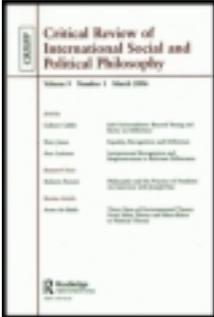


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Political rights, republican freedom, and temporary workers

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I defend a neo-republican account of the right to have political rights. Neo-republican freedom from domination is a sufficient condition for the extension of political rights not only for permanent residents, but also for temporary residents, unauthorized migrants, and some expatriates. I argue for the advantages of the neo-republican account over the social membership account, the affected-interest account, the stakeholder account, and accounts based on the justification of state coercion.

Keywords: democracy; migration; neo-republicanism; political rights

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? In this paper I defend a neo-republican account that bases the right to have political rights 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, p. 52).

I apply this domination-based analysis to argue that migrants who permanently or temporarily reside in the state should receive political rights. Neo-republicans have not devoted enough attention to the conundrum of democratic inclusion. In particular, they have neglected the political status of temporary and unauthorized migrants who are vulnerable to domination, but are not full members of the political community and failed to address the political rights of citizens living outside the state's territory. 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, unauthorized migrants, and some expatriates. The case of temporary residents is particularly telling for the domination-based account as they do not enjoy the social and cultural connections (Rubio-Marín 2000, Carens 2010) or the long-term stake in the community that

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some have argued trigger a right to political rights (Bauböck 2007). Since the primary reason temporary migrants have to claim political representation is domination, a discussion of their status clarifies and strengthens the neo-republican basis for granting political rights.

The paper is structured as follows. The first section clarifies my position and distinguishes the right to have political rights from citizenship. The second section outlines the domination-based account of the right to have political rights and contrasts it with accounts based on affected interests and on coercion. The third section examines other justifications for non-citizen voting and explains how the neo-republican account differs. The fourth section argues that the neo-republican account entails an entitlement of political rights for temporary migrants. The fifth section addresses the case of expatriates, while the sixth argues for the extension of political rights to unauthorized migrants. The final section surveys some major objections to extending political rights to non-citizens.

Some preliminaries on the right to have political rights

Globalization and the international human rights regime have contributed to the ‘unbundling’ of citizenship (Benhabib 2004). It is no longer possible to maintain a necessary connection between citizenship in a territorial state and the right to have rights. Unauthorized immigrants possess human rights and retain their civil rights in many states. Permanent residents normally enjoy civil and social rights, but in most districts lack political rights to vote and run for office. A majority of states and territories allow non-resident citizens to cast their vote from abroad (International Institute for Democracy and Electoral Assistance (IDEA) and Instituto Federal Electoral de Mexico (IFE) 2007).

The increased flow of migrants, capital, and ideas across territories associated with globalization demands the reevaluation of the source of democratic political norms (Raskin 1993). Changes in state sovereignty caused by political, economic, and legal globalization have constrained the state’s power. Cosmopolitans argue that the transnational political, legal, economic, and social rules raise new challenges for political representation. Though states are in practice the guarantors of most rights, political cosmopolitans 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 migration flows.

Though the neo-republican account has implications for supranational forms of political representation (Bohman 2004), my position neither affirms nor rejects political cosmopolitanism. Any political body that has the power to dominate someone can in principle trigger a ‘right to political rights’ claim. I focus on the territorial state since it has the greatest ability

to dominate people within its territory and because its political and legal institutions provide the best available protection against domination by employers, individual citizens, and others.

This requires addressing the rise in international migration. The United Nations Population Division estimates that there were 214 million migrants in 2010, many without any formal and direct political representation in the territory where they reside and some without political rights in their state of origin. I claim that the disenfranchisement of these migrants subjects them to domination in the territories where they reside and that they ought to receive political rights. Furthermore, the neo-Republican account provides a basis for determining why some expatriates should be entitled to vote.

A few clarifications are necessary. First, I aim to establish some forms of domination as a sufficient condition for a right to have political rights, including rights to political participation and to representation at the local and state level. My justification is instrumental: political rights are a necessary means to effectively resist domination. The instrumental character of my argument means that I 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 or by indirect representation). The argument succeeds under conditions where the state retains its capacity to dominate and has a responsibility to protect people from domination by private parties. These capacities and responsibilities are most strongly tied to residence though expatriates may retain relationships that leave them vulnerable to domination. Migrants require local voting rights and the right to vote in state elections (since immigration policy is usually decided at the national level).

Second, 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 freedom of association. Political rights are only effective when combined with legal, political, and social institutions such as independent courts, a bureaucracy that enables communication between citizens and representatives, a free press, 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.

Third, 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 in civil society. Many people also add a further identity-based dimension such as sharing a language, culture, and heritage with co-citizens (Kymlicka and Norman 1994).

The right to political rights is not equivalent to citizenship. Citizenship is a permanent status that ties people to the state which 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 a larger bundle of rights, such as the right to reside in to the territory and return from living abroad. It also includes the right to assistance abroad from the country's embassy and may also be a requirement for some types of public employment.

Citizenship goes beyond the granting of political rights because it signifies a long-term commitment to the community. This may justify more significant barriers to citizenship to ensure this commitment. For example, if we privilege how citizenship is connected to shared identity, then passing an exam testing knowledge of the official language(s), culture, and history may be a reasonable requirement.

Domination and political rights

The central concept in the neo-republican revival is political liberty as non-domination. Philip Pettit understands domination as the 'power of interference on an arbitrary basis' (Pettit 1997, p. 52). Liberals hold that interference is generally bad and justifiable only by weighty reasons. Neo-republicans contend that only *arbitrary* interference limits our freedom. Laws made according to just procedures with proper input from those subject to them do not dominate. Republican freedom is thus a function of the institutions, norms, and laws that regulate the community along with individual opportunities to effectively author and contest them.

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, and the counter-majoritarian condition that prevents majorities from easily amending or repealing basic laws (pp. 173–183). The second dimension is democratic. Even a well-ordered system that meets the requirements of constitutionalism still allows officials to exercise significant discretion. Citizens need to have the power to play an authorial, electoral role and an editorial, contestatory role in decision-making (Pettit 2006). This is partly realized through the election of representatives, but there also must be open channels to communicate with political representatives, the right to access the judicial system, and rights guaranteeing the possibility of public protest.

Though Pettit stresses the 'contestatory' element of his theory in his writings, he recognizes the importance of formal political rights such as the right to vote. People must have the power to elect legislators and executives as well as to avail themselves of the courts. Political rights are a necessary condition for political agency as their absence leaves people vulnerable to abuse in the legal system when they are unable to influence

legislation which binds them. 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.

For this reason, Pettit stipulates that neo-republicanism entails a broad conception of membership: '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, p. 142). Unfortunately, Pettit does not argue in detail for his account of inclusion or consider the possibility that permanent residence should be distinguished from citizenship. Vulnerability to domination is an important factor when considering admission to full membership, but there are other considerations including political stability, cultural identity, and the implications of the right to self-determination for membership policy.

Despite these considerations, neo-republicanism has much more radical implications than realized. Not only does it entail extending political rights to 'more or less permanent residents of the state's territories'; but also it requires that even sojourners *significantly* subject to state domination are entitled to political rights in the absence of good reasons for denying them.

Before proceeding, it is necessary to anticipate a potential confusion. Critics sometimes conflate Pettit's neo-Roman republicanism of liberty as non-domination with a version of republicanism that is sometimes called 'civic humanism' (Lovett 2010a). Civic humanism stresses civic virtue and the importance of active political participation for human flourishing. This contrast is evident in Iseult Honohan's discussion of citizenship rights. She argues that 'the primary basis of citizenship is subjection to a common authority' (Honohan 2009, p. 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' (p. 100) that she sets at three to five years. Her reason for this restriction is that republican citizenship demands active citizenship which in turn requires time to grasp the nuances of politics.

Pettit's neo-Roman conception does not make citizenship conditional on people being good citizens. Rather, it takes the brute fact of vulnerability to domination as grounds for extending political rights and rejects the imposition of a timeline in which people move to a situation free from domination.

Other accounts of non-citizen voting

A discussion of the practice and justification for non-citizen voting helps clarify my account and provides an opportunity to compare the neo-republican account with its alternatives. According to the Non-Citizen Voting Project, more than 40 countries permit some form of alien suffrage.¹ For

example, 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 United States until 1928. It presently exists at the local level 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 fears about extending the franchise.

Ron Hayduk has argued for local non-citizen voting rights in the United States (Hayduk 2004). According to the 2008 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 20–33% of the adult population. Hayduk argues that non-citizen voting is legal in the United States and that it is feasible and moral. Just as African-Americans, women, and youth under 21 demanded the vote and eventually received it, he holds that immigrants should at least be allowed to vote in local elections since they have the same stake in and responsibility for the community's political decisions (Hayduk 2004, p. 508).

There are four major alternative theoretical accounts that might justify extending the franchise. First, many migrants are *de facto* members of the community due to their length of residence. Second, migrants' well-being depends on the policies that affect their interests. Third, migrants have a long-term stake in the community where they live, work, study, and raise families. Fourth, migrants are subject to the coercive force of the law. I consider each of these accounts in turn and contrast them with my domination-based account.

Social membership

One view of democratic inclusion is that it ought to be based on *de facto* social membership established over time by residence in the community (Carens 2005, 2010, Kostakopoulou 2008, Rubio-Marín 2000). The passage of time creates ties with the community; this generates a right to stay and to be put on the path to citizenship. Little more than legal status distinguishes long-term residents and citizens, making it difficult, from a moral perspective, to justify different treatment.

The social membership account combines multiple morally relevant features that might ground an account of political rights. The passage of time alone does little moral explanatory work; rather, residence generates more fundamental considerations such as people's strong interest or stake in retaining ties to the community where they live, work, and raise families. Community ties become deep and perhaps essential aspects of their identity. Also, the long-term presence of people excluded from the franchise

leads to a marginalized class of denizens deprived of a voice in the coercive laws that subject them.

The ambiguities of the social membership account become particularly problematic when we reflect on external voting rights. Should expatriate retain their political rights? Without clarifying the morally salient aspects of social membership it is hard to know what is required. If residents' interests in social ties provide the basis for the granting of political rights, then expatriates who remain connected to the community may have a claim to suffrage. In this case, the social membership account would converge with a version of the affected-interest or stakeholder accounts. If the primary reason for granting long-term residents political rights is reluctance to countenance a class of disadvantaged denizens, then it may well be the case that expatriates should be disenfranchised (López-Guerra 2005). The ambiguity of the moral claims generated by social membership is grounds for considering other accounts.

Affected interests and stakeholder citizenship

Probably the most influential theory for democratic inclusion is the affected-interests account: people should have a say in policies and laws that affect their interests (Dahl 1970, Goodin 2007, Whelan 1983). The affected-interests account immediately faces a challenge: a plausible account of the right to political rights based on affected interests needs to give an account of what sorts of interests entail a right to participate in the political process. It cannot be all interests or even all significant interests. Much of the world has a significant interest in who is the US President, but this should not entitle them to vote in US elections. Business owners have an interest in the tariffs of countries to which they wish to export their goods. Tourists have an interest in the bylaws that maintain the beaches in places they want to visit. These interests are insufficient for an entitlement to political rights.

Rainer Bauböck and David Owen have pointed out that even fundamental interests do not necessarily entitle someone to political rights (Bauböck 2009a, Owen 2012). All that is required is that decision-makers adequately address the affected interest. Sometimes this will require giving the person affected the power to participate in making the decision, but there are often other fair ways of taking interests into account. These include the ability to contest decisions through the legal system, to condemn decisions through representation in other states, or to express disapproval in the public sphere. It must be shown that political rights are the appropriate response for defending an important affected interest.

In contrast, the domination-based account explains why political rights are an appropriate response. Political institutions have a direct responsibility to not dominate and to enact laws and policies that prevent private

domination. Domination is avoided when people enjoy a real opportunity to participate in the decision-making process and to contest decisions. When vulnerability to domination is pervasive within a political community, only political rights secure this opportunity. Even migrants who live under just policies are continuously vulnerable to arbitrary interference.

Bauböck's 'stakeholder view' addresses some of the challenges to the affected-interest account by deriving a claim to political participation from individuals' reliance on a particular polity for their future well-being (Bauböck 2007, 2008). People whose flourishing is bound up in the decisions of a particular polity deserve inclusion. The focus on whole lives rather than particular decisions helpfully demarcates the set of interests that can trigger the entitlement to political rights. Furthermore, the stakeholder view explains why political rights are a necessary response, as they derive from stakeholders' long-term interest in the flourishing of the community's major institutions. The ability to shape these institutions is integral to people's long-term flourishing. Furthermore, the stakeholder view has the advantage of presenting criteria for external citizenship (Bauböck 2007, 2009b).

In practice, the neo-Republican account largely concurs with the stakeholder account with regard to external citizenship, but on different grounds. It differs in refusing to exclude people who do not have long-term ties to the community. The neo-republican account acknowledges the importance of interests: on Pettit's view, 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 arbitrarily to affect people's interests when they do not have the countervailing power of authorship and contestation.

Temporary residents have a lesser stake in the future well-being of the polity where they reside, but nonetheless are vulnerable to domination. The disenfranchisement of immigrants exposes them to xenophobic political entrepreneurs, as well as marginalizes their concerns in political debate and policy (Hayduk 2004, p. 510). In many countries, non-citizens are disproportionately represented in low-income groups. They also have little formal recourse to defend themselves against xenophobic laws and policies. Even if long-term flourishing is not bound up in the polity of residence, the effect on migrants' interests (and the potential violation of their civil and human rights) 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 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

justifies voting rights for resident aliens. 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’ (p. 1106). The neo-republican extends this logic to the national level because of the importance of migrants’ voice in immigration and citizenship policies central to their lives.

Coercion-based entitlements

The third major justification for the right to political rights is based on subjection to coercion (López-Guerra 2005, Miller 2009). Resident non-citizens are subject to the coercive force of law, but are excluded from formal politics. David Miller presents one influential coercion-based account. He holds that coercion generates a stronger claim to inclusion than merely having one’s interests affected because it curtails freedom (Miller 2009, p. 225). Furthermore, he believes that the focus on coercion evades the potential global scope of the principle of affected interests.

Miller is aware that some theorists, most prominently Arash Abizadeh, have used coercion to generate a much broader principle of democratic inclusion (Abizadeh 2008). In response, he distinguishes coercion from prevention. Even though some of our options are blocked by force, we are not necessarily coerced. For example, many laws (e.g., laws against theft) simply prohibit certain actions whereas others force us to act (e.g., tax laws). Miller (2009) 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’ (p. 225).

There are important similarities between the coercion-based account and the neo-republican account, most particularly the shared concern with the use of force to limit people’s options. In fact, Miller’s coercion-based account and the neo-republican account in some respects concur in the case of people living within the state’s territory. The most important difference is that neo-republicans are concerned with potential as well as actual coercion. They consider it a serious wrong to limit someone’s options through preventative laws without providing institutions and opportunities that give people a voice in their legislation. The threat of violence that prevents a slave from escaping is as abominable as the coercion that compels her to work. Indeed, the normative significance of Miller’s distinction 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 occasionally report for jury duty.

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 2005, p. 93).

When options are limited by coercive sanctions, the people who find their freedom restricted deserve an opportunity to contest the decisions. In many cases, this entails extending political rights. But just as the fact that one's interests are affected by decisions does not necessarily entail a right to political rights, there is no automatic inference from the presence of coercion to the entitlement to political rights. What needs to be shown is that political rights are the appropriate response to domination. In this respect, the neo-republican account may differ from Abizadeh's radically inclusive demand that democratically legitimate decisions on coercive policies must include all people subject to them. (It *may* differ because Abizadeh does not explicitly require the extension of political rights to foreigners, preferring instead a form of justification in which all subjected parties are given a say consistent with their status as free and equal agents.) It is not clear that he should advocate for political rights. The right to vote or to run for office are particular entitlements that should generally only be granted when domination is severe, pervasive (i.e., present on multiple dimensions), and frequent. When people live under the state's authority, the threshold of potential domination reaches the point where an equal say in policy becomes appropriate.

The neo-republican concern with potential coercion demands a more generous account of inclusion of expatriates than Miller and López-Guerra allow. Though they may not be directly subject to the state's authority, they often retain sufficient ties to the community that leave them vulnerable to domination.

Temporary worker programs

The extension of political rights to even *permanent* residents strikes many people as too radical. The neo-republican account goes further in requiring that temporary residents 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 factors that might 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.

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. Valeria Ottonelli and Tiziana Torresi argue that temporary migration projects pose a dilemma for liberal inclusivism since they are based on the social and legal exclusion of migrants (Ottonelli and Torresi 2012). 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 prevalent wages and conditions. Temporary migration comes in a bewildering variety of forms, including working holidays for young adults, live-in-caretaker positions for domestic employees, and high-tech jobs for highly skilled professionals. Some jobs are in fact permanent and workers enjoy opportunities to eventually acquire citizenship. Other programs 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 may become *de facto* permanent residents as contracts are extended and families settle. Here I address temporary residents who will return to their homes when their visas expire.² My account should thus not be confused with Michael Walzer's influential discussion of the *gastarbeiter* (Walzer 1983). The *gastarbeiter* were in fact mostly permanent residents who in some cases were born and had lived their entire lives in Germany.

Nonetheless, there are similarities between Walzer's account and the neo-republican argument. Walzer (1983) holds that if people are 'subject to the state's authority ... they must be given a say, and ultimately an equal say, in what that authority does' (p. 61) This would suggest that Walzer recognizes domination as a factor for the extension of citizenship. However, his 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 even for permanent residents or 'privileged guests' such as technical advisors and visiting professors (p. 60).

What ultimately concerns Walzer is oppression and exploitation. 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' (p. 59). Temporary workers confront well-documented abuses, low and unpaid wages, unsafe working conditions, physical and psychological violence, and mandatory separation from family members abroad. These abuses occur most prominently in 'low-skilled' jobs where workers are typically more desperate, have less access to information, less government oversight, and lack resources and options.

Neo-republicans do not set the threshold at actual oppression to trigger political rights; potential interference is enough. '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 (with the possibility of renewal for another three years). Highly skilled workers holding H1-B visas are subject to laws and policies that directly affect their legal status and employment. Anti-immigrant rhetoric in the political arena may expose them to racism. If they have children, they have a stake in school board policies. Also, private companies can dominate their employees and public authorities must take measures to prevent this. Highly skilled engineers working in Silicon Valley in California are not 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 United States.

No doubt the situation of temporary workers in 'dirty, dangerous, and demeaning' jobs raises more urgent moral issues. Highly skilled workers' greater resources and opportunities provide real exit rights that 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. They are more vulnerable to domination due to the high cost they incur by exiting the relationship (Lovett 2010b). These workers suffer not only from domination, but also often from other types of abuse. Temporary visas give employers disproportionate power over workers and serve to limit access to collective bargaining and other forms of protest. Nonetheless, the fact that 'low-skilled' workers are comparatively 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 were relevant to women's entitlement to the right to vote. The neo-republican holds that temporary migrants are vulnerable to domination because they do not possess the means that would enable them to effectively address state power. Political rights give temporary migrants an appropriate voice to respond to laws and policies that demand their obedience.

This argument is vulnerable to two objections. First, we can argue that temporary migrants do not have cause to complain if they are dominated. 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. The final section examines some reasons for permitting the domination of some residents.

Second, my account depends on the empirical claim that state power cannot be contested except by giving people power political rights. It is necessary to argue that there are not alternative mechanisms that would serve this purpose. Plausible alternatives include: (1) non-domination guaranteed by an independent judiciary; (2) a political voice through one's

home state; (3) a voice through 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 their denial need not turn non-citizens into 'pariahs' isolated from the dominant groups in society and treated as inferior (Fiss 1999, p. 19). Non-citizens are protected by an anti-subordination principle that guarantees their social rights and an active and vigilant judiciary compensates for the lack of political rights. Fiss's challenge is buttressed by empirical research showing that existing immigration policies tend to be more liberal than those favored by democratic majorities which may favor restrictive, xenophobic policies (Freeman 2011, Hollifield 1992, Joppke 1998). Migrants may in fact be less vulnerable if they are protected from democratic politics by technocratic policy-makers and judges.

Though judicial protections for migrants are necessary, I do not believe they are sufficient to protect non-citizens. The role of democratic politics on immigration policy is complex. As Etienne Piguet has documented, in Switzerland the most extreme policies have led to the mobilization of ethnic, business, religious, academic, and other opposition and have ultimately been defeated in referenda (Piguet 2006). More importantly, the practices of technocrats acting within the bounds of the law are far from uniformly enlightened. It is unlikely 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 policies that systematically dominate and disadvantage them, though not to the point where they become 'pariahs'. 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. Moreover, the courts can only guarantee equal and impartial treatment under existing law. Political rights are also necessary because of their authorial function of allowing people to introduce new concerns on the political agenda. For example, in the United States, greater public knowledge could lead to popular opposition to immigration policies such as the widespread detention of migrants, including refugees, waiting to have their cases heard (Dow 2004). The extension of political rights to migrants dominated by the state could alter democratic dynamics by bring to popular attention issues that predominately affect excluded communities.

A second alternative is that temporary guest workers receive the necessary political voice through their home state (Walzer 1983). Non-citizens other than convention refugees fleeing state persecution are usually members of another state that purports to represent them. States of origin have obligations to protect their citizens from domination through consular

services and, in the case of temporary migration programs, through programs that educate workers about their rights and responsibilities aboard.

It is a mistake to place too much faith in sending countries to effectively protect their citizens. State powers are limited outside of their territory. This is particularly true of developing states that send workers to more powerful states in the developed world. They typically have few credible threats that they can enforce and states are usually reluctant to interfere in other states' internal sovereignty. Moreover, the presence of a large, unemployed domestic workforce and structure reliance on remittances may provide a disincentive to representing their workers abroad. For example, the Commission on Filipinos Overseas estimates that there were over 8.5 million Filipinos overseas, including 3.8 million temporary workers and another 650,000 unauthorized workers. Though the Philippine government promotes migration and attempts to protect its members, it has enjoyed mixed results (Rannveig, Agunias and Ruiz 2007). In many cases, the primary mechanism that states have at their disposal is the repatriation in cooperation with the host country, an option that workers may consider worse than continuing to endure mistreatment and exploitation.

More crucially, states retain the primary responsibility for enforcing the law and protecting people within their territories. Though sending states have an obligation to do what they can to protect their citizens, their role is indirect: they can advocate for changes to temporary worker policies and offer to repatriate people suffering abuse, but they neither author nor adjudicate the law. The focus on the responsibilities of sending states distracts from the fact that the state of residence has the greatest capacity to dominate and the strongest responsibility to protect people under its jurisdiction. States of origin have an obligation to mitigate the unjust coercion of their citizens, but temporary workers need a voice to directly contest their treatment to the authority that subjects them.

A third 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 have an interest in temporary migrants receiving prevailing wages and they may also share political and cultural ideologies with migrants. Nonetheless, 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.

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 that they had little power and their function was largely limited to providing information (Anderson 1990). Though unions and other organizations have a democratic role in taking up the causes of temporary

workers, we should not expect them to substitute for people representing themselves.

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. H.R.4437 had many harsh measures, including making it a felony to be present in the United States without documents, criminalizing the assistance of undocumented aliens (including charitable assistance), and increasing the discretion of immigration judges. It led to protests by millions of people holding placards reading 'We Are America' and 'Today we March, Tomorrow we Vote.' Glover (2011) claims that 'political voice *matters* to these individuals, despite their varying proximities to formal membership' (p. 15).

Nonetheless, Glover does not advocate extending political rights to non-citizens. Instead, non-citizens need to create 'radically inclusive political spaces' that allow political contestation and democratic engagement. 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' (p. 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' (p. 25).

Without the power of the right to vote and run for office, we should be skeptical about any large-scale change with formal political rights. Historically disenfranchised groups have always sought the vote (Keyssar 2009). Glover's proposal supplements, but does not conflict with my account.

Given the deficiencies of these alternative mechanisms for protecting temporary migrants from domination, a natural response is to express skepticism that the extension of political rights will do any better (Ottonelli and Torresi 2012, p. 219, cf. Bauböck 2011, p. 683). Frankly, political rights in isolation will not be sufficient to mitigate domination, but they contribute to the process. The symbolic power of acknowledging an entitlement to political participation is crucial, since it provides recognition of the need to legitimize policies to temporary workers. Temporary workers are entitled to an authorial voice in policy and coercive laws must be justified to them with the same rigor as they are justified to citizens. The extension of political rights symbolizes the equal importance of temporary workers before the state. Though the direct effect of political rights may not be visible in popular elections, they play a necessary role in combating domination in conjunction with other forms of democratic agitation and legal recourse.

The political rights of expatriates

A general account of the right to have political rights also has implications for the rights of people living outside the territory. It should tell us when expatriates are entitled to vote and under what circumstances they should forfeit this right. It might seem that neo-republicans should concur with López-Guerra that people outside of the state's jurisdiction should lose their political rights. However, López-Guerra is mistaken that non-residents are not subject to a state's decisions even if the laws will only apply to the person if she returns (Owen 2010). The neo-republican account of domination is concerned both with actual interference and potential interference, so expatriates may well require political rights if policies that affect their options are to be legitimate.

Nonetheless, there is no automatic connection between political rights and domination. Rather, we need to explain why political rights are the appropriate response to coercion. Residents in a state, regardless of their legal status or the duration of their stay, are directly subject to the sovereign's political, administrative, and legal authority. In the neo-republican account, the state has an obligation to track the interests of people subject to its power through mechanisms such as popular elections (Pettit 1999, p. 173). The extension of political rights is justified because they are the means for equally and effectively addressing the coercive agency of the state.

The case of expatriates is less clear and depends on the degree and the severity of potential state domination. Not all potential domination requires the extension of political rights or the neo-republican account would entail a global franchise of all competent adults. Rather, political rights should be extended to those who retain long-term interests in the community and therefore have a real connection that leaves them vulnerable to domination. People who have permanently exited the community and severed ties with their former compatriots have no entitlement to political rights, whereas temporary migrants should possess the same rights as residents.

Though it is difficult to precisely identify conditions in which the level of domination mandates the extension of political rights, a neo-republican account in practice (but not in principle) concurs with stakeholder citizenship on external voting rights: objective biographical circumstances can be used to identify people vulnerable to levels of domination that trigger the right to political rights (Bauböck 2007, p. 2421). But unlike stakeholder citizenship, it is subjection to pervasive coercion that justifies the retention of political rights.

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.

The stay of tourists is usually shorter than that of temporary migrants and the state is unlikely to exercise domination over key aspects of their lives such as work and family. In some cases arguments similar to those put forward for temporary workers may apply, but most tourists have little interest in affecting state policies – exercise of their exit rights would be the preferred way to escape domination. But what should we say about migrants whose presence is not sanctioned by the state? Though they are subject to the state's coercion, many people consider it absurd to extend them political rights (e.g., Goodin 2007, p. 42). 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 seems committed to this absurdity. The neo-republican should bite this bullet and argue that not only is allowing unauthorized migrants to vote *not* absurd, justice requires it.

The neo-republican account provides *prima facie* support for the extension of political rights to unauthorized migrants. 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. There is good reason to think that police officers should not enforce immigration law because it undermines community trust and makes it more difficult to investigate more serious crimes (Carens 2008, pp. 167–168, Carens 2010); similarly, we can erect a firewall between the political process and immigration enforcement.

The presence of unauthorized migrants is often unofficially sanctioned and structurally integrated into the economy. People advocating restrictive migration policies too often 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, this focus neglects interconnections in the global economy driven by the developed world and the role of host countries in promoting migration (Massey *et al.* 1993, Sassen 1999). States' large unauthorized populations are often present because these migrants were welcomed at some point in time.

Even where the state has no responsibility for the presence of unauthorized migrants, the seriousness of overstaying a visa or crossing a border without official permission is a minor administrative offense in the comparison with continued state domination. On the neo-republican view, states have a moral responsibility to regularize the status of at least long-term unauthorized migrants due to their extreme vulnerability and the lack of realistic and humane alternatives. There may be cases in which the

deportation of unauthorized migrants is justifiable (e.g., upon entry to a territory without a valid visa). However, the deportation of a substantial population of vulnerable, long residing, unauthorized migrants involves a disproportionate use of coercion that neo-republicans should reject.

More radically, the neo-republican concern with domination supports extending these residents political rights. Kamal Sadiq has studied ‘illegal immigrant’ voters in India, Malaysia, and Pakistan who ‘are indistinguishable from locals’ (Sadiq 2011, p. 234) Developing states often lack the resources and institutions to rigorously authenticate citizenship, permitting many non-citizens to acquire political rights they are not formally entitled to. Sadiq recognizes the challenge this poses to traditional conceptions of citizenship, but argues that illegal immigrant voting represents a bottom-up, organic approach that may subvert top-down, state control of the franchise and open up more legitimate forms of political community (p. 247).

Though developed states are much better at preventing people not entitled to membership from acquiring formal status, the division between authorized and unauthorized residents is closer to the ‘illegal immigrants’ Sadiq describes than often realized. Unauthorized migrants live, work, and participate in civil society, in many cases over years while suffering frequent demonization by populist politicians and the press. The continuous exercise of state power over their lives gives rise to an entitlement to a political voice regardless of their legal status.

Some objections

The plausibility of the neo-republican account depends on its ability to meet objections that attempt to restrict voting rights to citizens, so 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 people are disloyal and there is no evidence that non-citizens are less loyal than citizens to their state of residence.

A second criticism holds that non-citizens do not have the prerequisite knowledge to vote (Renshon 2008). Again, it is not clear that non-citizens are less knowledgeable than citizens. They are likely to be more knowledgeable of policies that threaten to dominate them. Moreover, knowledge requirements, if taken seriously, would exclude a good number of native-born citizens from the franchise. Finally, the solution to ignorance is education, not political exclusion.

Third, 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 (Miller 2009). We should be wary of how much weight we place on consent. Many non-citizens have limited options and are willing to consent to almost any conditions placed 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 should not 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 legitimately consent to become slaves, we should not allow people to renounce their power to effectively contest decisions that affect them.

Fourth, 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 (Fiss 1999). This underestimates the obstacles to acquiring citizenship. Citizenship can only be acquired after a number of years which is a long time to be dominated by the state without a formal say in policy. 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 more than voting rights. In the case of temporary residents, the acquisition of citizenship is not necessarily desirable or feasible. Nonetheless, they require protection from the state through their power to exercise their political rights.

This last claim leads to an important fifth objection: does not the extension of political rights to non-citizens, especially transients, risk the injustice of dominating citizens and other long-term residents? Temporary workers' plan to exit the community leaves them less vulnerable to domination than long-term residents: a much shorter period of their lives will be governed by decisions that fail to track their interests. As I argued above, not all potential coercion triggers a right to political rights. Nonetheless, given that temporary residents are potentially dominated for the duration of their stay on most aspects of their lives including work and family, they do meet the requisite threshold. Beyond a certain threshold, it is wrong to claim that some people should have more rights because they face more potential domination.

What about the claim that the extension of the franchise might lead to the domination of long-term residents by transients? This risk seems to me small in comparison to the very real domination suffered by temporary workers and others excluded from the franchise. Exercising one's political rights comes with an opportunity cost. Non-citizens are most likely to exercise these rights when they have an important stake in the issues. Temporary and unauthorized migrants will only have a significant impact if they are present in large numbers and in most cases their eventual exit from the community will have no greater impact than the migration within states that

occurs when people move between cities. In places where much of the labor force is on a temporary contract and workers could have a major political impact, we should challenge the justice of migration policies that demand the labor of a large number of people excluded from permanent residence and the franchise.

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 system where the franchise is limited to citizens. There is 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 (Ruhs and Martin 2008, p. 254). Ruhs and Martin note that Singapore and the Persian Gulf States have high numbers of migrant workers – in Kuwait composing 95% 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 incentives for employers to hire migrant workers and contribute to less migration.

Ruhs and Martin consider social and labor rights, but their point also applies to political rights. A legal requirement to extend political rights to new residents could 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.

This objection shows 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 possibly 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 freedom for welfare, but 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. If the arguments of this paper have been compelling, neo-republicanism shows that justice requires extending political rights to non-citizens residing within the state.

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Notes

1. See <http://www.immigrantvoting.org/> (accessed 25 July 2012).
2. Lenard and Straehle (2011) argue that just temporary work programs must provide a path to citizenship. They base their argument on a foundational principle of political inclusion and on the exploitation of guest workers through their exclusion from full membership. My argument differs in focusing on political rights rather than on citizenship and it rejects the justice of allowing a period in which temporary workers are excluded from receiving political rights.

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