

Political Rights, Republican Freedom, and Temporary Workers
AFSP Congress Strasbourg

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A world of high human mobility and global markets requires that we rethink the right to political participation. We need an account of the right to have political rights. What conditions generate an entitlement to vote, to join a political party, or to run for office?² In this paper I defend a neo-republican account of the right to have political rights. I hold that we should decouple political rights from citizenship and instead base them on individuals' vulnerability to domination. In particular, political rights are necessary to prevent domination caused by the "power of interference on an arbitrary basis." (Pettit 1997: 52)

I apply this neo-Roman republican analysis to argue that migrants who permanently or temporarily reside in the state should receive political rights. I justify this claim with an analysis of Philip Pettit's account of a contestatory democracy. Neo-republicans³ have not devoted enough attention to the challenges migrants pose to democratic inclusion. In particular, they have neglected the political status of temporary migrants who are vulnerable to domination, but are not full members of the political community. I argue that not only does neo-republicanism require that permanent migrants receive political rights, but also that neo-republican freedom entails political rights for temporary migrants. Temporary residents do not enjoy the social and cultural

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² I follow T.H. Marshall in defining political rights as "the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such as body." (Marshall 1963: 294) I mostly discuss the right to vote in this paper as it is the right migrants are most likely to exercise.

³ Unless otherwise specified, I use "neo-republicanism" to refer to "neo-Roman republicanism," particularly the version defended by Philip Pettit.

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connections, as well as a long term stake in the community that some have argued trigger a right to political rights (Carens 2010). For this reason, the primary reason temporary migrants have to claim political representation is domination. If my arguments are successful, this clarifies and strengthens the neo-republican basis for granting political rights.

The first section of this paper clarifies my position and distinguishes the right to have political rights from citizenship. The second section outlines the neo-republican account of the right to have political rights and contrasts it with accounts based on affected interests and on coercion. In the third section, I examine other justifications for non-citizen voting and explain how the neo-republican account differs. The fourth section argues that the neo-republican account entails that temporary migrants should be given political rights. The fifth section addresses the situation of unauthorized migrants. The sixth section surveys a few of the main objections to extending political rights to non-citizens. I conclude with some remarks on how the neo-republican account provides an analytic tool for asking how political rights may extend beyond the boundaries of the state.

1. The Right to Have Political Rights: Some Preliminaries

Globalization and the international human rights regime have contributed to the “unbundling” of citizenship rights (Benhabib, 2004). It is no longer possible to uncritically maintain a necessary connection between citizenship in a territorial state and the right to have rights. Unauthorized immigrants still retain their civil and human rights in many states. Permanent residents generally possess civil and social rights, but in most districts lack the political rights to vote and run for office. In some cases, non-resident

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citizens can exercise political rights such as the right to vote abroad, but not be eligible for social benefits.

Jamin Raskin writes, “As the world grows closer in terms of population mobility, capital investment, labor markets, cultural production, and high technology, it is imperative that we create political norms to make these processes of integration consistent with democratic values.” (Raskin 1993: 1460, c.f. Hayduk 2006: 57) The disaggregation of citizenship comes from two directions. First, changes in effective state sovereignty caused by political, economic, and legal globalization have constrained the state’s power through international law, including human rights law. Cosmopolitans argue that the transnational political, legal, economic, and social rules and institutions have weakened state sovereignty and raise new challenges for political representation. On the cosmopolitan account, the equal moral worth of all human beings entails that we give people’s interests equal consideration irrespective of their political community. Though states are in practice the guarantors of most rights, political cosmopolitans⁴ contend that supranational forms of governance can better enable the democratic participation of people in decision-making on issues not confined to the nation-state such as cross-border waterways, air pollution, global warming, and, in some cases, migration flows.

Though I believe the neo-republican account has implications for supranational forms of political representation, my position neither explicitly affirms nor rejects political cosmopolitanism.⁵ Any situation in which a political body has the power to

⁴ According to David Held, “Political cosmopolitanism involves advocacy of regional and global governance and the creation of political organizations and mechanisms that would provide a framework of regulation and law enforcement across the globe. ... [Cosmopolitan positions] are generally committed to the view that political cosmopolitanism entails that states should have a somewhat, and in some areas a markedly, diminished role in comparison with institutions and organizations of regional and global governance.” (Held 2002: 34)

⁵ See Bohman (2004) for a version of cosmopolitan republicanism.

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dominate someone can trigger a “right to political rights” claim. I focus on the state since it is still the institution with an uncontroversial capacity to dominate people within its territory,⁶ though arguments also apply to regional forms of government and supranational institutions that can exercise coercive power such as the European Union.⁷

In particular, my interest is the second direction that has contributed to the disaggregation of citizenship: the rise in international migration leading to large numbers of disenfranchised residents. The United Nations Population Division estimates that there are 214 million migrants in 2010, many of whom do not have any formal and direct political representation in the territory where they live. The disenfranchisement of these people subjects them to domination in the territories where they reside. I argue that they ought to receive political rights.

A few clarifications are necessary. First, I aim to establish domination as a sufficient condition for a right to have political rights. My justification is instrumental: political rights are a necessary means to effectively resist domination from political bodies.⁸ The instrumental character of my argument means that it must establish that political rights mitigate dominance *and* that this cannot be effectively accomplished through other means (e.g., rights guaranteed by rule of law, indirect representation).

Second, I do not claim that domination is a necessary condition for political rights. There may be other circumstances when states ought to extend political membership to people who have a stake in the community.⁹ For example, citizens living

⁶ Thus my focus is on what Pettit calls *imperium* (state, or public power) not *dominium* (private power of interference) (Pettit 2001: 152).

⁷ Braithwaite (2007) provides a compelling application of Pettit’s republicanism for a post-Westphalia world.

⁸ They are also a necessary means to combat domination by private power, e.g., corporations, by giving people a voice in the regulatory framework.

⁹ See David Owen’s (2010) rebuttal of Lopez-Guerra (2005) for a discussion.

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abroad may retain political rights entailed by membership even if they are not dominated by the state.¹⁰

Third, I contend that political rights are necessary, but not sufficient for effective political agency. Democracy requires more than a right to vote for representatives. The exercise of political rights requires civil rights and social rights such as freedom of speech and access to quality education. Political rights are only effective against a background of legal, political, and social institutions such as independent courts, a bureaucracy that enables communication between citizens and representatives, a free press, highly quality, universal education, and a social security net. But even if all the other conditions for democratic resistance to domination are met, people deprived of political rights will still be vulnerable.

Fourth, theorists interested in expanding the franchise usually couch their accounts in the language of citizenship. Citizenship is a complex concept. One dimension of citizenship includes political rights that establish legal entitlements and responsibilities. Another dimension of citizenship is the ideal of civic virtue or “good citizenship” that requires active participation in the community or civil society. Many people also treat identity as a further dimension that involves sharing a culture and heritage with co-citizens (Kymlicka and Norman, 1994).

Questions of admission to citizenship differ from questions about the right to political rights. Citizenship is a permanent status that ties people to the state. The state continues to represent its citizens outside of its territory. Under most circumstances, states do not have the right to strip people of their citizenship. Also, citizenship provides

¹⁰ For discussion, see López-Guerra (2005) and Bauböck (2007).

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a larger bundle of rights, such as the right to permanent residence in the territory or to assistance abroad from the country's embassy. It may also be a requirement for some types of public employment.

My arguments for political rights apply only as long as the state retains its capacity to dominate. It is tied to residence. Residents are understood to have their home in the territory for much of the year. They usual have an obligation to pay taxes.¹¹ Just as residents of NYC are entitled to vote in city elections, but lose this right if they move to LA, people who leave the territory forfeit their political rights.

Another reason to distinguish citizenship from the possession of political rights is its broader nature. Citizenship has symbolic meaning for many people. Co-citizens who meet abroad identify because of what they perceive as their shared culture, not mutual voting rights. The decision of when to grant people citizenship depends on our normative understanding of its value. For example, if we privilege identity, then passing an exam testing knowledge of the language(s) of majority, culture, and history may be a reasonable requirement. Identity-based understandings of citizenship may allow for extending citizenship to people from other countries of shared ethnicity.¹² The extension of political rights will not have the symbolic power of granting citizenship with its ceremony and oath that represents a commitment to the new political community.

2. Domination and Political Rights

¹¹ Some people may have more than one residence. My account entails that they should enjoy political rights and responsibilities in all territories where they reside.

¹² I am not endorsing identity-based understandings of citizenship. Rather, my claim is that if they are defensible, they may impose requirements on access to full membership rights. If theorists such as Yasemin Soysal (1994) are correct that we are moving toward a form of "post-national citizenship," then arguments based on national identity have limited force.

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Neo-republicanism entails the extension of political rights to non-citizen permanent residents in a fairly straightforward way. The central concept in the neo-republican research program is political liberty as non-domination. Philip Pettit defines dominance as the “power of interference on an arbitrary basis.” (Pettit 1997: 52) Pettit aims to replace the liberal notion of non-interference (negative freedom) with freedom understood as non-domination. Liberals hold that interference is generally bad and justifiable only by weighty reasons. Neo-republicans contend that only *arbitrary* interference reduces our freedom. Republican freedom “requires the capacity to stand eye to eye with your fellow citizens, in a shared awareness that none of you has a power of arbitrary interference over another.” (Pettit 1997: 5) Laws made according to just procedures that include an adherence to constitutionally protected rights and the opportunity for democratic contestation, do not dominate us. Republic freedom is thus a function of the institutions, norms, and laws that regulate the community along with individual opportunities to effectively contest them.

As Lovett and Pettit put it,

The people themselves are the best protectors of their own freedom. In other words, it is only in a *res publica*—a political system that does not rely on the direct personal rule of some by others, but rather is organized as a community of equal citizens governed by law—that our freedom from domination will have the resiliency we want from a “free state” (Lovett and Pettit 2009: 22).

Pettit’s vision of a *res publica* has two dimensions. First, there is “constitutionalism” which requires adherence to the rule-of-law, the dispersion of power (e.g., dividing government into executive, legislative, and judicial), and the counter-majoritarian

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condition prevents majorities from easily amending or repealing basic or important laws such as articles of the constitution (Pettit 1997: 173-83). The second dimension is democratic. Even a well-ordered system that adheres to the rule of law and disperses power still allows officials to exercise significant discretion in its application. How can a system prevent arbitrary discretion? Pettit's answer is that citizens need the power to effectively contest interference. This power has an "authorial, electoral element" and an "editorial contestatory element" (Pettit 2006).

Pettit envisages a form of deliberative democracy in which public decision-making ought to take the form of a dialogue in which opposing sides present reasons for their views. Citizens' power to contest decisions is partly realized through the election of representatives and the requirement that the administrators and the judiciary are drawn from different groups within society. More generally, there must be room "to protest to the representative bodies in question, in the event of your believing that things have not been properly done." (Pettit 1997: 193) This requires open channels to communicate with political representatives, the right to appeal in the judicial system, and rights guaranteeing the possibility of public protest. In other words, people must be able to access effective procedures for making their voices heard.

Pettit stresses the "contestatory" element of his theory in his writings. A decision is not an "arbitrary act of interference" under circumstances where "we can more or less effectively contest the decision, if we find that it does not answer to our relevant interests or relevant ideas." (Pettit 1997: 185) However, he explicitly acknowledges the importance of formal political rights such as the right to vote. The effectiveness of a separation of powers requires that people have the power to influence all three branches

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of government. They must have the power to elect legislators and executives as well as to avail themselves of the courts. The lack of political voice leaves people vulnerable to abuse in the legal system as they are unable to influence legislation which binds them. Political rights are a necessary condition for political agency. Unless politicians also believe that the people will respond to unaddressed grievances through their votes, it is unlikely that political speech will have the desired effect. Disenfranchised groups have recognized this and historically struggled for the right to vote. Presently disenfranchised residents may live under laws that treat them well, but they are continually vulnerable to changes in legislation as bills such as Arizona's SB 1070 show.¹³

For this reason, Pettit stipulates that neo-republicanism entails a broad conception of membership: "in the domestic case there is little or no question as to who should be the relevant members. Membership is individual and inclusive; it extends at least to all adult, able-minded, and more or less permanent residents of the state's territory." (Pettit 2010: 142)

Pettit does not argue in detail for his account of inclusion. This is a serious omission. First, it is not clear what Pettit means by "permanent residents" since in the next sentence in the passage quoted above he speaks of an "inclusive citizenry". Pettit does not seem to have immigrants explicitly in mind since he doesn't discuss the process required to obtain full membership. Rather, he assumes that we have already identified all permanent residents. Second, most people believe that even permanent residence is not sufficient for full political membership, instead reserving it for citizens. Vulnerability to

¹³ Robert Dahl points out that "Experience has shown that any group of adults excluded from the demos—for example, women, artisans and laborers, the unpropertied, racial minorities—will be lethally weakened in defending its own interests. And an exclusive demos is unlikely to protect the interests of those who are excluded. (Dahl 1989: 129) We can rephrase "defending its own interests" to "avoiding domination."

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domination is an important factor when considering admission to full membership, but there are other considerations including political stability, cultural identity, and implications of the right to self-determination for membership policy. Third, neo-republicanism may have much more radical implications than realized. In my view, not only does it entail extending political rights to “more or less permanent residents of the state’s territories”; it requires that even sojourners, should they be subject to state domination, are entitled to political rights in the absence of good reasons for denying them. In short, though I agree with Pettit that neo-republicanism requires inclusive membership, more needs to be said.

It is necessary to clarify a potential confusion about my account. Critics sometimes conflate Pettit’s neo-Roman republicanism that stresses liberty as non-domination with a version of republicanism that is sometimes called “civic humanism” (Lovett 2010).¹⁴ Civic humanism stresses civic virtue and the importance of active political participation for human flourishing. It regards the political participation as a means for citizens to act as authors and not just subjects of the laws passed: voting has a crucial role in providing legitimacy through citizen authorization. Pettit’s neo-Roman republicanism downplays this ideal of good citizenship and provides more emphasis on the “editorial” aspect of democracy than on its “authorial” aspect.

¹⁴ Commentators and audience members who have heard this paper have suggested that the Pettit’s neo-Roman republicanism departs fairly radically from the republican tradition. I have three replies to this sort of objection. First, Quentin Skinner and Pettit argue convincingly that their conception of freedom as freedom from arbitrary interference (non-domination) has its roots in Roman and Renaissance political thinkers (e.g., Pettit 1993, 2002, Skinner 1998). Second, given the breadth of the republican tradition, it is probably the case that more than one conception of freedom can be found in the tradition. Third, and most importantly for my purposes, is that the historical roots of Pettit’s theory are not essential for its plausibility. Even if Pettit significantly misreads the tradition, his account of freedom is plausible in its own right.

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This contrast is evident in Iseult Honohan's discussion of citizenship rights from the perspective of a civic humanist republicanism. She argues that "the primary basis of citizenship is subjection to a common authority" (Honohan 2009: 99) and notes that long-term residents are similarly situated under this authority. This concurs with the neo-Roman account, but Honohan conditions citizenship on a "significant period of residence" (Honohan 2009: 100) that she sets at three to five years. Her reason for this restriction is that "the nuances of politics are often one of the last aspects of a country's life to be fully grasped by a newcomer." (Honohan 2009: 100)

The requirement of a residency period depends on her view that republican citizenship demands active citizenship. My suspicion is that new residents often can grasp the nuances of politics rapidly, particularly when they are subject to them. For example, in cases under which the government is attempting to require the removal of headscarves in public spaces or allow the police to verify the legal residence of people they detain, the nuances may be much clearer to newcomers than long term residents. Be that as it may, Pettit's neo-Roman conception does not make citizenship conditional on asking whether people are capable of being good citizens. Rather, it takes the brute fact of vulnerability to domination as grounds for extending political rights.

A similar point can be made about Seyla Benhabib's work which draws on the civic humanist tradition inspired by Hannah Arendt. Benhabib argues that "the *entitlement* to all civil rights – including rights to association, property, and contract – and eventually to political rights, must itself be considered a human right." (Benhabib 2004: 140) She mobilizes her theory of discourse ethics to ground human rights claims. Participants engage in discursive moral and political justification in which they present

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reciprocally acceptable reasons to attempt to convince each other of the validity of their claims. Principles or rights claims are valid if they can be justified by mutually acceptable reasons. The human right to membership is “an aspect of the *principle of rights, i.e., of the recognition of the individual as a being who is entitled to moral respect, a being whose communicative freedom we must recognize.*” (Benhabib 2004: 141-2) To permanently deny residents full membership denies their “communicative freedom and moral personality” and cannot be justified from a “discourse-theoretical point of view” (Benhabib 2004: 140).

Benhabib distinguishes between the *principle of rights* and a *schedule of rights*. She sees the acquisition of membership in stages starting with emigration and first entry, followed by “civil, economic, and cultural *absorption*”, “residency of a significant duration” and, last, naturalization (Benhabib 2004: 136) She also allows for considerable discretion regarding how membership is extended:

Some polities may require a written language exam to prove competence, others may be satisfied with an oral demonstration alone; some countries may require a residency of seven years, others may be satisfied with three. Some may grant permanent residents the right to vote in municipal elections, as is the case with the Netherlands, the United Kingdom, and Ireland; others, such as Germany, may permit the vote only after naturalization. These are variations within the power and prerogative of the democratic people (Benhabib 2004: 141).

Here we see the role of citizen as author of the laws. This notion of citizenship arguably requires sufficient knowledge and civic virtue. My neo-republican account differs in several respects from Benhabib’s account. Though Benhabib is aware of instances of

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non-citizen voting, she bases the moral entitlement to political rights on full membership. In fact, she allows that “criteria that stipulate that you must show certain qualifications, skills, and resources to become a member are permissible because they do not deny your communicative freedom.” (Benhabib 2004: 139)

The neo-republican account concurs with Benhabib that any measures that deny people their communicative freedom are unjust. Communicative freedom is necessary to contest policies and laws that would otherwise dominate people. But the fact that certain stipulations do not deny one’s communicative freedom does not mean that these stipulations are just. Discourse ethics theorists are often unduly confident that they have identified moral norms that would be justifiable under actual debate among moral equals. In Benhabib’s case, it’s far from obvious what “schedule” of rights permanent residents would accept under conditions of free and equal discourse.

Rather than engage the discourse-ethics framework as a justificatory tool, the neo-republican account draws attention to the vulnerability to domination that these residents suffer. On normative grounds, it should not accept a “schedule” in which people move from a situation where they lack freedom and suffer domination to a situation free from domination. There may be practical and political grounds for choosing gradual measures to overcome domination, but this doesn’t change the injustice that dominated people suffer.

3. Other Accounts of Non-Citizen Voting

My case for extending political rights to people subject to domination overlaps with a number of accounts of non-citizen voting.¹⁵ A discussion of the practice and justification

¹⁵ Though my paper is about political rights that include the right to stand for office, I focus on voting rights as this is the right that most non-citizens are likely to exercise. I return to the question of other political

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for non-citizen voting helps clarify my account, as well as provide an opportunity to compare the neo-republican account to its alternatives. In this section, I discuss Ron Hayduk's arguments for local voting rights for non-citizens and canvass the two major theoretical justifications for non-citizen voting: non-citizens deserve the vote because their interests are affected in some way or because they are subjected to state coercion.

Non-citizen voting is more common than many people realize. According to the Non-Citizen Voting Project, over forty countries permit some form of alien suffrage.¹⁶ Sweden, Denmark, and Finland permit local non-citizen voting rights and Chile and New Zealand allow non-citizens to vote at the national level. Non-citizen voting at local, state, and national levels was legal in the US until 1928.¹⁷ It presently exists at the local level in the US in places such as Chicago (school board elections) and Cambridge, Amherst, and Takoma Park (local elections). These real-world examples provide models for implementing more inclusive political rights and also help allay some unfounded fears about extending the franchise.

Ron Hayduk has argued at length for local non-citizen voting rights in the US context (Hayduk 2004, 2006). Hayduk argues that non-citizen voting is legal in the US, rational, feasible, and moral. My interest here is primarily in the moral arguments. Hayduk notes that "the acquisition of political rights—including voting rights—has been a vital tool for every disempowered group in America's history to achieve economic, social, and civil rights and equality." (Hayduk 2004: 500) Just as African Americans, women, and youth under 21 demanded the vote and eventually received it, he thinks that

rights below.

¹⁶ <http://www.immigrantvoting.org/material/TIMELINE.html> (accessed August 14, 2011)

¹⁷ See, for example, Madison *The Federalist* No.42

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immigrants should at least be allowed to vote in local elections: “Noncitizens have the same stake and interest in a community’s political decisions and civic responsibility as that of any citizen.” (Hayduk 2004: 508)

According to the 2008 figures for the US Census, there are 21.6 million legal permanent residents who are not citizens. There are an additional 11.2 million long term unauthorized migrants (Pew Hispanic Center 2011). In many cities, non-citizens compose 20 to 33 percent of the adult population. We can reconstruct Hayduk’s account in terms of two principal claims. First, immigrants are *de facto* members with a stake in the community. They live, work, study, and raise families. Their wellbeing depends on the policies that regulate their lives, so they have an interest that political actors take account of their voice. Moreover, they are vulnerable to discrimination and mistreatment in part because of their lack of voting rights. Second, non-citizen residents are also subject to the coercive force of the law. For instance, they have obligations to the political community that include paying taxes. In the United States, non-citizens are also eligible for selective service. It is unfair that they are bound by laws in which they have no say.

The first and second points correspond to the two main rivals to the neo-Republican account: 1) political rights are triggered by affected interests; or 2) by coercion.

a. Affected Interests

Interests seem to be a natural ground for extending political rights. For example, Thomas Pogge posits a “human right to political participation” based on a “right to an institutional order under which those significantly and legitimately affected by a political decision have a roughly equal opportunity to influence the making of this decision.” (Pogge 1992:

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64) What is needed is an account of when people are “*significantly and legitimately*” affected by a political decision. Business owners have an interest in the tariffs of countries to which they wish to import their goods. Tourists have an interest in the bylaws that maintain the beaches in places they want to visit. But surely these interests are insufficient for an entitlement to political rights.

Any plausible account the grounds political rights on affected interests will give an account of when an interest is of sufficient importance for its holder to have a right to participate in the political process. Even if this can be plausibly supplied, there are deeper theoretical difficulties. Some versions of the “affected-interest” principle confront a possible circularity: in order to determine who is affected by the outcome of a democratic decision, we must first know what the outcome is. But in order to know this, we must know who is a member of the *demos*. If we substitute *actually* affected interests for *possibly* affected interests, then we may be committed to including almost everyone in the world in the *demos* (Dahl 1970: 64-67; Goodin 2007; Whelan 1983). This raises the problem of specifying which interests trigger a right to political rights, since it cannot be all possible interests or even all significant interests (e.g., much of the world arguably has a significant interest in the election of the US President, but this probably shouldn’t entitle them to vote in US elections).

Rainer Bauböck addresses this problem with a version of the principle of all affected interests that is constrained by his “stakeholder view”:

Individuals whose circumstances of life link their future well-being to the flourishing of a particular polity should be recognized as stakeholders in that

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polity with a claim to participate in collective decision-making processes that shape the shared future of this political community (Bauböck, 2007: 2422).¹⁸

The stakeholder view has the advantage over the affected-interested principle of focusing on a polity, rather than the question of who is affected by a particular decision. This solves the problem of circularity which is most severe when we consider decisions one-by-one: people whose flourishing is generally bound up in the decisions made by a particular polity deserve inclusion. The stakeholder view appeals to actually affected interests (to have a stake in the community is to have an interest in it), but stipulates that people included must have a long-term interest in the flourishing of the community's major institutions: "The individual rights and wellbeing of stakeholders are tied to those of other members because they all depend on the protection and public benefits provided by the same political institutions." (Bauböck 2008: 4)

The stakeholder view limits the interests that count for grounding a right to political rights, but from the neo-republican perspective, it is excludes too many people.¹⁹

The neo-republican account acknowledges the importance of interests: on Pettit's view,

¹⁸ Dora Kostakopoulou also argues for an "alternative citizenship design based on domicile." (Kostakopoulou 2008: 3) This "civic registration model" would extend citizenship to residents after a relatively short period. Kostakopoulou suggests a residency period of one to two years since residence makes people "stakeholders in the running and the future of the community" and "generates entitlements" to political inclusion due to "the participation of people in a web of social interactions and the sense of 'rootedness' associated with home ownership, business ownership, employment, participation in civil associations, family ties and schooling." (Kostakopoulou 2008: 87)

Carens (2010) also argues for the importance of residence in generating entitlements, in this case the right for unauthorized migrants to be admitted legal permanent residents.

¹⁹ It is also potentially too strong, depending on the criteria for who counts as a stakeholder. It would seem, for example, that the neo-republican account of political rights would may not account for political rights for non-resident citizens. Non-resident citizens generally don't risk domination from their country of citizenship and, as I argue below, political power abroad rarely protects people from domination in their place of residence). Neo-republicans may want to bite this bullet – perhaps we forfeit some of our political rights when we leave a territory, just as relocation to another city or province means giving up some political rights in favour of new ones. They may also cite reasons other than non-domination for why non-resident citizens should be allowed to vote in national elections. This has the disadvantage of lost parsimony for the theory, but may be appropriate given the complex relations people have to the state in a globalized world.

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non-arbitrary power must “track” the interests of people under its influence. But interests are not what trigger a right to political rights. Rather, it is the power to arbitrarily affect people’s interests when they do not have the countervailing power of contestation. Temporary residents may have a limited stake in the future well-being of the polity where they reside, but nonetheless be vulnerable to domination.

In the next section, I put forward the case for extending political rights to temporary residents. Here it suffices to note that the lack of political rights for migrants, permanent and temporary, often systematically disadvantages them. The disenfranchisement of immigrants leaves them vulnerable to xenophobic political entrepreneurs, as well as marginalizes their concerns in political debate and policy. Non-voters are effectively invisible to the political process. Hayduk argues:

[non-citizens are] at a risk of bias in majoritarian electoral systems because they lack voting rights and politicians can ignore their interests. Discriminatory public policy and private practices—in employment, housing, education, healthcare, welfare, and criminal justice—are the inevitable by-products of immigrant political exclusion, not to mention xenophobic political campaigning and racial profiling (Hayduk 2004: 510).²⁰

In many countries, noncitizens are disproportionately represented in low income groups. They also have little formal recourse to defend themselves against xenophobic laws and policies.²¹ Even if long-term flourishing is not bound up in the polity of residence, the

²⁰ Kostakopoulou also makes this point: “it is a deficit of democracy if majoritarianism becomes a vehicle for the domination of minority groups by a cultural majority and for hardening existing lines of privilege.” (Kostakopoulou 2008: 87)

²¹ Hayduk also argues that allowing noncitizen voting for coalitions between noncitizens and other groups with similar interests – e.g., housing, employment, and education. Often immigrants groups are pitted against African Americans or the working class. Hayduk argues that allowing non-citizens to vote could

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effect on migrants' interests (and the potential violation of their civil and human rights which clearly involves domination) is sufficiently severe to warrant the extension of political rights.

Gerald Rosberg develops this last point in an important article defending local voting rights. He argues that local governments should be treated as “‘polities of presence’ in which all community inhabitants, not just those who are citizens of the superordinate nation-state, form the electorate.” (Raskin 1993: 1396) Raskin points out that the US Supreme Court treats alienage as a suspect classification requiring strict judicial scrutiny for statutes that disadvantage aliens (Rosberg 1977). Rosberg argues that the combination of the fundamental importance of the right to vote, the “political powerlessness” of those denied this right, and the suspect nature of alienage grounds voting rights for resident aliens²²:

The denial of aliens of the right to vote would seem an obvious candidate for the stricter standard of review, because alienage stands near the top of the “suspectness” gradient (immediately next to race), and voting stands at the top of the gradient along which rights are laid out in order of their importance. (Rosberg 1977: 1105)

In particular, allowing aliens the right to vote would help them over time to “develop the ability to protect their own interests in the legislative process, and the need for extraordinary judicial protection will then disappear.” (Rosberg 1977: 1106)

“provide a buffer against potential social strife or segmented assimilation.” (Hayduk 2004: 511)

²² Immigrants “admitted to the United States for permanent residence, entitled to work and live anywhere in the country” (Rosberg 1977)

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Bauböck hopes for a theory of migrant transnationalism that tells us when both denizens deserve political rights and non-residents should have external voting rights. The stakeholder account may contain important insights with regard to expatriates, but it neglects too many vulnerable non-citizens residents who reside in the state with limited power to contest the policies that affect them.

b. Coercion-based entitlements

Hayduk's second argument is that non-citizens are subject to the coercive force of law, but have are excluded from policy formation. Their freedom is legally curtailed in a manner that dominates them as they have been prevented from effectively contesting the rules that bind them.

Coercion-based account such as the one advocated by David Miller base membership on coercion where "there is some course of action that the agent is forced to take." (Miller 2009: 220) Miller distinguishes coercion from prevention. Even though some of our options are blocked by force, we are not necessarily coerced. For example, many laws simply prohibit certain actions, rather than force us to act: compare laws against theft with tax laws. Miller holds that "being coerced by a *demos* does generate a claim for inclusion that is far stronger than any claim that the affected interests principle is likely to generate." (225) Miller's coercion-based account has a more limited scope than accounts based on affected-interests as there are more affected-interests than people subjected to coercion (as Miller understands it).

The neo-republic account is broader than Miller's coercion-based account as it is also concerned with potential coercion. Preventive laws – if we accept Miller's distinction between coercion and prevention – arbitrarily interfere with neo-republican

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freedom. Neo-republicans consider it a serious wrong to limit someone's options through preventative laws without providing institutions and opportunities for contesting the decision. The violence that prevents a slave from escaping is equally abominable as the coercion that compels her to work.

Indeed, the distinction between coercion and prevention may have limited coherence. Preventative laws are coercive laws even if the coercion is avoidable by refraining from acting in certain ways (Abizadeh 2010). Even if we can make sense of the Miller's distinction, its *normative* significance is not clear: a "preventative" law that prohibits people from exiting their homes after 8 p.m. interferes far more with people's lives than a "coercive" law that requires that they report for jury duty when (occasionally) selected.

The neo-Republican stresses that domination occurs both when people are directly compelled to act and when they are threatened (including through law) with coercion if they act in certain ways. Pettit stresses that "an agent may interfere with someone's choice, not just by forcibly or manipulatively rigging the options available, but also by threatening her sincerely with a penalty if she takes a certain option or by actually penalizing her for taking it." (Pettit 2005: 93) When actions are limited by coercive sanctions, the people who find their freedom curtailed deserve an opportunity to contest the decisions. In many cases, this entails extending political rights.

One concern is that the neo-republican account would require that we extend political rights to much of the world. There is a potential parallel here with Arash Abizadeh's arguments against immigration controls. Abizadeh has argued that coercive border controls must be justified to and by both the people living within the state and the

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people seeking admission. In his view, civic boundaries that demarcate the political community “are always instances of power exercised over both members *and non-members*.” (Abizadeh 2008: 46, Abizadeh’s italics) Non-members are subject to coercive power that excludes them from membership. On Abizadeh’s account, we must justify state coercion to the people being coerced: border controls need to be discussed and argued for in a manner that includes all affected “on terms consistent with the freedom and equality of all.” (Abizadeh 2008: 48)²³

The parallel to the neo-republican account of non-citizen voting rights is that non-resident would-be migrants should have the opportunity to contest preventative laws that prevent them from migrating. Do these preventative laws dominate, in the neo-republican sense, people around the world who are barred from migrating without having any say in the process? If so, does this require extending political rights to anyone who expresses a desire to possibly migrate?

I think we should concur with Abizadeh that laws enforcing border controls are democratically unjustifiable and that they do dominate foreigners in the neo-republican sense. The neo-republican account can be mobilized to criticize our current system of migration control. I leave aside what exactly neo-republicans should say about border controls – it is by no means clear how they should respond to the many complex issues.²⁴ What is important for our topic is that coercive preventative laws do not entail that neo-republicans must extend political rights to non-residents.

²³ Abizadeh bases political legitimacy on a deliberative conception of democracy in which “instances of coercion [must be legitimized] by subjecting them to participatory discursive practices of mutual justification on terms consistent with the freedom and equality of all.” (Abizadeh 2008: 48)

²⁴ My suspicion is that they would have to commit to a far more democratic procedure for managing migration that would incorporate international agents and end up endorsing more open borders, but more analysis is needed to establish this.

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Recall that the neo-republican justification of political rights is instrumental: non-citizen residents require political rights to avoid domination. Pettit appeals to two constraints that are needed to evaluate political ideals: a feasibility constraint and a desirability constraint (Pettit 2005). Even when there is a clear case of domination, it is by no means clear what measures must be taken. First, as Pettit notes, there are degrees of domination (Pettit 2005: 94). In the case of most people in the world, preventative laws that hinder their migration do not greatly interfere with their lives. Second, even when border controls do arbitrarily and significantly interfere with people's lives, it is not clear that granting these people political rights is the best or only solution. Neo-republican freedom could provide a guiding ideal for comprehensive immigration reform, but this reform might be top-down international political reform, rather than bottom-up reform driven by potential migrant votes. Third, letting the entire world potentially exercise political rights in any state is not desirable as it would open up new forms of arbitrary interference and domination. Unlike resident non-voters who are subject to the full force of the state's laws without an effective power to contest them, non-residents are affected only by a subset of laws (e.g., immigration laws, laws governing foreign policy and trade). To allow them to vote on policies that do not potentially dominate them would give non-residents unjustifiable power over people in another territory.

Non-republicans will thus only endorse political rights for non-citizens when this is the best available way of their avoiding domination. Their account will be broader than Miller's coercion based account and Bauböck's stakeholder account, but narrower than most forms of the actual or potentially affected-interest principle.

4. Temporary Worker Programs

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The extension of political rights to even *permanent* residents strikes many people as too radical. As I mentioned above, the neo-republican account goes further in requiring that temporary residents should also receive political rights when they reside in the state. Permanent residents, especially after they have lived for a number of years in their new home, are similar in most respects to citizens. This similarity makes it difficult to identify the factor or factors that entitle them to political rights. In the case of temporary migrants, their vulnerability to domination is the primary factor that could trigger a claim to political rights – or so I argue.

Temporary labor migration programs enjoy widespread support as a compromise between accepting larger numbers of new permanent residents and closing state borders to labor movement. The *RSA Migration Commission* asserts that, “in theory, temporary labor migration policies (TLMPs) can generate significant net benefits for receiving countries and their countries of origin.” (RSA Migration Commission, 2005: 67) The Global Forum on Migration and Development (GFMD), asserts, “Temporary labour migration can work to everyone’s advantage if it is legal, protective and linked to real labour needs.” (GFMD 2008:65)²⁵

Temporary visa programs connect migration to work: they are driven by a combination of demand in some sectors and the reluctance to open the gates to permanent immigrants. States provide temporary work visas, usually under pressure from the business community, to fill jobs that natives either cannot perform or refuse to accept under present wages and conditions. Temporary migration comes in a bewildering variety

²⁵ In another prominent example, the ILO Multilateral Framework on Labour Migration recognizes the contribution migration makes to development and economic growth and advocates “Adopting policies to encourage circular and return migration and reintegration into the country of origin, including by promoting temporary labour migration schemes and circulation-friendly visa policies.” (c.f. IOM 2008: 94)

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of forms, including working holidays to young adults, live-in-caretaker positions for domestic employees, and high-tech jobs for highly skilled professionals. Some jobs are in fact permanent and the visas such as the US H1-B visa provide workers with the opportunity to eventually acquire permanent residence and citizenship. Other programs such as the Canadian Season Agricultural Work Visa program encourage circular migration, bringing people in for a short period of time before rotating them back to their countries. Some visas tie workers to a specific employer or industry, others are open-ended.

No temporary worker program that I know of grants workers political rights. The purpose behind temporary worker programs is to recruit people for jobs. Their popularity rests on the presumption that they do not add new members to the political community. Of course, “guest” workers often become *de facto* permanent residents as contracts are extended and families settle. Here I address genuinely temporary residents who will return to their homes when their visas expire. My account should thus not be confused with Michael Walzer’s influential discussion of the *gastarbeiter* (“guest workers”) in *Spheres of Justice*, “men and women who resemble citizens in every respect that counts in the host country, but are nevertheless barred from citizenship.” (Walzer 1983: 59) Germany’s “guest workers” were in fact permanent residents, in some cases residents who were born and had lived their entire lives in Germany.

Walzer writes, “Men and women are either subject to the state’s authority, or they are not; and if they are subject, they must be given a say, and ultimately an equal say, in what that authority does.” (Walzer 1983: 61) He points out that “these guests experience the state as a pervasive and frightening power that shapes their lives and regulates their

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every move – and never asks for their opinion.” (Walzer 1983: 59) His condemnation of the Greek *metics* who resided in the city-state but were excluded from governing it would suggest that he recognizes domination as a factor for the extension of citizenship.

However, Walzer’s justification ultimately differs from the neo-republican account. He permits the exclusion of temporary workers and allows a transitional period in which residents gradually acquire full rights. More fundamentally, Walzer does not consider subjection to domination a sufficient condition for political rights or citizenship even for permanent residents. He writes, “It has been suggested to me that this argument doesn’t plausibly apply to privileged guests: technical advisors, visiting professors, and so on. I concede the point, though I’m not sure just how to describe the category of ‘guest workers’ so as to exclude these others.” (Walzer 1983: 60)²⁶

It is oppression and exploitation, not domination that primarily concerns Walzer. In particular, he objects to the creation of a “disenfranchised class” that that is “exploited or oppressed at least in part because [its members] are disenfranchised, incapable of organizing effectively for self-defense.” (Walzer 1983: 59) Temporary worker programs suffer from well-documented abuses, low wages, unsafe working conditions, uncompensated labour, physical and psychological violence, the failure to pay wages altogether, and separation from family members abroad. These abuses occur mainly in so-called “low-skilled” jobs where workers are typically more desperate, have less access to information, less government oversight, and lack resources and options.

²⁶ Daniel Bell echoes Walzer’s view: “This moral argument for citizenship seems less plausible in the case of wealthy, skilled immigrants – for example, it would be difficult to argue that, say, a state such as Switzerland would be committing a fundamental injustice by denying full citizenship rights to a well-paid corporate lawyer who has spent the last ten years working out of that country’s branch office. (Bell 2006: 282)

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Walzer's position is importantly at odds with my neo-republican account. Neo-republicans do not require acts of oppression to trigger political rights. Actual interference is not needed to establish domination. "Low-skilled" and "highly skilled" migrants are in a similar position with regard to domination: they are both subject to arbitrary state interference. Consider, for example, the H1-B visa in the United States that allows professionals to work for a single employer for a three year period.²⁷ Highly skilled workers holding H1-B visas are subject to laws and policies that directly affect them. These include proposed laws that may directly affect their legal status, leading to the termination of their employment. Anti-immigrant rhetoric in the political arena may expose them to racism or resentment. If they have children, they have a stake in school board policy. Also, private power can dominate and public power must take measures to prevent this. Highly skilled engineers working in Silicon Valley may not be as vulnerable as agricultural workers in Napa Valley, but they are by no means invulnerable to abuse from employers who can withdraw their right to live in the US. Neo-republicans endorse the need for policies to track people's interests, but their primary focus is on the way these laws and practices subject people to domination.

I do not deny that the situation of temporary workers in these sorts of jobs raises more urgent moral issues than those faced by well-paid professionals. Highly skilled workers are usually in demand and their greater resources and opportunities counteract employer power. "Low skilled workers" are typically recruited from regions where there are limited opportunities so that even exploitative labor abroad is more attractive than the viable options at home. These workers suffer not only from domination, but also often

²⁷ The visa can be renewed for another three years. With the sponsorship of one's company, it is possible to apply for a green card.

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from abuse. Legal restrictions, including temporary visas, give employers disproportionate power over workers and serve to limit access to collective bargaining and other forms of protest. The fact that “low skilled” workers are comparative worse off may have implications for political action, but should have no impact on the right to political rights any more than the comparative advantages of middle-class women was irrelevant to women’s right to vote.

The neo-republican notes that temporary migrants are vulnerable to domination because they do not possess the means that would enable them to contest state power. Political rights are necessary to effectively contest state power, since they contribute to giving temporary migrants a voice to contest laws and policies that demand their obedience.

However, this argument is vulnerable to two objections. First, we can argue that temporary migrants do not have cause to complain if they are dominated. Specifically, there may be reasons to deny temporary migrants political rights even if this entails that they are subject to domination. Subjection to domination does not trump all other rights and interests, so we need to ask if there are other, more compelling reasons to restrict the franchise to citizens. Section 6 examines some reasons for permitting the domination of some (especially temporary) residents.

Second, my account depends on the empirical claim that state power cannot be contested except by giving people under its power political rights. I need to argue that there are not alternative mechanisms that would serve this purpose that would not require political rights. Alternatives might include: 1) non-domination guaranteed by an independent judiciary; 2) a political voice through one’s home state; 3) a voice through

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organized labor; and 4) political voice through civil society. Let me consider these in turn.

Owen Fiss takes up the first challenge, holding that political rights can justly be restricted to citizens as this need not turn non-citizens into “pariahs” isolated from the dominant groups in society and treated as inferior (Fiss 1999: 19). Non-citizens are members of society and thus protected by an anti-subordination principle that guarantees their social rights. An active judiciary compensates for the lack of political rights:

the very allowance of political disablement—confining the right to vote to citizens—is a good and sufficient reason, constitutionally or even as a matter of democratic theory, for the judiciary to scrutinize with a healthy measure of skepticism the work of the elected bodies insofar as it affects immigrants (Fiss, 1999: 20).

It is unlikely, though, that judicial review can substitute for a political voice in avoiding domination. First, not all forms of potential domination are subject to judicial review. In particular, immigrants are highly vulnerable to local policies that while not likely to turn them into “pariahs,” may systematically dominate and disadvantage them. Consider the rules regulating who is eligible for a driver’s license. The requirement of a social security number and proof of legal residence to receive a driver’s license does not violate constitutional law, but may drastically lower the quality of life of undocumented immigrants. Second, it is unlikely that the courts can resolve all of the problems within its jurisdiction. The continued abuses in guest worker programs that violate labor law show the limitations of the courts, particularly when dealing with a vulnerable population. Third, the reliance on the courts may place disproportionate power in the hands of the

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judiciary, including on issues best settled in the democratic arena. Though immigrants require the legal protection, immigration policy needs to be a legislative matter if the populace is to accept its legitimacy. If the public perceives that the courts are engaged in “activism” to furthering the interests of migrants, it can aggravate fears that the immigration system is “broken” or unduly influenced by business and political elites.

Could temporary guest workers receive the necessary political voice through their home state or through membership with organized labor? Non-citizens other than convention refugees fleeing state persecution are usually members of another state that purports to represent them. Michael Walzer argues that “host countries might undertake to negotiate formal treaties with the home countries, setting out in authoritative form a list of ‘guest rights’—the same rights, roughly, that the workers might win for themselves as union members and political activists.” (Walzer 1983: 60)

It is a mistake to place too much faith in sending countries effectively protecting their citizens. State powers are limited outside of their territory. This is particularly true of developing states that send workers to richer, more powerful states in the developed world. They typically have few credible threats that they can enforce. For example, when Indonesia and the Philippines recently attempted to provide more labor rights for workers in Saudi Arabia (in the case of Indonesia in reaction to the torture of a domestic worker and the beheading of an Indonesian domestic worker), Saudi Arabia stopped providing visas (BBC June 30 2011; Vaswani June 28, 2011). States are usually reluctant to interfere in other states’ internal sovereignty. Also, faith in citizens being able to receive protection from their own state when abroad assumes that states of origin wish to effectively represent their workers abroad. They are often more interested in preserving

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their relationship with the host country to ensure a flow of remittances, knowing that temporary workers can be easily replaced by others.

Another proposal would be to grant temporary workers labor rights, including the freedom of association to join unions and the right to change employers. This assumes that labor unions and temporary migrants have similar interests. This may sometimes be the case with labor rights: unions may have an interest in temporary migrants receiving prevailing wages as employers would likely prefer native workers if the work of similar quality and if they avoid the costs of recruitment and visas. Notice, though, that this depends on the interests of native workers and the interests of migrants coinciding, something that may not always occur. Union members may benefit from a two-tiered labor system in which the exclusive rights of a few are bargained for on the backs of other, non-unionized workers. Also, as Ruhs and Martin (2008) have shown, there is a trade-off between the rights extended to migrants and the number of migrants a state permits (see below): migrants may have an interest in lowering labor standards to secure unemployment. Finally, even when the labor interests of migrants and union members coincide, unions are unlikely to serve as an effective voice for non-labor rights.

The limitations of unions are mirrored by the limitations of other institutions that purport to represent migrants. In her study of consultative institutions for migrant workers in seven European countries, Uwe Anderson concludes:

these local consultative institutions in all the project countries are confined to an outsider position in the local political process. They can raise issues and make requests but have limited power to pressure local parties and decision-makers.

They are often confined to providing information for the local authority and

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legitimizing its policies by being available for consultation, even though this may not result in any significant input into the context of policy. The “rules of the game” for consultative institutions are that a modest role in the local political system requires that representatives of migrant workers accept the limited role assigned to them (Anderson 1990: 125)

A final candidate involves new forms of political representation. Robert Glover believes we can have political change without modifying the political status of immigrants. He uses the H.R.4437, the “Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005” as a case study.²⁸ H.R. 4437 led to protests by millions of people holding placards reading “We Are America” and “Today we March, Tomorrow we Vote”. Glover claims that “In the former, the protesters expose the gap between the legitimizing myth of the United States as a nation of immigrants and the prevailing discourse of immigrants as economic drain and security threat.” (Glover 2011: 14-5) The latter makes a “broader claim that political voice *matters* to these individuals, despite their varying proximities to formal membership.” (Glover 2011: 15)

Nonetheless, Glover does not advocate extending political rights to noncitizens. Rather, he claims:

The ability of at-risk populations such as non-citizens to protect, and also expand, their legal and political standing is by no means preordained. It rests upon the ability of those who reside within society while lacking political voice, to carve

²⁸ H.R. 4437 had many harsh measures, including making it a felony to be present in the US without documents, criminalizing the assistance of undocumented aliens (including charitable assistance), increasing the discretion of immigration judges, and devoting more resources to border protection.

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out spaces where their narratives and experiences are assigned weight in the course of policy making. (Glover 2011: 19)

He makes that point that “those subject to the coercive power of the state ought to exercise political voice in the formulation and deployment of that coercion.” (Glover 2011: 21) How should this occur? He quotes Bonnie Honig on “providing democratic spaces for those ‘outside of the circle of who ‘counts’ [and who] cannot make claims within the existing frames of claim making” (Glover 2011: 26). He refers to “radically inclusive political spaces” that allow political contestation and democratic engagement that “promote the political agency of unlikely subjects such as non-citizens.” (Glover 2011: 22) In his view, “the point is not simply to create *more citizens*, but rather enlarge our notion of who ought to be able to make democratic demands beyond the traditional confines of citizenship.” (Glover 2011: 24) He suggests “formal agonistic spaces for non-citizen political voices” such as “open-ended citizens’ forums” that attempt “to covert what is largely a *monologue* of street-level protest by political actors seeking recognition into a *dialogue* of mutually opposed forces.” (Glover 2011: 25) In Glover’s view, “This need not mean a complete overhaul of contemporary American political institutions or the existing model of democratic claims-making.” (Glover 2011: 26)

As important as narrative, and contest, and dialogue are, without the power of the right to vote and run for office, we should be sceptical about any large-scale change with formal political rights. As Dahl pointed out in the passage cited above²⁹, historically disenfranchised groups have always sought the vote. I know of no case in which a vulnerable minority achieved political equality without the power to participate in the

²⁹ See footnote 13.

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mainstream political process, so Glover's optimism that agonistic spaces can replace political rights seems dubious. I see Glover's proposal as supplementing my account, not conflicting with it.

5. Unauthorized Migrants, and Political Rights

Does the neo-Republican account demonstrate too much? Not only does it trigger a claim to political rights for permanent residents and temporary residents, it also appears to apply to tourists and to migrants who have no legal right to reside in the state.

Tourists are relatively easily dispatched as are not residents and their stay is usually relatively short. They are much more likely to return to their country of residence than to stay and contest decisions that potentially dominate them. But what should we say about migrants who are not sanctioned by the state? Though they are subject to the state's coercion, many people would consider it absurd to extend political rights to them. Robert Goodin discusses this problem in the context of a right to political rights triggered by the obligation to obey the law:

Upon reflection, however, there turn out to be all sorts of people who are legally and morally obligated to obey our laws but who are not (and rightly not) entitled to membership in our demos: the captain of a foreign ship anchored in our harbor; any visitor to our shores; or indeed any alien illegally living among us. All are rightly bound by our laws, but none is (or ought to be) entitled to a vote in making them.

Goodin takes the possibility of allowing "illegal aliens" the vote to be an obvious absurdity. But since unauthorized migrants are one of the groups most vulnerable to domination, not only by government, but also by employers, the neo-Republican account

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seems committed to this absurdity. I believe that the neo-Republican should bite this bullet and argue that not only is allowing unauthorized migrants to vote *not* absurd, it is required by justice.

The neo-republican account provides *prima facie* support for the extension of political rights to unauthorized migrants. As I stated above, political rights and membership rights are conceptually distinct and often distinguished in practice. The acceptance of a state's right to determine who is entitled to live in its territory does not entail that it has the right to dominate those with unauthorized residence. This is similar to the observation that states should still protect the human rights of unauthorized residents. States can (under some conditions arguably) deport them, but they can't torture them. Just as many people in law enforcement argue that police officers should not enforce immigration law because it undermines community trust and makes it more difficult to investigate more serious crimes, we can erect a firewall between the political process and immigration enforcement.

Many people would reject granting unauthorized migrants the power to participate in authoring law despite their not having permission to live within the state and would dispute the stability of a firewall between political participation and immigration status. We will not resolve the controversies surrounding unauthorized migration. At most, I can make a few points in defense of allowing unauthorized migrants political rights.

The seriousness of overstaying a visa or crossing a border without official position is minor in the comparison to continued domination by the state. Pundits often lose sight of this point, but the vast majority of unauthorized migrants have committed a minor, administrative offense. In most liberal democracies, periodic legalization

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programs have allowed large number of people to obtain legal status, supporting this assertion.

Moreover, the presence of unauthorized migrants is unofficially sanctioned and structurally integrated into the economy. Too often, people advocating restrictive migration policies pretend that migration is simply the result of foreigners from poor countries violating immigration law in response to economic incentives. Though economic incentives are one factor contributing to migration flows, they tell an incomplete story. In particular, they neglect how interconnections in the global economy driven by the developed world and the role of host countries in promoting migration. For example, Mexican immigration to the United States is the result of a long history of recruitment, tolerance of unauthorized status, and the passing of the North American Free Trade Act which promoted trade integration without addressing the impact on human movement.

Unauthorized migration is influenced by economic policy (much of it systematically favoring the world's richer nations), the presence of social networks (often a product of early legal migration streams and colonization), direct recruitment by employers, a foreign trade policy (Castles and Miller 2009; Massey et al. 1993; Sassen 1999). States have large unauthorized populations because they welcomed them at some point in time.

Kamal Sadiq has studied "illegal immigrant" voters in India, Malaysia, and Pakistan who "are indistinguishable from locals." (Sadiq 2011: 234) Developing states usually lack the resources and institutions to rigorously authenticate citizenship, permitting many non-citizens to acquire political rights they are not formally entitled to.

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Sadiq recognizes the challenge this poses to traditional conceptions of citizenship, but argues that regimes allowing illegal immigrant voting “could represent something like the cosmopolitan future called for by Benhabib and others.” (Sadiq 2011: 249) Sadiq argues that illegal immigrant voting represents a bottom-up, organic approach that may subvert top-down, state-control of the franchise, but may also open up more legitimate forms of political community:

To the extent that illegal immigrants are *de facto* (if not *de jure*) recognized by fellow citizens (legal as well as illegal) as participants in the process, their citizenship practices necessarily entail the kind of mutual recognition that collective will formation requires. If such illegal processes are an organic form of community building, state control of such practices appear arbitrary and theoretically problematic (Sadiq 2011: 247).

The neo-republican account adds another dimension to this account. De facto “citizens” are equally subject to state domination. If the state takes measures to silence them, it is arbitrarily annulling their most basic freedom.

6. Some Objections

The plausibility of the neo-republican account depends on its ability to meet objections that attempt to restrict voting rights to citizens. I cannot address all of these objections, but it is important to discuss some of the most prominent ones.

The first common objection is that non-citizens have not demonstrated loyalty to their new state by swearing allegiance and perhaps renouncing their previous citizenship. This objection has little weight. The onus of proof lies on those who would claim that

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people are disloyal and I know of no evidence that non-citizens are less loyal to their state of residence.

A second criticism is non-citizens do not have the prerequisite knowledge to vote.³⁰ Again, I don't think this objection carries much weight. It is not clear that non-citizens are less knowledgeable than citizens. Moreover, knowledge requirements, taken seriously, would exclude a good number of citizens from the franchise, raising familiar concerns. For the neo-republican account that emphasizes the power to effective contest decisions, it seems clear that non-citizens are in fact more knowledgeable of policies that threaten to dominate them.

Third, some argue that it is acceptable to limit political rights to citizens given that non-citizens could choose to naturalize if they wished to vote. For example, Owen Fiss argues, "Yet as long as naturalization remains a viable and fairly economical option, as it indeed is in the United States—last year more than one million immigrants became citizens—it seems sensible for the law to require completion of the formal process of affirmation." (Fiss 1998)

This underestimates the obstacles to acquiring citizenship. It is expensive and citizenship applications face long backlogs so people may wait years or even decades for their application to be processed. Some countries do not allow dual citizenship, so receiving it in one's new country may require undue sacrifice such as long term separation from one's family abroad. Furthermore, citizenship can only be acquired after a number of years. In the United States, Green Card holders can apply for citizenship after five years of permanent residence, though in practice the process usually

³⁰ For a defense of these claims, see Renshon (2008). For rebuttal, see Hayduk (2006) and Gordon (1999)

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takes longer. Five years is a long time to be subject to state power that does not provide a formal political outlet for non-citizens' voices.

It is important to remember that the extension of political rights is not the extension of full membership into the community, especially if this community is thought to have a cultural component. Citizenship and the long term commitment to a political community involves significantly more than voting rights. In the case of temporary residents, the acquisition of citizenship isn't necessarily desirable or feasible. They may not see their long-term goals as being bound to the political community. Nonetheless, they require protection from the state through their power to exercise their political rights.

Fourth, doesn't the extension of political rights to non-citizens place undue power in their hands? This seems particularly true of temporary residents who do not have a long term stake in the community. Why should they be allowed to vote in national elections, perhaps playing a decisive role in the direction of a political community where they have a limited stake? Even more alarmingly, why should they be allowed to stand for office?

This objection overestimates the dangers. Temporary and unauthorized migrants will only have a significant impact if they are present in large numbers. Similarly, non-citizens will have a large disadvantage in electoral contests if they choose to run for office. If they *are* present in large numbers, the state should give them a proportionately powerful voice given the frequent mistreatment of temporary workers in states that dependent on their labor. Moreover, exercising one's political rights comes with an opportunity cost, as many citizens who choose not to vote attests. Non-citizens are most likely to exercise these rights when they have an important stake in the issues. When they

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have no incentive to do so, they are not likely to participate. Furthermore, in cases where non-citizens might become a powerful political block, we should challenge the justice of a state that depends on the labor of a large number of people who are excluded from the franchise. The presence of large number of people with temporary status or with no status at all tells us a great deal about the real composition of the body politic.

Fifth, perhaps non-citizens have explicitly or tacitly consented to not being granted political rights. This is particularly significant in the case of temporary migrants who are expected to return home at the end of their contract. They are aware that they will not receive political rights, but still accept the terms. David Miller writes with regard to visitors: “In normal cases we do not regard such coercion as problematic because we assume that visitors give their consent to the existing body of law when they arrive in the territory. This preempts the question whether they should be given a voice in decision making.” (Miller 2009: 222)

We should be wary of how much weight we place on consent. Many non-citizens have limited options, so may be willing to “consent” to almost any conditions place upon them. Consent has more weight when parties are allowed input into the rules that bind them. Though visitors consent to obeying the existing body of law, this shouldn’t imply that they are also renouncing any future opportunity to contest it. Furthermore, consent does not address the problem of domination. Just as people cannot consent to become slaves, we cannot morally allow that someone can renounce their power to effective contest decisions that affect them.

A final objection is that the extension of political rights could lead to more restrictive migration policies, leaving people worse off than they would be in the present

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system where the franchise is limited to citizens. As mentioned above, Martin Ruhs and Philip Martin provide evidence for a trade-off between numbers of immigrants allowed and the rights they are given: an increase in rights leads to fewer migrants performing low-skilled jobs, so that “the demand for low-skilled migrant workers is likely to be downward sloping with regard to migrants’ rights.” (Ruhs and Martin 2008: 254) Ruhs and Martin note that Singapore and the Persian Gulf States have high numbers of migrant workers – in Kuwait composing 95 percent of the private sector workforce – with very limited rights. At the other hand of the spectrum, Sweden’s full employment rights for migrant workers stifle any incentive employers have to hire migrant workers: “if migrants have the ‘full rights’ laid out in the ILO and UN conventions, including the right to equal wages and all work-related benefits, their cost will be higher and fewer will be employed.” (Ruhs and Martin 2008: 254)

Ruhs and Martin take account of social and labor rights more generally, but their point also applies to political rights. A legal requirement to extend political rights to new residents would fuel political agendas for limiting migration and possibly lead to yet more draconian measures to prevent unauthorized migration. Many non-citizens may prefer the present arrangement of limited rights to the possibility of fewer work opportunities. In an article on domestic workers in Singapore, Daniel Bell and Nicola Piper argue:

From the perspective of FDWs [foreign domestic workers] and their representative NGOs, the main concerns relate to informal interaction within the home, improved working conditions, and labor rights. The fight for equal citizenship is not the most pressing issue and equal citizenship is not typically

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seen to be the key to alleviating the high level of abuse that FDWs often experience. (Bell and Piper 2005: 203)

This is a serious point and reflects the impracticality in the current political climate of extending political rights to all adult residents. It probably also explains why Hayduk and others have focused on the more palatable local voting rights rather than defending extending the franchise on a national level. Still, it should not lead us to neglect the moral issue of suppressing the freedom of large numbers of people because it increases welfare – at least in the short term. Sometimes we ought to trade off freedom for welfare. However, we need to be clear that we are falling short of our moral and political ideals when we do this and not allow short term expediency to undermine long term justice.

Conclusion

I have argued that we ought to ground the right to have political rights on the neo-republican account of non-domination. Though my focus has been on the political rights of permanent and temporary residents, I believe that the account can be generalized. Any institution that can effectively dominate people in any sphere must allow a genuine opportunity to contest its power. Cosmopolitan republicans such as James Bohman have seized on this insight to re-imagine global and transnational institutions.

Rather than explore this cosmopolitan route, I want to conclude by noting that the fact that people reside in a state makes them vulnerable to domination is an incidental fact, not in itself a trigger for the right to political rights. Are there other situations where people outside of the state's territory are subject to domination by it? In a footnote to his paper "Stakeholder Citizenship and Transnational Political Participation," Rainer Bauböck claims:

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Many people's rights may depend on the actions of an external government, but this need not ground a claim to citizenship and electoral participation. Iraqi citizens' fundamental rights have been deeply affected by U.S. foreign policy, but this does not ground a right of Iraqi citizens to vote in U.S. elections." (Bauböck, 2007: 2422)

This may be true on Bauböck's stakeholder account. The neo-republican would ask whether Iraqi citizens are subject to domination by the U.S. government. I cannot begin to answer this question here, but it is worth reflecting on to further investigate the range and power of the neo-republican freedom.

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³¹ All articles are available through the PSU library.

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