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A MULTILEVEL PUZZLE: MIGRANTS' VOTING RIGHTS IN NATIONAL AND LOCAL ELECTIONS<sup>1</sup>

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## ABSTRACT:

How does international migration impact on the composition of the *demos*? Constitutional doctrines and democratic theories suggest contrasting responses: an *insular* one excludes both non-citizen immigrants and citizen-emigrants; a *deterritorialised* one includes all citizens wherever they reside; a *postnational* one, all residents and only these. This article argues that none of these predicted responses represents the dominant pattern of democratic adaptation, which is instead a *level-specific expansion* of the national franchise to include non-resident citizens and of the local franchise to include non-citizen residents. We demonstrate this by analysing an original dataset on voting rights in 31 European and 22 American countries and outline a level-sensitive normative theory of citizenship that provides support for this pattern as well as a critical benchmark for current franchise policies. Our findings can be summarised in two inductive generalisations: (1) Voting rights today no longer depend on residence at the national level and on citizenship of the respective state at the local level; (2) Voting rights do, however, generally depend on citizenship of the respective state at the national level and on residence at the local level. We call these the patterns of franchise expansion and containment. The former supports the idea of widespread level-specific expansion of the franchise and refutes the insular view of the *demos*. The latter signals corresponding level-specific restrictions, which defeats overgeneralised versions of deterritorialised or postnational conceptions of the *demos*. In order to test how robust this finding is, we analyse cases where the dominant patterns of expansion have been resisted and where unexpected expansion has occurred. With regard to the former, we identify constitutional and political obstacles to voting rights expansion in particular countries. With regard to the latter, we show that even where national voting rights have been extended to non-citizen residents, containment remains strong through indirect links to citizenship.

KEYWORDS: Immigrants; Emigrants; Voting rights; Europe; Latin America

## INTRODUCTION

International migration impacts on state populations in two ways: immigration adds non-citizens to the resident population and emigration adds non-residents to the citizenry. The resulting incongruence between resident and citizen populations depends not only on the size of migration but also on the stickiness of citizenship status, since the latter does not automatically change with taking up residence abroad. Citizenship laws determine the discrepancy through conditions for loss of a citizenship of origin through renunciation or withdrawal and conditions for acquisition of host country citizenship through naturalisation for first generation immigrants and *ius sanguinis* or *ius soli* for their descendants.

The disjuncture between the two types of state populations is recognised and regulated in international law through combining a basic right of states to territorial jurisdiction over all residents with their right to offer diplomatic protection to their nationals abroad and their duty to readmit them. International law has, however, very little to say about the impact of migration on the composition of the *demos*, i.e. the population that enjoys voting rights.<sup>2</sup> While equal voting rights for women and other formerly disenfranchised categories have become enshrined in human rights conventions, the inclusion of non-citizens and non-residents has been largely left to democratic self-determination.<sup>3</sup> This has produced different types of “discrepant electorates” (Caramani and Strijbis 2013) across democratic states.

The traditional democratic answer to the migration challenge is that the *demos* consists of all adult citizens who reside in the territory and only of these. This “insular” view of the *demos* implies that both non-residents and non-citizens should never be granted the right to vote. By contrast, constitutional doctrines and democratic theories have increasingly defended an “expansive” conception of the *demos*, although their views of how the *demos* should adapt to the challenge of migration are often at odds with each other. Constitutional Courts in Austria and Germany have struck down laws that denied or restricted voting rights of citizens residing abroad<sup>4</sup> as well as bills that would have introduced local voting rights for non-EU citizens.<sup>5</sup> These judgments reflect a “deterritorialised” view of the *demos*, according to which citizenship is both a necessary and a sufficient condition for the franchise. Democratic theorists have often defended the opposite view that all those and only those subjected to the laws have a claim to political representation (López-Guerra 2005, Abizadeh 2008, Beckmann 2009, Owen 2012). This principle suggests a “postnational” view of the *demos* according to which residence rather than nationality should determine voting rights.

In this paper we argue that none of the views summarised above matches the actual pattern of democratic responses to the migration challenge, which consists in level-specific expansion of the *demos*: Non-residents tend to be included in the national franchise and excluded from the local franchise. Conversely, non-citizens are often included in the local

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<sup>2</sup> We use the terms franchise or suffrage as synonyms for the right to vote and distinguish them from candidacy rights, which are sometime also called “passive voting rights”.

<sup>3</sup> Exceptions are Art. 41 of the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, promoting external voting rights of migrants and Art. 6 of the 1992 Council of Europe Convention on Participation of Foreigners in Public Life at Local Level, foreseeing local voting rights for non-citizens. Both Conventions have had rather limited success.

<sup>4</sup> Austria VfSlg 12.023/1989, Germany BVerfG, 2 BvC 1/11, 4 July 2012

<sup>5</sup> Germany BVerfGE 83, 37, 31 October 1990, Austria VfSlg 17.264/2003

franchise, but not the national one. We argue that this empirical pattern is compatible with a normative theory that acknowledges the multilevel structure of democratic polities exposed to migratory movements. Our analysis is based on an original dataset for 53 democratic states in Europe and the Americas. What we find can be summarised in two inductive generalisations: (1) Voting rights today no longer depend on residence at the national level and on citizenship of the respective state at the local level; (2) Voting rights do, however, generally depend on citizenship of the respective state at the national level and on residence at the local level. We call these patterns of expansion and containment. The former supports the idea of widespread level-specific expansion of the franchise and refutes the insular view of the *demos*. The latter signals corresponding level-specific conditionalities, which defeats overgeneralised versions of the deterritorialised or postnational conceptions. Diagram 1 illustrates these level-specific patterns.

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Insert diagram 1 about here

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Our main goal in this article is to provide descriptive evidence and normative support for the level-specific expansion of the *demos*. We do not offer an explanatory theory of *demos* expansion that would have to test hypotheses about norm diffusion and political actors' interests. In order to bolster the salience of our descriptive account we will, however, pay special attention to negative cases where expansion has been resisted or where we find an unexpected form of expansion (i.e. national voting rights for non-citizens or local voting rights for non-residents). At the end of the essay we suggest how a level-sensitive "genuine link" theory can provide normative support as well as critical benchmarks for the observed prevalent pattern of expansion and containment.

Our approach is original in three ways. First, we distinguish between national and local elections and argue that there are contrasting empirical patterns as well as normative principles for each level. Second, we transcend the geographical divide of the discipline and show how comparing countries in Europe and the Americas beyond the idiosyncrasies of their respective regional environments yields fruitful insights. Third, our approach puts equal emphasis on non-residents' and non-citizens' voting rights and examines for the first time how they combine. The social and political science literature on migration and citizenship is still mostly separated into a dominant focus on immigrants and their relation to host countries and a smaller but growing field of diaspora studies analysing the relation between emigrants and their countries of origin. This separation is problematic for understanding citizenship both from the migrant and the state perspective. International migrants are, by definition, at the same time immigrants and emigrants. Any study of migrant citizenship should therefore take into account migrants' relations to both sending and receiving countries. Similarly, nearly all democratic states experience both immigration and outmigration and citizenship as well as electoral laws reflect this dual experience. As we will see, in certain cases policies towards emigrants directly influence those towards immigrants or vice versa.

The article is divided into five sections. After this introduction the next one introduces our datasets and coding methods and presents the general trends of expansion of the franchise to both non-residents and non-citizens. While our comparative overview shows considerable support for a level-specific expansion of the suffrage, the outcome is by no means universal. In Sections 3 and 4 we therefore turn to deviant cases: Section 3 discusses instances where expansion failed to materialise as a result of constitutional or

political hurdles. Section 4 examines those rare cases where expansion occurred at unexpected levels and shows how these exceptions rather confirm the rule that citizenship is a condition for the national franchise and residence for the local one. In the fifth and final section we ask whether the expansion of the franchise can be supported by democratic principles of inclusion and which, among the possible combinations of voting rights that we study empirically, should be normatively preferred.

## EXPANDING THE FRANCHISE BEYOND CITIZENSHIP AND RESIDENCE

Our original dataset covers all European states that belong to the European Single Market apart from Liechtenstein, i.e. the 28 Member States of the European Union, Norway and Iceland, which participate in the European Economic Area, and Switzerland whose citizens have the same rights as EEA nationals. In the Americas we include all countries apart from the Caribbean island states. Although we will sometimes refer to cases outside our set of 53 states, focusing on Europe and continental America makes sense for studying how democracies adjust the boundaries of the *demos* in response to migration. Most countries in our set have experienced large scale immigration or emigration and have been stable democracies for several decades. These criteria might suggest including also Australia and New Zealand, but full coverage of (Western) Europe and (continental) America allows us better to compare continental patterns generated by shared history and diffusion processes. We draw extensively on the EUDO Citizenship collection of electoral laws, country reports and a comparative typology of restrictions of the franchise for resident citizens, non-citizen residents and non-resident citizens (Arrighi, Hutcherson and Piccoli 2015).<sup>6</sup> The quantitative part of our analysis is based on a new set of indicators, the coding rules for which are fully explained in Appendix 1.

Our indicators cover only the right to vote and not candidacy rights and consider only *eligibility* for the franchise, i.e. the legal definition of the category that is entitled to vote, leaving aside questions of *access* (voter registration and voting methods). We do not differentiate between types of elections (legislative, presidential/mayoral, and referendums). Wherever non-citizens or non-residents enjoy the franchise in one type of election at a given level, we count this as a case of expansive citizenship. Finally, we do not consider issues of voter representation, i.e. how votes are aggregated into parliamentary seats in legislative elections, or outcomes in presidential and plebiscitary elections. All these dimensions are important for determining the *inclusiveness* of voting rights. They are, however, secondary for our present purpose, which is to determine the external *boundaries* of the *demos*. Inclusiveness of the *demos* is a matter of degree, while membership in the *demos* is a dichotomous variable. In other words, even if non-citizens and non-residents face many obstacles for casting their vote and have unequal representation compared to resident citizens, the fact that they have an equal right to vote still signals an expansion of the *demos* beyond the insular conception.

Our dataset consists of two basic variables: non-citizen franchise and non-resident franchise. The former refers to voting rights for anybody who is not a citizen of the country where the election is held; the latter to voting rights of citizens who do not have a

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<sup>6</sup> Available at <http://eudo-citizenship.eu> [last accessed 12 May 2016]. The EUDO CITIZENSHIP observatory has also published ELECLAW indicators measuring the inclusiveness of electoral rights (EUDO CITIZENSHIP observatory 2015, available at <http://eudo-citizenship.eu/electoral-rights/electoral-law-indicators> [last accessed 12 May 2016]). At the time of writing, these were only available for the 28 EU member states. For the present paper, we have therefore coded simpler binary indicators that serve well enough for our purpose.

residence in the country and who can vote from abroad, counting thus as negative cases those where only registered residents can vote from abroad or where non-residents can cast their vote only inside the country. For each of the two variables we distinguish further whether the respective voting rights can be exercised at local level only, at national level only or in both local and national elections. We rule out regional elections at substate level (provinces) as well as at supranational level (for the European, Andean, Mercosur and Central American Parliaments) for two reasons. First, not all state territories are subdivided into regions where democratic elections are held and not all states are members of supranational unions with parliaments, whereas all states in our set have local elections. Second, the franchise in substate regional elections is often regulated by regional rather than national law. We would thus find that in the same state some regions include non-resident voters or non-citizen voters whereas others don't.<sup>7</sup>

The final distinction is between restricted and unrestricted voting rights. As explained above, there are many possible restrictions of the franchise that we do not take into account. In addition to those already mentioned, we do not count restrictions that apply equally to resident citizen voters (such as exclusion of criminal offenders or mentally handicapped persons). Yet, for our purpose, it is essential to know whether a non-citizen franchise is fully disconnected from citizenship or still depends on having the nationality of particular other countries, in which case we code it as restricted. Conversely, for non-residents we call the franchise restricted if, in addition to being citizens, voters have to meet a residence condition (prior residence in the country, a maximum duration of residence abroad or an intention to return). We also check for restrictions of the franchise for non-resident voters on grounds of citizenship. This refers to cases where naturalised citizens or dual citizens cannot vote from abroad or have to meet additional conditions. Restrictions of this kind are frequent in the Americas for candidacy rights, but we have not found any for active voting rights. Where the right to vote from abroad is granted only exceptionally to occupational categories, such as diplomats, civil servants or military personnel abroad, we count this as a negative rather than a restricted case,<sup>8</sup> just as we do if non-residents have to travel home to cast their vote in the country. We could have strengthened the evidence for expansion by counting also these instances of voting rights for non-resident citizens, but we do not think that laws that tie an absentee franchise closely to presence in the territory or service for the state should be regarded as evidence for deterritorialisation.

To sum up, we have four basic variables: the non-citizen franchise and non-resident franchise at local and national levels. We register for each country whether it grants voting rights and if so whether these are restricted or unrestricted. This results in 81 logically possible combinations. We exclude from further analysis those where non-residents can vote only in local but not in national elections and where non-citizens can vote only in national but not in local elections. These expansions are the opposite of the expected ones. They do not exist in our dataset and we would be surprised to find instances of such constellations anywhere in the world.<sup>9</sup>

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<sup>7</sup> This problem may also arise at local level, although less often. Where municipalities of the same country have different voting regimes, we code the local franchise that exists in the majority of municipalities (see coding rules in Appendix 1, online edition).

<sup>8</sup> Denmark is a borderline case. Voting rights from abroad are granted to diplomats, posted workers and students as well as their Danish spouses and generally to Danes who intend to return within 2 years. In our coding rules, the latter provision counts as a residence-based restriction of a non-citizen franchise.

<sup>9</sup> A Schumpeterian view that each *demos* can determine its own composition (Schumpeter 1942/1976: 245) might expect that within a sufficiently large sample some local and national *demoi* will decide to expand in

In Table 1 we have grouped together instances of a multilevel franchise which results in 25 combinations. Let us first consider the expansion of the franchise for non-citizens and non-residents separately and without taking restrictions into account. What we find is, first, strong confirmation of expansion: four-fifths (82.1 per cent) of the countries in our sample disconnect the national franchise from residence by extending it to expatriates almost as many (42, that is 79.3 per cent) disconnect the local franchise from national citizenship by granting to categories who are not citizens of the state. Second, there is even stronger evidence for containment: 83% retain the strict condition that voters in national elections must be national citizens and only one country in our set (Norway) allows citizens without domicile or residence to vote in local elections. As we will discuss in section 4, there have been a few cases in the past where expatriates could vote also at the local level, and future cases may emerge with new opportunities for municipalities to include absentees through electronic voting.

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Insert table 1 about here

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The Venn diagram below provides a further condensed version of the results which focuses on restricted vs. unrestricted expansions of the franchise, leaving out the empty cells for a non-resident local franchise and lumping together local and national voting rights.

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Insert diagram 2 about here

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The most striking finding that emerges from this diagram is that 35 states (66%) combine both extensions of voting rights (the intersecting areas in the centre of the diagram), whereas only three Central American states (5.7%) retain the traditional insular conception of the *demos* that includes only resident citizens. 16 states (30.2%) combine an unrestricted franchise for all non-resident citizens in national elections with similarly unrestricted voting rights for non-citizens in local elections (the grey area of the diagram). Unrestricted level-specific expansion of the kind portrayed in diagram 1 represents thus the most frequent type in our sample, whereas insular *demos* have become very rare. We expect to find many more instances of the latter in Asia and Africa, but it is remarkable that there are so few among the old democracies of Europe and America that have been exposed to migration for a long time. Among the three, Suriname became independent only in 1975 and both Guatemala and Nicaragua have experienced longer spells of non-democratic rule than most other states in the region (Escobar 2007).

At the other end of the spectrum, it is again in the Americas where we find the most expansive franchise. The strongest one among the 53 cases exists in Ecuador since the constitutional reform of 2008. The country currently grants unrestricted voting rights in national elections for Ecuadorians abroad as well as local and national voting rights for non-citizen residents (including those without regular residence permit) after 5 years. It was recently joined by Chile, where non-citizens have enjoyed the right to vote in local and national elections

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these unusual ways. Our conjecture that they do not exist is thus based on our substantive views about level-specific dynamics of franchise expansion.

after five years of residence since 1983 and where, after a 2014 constitutional reform, Parliament granted unrestricted voting for non-resident citizens in presidential elections and national referendums in August 2016.<sup>10</sup>

Let us now examine continental patterns in more detail. The overall lesser variation of franchise combinations in Europe is partly due to the 1992 Maastricht Treaty that granted voting rights in local elections to EU citizens residing in other member states. We included these voting rights, which are restrictive according to our coding rules, since our question is whether the franchise depends on the condition of nationality of the state where the election is held. Moreover, it is the member states which have adopted the EU Treaties by unanimity and have thereby accepted enfranchisement of non-citizens in local elections.

If we consider only the local franchise for third country nationals, we find 14 European states (12 of which in the EU) that have extended the local suffrage to all categories of long term residents, either based on the length of legal residence (ranging from 3 to 8 years), or the acquisition of a permanent resident status (Slovakia, Slovenia). Switzerland is not included in this category because non-citizens can vote only in a minority of cantons.<sup>11</sup> UK, Ireland and Portugal offer a restricted franchise for certain third country nationalities and 13 states do not grant voting rights for non-EU citizens. However, in several of the latter (e.g. in Austria, France, Germany, Italy, Greece) there have been sustained attempts to introduce a more general local franchise for third country nationals (Arrighi et al. 2013: 63-5). The picture is more mixed in the American context, where 7 countries out of 22 have extended local voting rights to all long-term residents. It should be noted that these countries are all located in South America, which suggests a neighbourhood effect and regional norm diffusion (Turcu and Urbatsch 2015).

The principle that the franchise for non-citizens depends on reciprocity can be found in a small minority of European and American states. It applies to local voting rights in Bolivia and Spain, and to national ones in Brazil/Portugal (since 2003) and UK/Ireland (since 1983). The franchise for Commonwealth citizens in the UK, Belize and Guyana in local and national elections is a unilateral extension that is not based on reciprocity. In Europe there is also the earlier instance of a reciprocity-based local franchise among the Nordic countries, which does not show in our table since these states now grant local voting rights also to third country nationals.

In the Americas there are two countries where the local franchise depends on legislation by federal provinces which may, but do not have to, grant voting rights to non-citizens. These are Argentina where a large majority of provinces have used this opportunity and the marginal case of the US where the alien suffrage was introduced in a handful of Maryland municipalities, which remains far below our 50% threshold for territorial units and is thus not recorded in our tables.

Examining the franchise for non-residents, unrestricted extension to citizens abroad is about equally frequent in the Americas and in Europe. The number of countries that do not grant any such franchise to expatriates (or grant it only to those who return to cast their vote inside the country) is substantially higher in the Americas (6) than in Europe (4).

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<sup>10</sup> The reform was passed in the Chilean Parliament on 3 August 2016. Non-resident citizens now can participate in Presidential elections and national referendums but not in parliamentary elections, unlike in Ecuador where they can directly elect their own representatives through reserved seats in Congress.

<sup>11</sup> Non-Swiss long term residents can vote in local elections in seven cantons: Neuchâtel since 1848, Jura since 1978, Appenzell Ausserrhoden since 1995, Fribourg and Graubünden since 2003, Geneva and Basel-Stadt since 2005.



Canada is the only American country with a restricted franchise for its permanent citizens abroad and it is an extreme case since voting rights expire already after 5 years. In Europe, 21 states now let their expatriates vote in national elections (presidential, legislative or referendums) from abroad, without restrictions based on qualifications or past residence. Only 3 states still reserve this right to civil servants (Malta, Ireland and Cyprus) while another 6 apply more or less severe residence qualifications. Ranked from most restrictive to most inclusive, these are Denmark, Iceland, UK, Sweden, Germany and Norway.

Our comparative analysis can be summarised as follows. First, the data suggests that the “insular conception” of the *demos* has become largely obsolete, with only three states reserving the right to vote at both levels to their own citizens and tying it to a strict residence condition. Second, there is some evidence for an emerging postnational conception of the *demos* with voting rights for non-citizens restricted to nationals of specific countries in 37.7% of the cases and expanded to all long-term non-citizens in 41.5%. However, this phenomenon has remained essentially limited to local elections, which casts doubts on the idea that it represents a broader *postnational* trend. Conversely, the rapid proliferation of external voting legislation observed in the literature has been nearly exclusively confined to national elections. Although two thirds of all states grant the national suffrage to all their citizens abroad and another 13.2% apply residence qualifications, only Norway has extended that right to local elections.

Let us finally categorize our sample by how well cases match the pattern sketched in Diagram 1. The expected level-specific expansion and containment applies to a majority of 30 states (56.6%); in 11 cases (20.8%) we find the expected containment but expansion at only one level; in another 10 countries (18.9%) there is a postnational or deterritorialised expansion of the franchise that defeats the containment expectation; and in only 3 insular cases (5.7%) there is no expansion at all.<sup>12</sup>

## RESISTANCE TO EXPANSION

Though present in a majority of states put under scrutiny, the disconnect of the national franchise from residence and of the local franchise from citizenship has not occurred in all countries. In this section, we turn to those cases that have resisted either forms of expansion and successively examine how constitutional hurdles and party politics have contributed to this outcome.

In the 1990s a number of scholars attributed the extension of rights to non-citizens to the postnational impact of human rights norms (Soysal 1994, Jacobson 1996) or the epistemic community of lawyers who acted as the guardians of liberal principles in the domestic politics of democratic states (Joppke 1999, Hollifield 2004). With regard to the expansion of the local franchise to non-citizen residents, however, national courts have typically played the opposite role. Through a conservative reading of constitutional norms, they often blocked or even reversed liberal legislation already adopted in parliament. A well-known example is Germany, where the enfranchisement of resident aliens was high on the political agenda throughout the 1980s. The controversy found its denouement in 1990 when decisions of the city-state of Hamburg to grant voting rights to aliens who could document eight years of residence and of the province of Schleswig Holstein to extend the local suffrage to selected nationalities on the basis of reciprocity were struck down by the

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<sup>12</sup> The list of countries in these four categories is provided in Table 2 in Appendix 3 (online edition).

German Federal Constitutional Court. The court found that all elections must be representative of the “people” consisting of German citizens (Benhabib 2004, Shaw 2007). In 2004, the Austrian Constitutional Court struck down a much more modest proposal to grant third country nationals voting rights for the 23 local district councils of the city of Vienna referring to article 1 of the Constitution according to which “Austria is a democratic republic. Its law emanates from the people” (Stern and Valchars 2013). More recently in Greece, the 2010 legislation extending the suffrage to long-term residents was invalidated by the Greek State Council in November 2012 on the grounds of violating the principle of sovereignty of the Greek people (Triandafyllidou 2014).

By contrast, the requirement to reside in one’s country to be entitled to vote there has hardly ever been entrenched as a constitutional principle. The disenfranchisement of expatriates was mostly not due to explicit restrictions limiting the right to vote to residents alone but to the failure of states to implement legislation enabling voting from abroad (Hutcheson and Arrighi 2015). Hence, domestic courts have often forced governments to take the necessary measures in order to provide equal voting rights and fair representation for all citizens, independently of their country of residence. In Austria, for instance, external voting rights were introduced after a 1989 judgment of the Constitutional Court finding that the exclusion of non-residents from the electoral register violated the norm of equality of citizens (Stern and Valchars 2013: 3). In these contexts, the constitutionally entrenched principle of universal suffrage for all citizens functioned as a two-edged sword facilitating the enfranchisement of non-residents as much as it impeded introducing that of resident aliens. Besides, constitutional traditions seem to have created very different dynamics with regard to expanding the *demos* in European and American contexts. In South American states, historic openness for immigration and contemporary concerns about the rights of emigrant citizens in the US and Europe have led to a discourse promoting emigrants’ as well as immigrants’ rights, including those of political participation (Acosta Arcarazo and Freier 2015).

A constitutional perspective, however, is insufficient for understanding the numerous cases where political parties from both sides of the political spectrum have agreed to reform the constitution in order to let aliens vote – as happened in Belgium and the Netherlands (Jacobs 2000) – or where they were unable to implement external voting legislation in spite of constitutional provisions urging them to do so, as in Greece (Christopoulos 2013). This leads us to highlight the role of political parties as a second crucial factor shaping the boundaries of the *demos*.

According to Christian Joppke, the political left has campaigned for the expansion of immigrants’ rights whereas the right has been more inclined to strengthen the bonds with expatriates (Joppke 2003: 431-2). Especially in Europe, left parties have long advocated extending the right to vote to non-citizens not only on ideological grounds but also for more prosaic electoral purposes (Ireland 1994), whereas centre right parties have been more prone to support restrictive measures, even where there is no significant far right electoral challenge (Bale 2008: 3020). In the absence of a cross-party consensus, left parties often failed to break the constitutional deadlock reserving the franchise to citizens, even when in government. The case of France, where the Socialist party has advocated the extension of local voting rights to long-term residents since 1981 and yet never managed to mobilize a two thirds parliamentary majority necessary for reforming the constitution, provides a telling example (Arrighi 2014).

There are several exceptions, of which we will only mention two. In Estonia, where a large

proportion of Russian-speaking residents became stateless at the time of independence, the extension of local voting rights to resident aliens was supported by right wing parties, which saw it as a means to legitimize restrictive rules of acquisition of citizenship (Canetti 2014). By providing a compensatory route to political representation, they successfully sought to alleviate international pressures to liberalize their nationality laws. In Uruguay and Chile, national voting rights were originally granted to (predominantly European) immigrants by authoritarian leaders who expected their electoral support (Escobar 2015, Echeverria 2015).

The ideological colour of political parties has played an equally ambiguous role in extending external voting rights. On the one hand, the electoral behaviour of expatriates, and therefore the potential electoral implications of their mass enfranchisement, is largely unknown prior to their enfranchisement. The Italian right, which pushed for the 2001 introduction of external voting in national elections assuming that it would be electorally rewarded, learned this lesson the hard way. In the 2006 general elections, the scale of mobilisation together with a clear partisan preference for centre left parties among a newly-represented electorate of Italians abroad came as a surprise to most. Ultimately, the ballots cast abroad tipped the electoral balance in favour of the coalition led by Romano Prodi, precipitating the fall of Silvio Berlusconi's second right wing government (Battiston and Mascitelli 2008: 265). On the other hand, progressive parties have often played a key role in the enfranchisement of expatriates in the aftermath of regime change. In Spain, Argentina, Peru and Brazil, left-wing parties were fervent supporters of out-of-country voting, which they portrayed as symbolic reparation for the political exiles of the Civil War and their descendants (Escobar 2007). In other Latin American countries, democratisation processes from the 1980s onwards provided grassroots activists and leftwing parties with a window of opportunity to extend the right to vote in national elections to citizens abroad (Rhodes and Harutyunyan 2010), to the detriment of incumbent right wing governments who long resisted their political incorporation. Joppke's hypothesis that centre right governments promote ethnicisation of citizenship by including diasporas whereas left wing governments endorse de-ethnicisation through promoting immigrant naturalisation and a non-citizen franchise (Joppke 2003) is, thus, plausible for Europe but not for Latin America (Acosta Arcarazo and Freier 2015).

We conclude that national legal and political obstacles to franchise expansion seem to be well entrenched in particular states but that the broader forces pushing towards reform are present even in countries resisting the trend.

## EXCEPTIONS TO CONTAINMENT

Our comparative overview shows that what we have called containment (i.e. the enduring link between citizenship status and national franchise, and residence and local franchise respectively) is empirically even stronger than the converse phenomena of expansion. In this section, we will focus on the rare exceptions and show why they provide indirect support for the salience of the link.

The extension of the local suffrage to non-residents is extremely rare. In our sample, Norway provides the only example of a local franchise for citizens without current residence in the country, although the pool of potential voters is greatly reduced by a cumbersome registration procedure and a strict past residence requirement, which

excludes second and third generation emigrants born abroad.<sup>13</sup> Recently, some Mexican states also experimented with a highly restrictive version of a local franchise for non-residents. For example, the state of Michoacán had permitted former residents to vote in local elections in 2007 and 2014 but abolished this option in 2014 due to high costs and low turnout (Pedroza 2015: 7). On the European side, Spain provides a case where the suffrage was as inclusive in local elections as in national ones until 2011, when a reform of the legislation established the residence requirement for the local franchise in unambiguous terms. The reform was promoted by the Galician nationalist party *Bloque Nacionalista Gallego* (BNG). The BNG was adversely affected by the vote of Galicians abroad who represented 15 percent of all registered voters in the province in 2014 – and over 25 percent in some municipalities – and tended to favour the state-wide conservative Partido Popular (PP). The BNG managed to convince an overwhelming majority of Spanish MPs that the external local suffrage constituted a “democratic anomaly which did not exist anywhere else in Europe” and unduly diluted the preferences of the resident population.<sup>14</sup> The reform was also legitimised by a growing awareness that “many Spaniards abroad did not know Spain”, a problem that was aggravated by legislation granting citizenship status to successive generations of emigrant descent in 2002 and 2007 (Rubio Marin et al. 2015). As a result, in 2012 only one third (33.6 per cent) of the 1.9 million Spanish citizens registered in the electoral census of “absent residents” [sic] were actually born in Spain. (Instituto Nacional de Estadística 2012).

At first glance, the nine states in our sample that have opened the gate to the national franchise to all long term residents or to selected nationalities suggest that the link between citizenship and national voting rights is less strong. Among them, two pairs of countries, the UK/Ireland and Portugal/Brazil, have extended the franchise in all types and levels of elections on the basis of reciprocity, in recognition of historical links and cultural affinities. In addition to Irish citizens, the UK also enfranchises all Commonwealth citizens who hold, or do not need to hold, an Indefinite Leave to Remain in the UK, a provision that is often reciprocated in other Commonwealth countries, two of which are included in our dataset: Belize and Guyana (Khadar 2013: 10). The privileged position of these categories of non-nationals is a consequence of the UK’s imperial history rather than based on any particular cultural or linguistic ties. As former colonies, Dominions or Overseas Territories gradually became independent states over the course of the 20<sup>th</sup> century, the peculiar franchise arrangements were preserved and updated (Shaw 2009). In any case, the restrictive scope of the policy with its distinction of nationality-based categories demonstrates how citizenship remains a sine qua non condition of the franchise.

The absence of franchise restrictions based on nationality in the legislation of Ecuador, Chile and Uruguay constitutes a stronger deviation from the containment rule. However, a closer examination of eligibility criteria and of the circumstances under which the extension of the franchise occurred shows a somewhat different picture. In Uruguay, the conditions under which non-residents are eligible to vote are more demanding than those for naturalisation. Depending on whether they have family in the country, foreign nationals can naturalise after 3 or 5 years of habitual residence, but if they do not choose to become citizens, they need 15 years of residence for the franchise in addition to requirements of

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<sup>13</sup> For the full list of eligibility conditions and detailed registration procedure see the English version of the Norwegian government’s web portal, available at <https://www.regjeringen.no/en/portal/election-portal/the-norwegian-electoral-system/id456636/#5> [last accessed 31 March 2016].

<sup>14</sup> Quoted in ‘El BNG urge modificar el voto exterior antes de las municipales’, *Crónicas de la Emigración*, 12 April 2010, available at <http://www.cronicasde laemigracion.com/especiales/galicia/reforma-voto-exterior/20100812104639027216.html> [Last accessed 12 May 2016].

family formation in the country, good behaviour and property or professional activity (Margheritis 2015: 7). Besides, the enfranchisement of long term residents was introduced already in 1934, under the conservative dictatorship of Gabriel Terra, who sought to gain electoral support among relatively wealthy European immigrants who were reluctant to naturalise. Similarly, in Chile non-citizens were granted the right to vote in 1980 by General Pinochet, who sought to allow a comparatively small population of Europeans to participate in the referendum ratifying an autocratic constitution that enabled him to remain in power for another eight years (Escobar 2007: 932-3).

The only case in our sample<sup>15</sup> which comes close to a full separation between citizenship status and the national franchise is Ecuador, where since 2008 all foreigners who can document at least five years of residence can vote, although not stand as candidate. The reform was part of a broader change of the electoral code, which also extended the suffrage to non-resident citizens. These are now not only able to cast a ballot from abroad but vote for their own representatives in the national Parliament. However generous the legislation may be, the enfranchisement of foreign residents was not the expression of a genuine desire to resolve a democratic deficit by encouraging the participation of a traditionally excluded group of residents. Instead, it was meant to produce a demonstration effect towards host states of Ecuadorian emigrants whom the government pressured to reciprocate (Echeverria 2015). A similar strategy has been observed in other cases, such as South Korea where the extension of the local suffrage was introduced with the aim of nudging Japan to grant its sizeable Korean community local voting rights (Mosler and Pedroza 2016) – although the intended demonstration effect has not been achieved. Even if the *outcome* of these reforms is a full separation of the franchise from citizenship status, their *motivation* seems to have been the promotion of political representation of the country's own citizens abroad.

All exceptions to containment that we have found in our sample retain thus in some way the links between local franchise and residence and between national franchise and citizenship.

## NORMATIVE SUPPORT FOR A LEVEL-SPECIFIC EXPANSION OF THE FRANCHISE

The puzzle stated in the introduction is that there seem to be very clear patterns of level-specific expansion and containment of the franchise that none of the current legal or political theories predict or support. We conclude our analysis by outlining an alternative democratic theory that distinguishes between birthright-based national and residence-based local citizenship and that provides normative support to the observed differentiation of the franchise.

As one of us has argued elsewhere, an expansive franchise does not make the *demos* shapeless, but can put it instead into the right shape in societies with significant mobility and relatively sedentary majority populations (Bauböck 2015). Both expansions respond to the same problem that international migration undermines the legitimacy of a *demos* consisting only of resident citizens, but they do so in diverging ways, by reaching out to emigrants at the national level and to immigrants at the local one.

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<sup>15</sup> Only New Zealand has an even more inclusive franchise for non-citizen residents in national elections after one year of permanent residence. However, even in this case, citizenship remains a condition for candidacy rights (Barker and McMillan 2014).

The normative argument supporting extension of the franchise in contexts of migration is that democratic polities should include as members all those and only those who have genuine links to the polity in the sense that their autonomy and well-being depends on the collective self-government and flourishing of the political community (Bauböck 2007, 2015). Migrants' claims to inclusion at the national level can be understood when considering their genuine links to two states. By taking up permanent residence in a polity, immigrants become 'citizenship stakeholders' with a claim to political inclusion and participation. Conversely, emigrants who take up residence abroad do not automatically lose genuine links to their country of origin.

At the national level, this normative perspective is compatible with the predominant containment pattern. Voting rights can legitimately depend on citizenship status if emigrants do not lose this status by taking up permanent residence abroad and if immigrants are entitled to acquire it through naturalisation under fair conditions. What explains then why, at the local level, voting rights can be disconnected from citizenship but not from residence?

The difference between national and local polities lies in their external environment and conditions for their collective self-government. In order to be self-governing, states must be recognised as equal members of the international state system, while municipalities are internally dependent polities that are self-governing insofar as they have democratic authorities elected by local citizens and legislative competencies in local matters.

In the international state system, the legal status and protection of rights of individuals depends fundamentally on being recognised as a citizen of a state (Arendt 1967: 267-303) and this explains why it is so important for migrants not to lose their citizenship of origin when gaining access to the citizenship of the country where they settle. In the European Union, there is a higher-level citizenship that protects internal migrants, but this EU citizenship is derivative from member state nationality and does not undermine the protective function of national citizenship in relations with third countries. At the global level no such encompassing citizenship exists.

By contrast, self-governing municipalities are nested within states and cannot provide their local citizens with external protection and rights without subverting equal citizenship at the state level. For the same reason, they also cannot discriminate internally between natives and immigrants or require that newcomers have to naturalise before being granted local citizenship. This 'origin-blindness' of local citizenship makes it possible and reasonable to disconnect it from nationality altogether and to derive it instead from residence. Finally, because of their smaller size, the impact of mobility on the mismatch between residents and natives is stronger in municipalities than in nation-states. There are many cities but few states where majorities of the population are born outside the territory and where a majority of native-born live permanently outside that territory. Conceiving of all residents and only residents as stakeholders in local self-government restores democratic legitimacy where sedentary populations have become minorities.

The proposed distinction between national and local citizenship is, however, primarily about the relations between polities rather than about their size. When Florence was a republic, it was surrounded by walls and considered the citizens of Siena or Pisa as enemies. For the city of Florence today, immigrants from Sicily, Romania or Somalia are all primarily residents with the same claim to local services and inclusion in the political community. For the Italian Republic, however, Sicilians are Italian nationals, Romanians

enjoy special citizenship status because of Italy's membership in the EU, while Somalians are *extracomunitari* with a claim to naturalisation. Distinctions that are arbitrary and therefore discriminatory at the local level are necessary and therefore justified at the national level.

The normative argument that we have proposed supports the extension of the franchise to non-resident citizens in national elections and to non-citizen residents in local elections. Among the many different combinations that we have found empirically, we can thus identify a specific bundle of voting rights for migrants that we regard as normatively desirable<sup>16</sup>: This is the combination of an unrestricted franchise for emigrants in national elections with an unrestricted franchise for immigrants at the local level. In our dataset we find 16 countries that fall into this category; the percentage is 32.3% in the EU and 27.3% in the Americas. Our normative argument does, therefore, not merely support retrospectively an existing pattern, but provides a critical benchmark that is met by only a minority of the cases.

Moreover, it would be premature to say that these countries meet all normative requirements for an inclusive *demos* and that other arrangements can never be justified. We have coded as "unrestricted" the absence of special conditions apart from citizenship for eligibility to vote in national elections and the absence of special conditions apart from residence for eligibility at local level. This does not imply that either citizenship or residence status are themselves unconditional or that eligibility is all that matters.

First of all, there is a concern about over-inclusiveness of the external franchise due to unlimited *ius sanguinis* transmission of citizenship to subsequent generations born abroad. A genuine link criterion suggests that *ius sanguinis* should no longer apply to the third generation born to parents themselves born abroad. Second generation minor children, however, need their parents' citizenship to preserve their options of return and to protect them in case of return (Dumbrava and Bauböck 2015). There is no similar justification for enfranchising them at the age of majority if they have never lived in the country. Second generation emigrants should therefore not acquire voting rights without any past or future residence condition.

An analogous argument against over-inclusiveness can be applied to the local franchise. Where it is unrestricted, it depends on residence rather than on citizenship (of the state, a supranational union of states, or another state with a reciprocal franchise). But, like citizenship, residence status itself is a legal fact rather than a social one. As argued by Robert Dahl, transients, such as tourists or travelling business people, have no claim to be included in the *demos* (Dahl 1989: 129). Unlike national citizenship, the residence status that qualifies for voting in local elections must not depend on meeting conditions for naturalisation and an individual decision to apply. It should be acquired automatically after some time of lawful residence. 'Some time' is necessary so that newcomers can sufficiently acquaint themselves with local political life to cast their votes responsibly. Based on this consideration, there can be reasonable gradations of the required time between internal migrants who are national citizens, internal migrants within a supranational union and third country immigrants. Current conditions under which EU migrants can exercise the local franchise in most Member States soon after arrival are over-inclusive in this respect.

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<sup>16</sup> A full discussion, for which we do not have enough space here, would need to distinguish further which forms of expansion and containment are normatively required and which are permissible.

As with national citizenship, there is not only a problem of over-inclusiveness, but also of unjust exclusion of individuals who qualify under a stakeholder conception of political membership. Immigrants without legal status often live and work in a municipality for many years as all other long-term residents and ought to be treated like these. City sanctuary movements protecting residents from deportation in the U.S. and Canada illustrate that a principle of residence-based citizenship is widely endorsed in civil society and local politics. The same principle supports individual claims to regularisation after some time of residence. Former undocumented migrants would thereby be automatically included in the local *demos* while being set on the road to national citizenship and voting rights at a later point in time.

## CONCLUSIONS

We have found strong empirical evidence that voting rights at national level no longer depend on residence but continue to depend on citizenship status, whereas the local franchise conversely no longer depends on citizenship status but strongly depends on residence. Exceptions do exist but we have argued that they generally confirm the underlying principles. Our sample of 53 European and American states is broad, but of course not fully representative for all democracies worldwide. We know that outside Europe and the Americas we will find many more cases of extension of the franchise to non-residents but rather few where noncitizens have been granted voting rights.<sup>17</sup>

Our most important conclusion is that standard assumptions in theories and comparative studies of democratic citizenship need to be revised by paying symmetrical attention to emigration and immigration contexts and differentiating between national and local levels of citizenship. As we have shown, this is not merely necessary for normative theories of democratic inclusion but also for understanding how real world democracies have responded to the impact of migration on their *demos*.

Our analysis should be of interest not only to the comparative study of political rights and “realistic” normative theories of migration and democracy (Carens 1996, Little and Macdonald 2015) but also to research on immigrant integration and transnationalism. For the latter, it sheds important light on the institutional conditions under which migrants develop practices of political engagement in relation to countries of residence and origin. Our data cannot answer the question of whether migrants who vote in home country elections tend to be less or equally politically engaged in their country of settlement (Chaudhary 2016), which feeds into the broader debate about political assimilation and transnationalism (Portes and Haller 2003, Waldinger 2015). Yet behavioural studies of immigrants’ transnational political participation often ignore variations in the institutional opportunity structure, e.g. regarding conditions for naturalisation or dual citizenship. We have shown that a surprisingly large number of democracies offer opportunities for such

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<sup>17</sup> The spread of external voting legislations in national elections is a truly global phenomenon, which accelerated considerably in the past 25 years (Lafleur 2015). While less frequent, the enfranchisement of non-residents can also be found in other world regions. In Asia, the practice was pioneered in 2005 by South Korea when it introduced local voting rights for foreigners who have held a permanent residence permit for at least three years (Mosler and Pedroza 2016). In Africa, Malawi grants voting rights in all elections to foreigners after 7 years of residence, while the 2011 reform of the Moroccan Constitution provides for an extension of the local suffrage to non-citizens, although no implementing legislation has been passed to date. The globally most inclusive non-citizens franchise exists in New Zealand. For a global overview of non-citizen voting legislations, see Earnest (2006).



simultaneous engagement through local and transnational voting without requiring prior naturalisation of immigrants or cutting emigrants off from national elections. Alongside the strong trend towards toleration of dual citizenship by sending and receiving countries,<sup>18</sup> the expansive franchise patterns that we have found provide stark evidence for the transnationalisation of citizenship statuses and rights.

Whether and how this affects voting patterns is another important question that has been rarely addressed by mainstream scholarship on electoral behaviour. The inherent difficulty of collecting data on geographically dispersed transnational migrants has meant that the partisan preferences of these new voters are largely unknown. Existing research suggests that immigrants in Western Europe and North America tend to favour left-wing parties, despite the fact that they are not more likely to support increased social spending and that they often endorse more conservative views on cultural issues than the native population (Dancygier and Saunders 2006). Regarding emigrants, a recent case study on Bolivian expatriates found that their experience abroad contributed to shaping not only their own perception of home-country elections, but also those of their non-migrant relatives through 'electoral remittances' (Lafleur and Sánchez-Dominguez 2015).

Last but not least, our findings raise at least two important questions in the field of party politics: How have political parties contributed to our twin patterns of expansion and containment and how have they sought to adapt to the new rules of the game? In order to address the former issue, one must move away from a binary variable of expansion versus containment and examine instead how political parties who are negatively affected by the enfranchisement of a new electorate have sought to curb the electoral impact through a variety of electoral engineering strategies, such as reducing participation rates through cumbersome registration procedures and voting methods or reducing the electoral weight of migrants' ballots through a higher ratio of votes required for winning reserved seats (Hutcheson and Arrighi 2015). Even if such schemes are designed to diminish emigrants' electoral representation they will at the same time enhance their substantive representation as a distinct group and may thus make legislators and parties more responsive to their interests. Overall, depending on the size of 'discrepant electorates' (Caramani and Strijbis 2013) produced by a deterritorialisation of national *demos* and an inclusion of non-citizens in local *demos*, political parties should have incentives to pursue distinct electoral strategies in national and local arenas – a hypothesis that could be easily tested empirically.

Our study does not only matter for these core fields of political science, it also needs to be further developed. For a future research agenda we see five desirable extensions: first, a broadening of geographic scope by including other regions of the world; second, using the more fine-grained ELECLAW indicators (EUDO CITIZENSHIP 2016) for analysing degrees of inclusiveness; third, combining these indicators with datasets on independent variables to test causal hypotheses about general conditions for expansion or containment of the franchise; fourth, longitudinal data that capture the timing of franchise reforms and allow studying trends and norm diffusion in a way that a cross-sectional analysis cannot do; and fifth, in-depth analysis of pivotal cases of expansive citizenship or resistance against

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<sup>18</sup> See Global Dual Citizenship Database (2015) published by the Maastricht Centre for Citizenship, Migration and Development (MACIMIDE), available online at <https://macimide.maastrichtuniversity.nl/dual-cit-database/> [last accessed 31 March 2016].

extensions in order to identify the agents, interests and mechanisms driving policy changes.

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LIST OF TABLE AND FIGURES (SEE ATTACHMENTS)

Diagram 1: Level-specific expansion of the demos in migration contexts

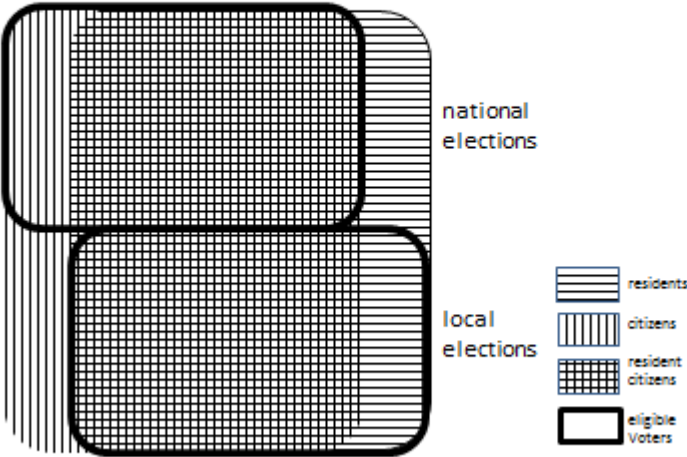


Table 1: Non-citizen and non-resident franchise in the Americas and Europe

Table 1: Non-citizen and non-resident franchise in the Americas and Europe

non-citizen franchise							N (%)	
		none	monolevel (local only)		multilevel (national and/or local)			
			restricted	unrestricted	restricted	unrestricted		
non-resident franchise	none	Guatemala Nicaragua Suriname	Cyprus Greece Malta		Belize Guyana	Ireland* Uruguay	10 (18.8)	
	monolevel (national only)	restricted	Canada	Germany	Denmark Iceland Sweden	United Kingdom	6 (11.3)	
		unrestricted	El Salvador USA Costa Rica Honduras Mexico Panama Switzerland	Austria Bolivia Bulgaria Czech Republic Spain France Croatia Italy Latvia Poland Romania	Argentina Belgium Colombia Estonia Finland Hungary Lithuania Luxembourg Netherlands Peru Paraguay Slovakia Slovenia Venezuela	Brazil Portugal	Chile Ecuador	36 (68.0)
	multilevel (national and/or local)	restricted			Norway			1 (1.9)
		unrestricted						0 (0)
	N (%)		11 (20.7)	15 (28.3)	18 (34.0)	5 (9.4)	4 (7.5)	53 (100)

Note: \* noncitizen franchise in Ireland is unrestricted in local but restricted in national elections



Diagram 2: Restricted and unrestricted expansion of voting Rights

