exclusion, see Chetail, n 2 above, 910-917. For an expression of this principle in contemporary international law see for example *Hirsi Jamaa and Others* v *Italy* Application No 27765/09, Judgment, 23 February 2012 at [113]; *Moustaquim* v *Belgium* Application No 12313/86, Judgment, 18 February 1991 at [43.2]; also see Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration, Global Compact for Safe, Orderly and Regular Migration, 30 July 2018, para 15(c) at https://undocs.org/A/CONF.231/3 [https://perma.cc/X7ZG-U9RF]; United Nations Human Rights Committee (UNHRC), General Comment No 15, The Position of Aliens under the Covenant, HRI/GEN/1/Rev.9 (Vol. I), 11 April 1986, para 5.

31 For the natural law view see Francisco de Vitoria, *Political Writings* (1543, Cambridge: CUP, Pagden and Lawrance (eds), 1991) 278; Hugo Grotius, *The Freedom of the Seas, or the Right which Belongs to the Dutch to Take Part in the East Indian Trade* (1633, New York, NY: OUP, Eng tr 1916) 7. For a self-determination perspective, see Thomas Jefferson, 'A Summary View of the Rights of British America' in Julian P. Boyd and others (eds), *The Papers of Thomas Jefferson* (Princeton, NJ: Princeton University Press, 1950) at http://press-pubs.uchicago.edu/founders/print_documents/v1ch14s10.html [https://perma.cc/WS99-ECRR]. For a view on freedom of movement as a form of dissent see John H. Ely, *Democracy and Distrust – a Theory of Judicial Review* (Cambridge, MA: Harvard University Press, 1980) 178-179. For freedom of movement

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and cosmopolitan responsibility from the domain of international migration.[32] It has ultimately left only the most limited space for the articulation of a state duty to admit migrants.

This space is occupied by arguments in the philosophy of immigration that challenge the state moral right to exclude and by international law arguments that challenge the state legal right to exclude.[33] The philosophical argument for open borders that Joseph Carens has articulated in its fullest version rests on three assumptions: that there is no natural social order that cannot be changed, that all human beings are of equal moral worth, and that any restrictions on human freedom require a justification.[34] The international law argument against the state right to exclude relies on the historical role of freedom of movement as the default norm as to the passage of borders. Nafziger's compelling analysis suggests in this sense that: 'The proposition that states have an absolute right to deny territorial access to all aliens has unusual resilience and resonance, but little historical or jurisprudential foundation.'[35] Vincent Chetail embraces and reinforces Nafziger's argument, suggesting that the whole doctrine of immigration control is premised on a false idea, this idea being that free movement has historically been the exception rather than the rule in international law.[36] Frédéric Mégret has also emphasised how the sovereign right to exclude has always been tempered, in international law, by a principle of non-arbitrary exclusion.[37]

In challenging the state right to exclude, the above arguments support a state duty to admit at least some 'others'. Nafziger, for instance, traces a duty of states to admit at least some aliens through some of the key norms underlying human rights law and the principles of global order, including freedom of movement, human dignity, comity, enrichment of national cultures, redistribution of economic resources and the encouragement of peace.[38] Chetail points to the importance of hospitality in the evolution of the law of nations.[39] Carens justifies the positive argument for open borders on three grounds: it protects a basic human right that is inherent to individual autonomy; it is essential to equality of opportunity; and it promotes economic, social and political equality.[40]

However, the state duty to admit, in the above arguments, is never justified from the perspective of the admitting state's citizens. The interests of the citizens are rather taken to justify the state prerogative of exclusion.[41] So that mounting a

in response to necessity see Emerich de Vattel, *The Law of Nations, or Principles of the Law of Nature, applied to the conduct and affairs of nations and sovereigns* (1787, Cambridge: CUP, Joseph Citty (ed), 1834) 179. For an overview see Chetail, *ibid*, 903-910 and 914-921.

32 But see Cabrera, n 2 above, 229-230; Joseph Carens, *The Ethics of Immigration* (Oxford: OUP, 2013) 226; Lea Ypi, 'Justice in Migration: a Closed Borders Utopia?' (2008) 16 *Journal of Political Philosophy* 391.

33 See Carens, n 32 above; Wellman and Cole, n 2 above; Seglow, n 2 above; Nafziger, n 2 above; Chetail, n 2 above; Mégret, n 2 above.

34 Carens, *ibid*, 226.

35 Nafziger, n 2 above, 845.

36 Chetail, n 2 above, 921-922.

37 Mégret, n 2 above.

38 Nafziger, n 2 above, 843-844.

39 Chetail, n 2 above, 921-922.

40 Carens, n 32 above, 227-228; also see Cole, 'The Case against the Right to Exclude' in Wellman and Cole, n 2 above.

41 See, in this sense, Carens, *ibid*, 265-287.

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challenge to migration restrictions requires reliance on rationales that bypass, or counter-balance, the interests of citizens: the freedom of movement of 'others'; equality of opportunity for those outside a state's borders or the moral duty to be hospitable to 'others'. To the extent that the open borders arguments built on these rationales can be framed as cosmopolitan arguments, they are thus cosmopolitan from 'without'. What then would the cosmopolitan argument from within look like in the domain of international migration?

Cosmopolitanism from within prompts to reground the argument for open, or at least ajar, borders from the perspective of the citizens. The starting point must be refocusing the attention on the freedom to migrate of citizens rather than on that of 'others', and on the cosmopolitan responsibilities that this freedom and its protection call for on the part of the sovereign state. As part of its broader duty to protect the citizen in his cosmopolitan status, the state must have a duty to safeguard and protect his freedom to migrate. Freedom to migrate indeed enables the citizen to concretely reach the broader physical, economic and political space to which he can lay claim as a member of humanity at large. In this sense freedom of international migration can be seen as fundamental to the citizen's cosmopolitan condition. It fulfils that condition in the same way in which freedom of internal movement fulfils the citizen's domestic condition.[42]

Up to here the argument may appear to closely track Carens' open borders argument. The freedom prong of Carens' argument may refer indistinctly to citizens and to 'others'. It protects both groups in their vital interest in being free, including free to decide where to go.[43] In addition, Carens explicitly relies on the analogy between internal and international free movement. He advances in this respect a 'cantilever' argument: the right to free movement within a state is clearly guaranteed and accepted as a human right. And if the right is thus seen as vital at the internal level, it cannot but be vital also from an international perspective.[44] In Carens' words 'every reason why one may want to move within a state may also be a reason for moving between states'.[45] There are however two points of distinction between the argument from the perspective of the citizens that is being explored here and Carens' open borders argument. First, Carens' argument does not rest on a membership rationale. He grounds the analogy between the internal and international right to free movement precisely in refuting the membership rationale of either.[46] The argument from the perspective of the citizens relies instead on a membership rationale. Freedom to migrate is fundamental to the citizen's cosmopolitan status, but as the citizen is first of all the member of a sovereign state, protection of that cosmopolitan status and of the freedom that inheres to it pertains to the relation between state and citizen. Second, Carens' open borders argument is aimed at challenging the state moral right to restrict immigration, however it stops short of considering state agency to actively facilitate migration.[47] The argument from the perspective of

42 See ICCPR, Art 12(1).
43 See Carens, n 32 above, 249.
44 *ibid*, 238-239.
45 *ibid*, 239.
46 *ibid*, 241-242.
47 *ibid*, 225.

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the citizen, in part following from the membership rationale that underpins it, places the emphasis precisely on the agency of the sovereign state in protecting the citizen's freedom to migrate.

No state can go very far, however, in protecting its own citizens in this latter sense, as long as the citizen faces migration restrictions in any other state. As each state has the right to exclude, no citizen has a right to enter a state in which he is a foreigner. The statist paradigm of immigration law is at first sight grounded in the sacrifice of the interest of the migrant other. But at closer look it is also grounded in the sacrifice of the interest of the citizen as a migrant.

From the perspective of cosmopolitanism from within, this suggests that a state duty to let the 'other' in must be linked to that state duty to truly protect its own citizens in their cosmopolitan freedom to migrate. This is where the argument starting from the protection of the citizen's freedom to migrate and the open borders argument starting from the protection of the freedom to migrate of 'others' stumble upon one another. International migration makes even clearer what transpired already through the cosmopolitan argument from within in its abstract form: protecting the citizen's cosmopolitan status requires protecting the 'other'; and protecting the citizen in his migrant capacity requires protecting the migrant 'other'. But how exactly do cosmopolitan state duties that are owed from within for the benefit of the citizen link to duties that are owed from without to others? Answering this question requires engaging further with the argument from within for cosmopolitan state responsibilities, delving more profoundly into its conceptual roots. The next section undertakes the task.

AT THE ROOTS OF COSMOPOLITANISM FROM WITHIN: CITIZENSHIP, THE CHANGING ROLE OF THE STATE, AND REFLEXIVE RECOGNITION OF THE OTHER

To restate, the perspective from within on the sovereign state cosmopolitan role suggests that the state has a duty to contribute to fulfil its own citizens' condition as members of humanity at large; and that this latter duty is both a justification and a meter for the state cosmopolitan responsibilities to others. At the roots of the idea of cosmopolitanism from within there are thus three elements that need conceptual exploration: a notion of national citizenship that embraces membership of humanity at large; an understanding of the relation between the sovereign state and the citizen so conceived; and a revised rule of engagement between the state (and the citizen) and the 'other'. This section takes up each of these elements in turn.

Cosmopolitan, global, and transnational conceptions abound in citizenship theory.[48] In either articulating a condition of belonging in a sphere broader than

48 For a sample of a rich literature see Richard Falk, 'The Making of Global Citizenship' in Bart van Steenbergen (ed), *The Condition of Citizenship* (London: Sage, 1994); Daniele Archibugi, *The Global Commonwealth of Citizens: Towards Cosmopolitan Democracy* (Princeton, NJ: Princeton University Press, 2008); Andrew Linklater, 'Cosmopolitan Citizenship' (1998) 2 *Citizenship Studies*

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the national one or in fragmenting statuses of belonging across multiple overlapping spheres, relevant conceptions tend to resize the role of national citizenship and to relevant extents to bypass or qualify the relation between the sovereign state and its citizen.[49] The conception of citizenship that underpins the idea of cosmopolitanism from within rather places the emphasis on the simultaneous status of the citizen as the member of a territorially bounded political community and as a member of humanity at large. The latter cosmopolitan status of the citizen represents an enhancement of her national status. It stretches the scope of national citizenship and projects it outward but without superseding its role as the centre of gravity of belonging, political participation, entitlements and civic duties.

The closest analogy is to supranational citizenship as concretely exemplified by citizenship of the European Union. The supranational citizenship status that the founding treaties of the European Union have recognised, ever since the early 1990s, for nationals of the Member States is indeed defined as an addition, but not a replacement of national citizenship.[50] It expresses the individual simultaneously belonging in a national and in a European political and legal space.[51] While part of the literature has looked at supranational citizenship as destined to overtake national citizenship and as an autonomous vehicle of rights,[52] descriptive and normative accounts that situate the process of European integration at the intersection of cosmopolitanism and statism offer a different view.[53] They interpret this additional citizenship precisely as an enhancement of national citizenship.[54] In rejecting the idea of the *telos* of integration as a form of unity or 'oneness' of the European nation states,[55] relevant accounts place the emphasis on the horizontal link that integration weaves between the polities, governance structures and democratic accountability mechanisms of different

23; Michael Collyer 'Diasporas and Transnational Citizenship' in Ayelet Shachar and others (eds), *Oxford Handbook of Citizenship* (Oxford: OUP, 2017).

49 For an account of how a world state may come about see Wendt, n 7 above, 520-528; for an account of the dispersal of citizenship beyond the territorial boundaries of the nation state see for example Collyer, *ibid*, 577.

50 See Treaty on the Functioning of the European Union, Art 20.

51 See Loïc Azoulai, 'The European Individual as Part of Collective Entities (Market, Family, Society)' in Loïc Azoulai and others (eds), *Constructing the Person in EU Law – Rights, Roles, Identities* (London: Bloomsbury, 2016) 204-205. Also see Richard Bellamy and Joseph Lacey, 'Balancing the Rights and Duties of European and National Citizens: a Demoicratic Approach' (2018) 25 *Journal of European Public Policy* 1403, 1413.

52 Building on the words of the European Court of Justice that has famously and repeatedly described Union citizenship as 'destined to be the fundamental status' for nationals of the Member States. See for example Case C-184/99 *Grzelczyck* ECLI:EU:C:2001:458. Also see Dora Kostakopoulou, 'European Union Citizenship: Writing the Future' (2007) 13 Eur Law J 623; Dimitry Kochenov, 'The Citizenship Paradigm' (2013) 15 *Cambridge Yearbook of European Legal Studies* 197.

53 See Kalypso Nicolaïdis, 'The Idea of European Demoicracy' in Juliet Dickinson and Pavlos Eleftheriadis (eds), *Philosophical Foundations of European Union Law* (Oxford: OUP, 2012); Kalypso Nicolaïdis, 'European Demoicracy and its Crisis' (2013) 51 JCMS 351; Richard Bellamy, *A Republican Europe of States: Cosmopolitanism, Intergovernmentalism and Democracy in the EU* (Cambridge: CUP, 2019).

54 See for example Bellamy and Lacey, n 51 above, 1404-1405.

55 See Nicolaïdis, 'European Demoicracy and its Crisis' n 53 above, 352-355.

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nation states.[56] Supranational citizenship builds on this link to 'enmesh rather than replace' national citizenships.[57] It gives to its holders, as members of a supranational community, a potential claim to the opportunities and responsibilities that are attached to each of those national citizenships. The right to move and reside in the Member States that is the main attribute of supranational citizenship gives concrete bite to that claim.[58]

In an analogous manner, the national citizen, as a member of humanity at large, must have a potential claim to a recognised status in each of the hundreds of nationally bounded spaces on which the current global order relies. Migration is one of the ways through which that claim is expressed. This potential claim reflects back in turn on the rights that the citizen can claim, the voice that he can raise, and the responsibilities that he holds as part of his status of national citizen. It represents a reminder that the national citizen in a global world, as the national citizen in an integrated Europe, retains his primary affiliation to a nation state, but is also a transnational stakeholder: his freedoms and rights increasingly depend on decisions made beyond the boundaries of the national community and are more broadly linked to the prosperity of the human community at large.[59] Embracing this dual aspect of the citizen's status prompts in turn to reconsider the terms of the relation between the sovereign state and the citizen.

That relation must encompass protection of the citizen in his double capacity, national and global. This entails, on the part of the state, safeguarding not only the circumstances of the citizen's domestic life,[60] but also the citizen's transnational stakes. In this latter respect, the state may have to, for instance, participate in global drives for environmental protection and technological innovation, act to protect the integrity of trade and supply chains or contribute to safeguard geopolitical equilibria. It has to do so as agent for the citizen, and incubator for his cosmopolitan condition.

This outward-facing role that the state is called to play adds a layer to the social contract between state and citizen. The promise underlying the social arrangement that finds an implied justification in that contract is not just the promise of a space of safety from a violent state of nature as in the Hobbesian conception; not just the promise of a space to develop individual autonomy as in the liberal conception; not just the promise of a space of equality and welfare as in the 20th century welfare state conception. It is a promise of agency, protection and empowerment in the global arena. The model rational deliberating person that modern social contract theory takes as a benchmark would indeed

56 Bellamy, n 53 above, 91-93.
57 Nicolaïdis, 'The Idea of European Demoicracy' n 53 above, 364. Also see Bellamy, *ibid*, 133.
58 Treaty on the Functioning of the European Union, Art 21.
59 For the idea of stakeholder citizenship see Rainer Bauböck, *Democratic Inclusion: A Pluralist Theory of Citizenship* in Rainer Bauböck (ed), *Democratic Inclusion – R. Bauböck in Dialogue* (Manchester: Manchester University Press, 2017). Also see Francesca Strumia, 'The State and the Citizen-as-Migrant. How Free Movement Changes the Social Contract' Robert Schuman Centre for Advanced Studies Research Paper RSC 2021/79 (18 November 2021) 6-7 at https://doi.org/10.2139/ssrn.3966256 [https://perma.cc/2PMD-848M].
60 On the 'circumstances of citizenship' see Bellamy, n 53 above, 152-154.

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be unlikely to agree to a social arrangement where the state did not commit to safeguard the citizen's transnational stakes.[61]

No state, however, can by itself fulfil the cosmopolitan side of the citizen's condition from within. This is where the embracing of the citizen's status as member of humanity at large, on the one hand, and the reorganisation of the state-citizen relation around this latter status, on the other hand, must link to a novel rule of engagement with the 'other'. The default rule that governs the relation between state and 'other' in the international system is rooted in denial.[62] The 'other' is the 'non-citizen'. When this non-citizen is outside the state jurisdiction, the state has no direct relation to her and owes her in principle no responsibilities, bar for its limited cosmopolitan duties out of goodwill, hospitality or human rights. Looking at the citizen as at a member of humanity at large problematises, however, this rule of denial. It blurs the boundary between the citizen and the other.

A similar blurring of the lines can be found, once again, in the context of European integration and, in particular, of European citizenship. Variously described in the literature as a principle of constitutional tolerance, a duty of mutual concern among the Member States and their citizens, or a norm of mutual recognition, an idea of no-othering has had a fundamental place in the process of integration.[63] Supranational citizenship embodies, in part, this idea. In legal terms, this depends on the rule of non-discrimination on the basis of nationality that applies, under EU law, to the system of citizens' free movement.[64] This rule is in sharp contrast to the principle of discrimination of the non-national 'other' that is the default in the context of the governance of international migration.

In broader terms supranational citizenship imports into the domain of citizens' rights the norm of mutual recognition that is otherwise a regulatory rule, a mode of governance and a political principle of EU integration.[65] Supranational citizenship can indeed be seen as grounded in a form of mutual recognition of

61 See John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press, 1971); David Gauthier, *Morals by Agreement* (Oxford: OUP, 1987); also see 'Modern Approaches to the Social Contract' *Stanford Encyclopedia of Philosophy* (substantive revision 27 September 2021) at https://plato.stanford.edu/entries/contractarianism-contemporary/ [https://perma.cc/66M2-LZG8].

62 See in this sense Wendt, n 7 above, 515.

63 On constitutional tolerance see J. H. H. Weiler, 'In Defence of the Status Quo: Europe's Constitutional Sonderweg' in J. H. H. Weiler and Marlene Wind (eds), *European Constitutionalism Beyond the State* (Cambridge: CUP, 2003) 19-20. On mutual recognition see Kalypso Nicolaïdis, 'Trusting the Poles: Constructing Europe through Mutual Recognition' (2007) 14 *Journal of European Public Policy* 682, 695-696; Kalypso Nicolaïdis, 'Mutual Recognition: Promise and Denial from Sapiens to Brexit' (2017) 70 *Current Legal Problems* 1, 18; Kalypso Nicolaïdis, 'Trusting the Poles?: Mark 2 – Towards a Regulatory Peace Theory in a World of Mutual Recognition' in Ioannis Lianos and I. Blanc (eds), *Regulating Trade in Services in the EU and the WTO: Trust, Distrust and Economic Integration* (Cambridge: CUP, 2012), 265. On mutual concern see Bellamy, n 53 above, 92.

64 See Treaty on the Functioning of the European Union, Art 18; EU Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (2004) OJ L 158, Art 24.

65 See for example Nicolaïdis, 'Mutual Recognition: Promise and Denial' n 63 above; Fiorella Kostoris Padoa Schioppa (ed), *The Principle of Mutual Recognition in the European Integration Process* (Basingstoke: Palgrave McMillan, 2005); Christine Janssens, *The Principle of Mutual Recognition in EU Law* (Oxford: OUP, 2013); Markus Möstl, 'Preconditions and Limits of Mutual Recognition' (2010) 47 *Common Market Law Review* 405.

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belonging.[66] It springs from an implied agreement among the Member States to recognise one another's citizens, not as 'others' but as in part members of their respective communities.[67] In the relation between a Member State (and its citizens) and citizens of other Member States, mutual recognition of the non-citizen 'other' thus replaces mutual denial.

This norm of mutual recognition and no-othering has a conventional basis in the EU context. It depends on the arrangements to which EU Member States have agreed in the EU Treaties. And it finds a limit in the compliance of the Member States with those Treaties, and in the acceptance of the underlying norm on the part of the citizens.

At the global level, a conventional basis for recognition of the 'other' is not feasible and would probably not suffice to alter existing patterns of state engagement with others. A shift from denial to mutual recognition must start from the very idea of citizenship and the self-recognition of the citizen. Mutual recognition is but an aspect of a broader idea of recognition that governs the relations between individuals and between states, aspires to a philosophical view of reality, and constitutes a key functioning principle of the human psyche.[68] In the treatment of philosopher Paul Ricoeur, for instance, mutual recognition is the arrival point of a course through which the 'self' and the 'other' encounter and distinguish one another at different stages.[69] The course of recognition starts with '*anerkennung*' that is recognition as identification, and continues towards mutual recognition passing through self-recognition.[70]

The rule of engagement with the 'other' that embracing the perspective of the citizen as member of humanity at large calls for can be explained in terms of these very categories of recognition. Only the sequence is reversed. *Anerkennung* of the other follows from the altered self-recognition of the citizen. The citizen in his condition as member of humanity at large is as much a citizen as he is an 'other'. Embracing his own cosmopolitan condition entails recognising the 'other' under his own semblances of citizen. Relatedly, embracing that condition entails on the part of the state recognising its agency for the citizen as in part agency for an 'other'. The counterpart of finding the 'other' in one's self and in the state's own role as agent is a new recognition/*anerkennung* of the 'other' in the 'other' as non-foreign to the identity of the citizen, and non-foreign to the duties of the sovereign state. The combination of this altered self-recognition on the part of the citizen and the state, and of this renewed *anerkennung* of the 'other', can ground a rule of engagement based not on denial but on mutual reflexive recognition.[71]

66 See Francesca Strumia, 'Supranational Citizenship' in Ayelet Shachar and others (eds), n 48 above.
67 *ibid*.
68 Mattias Iser, 'Recognition' in *Stanford Encyclopedia of Philosophy* (substantive revision 25 April 2019) at https://plato.stanford.edu/entries/recognition/ [https://perma.cc/4PPX-ZC98]; also see Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge, MA: MIT Press, 1992); Christopher Daase and others (eds), *Recognition in International Relations. Rethinking a Political Concept in a Global Context* (Basingstoke: Palgrave Macmillan, 2015). For an analysis of the 'Struggle for Recognition' in the context of international relations among states and their peoples see Wendt, n 50 above, 510-516.
69 Paul Ricoeur, *The Course of Recognition* (Cambridge, MA: Harvard University Press, Eng tr, 2005).
70 *ibid*.
71 For an articulation of this argument in the context of the EU see Strumia, n 59 above, 11-14.

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This norm of mutual reflexive recognition has some elements in common with both reciprocity and empathy. However it is also distinct from both. As in a reciprocity based model, in the reflexive recognition model states' duties to others are justified in part by the expectation that another state will accommodate the acting state's citizens in their cosmopolitan condition. That expectation however is not directly addressed to the state of belonging of the 'other' in whose respect relevant duties are discharged. Duties to others are internalised as part of the state's role as agent for the citizen in her cosmopolitan capacity. It is the shared nature of this latter role among the states in the international system that justifies the expectation, on the part of a state acting towards the 'other' that some other state – not necessarily the state to which the relevant 'other' belongs – will act along the same lines towards its own citizen. As to empathy, while reflexive recognition must rely in part on empathy between the citizen and the other, empathy blends with self-interest: in recognising and accommodating the other, the citizen and the state act in part in their own interest of respectively realising, and upholding, the citizen's status as a member of humanity at large. It is thus a form of 'empathy plus'.

Ultimately reflexive recognition calls for the state to act towards the other in part as a trustee for its citizens, and in part as a surrogate for the state to which the other belongs. It is in these obligations of trusteeship and surrogacy that cosmopolitanism from within's norm of citizen-regardingness finds its concrete expression. And it is through these norms that ultimately the 'other' enters the social contract as a third party beneficiary.

Understanding the concrete import of these obligations of trusteeship and surrogacy requires considering their implications in the context of existing legal duties of states towards migrants and towards others. As a first step in this direction, the next section zooms in once again on the domain of international migration.

IMPLICATIONS FOR INTERNATIONAL MIGRATION: THE LINK BETWEEN THE CITIZENS' FREEDOM TO MIGRATE AND STATE DUTIES TO MIGRANTS

In the domain of migration the legal bite of cosmopolitan arguments has on the one hand been thwarted by the widespread assumption of a state right to exclude; and on the other hand it has been limited by the failure in articulating a link between state duties to protect their citizens in a cosmopolitan freedom to migrate and state cosmopolitan duties towards migrant 'others'. It is in weaving the latter link that thinking of state cosmopolitan duties in terms of trusteeship for the citizens and surrogacy for other states may concretely help.

That missing link has contributed to an enduring asymmetry in the protection of freedom of movement under international law.[72] Several international

72 See in this sense Satvinder S. Juss, 'Free Movement and the World Order' (2004) 16 *International Journal of Refugee Law* 289, 294; Ryan Liss,'A Right to Belong: Legal Protection of Sociological Membership in the Application of Article 12(4) of the ICCPR' (2013-2014) 46 *New York*

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law treaties of the second half of the 20th century recognise a right to international free movement.[73] This right is however a crippled one. It consists of two halves that do not match, the right to leave a country and the right to enter a country. The former is recognised for everyone in respect of any country, regardless of citizenship.[74] It prevents states from imposing undue burdens on a person's exit from their territory. In the jurisprudence of the European Court of Human Rights the right to leave has been found to have been violated, for instance, through the denial of exit visa or the withdrawal of passports.[75] The right to enter by contrast is a much narrower one that grounds no real state duty to admit migrants. It is recognised for a person only in respect to the country of her nationality or, in the somewhat broader definition of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights (ICCPR), in respect of the country 'of her own'.[76] A right to enter has been found to have been infringed in international case law in only a handful of cases, and only in respect to long-term residents threatened with expulsion in conjunction with criminal convictions.[77] The corresponding duty of the state in the relevant cases is thus a duty not to remove or expel, rather than an authentic duty to admit. Absent a general duty to allow the entry of migrants, obligations to admit may arise in conjunction with rules protecting family life and the rights of refugees.[78] But even in respect to these obligations, states have ample margins of discretion.[79]

State duties of admission reach further in the context of regional free movement systems.[80] EU law offers the most advanced example in this sense. EU

University Journal of International Law and Policy 1097, 1114; Cole, n 40 above, 193-198; Ypi, n 32 above, 391-394.

73 See UDHR, Art 13; ICCPR, Art 12; European Convention on Human Rights and Fundamental Freedoms (ECHR), Protocol 4; American Convention on Human Rights (ACHR), Art 22.

74 UDHR, Art 13(2); ICCPR, Art 12(2); ECHR, Protocol 4, Art 2; ACHR, Art 22(2).

75 See for example *Vlasov and Benyash* v *Russia* Application Nos 51279/09 and 32098/13, Judgments, 20 September 2016; *Berkovich and Others* v *Russia* Application No 5871/07 and 9 other applications, Judgment, 27 March 2018; also see *Battista* v *Italy* Application No 43978/09, Judgment, 2 December 2014.

76 ECHR, Protocol 4, Art 3; ACHR, Art 22(5); UDHR, Art 13; ICCPR, Art 12(4). According to the Human Rights Committee the latter concept is broader than that of country of nationality: it encompasses 'at the very least' the countries in which an individual, due to special ties such as long-term residence status, personal and family connections, 'cannot be considered a mere alien'. See UNHRC, 'General Comment 27: art 12 (Freedom of Movement)', 2 November 1999, UN Doc CCPR/C/21/Rev.1/Add.9, para 20. Also see UNHRC, Communication 1959/2010, *Jama Warsame* v *Canada*, UN Doc CCPR/C/102/D/1959/2010; Communication 1557/2007, *Nystrom* v *Australia*, UN Doc CCPR/C/102/D/1557/2007. Also see Liss, n 72 above.

77 See *Nystrom* v *Australia ibid*; *Jama Warsame* v *Canada ibid*. Communication 859/1999, *Jiménez Vaca* v *Colombia*, UN Doc CCPR/C/74/D/859/1999. By contrast the European Court of Human Rights has never awarded a right to entry claim in application of ECHR, Protocol 4.

78 See for example ICCPR, Art 7; Convention Relating to the Status of Refugees (Refugee Convention), Art 33; ECHR, Art 8. Also see *Jeunesse* v *the Netherlands* Application no 12738/10, Judgment, 3 October 2014; *Affaire Şen* v *Pays-Bas* Application No 31465/96, Judgment, 21 December 2001.

79 For a historical reconstruction of the limited nature of refugee law and the duties it imposes on states see James Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law' (1990) 31 *Harvard International Law Journal* 129.

80 Including for instance, beyond the EU system, those enacted within the frame of MERCOSUR, of the Economic Community of West African States (ECOWAS), of the Caribbean Community

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citizens indeed have a right to enter precisely any EU Member State *other* than their own. Member States have a corresponding duty to admit migrant Union citizens who are nationals of other Member States. Not only do they have a duty to let them enter, they also have a duty to let them reside in their territory, albeit initially on a conditional basis.[81] Consistent with the principle of non-discrimination on the basis of nationality, host Member States are also under an obligation to offer to migrant citizens a broad range of services and benefits on the same terms as these are offered to national citizens.[82] There are conditions and limits to the obligations of host Member States towards migrant citizens.[83] However these obligations are significantly more stringent than those of host countries under the international law right to free movement.

Nonetheless the same asymmetry that characterises the latter right can be traced also in EU law. If the duties of host Member States are extensive, even more extensive are those of home Member States. The EU citizens' right to free movement has resulted in a wide range of obligations on home Member States to protect their citizens' capacity to exercise free movement rights. Grouped under the umbrella of a broad obligation not to hinder or discourage movement, relevant duties include, for instance, duties to let citizens 'export' study finance and social benefits, to recognise professional experiences earned abroad upon their return, and to accommodate family life that has been created or strengthened during an experience of migration.[84] In the adjudication of the right to free movement, the Court of Justice of the European Union has in recent years been prone to recognise always more extensive obligations on the part of home Member States, while at the same time retaining a deferential attitude towards the sovereign preferences of host ones.[85]

While in the EU law literature, the surfacing of this asymmetry has been regarded as a regressive phase in free movement and as a failure of supranational citizenship,[86] from a different perspective what the asymmetry hints at is precisely a misconceived link between the duty to protect the freedom of citizens and the duty to accommodate migrant 'others'. The absence of this link makes state duties to admit and accommodate migrant 'others', whether within the

(CARICOM), and of the Association of South East Asian Nations (ASEAN). For an overview see Francesca Strumia, 'Supranational Citizenship' n 50 above, 681-685.

81 Directive 2004/38 n 64 above, Arts 5, 7, 14, 16.

82 *ibid*, Art 24.

83 *ibid*, Arts 7 and 14 for conditions; Art 28 for limits.

84 On exportable benefits see for example Case C-503/09 *Lucy Stewart* ECLI:EU:C:2011:500; and Case C-192/05 *Tas-Hagen* v *Raadskamer WUBO van de Pensioen- en Uitkeringsraad* ECLI:EU:C:2006:676; on recognition of experiences earned abroad, Case C-224/98 *D'Hoop* ECLI: EU:C:2002:432 at [34]-[35]; on accommodation of family life, Case C-673/16 *Coman and Others* ECLI:EU:C:2018:385.

85 For a widely debated example of the latter approach see Case C-333/13 *Elisabeta Dano and Florin Dano* v *Jobcenter Leipzig* ECLI:EU:C:2014:2358; also see Case C-67/14 *Alimanovic and Others* ECLI:EU:C:2015:597.

86 See for example Eleanor Spaventa, 'Citizenship: Reallocating Responsibilities to the Member State of Origin' in Panos Koutrakos, Naimh Nic Shuibhne and Phil Syrpis (eds), *Exceptions from EU Free Movement Law: Derogation, Justification and Proportionality* (Oxford, London: Hart Publishing, 2016); Oliver Garner, 'The Existential Crisis of Citizenship of the European Union: The Argument for an Autonomous Status' (2018) 20 *Cambridge Yearbook of European Legal Studies* 116.

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frame of international law or within that of regional law, appear foreign to the role of the sovereign state.

Cosmopolitanism from within's reflexive recognition model points to a way in which the sovereign state may appropriate the relevant duties. In discharging duties in respect to migrant others, the state acts in part as trustee for the interests of its citizens and their cosmopolitan freedom to migrate: protecting that freedom requires a system in which states are amenable to admit others within their borders. The state also acts in part as surrogate for the state of belonging of the migrant 'other'. It supports the latter state in discharging its own duty to protect its citizens in their freedom to migrate.

These state duties to migrant others exercised as both trustees for the citizens and surrogate for other states substantiate the link between state cosmopolitan duties to citizens and state cosmopolitan duties to others. Through exercising their duties as hosts to migrants, states contribute to fulfil their duties as homes to citizens holders of transnational stakes.

In the regional context, such as in the EU, this link may help states own the duties they already conventionally owe to migrant citizens. Beyond the regional context, the same link may create the very normative space to justify at a global level state duties towards migrants similar in quality to those already existing in the regional free movement frame. Linking the freedom to migrate of 'others' to that of citizens would entail, in a first direction, rethinking duties of admission on the basis of a rebuttable presumption of admission rather than a presumption of exclusion. Such a flipped presumption would warrant added flexibility in the design and application, in the context of migration policies, of criteria of eligibility and qualification for both economic migrants and refugees. In a second direction, the link between freedom of the citizen and freedom of the other would warrant strengthening the rights of migrants in host countries, regardless of the regular or irregular nature of their status.[87] For instance, refugees and asylum seekers ought to receive stronger protections than under the Refugee Convention in terms of access to work, access to housing, and recognition of qualifications.[88] This would be justified by recognising both their status as citizens in the exercise of a cosmopolitan freedom of migration, and the duty of the recipient state to act as surrogate for their state of origin or provenance. As a further example, linking the perspective of citizens to that of migrant 'others' would support generalising the extension of political rights in local elections to resident foreigners. The rationale would be not only that residents participate, are affected by political decisions, and have a stake in the prosperity of the local community;[89] it would also be that they are citizens who, in exercising a freedom to migrate, have transferred part of their citizenship responsibilities to the recipient community.

87 On the scope of relevant rights see Bernard Ryan and Virginia Mantouvalou, 'The Labor and Social Rights of Migrants in International Law' in Ruth Rubio Marín (ed), *Human Rights and Immigration* (Oxford: OUP, 2014); on the rationale see Bosniak, n 8 above, 390-392; also see Carens, n 32 above, 160-162.

88 See Ryan and Mantouvalou, *ibid*, 182-183.

89 For a discussion and proposal in this sense see Bellamy and Lacey, n 51 above, 1413-1415.

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The asymmetry of the right to international movement would emerge narrowed by a similar exercise in the redesign of immigration policies and policies as to the status of migrants. It could not be completely closed as cosmopolitanism from within, other than a pure open borders argument, qualifies but does not dismiss a state prerogative of exclusion.

In the domain of migration, obligations of the state as trustee for its citizens and surrogate for other states may thus substantiate the link between a state duty to protect its citizens in their freedom to migrate and its duty to let migrant 'others' in. But how do relevant obligations contribute to reshape the duties of states towards others more broadly? The next section zooms out of the migration context to embrace a further set of concrete state duties to 'others'.

IMPLICATIONS FOR STATE DUTIES TO OTHERS: AS-CITIZEN-REGARDINGNESS AND STATE SURROGACY

In the first part of this article it was found that the conception of cosmopolitan state duties as external to the social contract, mostly addressed to non-citizen others, and in competition with state duties to citizens, made for a limited range of state duties to humanity at large. Returning to take a closer look at these cosmopolitan duties from without now, they can be distinguished into three groups.

A first group includes duties of the state to take into account the interests of others beyond a state's jurisdiction and citizenry when their decision making, or territorial action, is likely to produce cross-border externalities. An example could be for instance when a state draws a policy to dispose of toxic waste or manoeuvres space objects whose debris might fall within the territory of other states. While attracting much theoretical thinking, relevant duties only have concrete legal bite at this point when addressed through international conventions.[90]

A second group includes duties to others in the context of state extra-territorial action.[91] Counter-terrorism operations or the push back of migrants on the high seas may provide examples in this sense. A basis for state responsibility in this respect has been found in the extra-territorial extension of domestic constitutional provisions as well as in international human rights law. The US Supreme Court has extended for instance constitutional habeas corpus protection to foreign nationals detained abroad in a territory under US control.[92] Along similar lines, the European Court of Human Rights has

90 See for example UN Convention on State Liability for Damage Caused by Space Objects 1972.

91 Part of the literature on cosmopolitan sovereignty identifies precisely in extraterritoriality the terrain on which the state has the best chance to exercise its cosmopolitan responsibility as a Good International Citizen (GIC). See for example Richard Shapcott, 'Human Rights, Extraterritoriality and the Good International Citizen: a Cosmopolitan Perspective' (2020) 34 *International Relations* 246.

92 See *Boumediene* v *Bush*, 553 US 723 (2008), IVc; *Rasul* v *Bush*, 542 US 466 (2004); also see Criddle and Fox-Decent, n 1 above, 230-240.

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linked state responsibility in relevant cases to the concrete exercise of control and authority in respect of an individual in a certain territory or on a ship.[93]

The third group includes a far more delicate type of obligations involving protection of the citizens of a foreign state.[94] Relevant obligations are at the core of the international law doctrine of the responsibility to protect, stemming from the idea 'that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe', such as mass murder, rape or starvation.[95] This doctrine bestows on the international community the duty to fill the vacuum of protection left by a state's failure to discharge that responsibility towards its citizens. In this sense, the international community has a duty to provide assistance and support to those in need. And in qualifying circumstances it may also have a duty of humanitarian intervention in a foreign state.[96]

As currently theorised and translated into legal norms, duties in all the three groups require a commitment of sovereignty in exceptional directions and a stretching of its rationale. The perspective of the state as either trustee for its citizens or surrogate for other states may help bring these duties in alignment with the exercise of sovereignty in its normal course.

With regard to the first group of duties, in their existing theoretical treatment the focus falls on entrenching and internalising the perspective of the other.[97] Cosmopolitanism from within, guided by its norm of citizen-regardingness, rather suggests 'as-citizen-regardingness' in this context. It prompts the state to approach the relevant duties as if the other were a citizen, and in this sense to act as trustee for its citizens in taking the interests of others into account. What if space debris from a neighbouring state threatened the citizens' heads – what would the state want the other state to do? What if toxic waste polluted the water that flowed in the houses and businesses of the first state – what would this state want the polluting state to do to prevent harm to its citizens? In

93 *Hirsi Jamaa and Others* v *Italy*, n 30 above at [74]; *Al Skeini and Others* v *the United Kingdom* Application No 55721/07, Judgment, 7 July 2011 at [136]-[137]; *Öcalan* v *Turkey* Application No 46221/99, Judgment, 12 May 2005 at [91]; *Hassan* v *United Kingdom* Application No 29750/09, Judgment, 16 September 2014. Also see Thomas Gammeltoft-Hansen, 'Extraterritorial Migration Control and the Reach of Human Rights' in Vincent Chetail and Céline Bauloz (eds), *Research Handbook on International Law and Migration* (Cheltenham: Edward Elgar, 2014) 113; Sarah Miller, 'Revisiting Extraterritorial Jurisdiction: A Territorial Justification for Extraterritorial Jurisdiction under the European Convention' (2010) 20 EJIL 1223.

94 To afford relevant protection, domestic law in some cases creates jurisdictional counts for claims of foreigners in respect of facts occurring outside the territory of the state. The US 1890 Aliens Torts Statute, revived at the dawn of the 21st century, offers an example in this sense. See *Filartiga* v *Pena-Irala*, 630 F.2d 876 (2nd Circ 1980).

95 Report of the International Commission on Intervention and State Sovereignty (ICISS), 'The Responsibility to Protect' (December 2001), VIII.

96 *ibid*, para 8.2. Also see Alex J. Bellamy and Blagovesta Tacheva, 'R2P and the Emergence of Responsibilities Across Borders' in Beardsworth, Wallace Brown and Shapcott, n 1 above.

97 According to Matthias Kumm, for instance, to the extent that cross-border repercussions of domestic action are justice-relevant, then the state has to act with the outsider's perspective in mind; Matthias Kumm, 'The Cosmopolitan Turn in Constitutionalism: an Integrated Conception of Public Law' (2013) 20 *Indiana Journal of Global Legal Studies* 605, 614-620. Eyal Benvenisti distinguishes, in this respect, a duty to take others' interests into account, a duty to hear others' voices and a duty to accommodate others where the acting state sustains no loss, Benvenisti 'Sovereigns as Trustees' n 7 above, 314-325. Shapcott goes as far as to suggest giving some legal standing to outsiders through constitutional provisions, Shapcott, n 4 above.

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comparison to the perspective from without, as-citizen-regardingness demands at the very least a step-up in the protection of others. But perhaps more importantly it fosters a narrative of alignment between the interests of citizens and the interests of others, thereby creating a channel to internalise the perspective of humanity at large and turn it into a constant corrective for the action of the sovereign state, whether in setting its environmental, trade, space exploration or other externality-rife policies. From this perspective, the state that fails to apply that corrective is not prioritising its citizens' interests. On the contrary, it is prejudicing the cosmopolitan side of its citizens' status and can be held to account by its very citizens in this sense.

Also with regard to state duties in the second group, cosmopolitanism from within calls for the state to approach its extraterritorial action as a trustee for its own citizens. As-citizen regardingness supplements the all-subjected-to-control principle that drives existing human rights and constitutional law approaches to state duties when acting extra-territorially. As-citizen-regardingness entails taking into account what a state would want for its citizens in a corresponding situation. At the very least, relevant state action should be subject to the rule of law: not only because a responsible cosmopolitan state would commit to non-domination also externally, but also because a representative cosmopolitan state would want to ensure that its citizens not be subject to unlawful foreign action in a reverse situation.[98] As for the previous group, ultimately the argument from within helps align state responsibility in territorial and extraterritorial contexts. The reflexive perspective attracts the extraterritorial exercise of sovereignty within the same sphere of responsibility as 'regular' sovereign action: the state is not acting in a lawless zone where the interests of the citizens are remote and unaffected. The state is acting in a different sphere of citizenship, where the same interests of citizens as members of humanity at large apply, and the state can be held to account by its own citizens for the way it upholds or fails to uphold relevant interests.

As to duties in the third group, cosmopolitanism from within adds once again a reflexive perspective to the idea that the international community has a responsibility for the safety of the citizens of a failed state, an idea that underpins the doctrine of the responsibility to protect. This reflexive perspective helps clarify the rationale for duties in this group, highlights a link to the duties that the state owes to refugees and lessens a common objection that stands in the way of the state cosmopolitan role. The rationale for a state duty to protect the citizens of a foreign state can be found in part in seeking an insurance policy for the acting state's own citizens: in taking on those duties as member of the international community, the acting state pays its 'premium' to insure against the risk that its own citizens may be left to fend for themselves in the event of their own state failure.[99] This insurance rationale highlights the link in turn between duties in this category and duties that the state owes to refugees: in both cases the state is acting as surrogate for a state that is unable to provide

98 Shapcott n 4 above, 99; Pettit, n 12 above, 70 and 88.

99 For the idea that states duties of solidarity relate to a form of insurance see Andrea Sangiovanni, 'Solidarity in the European Union' (2013) 33 OJLS 213.

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protection to its own citizens. And in doing so, it is insuring the destiny of its own citizens. This reveals the short-sightedness and the paradox of restrictive refugee policies justified in terms of protecting the interests of citizens. This is all the more true in the context of climate change, geopolitical instability and natural disasters that make any situation of apparent citizen safety inherently precarious. Finally, the fact that the state is acting as surrogate for another state, in order to supplement and complete this state's sovereignty, or in order to remedy its shortfalls, lessens a common objection to the state cosmopolitan role. Either the state serves the 'other' – the objection goes – or it respects the sovereignty of the state to which the 'other' belongs.[100] The vision of the cosmopolitan state as surrogate for another state suggests that the two things can go together. The optic is not one of sovereign interference, but one of sovereign mutual support.

Ultimately through linking duties to others to the responsibilities of the state as trustee for its citizens and as surrogate for other states, the argument from within corroborates and stabilises the state cosmopolitan role. As the argument draws its force from the extension of the reach and scope of citizenship, however, it finds a limit precisely in the capacity of the latter for extension. The next section turns to consider this limit more closely.

THE LIMITS OF THE COSMOPOLITAN ARGUMENT FROM WITHIN

The nature of citizenship poses two obstacles to the cosmopolitan argument from within. First, citizenship is not always an asset. The states that have no regard whatsoever for their citizens are many more than those that do. For the populations of states of the former type, citizenship comes as a liability, it determines second class status and it restricts rather than enlarging opportunities.[101] There are two parts to the possible objection that cosmopolitanism from within faces if one considers this double sided character of citizenship. First, why would a state that has no regard for its citizens care for 'others' on reflexive grounds? Second, why would a state, even a 'good' state, treat 'others' whose citizenship is a less than desirable one according to principles of citizen-regardingness? Its own citizens would have, it seems, little to gain in return.[102] The first part of the objection cannot be entirely rebutted. Cosmopolitanism from within can gain little from 'bad states'. The second part of the objection conflates reflexivity with reciprocity. In the reflexive model that cosmopolitanism from within suggests, a state is called to see in any 'other', whether the citizen of a 'bad' state, of a 'good' state, or a stateless person, a potential reflection of the citizen, regardless of the immediate reciprocal return.

100 For an articulation of this objection see Ronzoni, n 21 above.

101 See Dimitry Kochenov, *Citizenship* (Cambridge, MA: MIT Press, 2019); for a view on the disentitlements that are highlighted when one abandons a Northern lens on citizenship also see Manuela Boatcă, 'The Colonial Institution of Citizenship and Global Capitalist Dynamics' in Dimitry Kochenov and Kristin Surak (eds), *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging* (Cambridge: CUP, 2022).

102 For a parallel argument on the incentives for representative states to treat non representative ones according to a principle of external non-domination see Pettit, n 12 above, 90-96.

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Cosmopolitanism from within's norm of reflexive recognition ultimately holds a response to both the first and the second part of the objection. In respect to the first, it does not completely single out citizens of 'bad' states as they are still entrusted to the reflexive protection of 'good' states. In respect to the second, consistent with the very norm of equal moral concern for all human beings, it stands for the neutrality of the citizenship status of the 'other' in the eye of a foreign state exercising a cosmopolitan responsibility.

A second objection descends from the very nature of citizenship as particular and relational. The idea of citizenship is not based on a norm of equal concern for all, but rather it embodies a norm of differentiated concern for those who belong to an ingroup.[103] To the extent that cosmopolitanism from within grounds concern for others in the reflexive opening and extending of the perimeter of this ingroup, it may appear to be undoing the very fabric of citizenship. If pushed to the extreme, cosmopolitanism from within may be seen as denying the particular value of citizenship. This risks in turn making the argument self-defeating. The initial prompt to rearticulate cosmopolitan duties from within came precisely from the effort to uphold and upgrade the value of citizenship in a global world. Protecting the particularity of citizenship thus must represent a self-imposed limit to the argument of cosmopolitanism from within.

This self-imposed limit helps define, on the one hand, the contours of duties to others that descend from the argument from within. The argument from within warrants in this sense making the interest of others a factor in the equation when the state adopts its other-affecting policies. However, it does not warrant making those interests automatically prevail or even have equal weight to competing interests of citizens. For instance, in the context of migration, the argument from within prompts to design policies starting from the assumption that those in need deserve admission and that economic migrants should be able to compete in the internal job market. The argument does not warrant however automatically opening the doors to all manners of 'others' in need, and it does not prevent a state from reserving certain jobs to its citizens or from providing support to its citizens in qualifying for or accessing relevant jobs.

On the other hand the inseparable link between upholding citizenship and advancing a cosmopolitan norm that arises out of this objection grounds, in reverse, a duty of care on the part of individual 'others' for communities of citizens where they do not belong. This latter duty becomes a very condition for the viability of the cosmopolitan argument from within: upholding the citizenship of others in the reflexive logic of cosmopolitanism from within is indeed a requirement not only not to prejudice the possibilities of one's own citizenship, but also not to prejudice the essence of citizenship as a relational and bounded status.

This duty of care for the citizenship of others can be exercised in two ways. First, as a citizen. To protect their own cosmopolitan condition and stakes,

103 See for example Kok-Chor Tan, 'Cosmopolitan Citizenship' in Ayelet Shachar and others (eds), n 48 above, 695. For the idea that citizenship is 'hard on the outside and soft on the inside' also see Linda Bosniak, *The Citizen and the Alien: Dilemmas of Contemporary Membership* (Princeton, NJ: Princeton University Press, 2006).

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citizens have to internalise the interests of citizens of other communities in exercising their political voice, and in holding the institutions in which they are a direct stakeholder to account. In this sense the relevant duty shifts cosmopolitan responsibilities from the state level to the citizen level. The citizens are the first-line enforcers of the state cosmopolitan role.

Second, the duty to care for the citizenship of others can be exercised as a migrant. As citizens on the move, migrants are called to transfer part of their responsibility as citizens to the host community.[104] This is in part a responsibility to contribute to maintain the boundedness of the relevant community and the particular value of its citizenship. Beyond the duties that come with residence such as paying taxes, it may concretely entail, for instance, learning and respecting the values and customs of the host community.[105]

Ultimately the argument from within is not meant to threaten the particularism of citizenship. It rather highlights the transferability of some of citizenship's duties, *in primis* the very duty to protect the boundedness of the community. Of course, this transferability presupposes a measure of compatibility between the social contracts of different states and a measure of trust in the context of their interaction. These preconditions are met with a certain ease in a regional system of economic and political cooperation such as the EU one. They are much more difficult to fulfil at the global level. Also, in the international migration context, the argument from within and its mandate of reflexive recognition may be more easily digestible from the perspective of states confronting comparable streams of inbound and outbound migration.[106]

For all these reasons, cosmopolitanism from within is not intended at this stage as a self-standing argument replacing existing justifications for sovereign duties to others. Rather, as anticipated in the first part of this article, it is a supplement and a catalyst for the traditional argument from without. Its merit is in mitigating some of the contradictions that punctuate the cosmopolitan role of the state when construed from without and in normalising the state cosmopolitan duties through aligning the interests of citizens with the duties to others mandated by hospitality and goodwill.

104 See Bellamy, n 50 above, 154.

105 This transferred citizenship responsibility may offer a novel lens in turn to assess the wisdom of the civic integration requirements that are a common find in the immigration legislation of several western countries. For an overview of civic integration policies see, among others, Liav Orgad, *The Cultural Defense of Nations: A Liberal Theory of Majority Rights* (Oxford: OUP, 2015); Dora Kostakopoulou, Ricky Van Oers and Eva Ersbøll (eds), *A Re-definition of Belonging? Language and Integration Tests in Europe* (Leiden/Boston: Martinus Nijhoff, 2010) 8-11; Sarah Ganty, 'Integration Duties in the European Union: Four Models' (2021) 28 *Maastricht Journal of European and Comparative Law* 784.

106 Although the comparability of migration streams is not per se a condition of validity of the argument. The assumption underpinning the argument is indeed that the citizen of any state, as a member of humanity at large, is the holder of a potential interest in migration, regardless of that state's position in global migration streams. The interest could become actual in conjunction with a range of different factors, including but not limited to geopolitical shifts, changing climate conditions and personal and professional trajectories.

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CONCLUSION

Ultimately the argument from within that this article has explored justifies state cosmopolitan responsibilities and freedom to migrate from the perspective of citizenship. In answering from this perspective the two questions raised in the introduction, it yields a novel way to think of statehood and cosmopolitanism. In the process, it also opens up some room for a conception of migration as freedom.

As to the first question that was posed at the beginning – on what grounds does the state owe duties to 'others' – citizen-regardingness emerges as a crucial prompt and meter for the relevant responsibility. In discharging its responsibilities to 'others' the state ought to be guided by the perspective of the duties it owes to its own citizens to fulfil the cosmopolitan value of their condition. And the citizens both in interacting with the 'others' within their community and in exercising their political capacity to hold state institutions to account ought to be guided, in reflexive terms, by the objective to uphold their very own citizenship as a cosmopolitan condition. From this reflexive perspective, indeed, 'others' raise claims on our behalf.

One of the most prominent among these claims is the claim of a migrant for entry into a foreign country. In this respect, turning to the second question raised in the introduction – on what grounds do states have duties to migrant 'others' – the cosmopolitan argument from within highlights the link between the duty of the state to safeguard the citizen's freedom to migrate and the duty to let others in. In accommodating migrant 'others', states protect in part the interests of their own citizens as potential or actual migrants, and in part support the states of belonging of the migrant 'others' in discharging their very duty to protect their own citizens in their freedom to migrate.

The argument points in this sense to a novel vision of the role of the sovereign state. It suggests that the local and the global role of the state are somehow nested within one another. The state is responsible for guarding the human and territorial community on which it exercises sovereignty. However it ought to exercise that guardianship in a way which is cognizant that the relevant community is but a fraction of a larger one, for whose interests and prospects the state, in its capacity as a cosmopolitan agent, is also responsible. This vision of statehood brings under scrutiny, in turn, the idea that sovereignty and cosmopolitanism are a misfit.

As to cosmopolitanism, the argument from within impliedly defends it from the common accusation of being an arrogant philosophy that accommodates the interests of the indifferent and unattached.[107] The cosmopolitan, when cosmopolitanism is seen from within, is not the person to whom no one and no community is of particular concern. The cosmopolitan is rather the person who recognises the equal worth of different communities as well as her own responsibility in upholding the interests of communal life. The cosmopolitan thus retains his allegiances and community commitments, but accepts the

107 See Luis Cabrera, *The Humble Cosmopolitan – Rights, Diversity and Trans-State Democracy* (Oxford: OUP, 2020).

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possibility that relevant allegiances and commitments may shift in part, along the path of life, from one community to another.

The internationally engaged vision of sovereignty and the community-conscious notion of cosmopolitanism that the argument from within advances invite in turn to rethink the regulation of migration in proactive rather than reactive terms. Cosmopolitanism from within indeed pitches against the sovereign prerogative to exclude not just the duty of the state to let through its borders migrants to whom it then becomes host but also the duty of the state to facilitate migration in the interest of the potential migrants to whom it is home. The former duty commits the state to respond to a migrant's claim for entry on qualifying grounds, as well as to identify and respect a list of such qualifying grounds in accordance with moral rules of hospitality and legal norms on human rights. The latter duty calls for the state to commit to build and support clear pathways to international mobility and migration. The former duty, in other words, commits the state to act '*ex post*' on an entry claim. The latter duty rather commits the state to protect migration '*ex ante*' as a viable option for its citizens. It pulls the force of the state to protect in this sense a conception of migration as freedom.[108]

Ultimately the argument from within relieves cosmopolitanism from a false alternative: either the state serves the citizens, or it serves the others. On the contrary, the state serves its citizens through serving the others, and it serves the others in part to protect the global options of its own citizens. In speaking to the global capacity of the citizen, the argument of cosmopolitanism from within perhaps harbours the potential to engage the large domestic constituencies that have come to experience transnational interests as alien and domestic actors as unreliable to the extent that they pursue those interests. It can in this sense inspire a narrative and agenda that align political accountability for national and local interests and moral responsibility for the governance of global problems. That narrative and agenda could contribute to filling the vacuum of liberal and moderate positions in the political spectrum of contemporary democracies. And they could do so through speaking of the citizen as other.

108 This proactive conception has only found room so far in the literature on climate change and migration as adaptation. For a sample of a growing literature see Kira Vinke and others, 'Migration as Adaptation?' (2020) 8 *Migration Studies* 626; also see Jane McAdam, *Climate Change, Forced Migration and International Law* (Oxford: OUP, 2012).

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