



CITIZENSHIP AND THE FRANCHISE:

THEORETICAL, LEGAL, AND EMPIRICAL PERSPECTIVES

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ABSTRACTS

PANEL ONE

Lorenzo Piccoli (EUI), “Regional Citizenship and the Franchise”

The inclusion of immigrants into the political suffrage has become a crucial concern for many governments in Europe. Some states have sought to tighten the conditions for immigrant enfranchisement, while others have pioneered new ways to include immigrants in the political body of the state. However, while enfranchisement is usually characterized in state-centric terms, in both federal and devolved states this is a key issue at the level of the sub-state regions too. Through an empirical comparison of different regions in Europe, my paper seeks to answer the questions (1) how relations between central and regional governments have been organized around the issue of immigrant enfranchisement and (2) under what conditions this has led to institutional convergence and under what conditions this has led to divergence instead.

Ruvi Ziegler (Reading), “Between Scotland and Palestine: Participation in Transformative Referenda and Putative Citizenship”

All democratic states set eligibility criteria for participation in elections of their institutions of government. Broadly speaking, these criteria fall into two categories: individual competence and membership of the state’s political community. The latter criterion is manifested by ubiquitous exclusion of non-citizen residents from national (and oftentimes also *sub-* or *supra-*national) elections. Concurrently, some states impose *residency* requirements which disqualify their expatriates (non-resident citizens) during part or all of their period of absence. Stake-holding across time and ties features prominently in jurisprudential and theoretical discourses surrounding disenfranchisement of non-resident citizens (and, in parallel, of non-citizen residents). However, in the main, it is assumed that most of the state’s citizens reside therein *and* that the geographical boundaries of the state are stable. Thus, electoral processes affect the governance of an existing political unit, to which expatriates *qua citizens* retain the internationally

recognised right to return. A current example may be the decision of the German Federal Constitutional Court to permit participation of German expatriates in Federal Elections even if they have *never* lived in the country. In contradistinction, the proposed paper will address the constitutive roles of eligibility of non-residents to participate in electoral processes which (may) *transform* political and geographical borders. It will do so in the light of two contemporary case-studies. The *first* case-study concerns the creation of a new country seceding from an *existing* country. Participants in the 18 September 2014 Scottish independence referendum will be asked whether Scotland should become an independent country. The non-residents concerned are citizens of the United Kingdom, formerly resident in Scotland, who will be electorally excluded (according to Section 2 of the Scottish Independence Referendum (Franchise) Act). The *second* case-study concerns the creation of a new country whose prospective citizens are either stateless or citizens of other *unrelated* countries. The Palestinian President Mahmoud Abbas announced in an interview that, following the conclusion of any agreement between Israel and Palestine, a referendum will take place (while refraining from specifying its eligibility criteria). The non-residents concerned are members of the Palestinian Diaspora who could either become citizens of Palestine or eligible to become citizens thereof. Stake-holding is evident in both scenarios: these referenda may determine the very existence of new countries, with ensuing ramifications for citizenship-contingent privileges of individual electors. Nevertheless, extending the franchise beyond the polity's (prospective) geographical boundaries gives rise to considerable conceptual and practical challenges.

PANEL TWO

Asli Selin Okyay (EUI), "The Politics of External Voting within the Country of Origin - Expatriates Context: The case of Turkey"

Turkey has become a country of emigration starting with the waves of labour migration in the 1960s and continuing outflow of its citizens in the following decades. First attempts to pass legislation aiming to enfranchise overseas Turkish citizens date back to 1964. Yet, the 2014 presidential election will be the first occasion where external citizens will exercise their right to vote from their countries of settlement. The paper first examines political processes through which the franchise has been legally and practically extended to overseas citizens and particularly asks which factors and conditions have shaped the process. Second, it aims to evaluate the outcome by asking whether or not Turkey's enfranchisement of its non-resident citizens by itself can be considered as an improvement in terms of participatory democracy and representation.

Regarding the first question, I argue that both domestic and transnationally interconnected factors have been important in shaping the process. Main domestic factors have been: (i) differing expectations of political parties from opening the political field to non-resident citizens; (ii) the degree of institutional confidence in the organisation of elections without jeopardising the principles of free and secret suffrage. The Turkish case

also illustrates that, especially when external voters are concentrated in a single host-state, that state's facilitating or impeding attitude stands out as an important factor affecting the home-state's capacity to extend the franchise.

Vis-à-vis the second question, it can be claimed that at first instance, the extension of political rights to overseas citizens reflects a more inclusive interpretation of the polity. However, such extension should be considered within the context of specific political structure, electoral design and democratic deficits of the home-state. Seen from that perspective, Turkey's external voting legislation in its current form seems to be tailored to advantage mainstream political parties, and to "exclusively include" their voters abroad.

Milena Tripkovic (EUI), "Drawing the Borders Within: On the Nature and Purpose of Criminal Disenfranchisement"

The paper seeks to provide an understanding of criminal disenfranchisement - to discuss the type of institution it is and the kinds of reasons that are put forward by policy-makers by way of its justification. While it is commonly assumed that criminal disenfranchisement constitutes (additional) punishment imposed on guilty offenders, I argue that, unlike punishment, which targets limited and carefully chosen rights of criminal offenders but ultimately does not question their membership rights, disenfranchisement undermines the very status of citizenship. Hence, while (regular) punishment can be thought of as creating distinctions between first and second-order citizens, which is inevitable due to its nature, disenfranchisement aims at creating 'non-citizens' - its nature is thus distinct and different from punishment and its imposition needs further justification.

Connecting this argument to examples of disenfranchisement norms in Europe, I also aim to interpret the ideas that policymakers have of the types of criminal offenders that 'deserve' to be disenfranchised. The comparative analysis traces particular views on those worthy of 'non-citizenship' - all offenders; only 'serious' criminals; those committing anti-state crimes; those considered 'immoral'. The array of solutions suggests quite different views to what 'good citizenship' requires and I conclude by examining the normative appeal of each of these approaches.

Rutger Birnie, 'Citizenship and the disaggregation of non-deportability'

The unconditional right of residence and the franchise are arguably the remaining cornerstones of citizenship in the age of its 'disaggregation'. However, even these two fundamental privileges of modern liberal-democratic citizenship show signs of disconnection from this status. It has already been noted and extensively discussed that the demos and the citizenry decreasingly overlap in liberal democracies: on the one hand, citizens who reside abroad are regularly excluded from the franchise, while certain

groups of non-citizen residents are increasingly granted the vote in local and sometimes national elections. There has been much less attention to the fact that the plausibly more fundamental of the two core citizenship privileges, the secure, permanent and unconditional right to reside on and (re)-enter the national territory, equally shows signs of detachment from citizenship. On the one hand, some non-citizens have been granted enhanced legal protections against deportation that have come to resemble those of citizens. The most obvious examples of this are family migrants and refugees with a legally recognised right to non-refoulement. In the context of the member states of the European Union, moreover, nationals of other member states, beneficiaries of subsidiary protection and even long term resident third country nationals now enjoy at least a quasi-secure status of non-deportability. On the other hand, there appears to be an incipient trend in a number of countries to make it possible to strip citizens of their protection against deportation, for example in the case of dual citizens who are thought to pose a security threat, or by refusing to readmit citizens living abroad. This paper will trace and analyse these developments, and ask whether we can indeed speak of a trend that sees a growing disconnect between the status of non-deportability and that of citizenship. Having addressed this empirical question, it will then turn to the normative questions that this presumed trend of disaggregation raises, in terms of problems of both over- and underinclusiveness. Are either or both of these developments normatively desirable? Or are there reasons to keep a strong link between citizenship status and non-deportability? What can we learn from the debate about the disaggregation of the franchise in answering these questions, and how are the two debates connected?

PANEL THREE

Jaap Dronkers (Maastricht), “Do Liberal Citizenship Policies Decrease the Citizenship Premium? Assessing the Relation between Naturalization and Employment among Female Immigrants in 16 European Destination Countries”

Does citizenship or a liberal citizenship policy promote socio-economic integration of immigrants in Europe, not only of the male but also the female immigrants? In this paper we assess both claims for female immigrants in Europe: 1. citizenship promotes socio-economic integration; 2. making citizenship relatively easily available to immigrants defeats this purpose of using naturalization as a tool to further economic integration. Most of the literature of economic integration of migrants limits itself to males. We extend this line of research to females, which might produce different outcomes due to the gendered roles of housekeeping and breadwinner. We analyze the relations between citizenship and labour market participation or employment of female immigrants in 16 European destination countries with the European Labour Force Survey (LFS) and the ad hoc module 2008. (see for an analogous analysis for males www.eui.eu/Personal/Dronkers/English/Prokic1.pdf). We find only a positive relation between citizenship and labour market participation for female migrants from non-western countries or who migrated for non-economic reasons. But we do not find

any significant effect of citizenship in relation to liberal citizenship policies (in contrast to male migrants). Citizenship has a positive effect on labour market participation of female migrants if the native female participation in the destination countries is high, and citizenship has a negative effect on labour market participation if the native female participation in the destination countries is low. We do not find a positive relation between citizenship and employment for female migrants or any relation between liberal citizen policy, citizenship and likelihood of employment (again, in contrast to male migrants). Openness of labour markets for female migrants (lower employment protection; participation and employment by native females) seems more important for their socio-economic integration than citizenship or citizenship policies.

Constanza Sanhueza Petrarca (Mannheim), “The Immigrant Electorate in Western European Democracies”

As a consequence of mass immigration and the liberalization of citizenship regimes an ever-growing proportion of Western European electorates are first or second generation migrants. This paper investigates whether immigrant voters give overwhelming support to centre-left parties, and why this is the case. Does the immigration background overrides other social cleavages such as social class? Using the European Social Survey (2010) the voting behaviour of immigrant and native voters is examined across Western European democracies. The research shows that in general immigrant voters are more supportive of centre-left parties than native voters. Furthermore, considerable homogeneity is found in patterns of immigrants’ electoral behaviour and the predictors of that behaviour across countries.

Bouke De Vries (EUI), “Are Citizenship and Settlement Tests Compatible with Liberalism?”

Over the past decade, various European countries have made the acquisition of residence rights and citizenship for particular groups of (most non-Western) immigrants conditional on the passing of admission and citizenship tests. Many theorists maintain that these tests are illiberal to the extent that they (i) prevent immigrants from becoming residents or citizens, (ii) ask them questions about their personal beliefs and values, and/or (iii) quiz them over cultural facts that are not related to the politico-legal structure of the host country. Whilst acknowledging that admission and citizenship tests can be incompatible with liberalism, as well as that there is a liberal presumption against these tests, this paper claims that this incompatibility does not apply to all kinds. Moreover, it claims that the potential of different currents of liberalism to justify these tests is generally understated in academic circles; I will show that under certain conditions, liberals can accept admission and citizenship tests that exclude immigrants with illiberal comprehensive doctrines (in the case of perfectionist liberals) or unreasonable comprehensive doctrines (in the case of political liberals). Finally, it shall be argued that tests that quiz immigrants over cultural specifics that are not related to the host country’s politico-legal structure are always problematic from a liberal perspective, but that tests that ask immigrants about their personal beliefs and values can be justified from a perfectionist liberal perspective

PANEL FOUR

Derek Hutcheson (Malmö), “The enfranchisement of Nonresident Citizens: The gap between entitlement and accessibility, and its implications”

There are various normative bases on which the franchise can be based, ranging from affectedness to subjectedness to stakeholding. In practice, most European states base their entitlement to vote on a combination of citizenship and residence. The enfranchisement of non-resident citizens was once rare but is now increasingly commonplace, and all EU states allow at least some of their non-resident citizens to vote at some level. However, there is considerable variation in the scope of this entitlement (which non-resident citizens, at which levels), the accessibility of these rights (obstacles to voter registration and the ease of casting a ballot), and the extent to which non-resident citizens are ultimately represented in the political system. This paper examines the interplay of these three factors and exemplifies the ideal types within the 28 states of the EU.

Samuel Schmidt (Lucerne), “The Immigrant Inclusion Index (IMIX): A Tool for Assessing the Democratic Deficit of Established Democracies with Respect to the Electoral Inclusion of Immigrants” (co-authored with Joachim Blatter and Andrea Blättler)

In this paper, we develop a tool to comparatively assess and evaluate the electoral inclusion of alien residents. With reference to both liberal and republican theories of democracy, we argue that in times of transnational migration not only citizens but all non-transient residents should have access to voting rights if established democracies want to retain their full legitimacy. Voting rights for alien residents can be granted either by access to citizenship or by alien enfranchisement. Based on a conceptual specification and an operationalization of these two pathways to inclusion, the resulting *Immigrant Inclusion Index* (IMIX) allows us to evaluate relevant laws and legal procedures (the *de jure* aspect) as well as the realities in respect to the actual distribution of voting rights (the *de facto* aspect). Throughout the specification and operationalization of our index, we adhere strictly to what we characterize as a normative-functional logic of concept formation, and point to its distinctive qualities as opposed to the dominant causal logic. An analysis of 24 European democracies reveals that all countries under scrutiny perform better with respect to granting voting rights via access to citizenship than via alien enfranchisement. Overall, however, we find evidence that points to a serious democratic deficit of many European countries with regard to the electoral inclusion of their immigrant population. For instance, Austria and Switzerland display degrees of electoral exclusion that seriously question the democratic legitimacy of their political rule over immigrants subjected to their laws.