

# PERFECTING POLITICAL DIASPORA

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*This Article addresses the political rights of nonresident citizens. It first describes the trend towards extending to, and facilitating the exercise of, the franchise by external citizens. An increasing number of states permit nonresidents to vote, in many cases without requiring return to the homeland. The trend requires a changed conception of citizenship and nationhood, as political membership decouples from territorial location. The Article addresses objections to nonresident voting rights, including those based on assumptions that nonresidents will be irresponsible and uninformed voters, that they will form unpredictable and destabilizing voting blocs, and that nonresident voting will impose unsustainable logistical costs. None of these objections carry enough weight, empirically or normatively, to deny the franchise to nonresident citizens; voting rights are validated by the increasing degree to which nonresidents can access information and maintain significant interests in their home states. Nevertheless, the Article argues, voting rights need not be extended on a one-person, one-vote basis. In certain circumstances—in particular, cases in which the home state sets a low bar for nonresident citizenship and where the nonresident citizen population is large relative to the resident population—it may be justifiable to accord lower proportional voting power to nonresidents, at least where their interests are discretely represented in national legislatures. In other words, once the concepts of nationhood and full citizenship are no longer bounded by geography, it may be normatively acceptable to derogate from the creed of formal equality among citizens and within the nation. The increasingly prominent practice of nonresident voting, the Article concludes, thus presents a formidable challenge to political liberalism.*

The geography of human community is being destabilized. Great migrations occur across space, at the same time that the significance of space has been eclipsed by technological innovation. These twin developments have laid the groundwork, as Kim Barry elegantly observed, for “disrupting tidy conceptions of nation-states as bounded territorial entities with fixed populations of citizens.”<sup>1</sup> One’s physical location is no longer so likely to coincide with national membership; “[c]itizenship—so long a symbol of rootedness, exclusivity, and permanence—has been discovered to be portable, exchangeable, and increasingly multiple.”<sup>2</sup> Far from the neat lines of a territorial atlas, the map of national membership is increasingly difficult to render on a

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<sup>1</sup> Kim Barry, *Home and Away: The Construction of Citizenship in an Emigration Context*, 81 N.Y.U. L. REV. 11, 17 (2006).

<sup>2</sup> *Id.* at 18.

spatially contiguous, non-overlapping basis. The decoupling will have profound consequences for the practices and meaning of citizenship.

Law will be both an inscription and an accelerant of these new meanings and practices, both a lagging and a leading indicator. The challenge for law falls along two fronts: setting the place of non-citizens within a territorial political jurisdiction and that of citizens beyond—the two sides of citizenship status as disconnected from location. The first challenge is familiarly telegraphed as “the rights of aliens,” a subject that is by now well covered in the literature both of law and of political theory.<sup>3</sup> In a world in which interests and governmental jurisdiction were largely correlated to physical presence, that focus made sense, as the deprivation of rights left territorially present aliens exposed to harsh injustice and excluded from the project of self-governance. To liberal and legal theorists, in particular, this exposure has posed an increasingly daunting affront to the core premise that the governed should have a voice in government.<sup>4</sup>

The second consequence of the decoupling of territory from citizenship—the growing populations of citizens who reside outside of their countries of citizenship—has hardly crept into even the periphery of the academic imagination. This is no doubt in part because the dominant academic communities have been centered in immigration states; the more visible twentieth century problem from that vantage point has been the in-migration of non-members rather than the out-migration of citizens. The explanation, then, is partly a matter of numbers and the lack of any perception of a problem requiring political or scholarly confrontation. But neglect of the phenomenon is also no doubt due to an unstated assumption that absent citizens, even in large numbers, simply do not have much of a claim on or need for the full bundle of rights accorded residents. If government is largely a territorial enterprise, as political theory until recently has presumed, then the absent citizen will not have cause either to be protected from, or participate in, the home government. The challenge of external citizenship has never been prominently addressed.

Kim Barry’s work represents an important step towards putting external citizenship on the table. Recognizing that received citizen-

<sup>3</sup> See, e.g., SEYLA BENHABIB, THE RIGHTS OF OTHERS: ALIENS, RESIDENTS, AND CITIZENS (2004); YASEMIN NUHOGLU SOYSAL, LIMITS OF CITIZENSHIP: MIGRANTS AND POSTNATIONAL MEMBERSHIP IN EUROPE (1994); T. Alexander Aleinikoff, *Citizens, Aliens, Membership and the Constitution*, 7 CONST. COMMENT. 9 (1990); Linda S. Bosniak, *Membership, Equality, and the Difference That Alienage Makes*, 69 N.Y.U. L. REV. 1047 (1994).

<sup>4</sup> See, e.g., RUTH RUBIO-MARÍN, IMMIGRATION AS A DEMOCRATIC CHALLENGE: CITIZENSHIP AND INCLUSION IN GERMANY AND THE UNITED STATES 3 (2000) (“[The position of aliens] results in an increase in politically vulnerable and disenfranchised communities of socially involved individuals . . . ”).

ship constructs assume “coherence . . . flow[ing] largely from co-residence,”<sup>5</sup> Barry understood that the rise of external citizenship demands a new global model of citizenship. Her work extracted the elements of external citizenship, in law and in practice, and as reflected in the economic, legal, and political relations of homeland and diaspora communities. By her own reckoning, the account was an empirical one, a necessary first step to understanding the salience of external citizenship.<sup>6</sup>

This essay begins to explore the normative aspects of external citizenship, which Barry had described as the next step in her project and which has otherwise gone largely ignored.<sup>7</sup> I isolate the political rights of external citizens as a dimension within which to measure their status as citizens. Political rights present a central component of the institution of modern citizenship. Voting is often now the only significant right in modern democracies that distinguishes the citizen from the alien; it also served, historically, to mark the divide between citizen and subject. Though this has always been, and continues to be, something of an overstatement, political rights have also typically been assumed to be enjoyed by all citizens, on a formally equal basis. In that respect the liberal vision of democratic citizenship has in fact largely been realized. Recent efforts to overturn franchise ineligibility for ex-felons prove the point—a kind of mopping-up exercise, coinciding with vigorous calls to extend the franchise to resident aliens.<sup>8</sup>

The political status of external citizens may emerge as another such front. It has historically been the dominant practice of states to deny the enjoyment of political rights to nonresident citizens during the period of absence. This dominant practice is now dissipating. External citizens more often carry political rights with them even as they relocate in—and become citizens of—other countries. Fewer countries now impose blanket ineligibilities on nonresident citizens. A growing number are facilitating the political participation of

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<sup>5</sup> Barry, *supra* note 1, at 24.

<sup>6</sup> *Id.* at 58–59.

<sup>7</sup> For a notable exception, see Rainer Bauböck, *Towards a Political Theory of Migrant Transnationalism*, 37 INT'L MIGRATION REV. 700, 700 (2003), arguing “for a wider conception of political transnationalism from a political theory perspective.”

<sup>8</sup> See, e.g., Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1391, 1394 (1993) (“[T]he current blanket exclusion of noncitizens from the ballot is neither constitutionally required nor historically normal.”); Rachel L. Swarns, *Immigrants Raise Call For Right to Be Voters*, N.Y. TIMES, Aug. 9, 2004, at A13; Jamin Raskin & Matthew Spalding, *Debate Club: Should Non-Citizens Be Permitted to Vote?*, LEGAL AFF., May 10–13, 2005, [http://www.legalaffairs.org/webexclusive/debateclub\\_ncv0505.msp](http://www.legalaffairs.org/webexclusive/debateclub_ncv0505.msp).

external citizens by reducing the transaction costs of its exercise, most notably by allowing voting by mail or at diplomatic facilities abroad.

These trends have attracted little controversy. That, however, may reflect the position of immigration states, such as the United States and European Union members, in which the position of external citizens is a low-profile issue, both in the communal imagination and by the numbers. In some cases, however, the political inclusion of external citizens has been contested. After describing in Part I state practice respecting the inclusion of external citizens in homeland political processes, I address in Part II the normative objections to such participation, including that external citizens will be irresponsible, uninformed, or undisciplined in exercising franchise privileges. I argue that such objections are exaggerated, and suggest that in some contexts the political participation of external citizens should be framed as a matter of individual rights in much the same way as is the political participation of resident citizens. Because the connection of external citizens to their original country of citizenship may be systematically attenuated and their numbers proportionally large, however, such participation need not be afforded on the basis of full formal equality. Part III compares two models for channeling nonresident political participation, in which external voters are alternatively assimilated into homeland territorial districts or afforded discrete representation in homeland legislatures.

I conclude by suggesting that the political aspects of external citizenship may pose a foundational challenge to liberal theories of governance. At the first, more obvious level, it eliminates a necessary territorial tie among citizens. That implies a definition of community—and indeed of society—that is not geographically defined. Liberalism will have a hard time processing that shift. The coextensiveness of territory and community afforded liberal theorists a perimeter within which to preach and practice equality. Once that perimeter is breached, however, the equality metanorm becomes more difficult to apply as citizenship's inherent exclusionary nature is brought into sharper relief. External citizenship also challenges principles of liberal equality insofar as it (in some cases) results in justifiably tiered rights of political participation, derogating from the creed of one-person, one-vote. This may give rise to a normatively acceptable form of second-class citizenship. In the end, external citizenship suggests the possibility of a citizenship that is scalar rather than binary.

## I

### VOTING RIGHTS OF EXTERNAL CITIZENS: A BRIEF SURVEY

Although many states restrict the franchise of nonresidents, the clear trend is toward allowing and facilitating greater electoral participation by external citizens.<sup>9</sup> A few states provide external citizens with discrete legislative representation, while most assimilate external voters into existing internal territorial subdivisions (usually according to place of last residence). Although turnout among external voters has historically been low, there is evidence that such participation is becoming more consequential.

Blanket franchise ineligibility for nonresident citizens appears to be increasingly the minority practice. Some countries continue as a default rule to deprive external citizens of voting privileges during the period of nonresidency.<sup>10</sup> These countries include Ireland,<sup>11</sup> Hungary,<sup>12</sup> South Africa,<sup>13</sup> Zimbabwe,<sup>14</sup> El Salvador,<sup>15</sup> India,<sup>16</sup> and Nepal.<sup>17</sup> Even among these, however, most include exceptions for

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<sup>9</sup> See Eur. Parl. Ass., *Links Between Europeans Living Abroad and Their Countries of Origin*, 1999 Sess., Doc. No. 8339 § 4.3 ¶ 43 (1999) [hereinafter Eur. Parl. Ass., *Links*], available at <http://assembly.coe.int/Documents/WorkingDocs/Doc99/EDOC8339.htm> ("More and more countries are allowing their expatriates to vote in national presidential or legislative elections . . .").

<sup>10</sup> Much of the survey information that follows is drawn from a comprehensive country-by-country analysis of election systems, laws, management, and administration by the Election Process Information Collection (EPIC) Project, a joint endeavor of the International Institute for Democracy and Electoral Assistance, the United Nations Development Programme, and the International Foundation for Election Systems. See Election Process Information Collection (EPIC) Project, <http://www.epicproject.org> (last visited Aug. 19, 2005).

<sup>11</sup> EPIC Research Results for Ireland—Voting Operations, [http://epicproject.org/ace/compepic/en/country\\$IE+VO](http://epicproject.org/ace/compepic/en/country$IE+VO) (last visited Aug. 19, 2005) [hereinafter EPIC Ireland] (noting that exceptions include members of armed forces and diplomatic staff).

<sup>12</sup> EPIC Research Results for Hungary—Voting Operations, [http://epicproject.org/ace/compepic/en/country\\$HU+VO](http://epicproject.org/ace/compepic/en/country$HU+VO) (last visited Aug. 19, 2005).

<sup>13</sup> EPIC Research Results for South Africa—Voting Operations, [http://epicproject.org/ace/compepic/en/country\\$ZA+VO](http://epicproject.org/ace/compepic/en/country$ZA+VO) (last visited Aug. 19, 2005) [hereinafter EPIC South Africa] (noting that students and diplomatic staff may vote from outside country, and that persons absent for employment, business, or study may vote in national and provincial elections, but not local elections).

<sup>14</sup> EPIC Research Results for Zimbabwe—Voting Operations, [http://epicproject.org/ace/compepic/en/country\\$ZW+VO](http://epicproject.org/ace/compepic/en/country$ZW+VO) (last visited Aug. 19, 2005) [hereinafter EPIC Zimbabwe].

<sup>15</sup> EPIC Research Results for El Salvador—Voting Operations, [http://epicproject.org/ace/compepic/en/country\\$SV+VO](http://epicproject.org/ace/compepic/en/country$SV+VO) (last visited Aug. 19, 2005).

<sup>16</sup> EPIC Research Results for India—Voting Operations, [http://epicproject.org/ace/compepic/en/country\\$IN+VO](http://epicproject.org/ace/compepic/en/country$IN+VO) (last visited Aug. 19, 2005).

<sup>17</sup> EPIC Research Results for Nepal—Voting Operations, [http://epicproject.org/ace/compepic/en/country\\$NP+VO](http://epicproject.org/ace/compepic/en/country$NP+VO) (last visited Aug. 19, 2005).

those abroad in government service.<sup>18</sup> South African law includes broad exceptions for those on overseas assignment with a home-based corporation or studying abroad.<sup>19</sup>

Most other states extend the franchise broadly to external citizens, though some with important limitations. A handful of countries, including Germany,<sup>20</sup> the United Kingdom,<sup>21</sup> Canada,<sup>22</sup> and New Zealand,<sup>23</sup> disqualify citizens after a certain period of nonresidence. The Philippines disqualifies legal permanent residents of other countries unless they execute an affidavit declaring an intention to resume residency in the Philippines within three years of voter registration.<sup>24</sup> A number of other states allow all nonresidents to vote, but only if they return home to cast ballots: for example, Israel,<sup>25</sup> Taiwan,<sup>26</sup> El Salvador,<sup>27</sup> and Slovakia.<sup>28</sup>

Finally, there is an increasing number of countries that extend the franchise to all nonresident citizens and allow ballots to be cast either through the mail or at embassies and consulates. Countries that

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<sup>18</sup> See, e.g., EPIC Ireland, *supra* note 11; EPIC South Africa, *supra* note 13; EPIC Zimbabwe, *supra* note 14.

<sup>19</sup> See EPIC South Africa, *supra* note 13.

<sup>20</sup> Germany disqualifies nonresidents from voting after a period of twenty-five years. See German Embassy to the United States, Questions & Answers About Germany, [http://www.germany-info.org/relaunch/info/facts/facts/questions\\_en/poldevelopment/parties7.html](http://www.germany-info.org/relaunch/info/facts/facts/questions_en/poldevelopment/parties7.html) (last visited Aug. 19, 2005).

<sup>21</sup> ELECTORAL COMM'N (U.K.), ELECTORAL REGISTRATION FORM FOR A BRITISH CITIZEN LIVING OVERSEAS 1, available at [http://www.aboutmyvote.co.uk/documents/overseas\\_registration.pdf](http://www.aboutmyvote.co.uk/documents/overseas_registration.pdf) (last visited Jan. 12, 2006) (allowing any U.K. citizen living abroad, who has been registered in last fifteen years, to register to vote).

<sup>22</sup> Canada Elections Act, 2000 S.C., ch. 9, § 222(1)(b), available at <http://www.justice.gc.ca/en/E-2.01/text.html> (disqualifying voters after five consecutive years of nonresidence).

<sup>23</sup> New Zealand disqualifies citizens after three consecutive years without physical presence in the country. See Elections New Zealand, How to Vote from Overseas, [http://www.elections.org.nz/voting/how\\_vote\\_overseas.html](http://www.elections.org.nz/voting/how_vote_overseas.html) (last visited Aug. 19, 2005).

<sup>24</sup> See An Act Providing for a System of Overseas Absentee Voting by Qualified Citizens of the Philippines Abroad, Appropriating Funds Therefor, and for Other Purposes, Rep. Act No. 9189, § 5(d), (2003) V.L. DOC. (2nd), Book 17, p. 92, (Phil.), available at [http://www.congress.gov.ph/download/ra\\_12/RA09189.pdf](http://www.congress.gov.ph/download/ra_12/RA09189.pdf).

<sup>25</sup> See Editorial, *Let Absentees Vote*, JERUSALEM POST, Sept. 24, 2002, at 8 ("Morally, there is no justification for depriving good citizens of their most fundamental civil right, namely their fair share in deciding their own fate, just because they happen to be out of the country on election day.").

<sup>26</sup> See William Wan, *Taiwanese Americans Take Long Flight Home to Vote*, L.A. TIMES, Mar. 20, 2004, at B1.

<sup>27</sup> See Mary Beth Sheridan, *Salvadorans Seek Access to Absentee Ballot*, WASH. POST, Oct. 11, 2004, at B3.

<sup>28</sup> Law on Procedure of the Election of the President of the Slovak Republic, on Plebiscite and Removal of the President and on Supplementation of Several Other Laws, arts. 1(2)-(3), 4(6) (1999), available at <http://www2.essex.ac.uk/elect/database/legislationAll.asp?country=slovakia&legislation=sk99pr>.

allow absentee voting by mail include the United States,<sup>29</sup> Spain,<sup>30</sup> Italy,<sup>31</sup> Portugal,<sup>32</sup> and, with some qualifications, Canada<sup>33</sup> and the United Kingdom.<sup>34</sup> Countries that provide for polling places at embassies and consulates abroad include Poland,<sup>35</sup> Lithuania,<sup>36</sup> Ukraine,<sup>37</sup> Colombia,<sup>38</sup> Venezuela,<sup>39</sup> Peru,<sup>40</sup> France,<sup>41</sup> Russia,<sup>42</sup> Sweden,<sup>43</sup> the Philippines,<sup>44</sup> Japan,<sup>45</sup> the Dominican Republic,<sup>46</sup> and

<sup>29</sup> 42 U.S.C. § 1973ff-2 (2000).

<sup>30</sup> EPIC Research Results for Spain—Voting Operations, [http://epicproject.org/ace/compepic/en/country\\$ES+VO](http://epicproject.org/ace/compepic/en/country$ES+VO) (last visited Aug. 19, 2005) [hereinafter EPIC Spain].

<sup>31</sup> Provisions Governing the Right to Vote of Italian Citizens Resident Abroad, Law No. 459 of 27 Dec. 2001, art. 1 (Italy), *available at* [http://www.italyemb.org/L459\\_2001\\_English.pdf](http://www.italyemb.org/L459_2001_English.pdf).

<sup>32</sup> EPIC Research Results for Portugal—Voting Operations, [http://epicproject.org/ace/compepic/en/country\\$PT+VO](http://epicproject.org/ace/compepic/en/country$PT+VO) (last visited Aug. 19, 2005).

<sup>33</sup> See Canada Elections Act, 2000 S.C., ch. 9, §§ 227–30, *available at* <http://laws.justice.gc.ca/en/E-2.01/text.html>.

<sup>34</sup> ELECTORAL COMM’N (U.K.), *supra* note 21, at 1 (allowing nonresident voting by mail, by proxy, or in person).

<sup>35</sup> See Act of 12 April 2001 on Elections to the Sejm of the Republic of Poland and to the Senate of the Republic of Poland, art. 31, *available at* <http://www2.xessex.ac.uk/elect/database/legislationAll.asp?country=Poland&legislation=PL2001> (establishing “election wards” for Polish citizens abroad).

<sup>36</sup> EPIC Research Results for Lithuania—Voting Operations, [http://epicproject.org/ace/compepic/en/country\\$LT+VO](http://epicproject.org/ace/compepic/en/country$LT+VO) (last visited Aug. 19, 2005).

<sup>37</sup> Robert Polner, *Ukraine Election Hits Close to Home*, NEWSDAY, Dec. 23, 2004, at A20.

<sup>38</sup> See Sandra Hernandez, *Colombians in S. Florida Face Critical Vote at Home*, SUN-SENTINEL (Fort Lauderdale), Oct. 24, 2003, at 1A.

<sup>39</sup> See Wilfredo Cancio Isla, *Local Venezuelans Cast Ballot*, MIAMI HERALD, July 26, 1999, at 6A.

<sup>40</sup> See Edward Hegstrom, *Peruvians Can Vote in Elections From Houston*, HOUSTON CHRON., Apr. 6, 2001, at A38.

<sup>41</sup> See Eur. Parl. Ass., *Links*, *supra* note 9, § 4.3 ¶ 41.

<sup>42</sup> Law on Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum, Fed. L. No. 67-FZ of June 12, 2002, art. 3(4) (as amended July 4, 2003), *available at* <http://www.legislationline.org/view.php?document=57535>.

<sup>43</sup> EPIC Research Results for Sweden—Voting Operations, [http://epicproject.org/ace/compepic/en/country\\$SE+VO](http://epicproject.org/ace/compepic/en/country$SE+VO) (last visited Aug. 18, 2005) (noting that voting by mail also allowed).

<sup>44</sup> See An Act Providing for a System of Overseas Absentee Voting by Qualified Citizens of the Philippines Abroad, Appropriating Funds Therefor, and for Other Purposes, Rep. Act No. 9189, § 16(1), (2003) V.L. Doc. (2nd), Book 17, p. 92, (Phil.), *available at* [http://www.congress.gov.ph/download/ra\\_12/RA09189.pdf](http://www.congress.gov.ph/download/ra_12/RA09189.pdf); Simon Montlake, *Filipinos Abroad Get Vote*, CHRISTIAN SCI. MONITOR, Mar. 17, 2004, at 7 (“[O]verseas Filipinos can register with their local consul and vote in state and federal elections.”).

<sup>45</sup> See Yoshimichi Hironaka, *Success of Absentee Vote Reform Depends on Japanese Overseas*, DAILY YOMIURI (Tokyo), Nov. 17, 1999, at 6 (noting that voting at consulate is permitted but voting by mail is not).

<sup>46</sup> See Johnny Diaz, *Dominicans Make History: Expatriates Vote in Boston, Elsewhere as Island Nation Changes Hand at Helm*, BOSTON GLOBE, May 17, 2004, at B1 (reporting balloting at schools and community centers in Dominican communities).

Spain.<sup>47</sup> France has also experimented with Internet voting for nonresident citizens.<sup>48</sup>

Most countries that permit nonresident voting (including those that require nonresidents to return home to cast ballots) do not provide separate representation in national legislatures for nonresident communities. Instead, nonresident voters are assimilated, for electoral purposes, to their last place of residence in the country. Some countries provide discrete representation for nonresident communities, however, and recent developments suggest that others will follow suit. Portugal,<sup>49</sup> France,<sup>50</sup> and Colombia,<sup>51</sup> for example, reserve seats in upper legislative chambers for citizens abroad. Six delegates of the seventy-two-member national assembly of Cape Verde are selected by nonresident voters,<sup>52</sup> as are eight out of 380 Algerian parliamentarians.<sup>53</sup> In 2001, Italy allocated six upper-house and twelve lower-house seats for external citizens as part of legislation extending them the right to vote.<sup>54</sup> Nonresident citizens of Croatia are discretely represented according to the level of their turnout.<sup>55</sup> Separate representation has also been proposed in Ireland (as part of a general proposal

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<sup>47</sup> EPIC Spain, *supra* note 30.

<sup>48</sup> See Dan Keating, *Pentagon Drops Plan To Test Internet Voting: Security Fears Derail \$22 Million Experiment*, WASH. POST, Mar. 31, 2004, at A23 (contrasting American reluctance with European willingness to experiment with Internet voting).

<sup>49</sup> See Eur. Parl. Ass., *Links*, *supra* note 9, § 4.3.2 ¶ 50 (noting that Portugal grants expatriates four of 230 total Parliamentary seats).

<sup>50</sup> *Id.* (explaining indirect process in which twelve senators are elected by members of Senior Council of the French Abroad). The representation of external French citizens is constitutionally protected. See 1958 CONST. 24 (Fr.), available at <http://www.assemblee-nationale.fr/english/8ab.asp#TITLE%20IV> ("French nationals settled outside France shall be represented in the Senate.").

<sup>51</sup> CONST. OF COLOM., art. 176 (1991); see also Michael Vasquez, *Democracy from Afar*, MIAMI HERALD, Mar. 11, 2002, at 3B (noting that 2002 Colombian elections were first in which nonresident Colombians could vote for nonresident Colombian candidate).

<sup>52</sup> See Robert Preer, *Voting Long-Distance: Homeland Ballots Come to Area Cape Verdeans*, BOSTON GLOBE, Jan. 15, 2001, at A1.

<sup>53</sup> See Gail Russell Chaddock, *Algerians in France Play a Part*, CHRISTIAN SCI. MONITOR, June 4, 1997, at 6.

<sup>54</sup> See Provisions Governing the Right to Vote of Italian Citizens Resident Abroad, Law No. 459 of 27 Dec. 2001, art. 6 (Italy), available at [http://www.italyemb.org/L459\\_2001\\_English.pdf](http://www.italyemb.org/L459_2001_English.pdf). The law sets aside one seat in each house to external citizens from each of four geographic divisions, allocating the remaining seats on a proportional basis.

<sup>55</sup> See Eur. Parl. Ass., *Links*, *supra* note 9, § 4.3.2 ¶ 51 (noting that since 1995, twelve parliamentary seats are reserved for nonresident representatives); Peter J. Spiro, *Political Rights and Dual Nationality* [hereinafter Spiro, *Political Rights*], in *RIGHTS AND DUTIES OF DUAL NATIONALS: EVOLUTION AND PROSPECTS* 135, 145 n.28 (David A. Martin & Kay Hailbronner eds., 2003) (noting that Croatia gives "nonresident voters representation according to the number of voters actually participating in a particular parliamentary election").

extending franchise rights to some nonresident citizens),<sup>56</sup> Mexico,<sup>57</sup> the Dominican Republic,<sup>58</sup> and Switzerland.<sup>59</sup>

Anecdotal evidence suggests that turnout among eligible nonresident voting populations has generally been low. Only 3000 of 200,000 Colombian citizens residing in the New York metropolitan area cast ballots in the 1990 elections for the Colombian presidency.<sup>60</sup> Similarly, fewer than 14,000 nonresident British citizens voted in the 1997 parliamentary elections, a small fraction of those eligible.<sup>61</sup> A 1999 Council of Europe report concluded that "in countries which allow their expatriates to vote, the actual participation rate is so low as to have little effect on the outcome."<sup>62</sup> There are, however, examples of higher participation: In the 1994 Swedish parliamentary elections, for example, approximately 25,000 out of 80,000 eligible nonresidents cast ballots;<sup>63</sup> France and Austria have reported turnout rates of approximately twenty-five percent of total eligible nonresident voters;<sup>64</sup> and in 2003, the first year in which Belgians abroad were allowed to vote in elections,<sup>65</sup> over sixty percent of eligible voters participated.<sup>66</sup> An estimated ninety percent of eligible Eritreans abroad voted in a 1993

<sup>56</sup> See Eur. Parl. Ass., *Links*, *supra* note 9, § 4.3.2 ¶ 54 (noting proposed constitutional amendment allowing for election of three members of Irish Senate by Irish emigrants); Geraldine Kennedy, *Votes for Emigrants of 20 Years Proposed in Document*, IRISH TIMES, Mar. 12, 1996, at 5.

<sup>57</sup> See Jennifer Mena, *U.S. Citizen in Mexico's Congress*, L.A. TIMES, July 11, 2003, § 2, at 1.

<sup>58</sup> See Larry Rohter, *New York Dominicans Strongly Back Candidates on Island*, N.Y. TIMES, June 29, 1996, at 21.

<sup>59</sup> See Elizabeth Olson, *Americans Abroad Keep up Fight to Get a Delegate in Congress*, INT'L HERALD TRIB., Mar. 6, 2004, at 26 (reporting proposal to create twenty-seventh canton to represent nonresident Swiss citizens).

<sup>60</sup> MICHAEL JONES-CORREA, BETWEEN TWO NATIONS: THE POLITICAL PREDICAMENT OF LATINOS IN NEW YORK CITY 125 (1998).

<sup>61</sup> See *Voteless in Marbella*, ECONOMIST, Jan. 29, 2000, at 66 (reporting that pool of potentially eligible nonresident voters includes over 800,000 British citizens who have retired overseas, and "many more [who] are thought to be businessmen or tax exiles"). A recent campaign by the Thai government to register overseas voters mustered a tepid response, with fewer than 25,000 out of 710,000 eligible nonresidents filing to vote in national elections. See Marisa Chimprabha, *Better Deal for Overseas Voters*, THE NATION (Thailand), Feb. 23, 2000. In 1999 parliamentary elections, only 558 of 3080 Venezuelans registered at the country's consulate in Miami cast ballots there. See Isla, *supra* note 39.

<sup>62</sup> See Eur. Parl. Ass., *Links*, *supra* note 9, § 4.3.1 ¶ 48.

<sup>63</sup> See BRITT-MARIE GRUNDSTRÖM, EXTERNAL VOTING IN SWEDISH ELECTIONS (1998), available at <http://www.ife.org.mx/InternetCDA/estaticos/AI/sesuecia.htm>.

<sup>64</sup> See Spiro, *Political Rights*, *supra* note 55, at 138.

<sup>65</sup> See Law No. 2002-1645 of Mar. 7, 2002, Moniteur Belge, p.19,146 (Belg.) (enfranchising Belgians abroad to vote in 2003 election for federal legislative Chambers).

<sup>66</sup> E-mail from Leo Cortens, Consul, Embassy of Belgium to the United States to Anna Green, Research Assistant, University of Georgia Law School (Mar. 3, 2005, 16:02:17 EST) (on file with the *New York University Law Review*).

referendum on independence.<sup>67</sup> And though it is clearly an anomalous case, it is worth noting that in the recent post-invasion elections in Iraq, over 265,000 nonresident Iraqis cast ballots, approximately ninety-three percent of those registered<sup>68</sup> (though fewer registered than expected by election organizers).<sup>69</sup> A poll of Mexican migrants in the United States found that eighty-seven percent said they would vote in 2006 federal elections if they could cast ballots in the United States.<sup>70</sup> Now that Mexico has adopted external voting procedures, as many as four million of the ten million Mexicans living in the United States could be eligible to participate.<sup>71</sup> Finally, as more countries allow for balloting by mail (and, perhaps, in the future, via the Internet as well), as opposed to requiring nonresident voters to make sometimes distant trips to diplomatic facilities, the transaction costs of external voting will diminish and participation rates may increase correspondingly.<sup>72</sup>

There seems to be a clear trend towards more expansive voting privileges for external citizens and the facilitation of the exercise of those privileges. In recent years, the Philippines,<sup>73</sup> Italy,<sup>74</sup> Belgium,<sup>75</sup> Slovakia,<sup>76</sup> Japan,<sup>77</sup> and the Dominican Republic,<sup>78</sup> among others, have all liberalized laws relating to voting by external citizens. After

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<sup>67</sup> *A World of Exiles*, THE ECONOMIST, Jan. 4, 2003, at 41, 43, available at [http://economist.com/PrinterFriendly.cfm?story\\_ID=1511765](http://economist.com/PrinterFriendly.cfm?story_ID=1511765).

<sup>68</sup> See Iraq Out-of-Country Voting Program, Counting Begins After 93% of Registrants Vote in Out-of-Country Election (Jan. 31, 2005), [http://www.iraqocv.org/php/read\\_media.php?link\\_id=36&lang=eng](http://www.iraqocv.org/php/read_media.php?link_id=36&lang=eng).

<sup>69</sup> See Hassan M. Fattah, *Iraqis Abroad Seem Reluctant to Vote, Too, Sign-Up Shows*, N.Y. TIMES, Jan. 26, 2005, at A8 (reporting that more than one million expatriate Iraqis were expected to register).

<sup>70</sup> See Lennox Samuels, *Survey: Migrants Want to Vote in Mexico Elections: Millions in U.S. May Get Chance in '06 Presidential Race*, DALLAS MORNING NEWS, Mar. 15, 2005, at 9A (reporting results of Pew Hispanic Center poll).

<sup>71</sup> See Sam Quinones, *Mexican Emigres Cheer, Shrug at New Voting Right*, L.A. TIMES, July 2, 2005, at B1.

<sup>72</sup> See Eur. Parl. Ass., *Links*, *supra* note 9, § 5.1.2 ¶ 80 (noting that low expatriate turnout rate may in part be ascribed to “long journeys—sometimes of several hundred kilometres—to centralised polling stations”); Keating, *supra* note 48 (reporting that participation trends among nonresident French citizens in United States able to vote by Internet in 2003 elections were favorable compared to nonresident French citizens located in other countries); see also *Let Absentees Vote*, *supra* note 25 (supporting proposal to allow nonresident Israelis to vote from abroad).

<sup>73</sup> See Montlake, *supra* note 44 (noting that Filipinos living abroad voted in Philippine elections for first time in 2004).

<sup>74</sup> See *supra* note 54 and accompanying text.

<sup>75</sup> See E-mail from Leo Cortens, *supra* note 66.

<sup>76</sup> E-mail from Marcel Klimo, Consul, Embassy of Slovak Republic to the United States to Anna Green, Research Assistant, University of Georgia Law School (Mar. 3, 2005, 14:31:15 EST) (on file with the *New York University Law Review*) (describing recent changes in Slovakian law allowing for external voting by citizens of Slovakia).

having recognized dual citizenship in 1998, Mexico has recently adopted external voting procedures which will allow significant numbers of Mexican citizens in the United States to vote in the 2006 presidential election without having to return to Mexico to cast their ballots.<sup>79</sup> With one minor exception,<sup>80</sup> the trend appears to be unidirectional; that is, no state has moved to restrict the franchise as previously extended to external citizens. That is not to say that the trend is consistent or that the extension of voting rights to external citizens is anything approaching universal. But there is more than a suggestion in recent developments that external citizen voting is becoming a more prevalent practice.

## II

### JUSTIFYING EXTERNAL CITIZEN VOTING

Insofar as they remain, restrictions based on residency appear in the first instance to share the same basic policy motivation: to eliminate or limit what could be called the “loose cannon” risk of substantial nonresident voter participation.<sup>81</sup> This perceived risk can be unpacked into three types of risk possibly associated with nonresident voting: irresponsible voting, uninformed voting, and undisciplined voting. Residency restrictions may also be tied to the perceived challenges of large-scale out-of-country electoral logistics. In most contexts, however, none of these perceived risks ultimately justifies the perpetuation of residency restrictions on the franchise. Nor, I believe, do other objections to the nonresident franchise—that it undermines political participation in countries of residence or that it contradicts the equality norm of modern citizenship—justify the imposition of such restrictions.

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<sup>77</sup> See *Bill to Allow Postal Votes for Residents Overseas*, DAILY YOMIURI (Tokyo), Dec. 8, 1998, at 3 (reporting on passage of bill “allow[ing] voters living in foreign cities and districts with 10,000 or more Japanese residents to vote by mail in national elections”).

<sup>78</sup> See Ginger Thompson, *Dominicans Cast Ballots in Presidential Vote*, N.Y. TIMES, May 17, 2004, at A3 (noting that 2004 election was first in which Dominicans could cast ballots abroad).

<sup>79</sup> See Quinones, *supra* note 71.

<sup>80</sup> In 2000, an Act of Parliament in the United Kingdom reduced the period of nonresidency giving rise to ineligibility from twenty years to fifteen. Political Parties, Elections and Referendums Act, 2000, c. 41, § 141 (U.K.), available at <http://www.opsi.gov.uk/acts/acts2000/20000041.htm> (amending Representation of the People Act 1985). Even that change represents a minor retrenchment against a liberalizing trend facilitating voting for nonresident British citizens. See *Voteless in Marbella*, *supra* note 61 (noting that nonresidents were prohibited from voting in U.K. elections altogether until 1985).

<sup>81</sup> See Michael Jones-Correa, *Under Two Flags: Dual Nationality in Latin America and Its Consequences for Naturalization in the United States*, in RIGHTS AND DUTIES OF DUAL NATIONALS: EVOLUTION AND PROSPECTS, *supra* note 55, at 303, 317 (“Sending countries may fear that immigrants may become a political loose cannon.”).

### A. External Citizens: Irresponsible and Uninformed?

Arguments asserting the risk of irresponsible voting on the part of nonresidents work from the premise that nonresidents lack an interest in election contests and therefore will not exercise the franchise in a conscientious manner. Because nonresidents do not live with the consequences of their vote, the argument runs, they will not exercise it with the care that one would expect of resident voters, who vote responsibly out of self-interest.<sup>82</sup> The argument thus assumes that individual interests in governmental policymaking hinge on residence.

This premise seems increasingly tenuous in the face of globalization. Nonresident citizens often have significant interests in policymaking in their (other) country of citizenship. Many nonresidents own property, operate businesses, and have made other investments (including financial support for schools, road-building, and other public works) either located in or involving transactions with the home country. Many are liable for taxes, notwithstanding nonresidence.<sup>83</sup> Many have interests that arise from their nonresidence, but with respect to which home-country governments are influential, for instance, in the processing and use of remittances.<sup>84</sup> Nonresident citizens have clear interests with respect to nationality and military service laws, as well as practices relating to the diplomatic protection of

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<sup>82</sup> See Bauböck, *supra* note 7, at 711 (“[M]igrants who demand a voice in the political process at home can be accused of imposing their interests from the outside without sharing any responsibility for the outcome.”). As David Martin argues, a rule allowing dual nationals the right to vote only in their country of residence would “help[ ] promote mature deliberation and seriousness about the vote, because the voter will have to live with the consequences in the most direct way.” David A. Martin, *New Rules on Dual Nationality for a Democratizing Globe: Between Rejection and Embrace*, 14 GEO. IMMIGR. L.J. 1, 26 (1999). As one resident citizen of Mexico observed in expressing opposition to the political participation of external citizens: “We’re the ones who are in the trenches, on a war footing, not them . . . . Yes, their support for our democracy is important, but we’re the ones who must live with the consequences, not them.” Alfredo Corchado & Laurence Iliff, *Double Edged Sword: Latin American Governments Weigh Emigrants’ Right to Vote in Their Native Countries*, DALLAS MORNING NEWS, Sept. 21, 1997, at 1A.

<sup>83</sup> See Barry, *supra* note 1, at 36–40. U.S. citizens, for instance, are required to file and pay taxes regardless of residence, although credits for taxes paid to a country of residence may largely cancel out federal income taxes that would otherwise be due. Treas. Reg. § 1.1-1(a)(1) (as amended in 1974) (defining “United States persons” subject to federal income tax); see also Cook v. Tait, 265 U.S. 47 (1924) (upholding governmental power to tax Americans abroad). Nonresident citizens owning real property in homelands, as is often the case, will also be subject to applicable property taxes.

<sup>84</sup> As one advocate of nonresident voting for Salvadoran residents in the United States observed: “If they are the ones who are carrying El Salvador’s economy on their backs, . . . then they have political rights at home and should have a say in their nation’s destiny, whether they live here or not.” Corchado & Iliff, *supra* note 82.

citizens abroad;<sup>85</sup> and many (especially those who retire abroad) have an interest in social welfare policy, as beneficiaries. Finally, many nonresidents return to their home country and thus have an important interest in the future course of home-country government.<sup>86</sup>

The temporary return of many nonresidents from the United States to vote in recent elections in Israel and Taiwan would seem by itself to evidence a nonresident interest in those contests.<sup>87</sup> To the extent that nonresidents do not have interests in homeland governance, they are unlikely to exercise the franchise at all, even where the costs of participation are low. Anemic nonresident participation rates in Colombian and British elections<sup>88</sup> would seem to belie assertions that large numbers of uninterested nonresident voters would participate if given the opportunity.

Much the same goes for charges that nonresident voting will be uninformed.<sup>89</sup> Those who are truly uninformed are unlikely to participate. Those who want to stay or become informed regarding political

<sup>85</sup> See Montlake, *supra* note 44 (reporting nonresident Filipino citizen interest in voting for "candidate that sticks up for her rights"); Rodel E. Rodis, *Absentee Voting and Filipino TNT's*, GLOBAL NATION, Feb. 20, 2003, [http://www.inq7.net/globalnation/col\\_gln/2003/feb20.htm](http://www.inq7.net/globalnation/col_gln/2003/feb20.htm) (suggesting that if nonresident Filipinos enjoyed voting privileges, "the Philippine government would be lobbying the US government to ease up on the harassment of Filipinos and to provide Filipino [undocumented aliens in the United States] . . . with whatever benefits that may be extended to their Mexican counterparts").

<sup>86</sup> By way of justifying 1975 legislation protecting the right of nonresident citizens to vote in federal elections, a report to the House of Representatives stressed that they have: distinct congressional interests. The citizen outside the country is interested, for example, in the exchange rate of the dollar, social security benefits, or the energy situation. Furthermore, the local citizen and the overseas citizen share a number of common national interests, such as Federal taxation, defense expenditures (for example, U.S. troops stationed overseas), inflation, and the integrity and competence of our National Government.

H.R. REP. NO. 94-649, at 2 (1975), as reprinted in 1975 U.S.C.C.A.N. 2358, 2359.

<sup>87</sup> See Wan, *supra* note 26; Elli Wohlgelernter, *Thousands of Citizens Return to Vote*, JERUSALEM POST, May 17, 1999, at 4. Before changes in Dominican law allowed for polling in places of foreign residence, thousands of Dominican citizens would return home from the United States to vote in elections there. See Jordana Hart, *Sense of Duty to Homeland Compels Mass. Dominicans to Return to Vote*, BOSTON GLOBE, May 13, 2000, at B3; Rohter, *supra* note 58.

<sup>88</sup> See JONES-CORREA, *supra* note 60, at 331; *Voteless in Marbella*, *supra* note 61.

<sup>89</sup> See, e.g., Arnold, *Overseas Voting: Length of Time Away Possible Criterion*, STRAITS TIMES (Sing.), Feb. 23, 2001, at H4 (quoting Singaporean opposed to nonresident voting as saying that "somebody who's out of touch may vote . . . based on outdated or incorrect views"). As one British parliamentarian noted:

Their use of the right will be a farce. They will not be able to meet their candidate, to question the candidate or be canvassed by someone calling on behalf of the candidate. They may not receive any election literature, and they may therefore know nothing of the candidate except his or her name and party.

341 PARL. DEB., H.C. (6th ser.) (1999) 367, available at <http://www.publications.parliament.uk/pa/cm199900/cmhansrd/vo991215/debtext/91215-32.htm>.

developments in their home countries now enjoy the means to do so through the Internet, satellite and cable television, and increasingly diversified print media.<sup>90</sup> Print and broadcast media worldwide now maintain parallel websites, as do political parties, governments, and diaspora associations. One's physical location now need have little bearing on access to political information.<sup>91</sup> Hence, nonresident participation is consistent with republican conceptions, which require "a willingness to argue, to listen, and to accept the force of better reasons," in short, "some ongoing involvement."<sup>92</sup> This sort of deliberative participation has also been enabled across space by the communications revolution, at the same time that the increasingly concentrated nature of many emigrant communities in many cases will permit more traditional face-to-face engagement as well.

### B. Playing Politics: External Citizens as "Undisciplined" Voters

Perhaps the most significant obstacle to extending and facilitating nonresident exercise of the franchise is the possibility that ruling parties will perceive nonresident communities to be unfriendly to their electoral interests, and will thus work to deny them the franchise.<sup>93</sup> Ruling parties by definition have an interest in preserving the status quo, and the political uncertainties posed by nonresident communities become an obstacle to regularizing their electoral participation. In its more pronounced version, the nonresident community becomes a "swing" bloc dictating a change in home-country government.<sup>94</sup> This

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<sup>90</sup> Even in the pre-Internet context of 1975, the U.S. Congress observed that nonresidents "keep in close touch with the affairs at home, through correspondence, television and radio, and American newspapers and magazines." H.R. REP. NO. 94-649, at 2, as reprinted in 1975 U.S.C.C.A.N. 2358, 2359.

<sup>91</sup> Indeed, it has been suggested that nonresidents may be better informed to the extent their sources will be less vulnerable to official manipulation. See Marcella Bombardieri, *To Russia—Politics With Love: Immigrants Vote in Duma Election*, BOSTON GLOBE, Dec. 20, 1999, at B1 (reporting nonresident Russians' opinion that "they are better equipped than most Russians to judge the political scene since they receive more unbiased information in the United States").

<sup>92</sup> Bauböck, *supra* note 7, at 713.

<sup>93</sup> A recent example is the denial of the franchise to nonresident citizens of Zimbabwe in the March 2005 presidential election there. The nonresident population, estimated at 2.5–3 million (relative to 5.7 million registered resident voters), was assumed to be opposed to the ruling government of Robert Mugabe, and the refusal to extend voting rights was understood to have been motivated by that assumption. See David Blair, *Eight Ways to Rig an Election*, DAILY TELEGRAPH (London), Mar. 31, 2005, at 13 (counting ban on nonresident voting as among those eight ways); Basildon Peta, *Court Backs Mugabe's Ban on Expat Voters*, INDEPENDENT (London), Mar. 19, 2005, at 32.

<sup>94</sup> A former attorney general of Mexico, for example, argues that in a close election where "the deciding votes might well be cast by dual citizens," candidates would need "to take care that their campaign issues and proposals not be alien to the interests of U.S. citizens nor opposed to those held by the U.S. government." Diego Valades, Constitu-

motivation seems the most probable explanation for prohibitions on nonresident voting. Home countries should have an interest in nonresident voting as a relatively cheap mechanism for maintaining connections—especially economic connections—with emigrant communities. One would thus expect the prevalence of nonresident voting, but for the political uncertainty that nonresident voters present to entrenched regimes.<sup>95</sup>

This concern also seems unsupportable, both empirically and normatively. Again, voter participation among nonresidents in those countries which allow the practice has been historically so low as to minimize the danger that nonresident voters will command a decisive position in any given election. Moreover, to the extent that nonresident voters do influence election results—most notably, overseas absentee ballots apparently tipped the balance in the 2000 U.S. presidential election<sup>96</sup>—that provides no principled justification for their

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tional Implications of Mexican Voting Abroad (unpublished manuscript on file with the *New York University Law Review*); see also Eva Østergaard-Nielsen, *Trans-State Loyalties and Politics of Turks and Kurds in Western Europe*, SAIS REV., Winter–Spring 2000, at 23 (arguing that similar blurring of host state and foreign interests is evidenced in political activities of Kurdish and Turkish communities in Germany and Netherlands); cf. Celia Walden, *Labour and the Missing Millions*, DAILY TELEGRAPH (London), Dec. 1, 2004, at 23 (reporting charge that Labour government slowed overseas turnout drives “lest [overseas voters] . . . vote the ‘wrong’ way”). With respect to the recent adoption of external voting under Mexican law, observers agreed that “a belief that none of Mexico’s three major parties would automatically benefit from the new votes” facilitated by the change was “[k]ey to the move.” Hugh Dellios & Oscar Avila, *Doubts Cast on Pull of Absentee Vote in Next Election*, CHI. TRIB., June 30, 2005, at 3. Earlier failed attempts to establish absentee ballots were explained by the then-ruling party’s “fear that the overwhelming majority of Mexicans living in the United States blame[d] [it] . . . for poor economic conditions and a lack of opportunity at home and would therefore vote for the opposition.” John Ward Anderson, *Politicians Without Borders: Mexico’s Candidates Court Support of Migrants in U.S.*, WASH. POST, May 9, 2000, at A20.

<sup>95</sup> The incidence of nonresident voting mechanisms may be lower among those countries (such as Mexico) whose government has been dominated by a single political party. Of course, once the logjam is broken through legislative reforms, the effect is likely to be ratcheted, as voting rights once extended will be difficult to retract. That said, even where external citizens have been extended the franchise, they may find the exercise of voting rights obstructed when an incumbent government believes them to be inclined to opposition candidates. See Michele Wucker, *The Perpetual Migration Machine and Political Power*, WORLD POL’Y J., Fall 2004, at 41, 43 (recounting difficulties faced by nonresident Venezuelan voters in referendum on president Hugo Chavez).

<sup>96</sup> Overseas absentee voters most likely delivered George W. Bush his slim victory in the decisive Florida contest. Bush picked up 739 votes among overseas ballots received after election day, more than his final margin of 537. See David Barstow & Don Van Natta Jr., *How Bush Took Florida: Mining the Overseas Absentee Vote*, N.Y. TIMES, July 15, 2001, § 1, at 1. It is impossible, however, to know whether overseas voters in aggregate made the difference, as absentee ballots received before election day were counted in initial election returns. See *id.* In the days before the deadline for receipt of overseas absentee ballots (ten days after the election itself), there was speculation that Democratic candidate Al Gore would pick up a large bloc of votes from former Floridians now resident

exclusion. Assuming that nonresident citizens have an interest in homeland governance, and that they are no less likely to exercise the franchise in a responsible or informed manner than resident voters, they should enjoy facilitated rights of participation in national elections, and, where warranted by numbers and interests, some assurance of a voice in national policymaking.<sup>97</sup>

### C. The Logistics of Nonresident Voting

The administration of nonresident suffrage should not pose insuperable obstacles in any but the most extreme cases of high nonresident voter concentration. The many countries that facilitate nonresident voting do so through mail ballots or polling at embassies and consulates, or a combination of the two.<sup>98</sup> Where nonresident communities are dispersed or small, host countries (that is, countries in which the voters reside) have not objected to foreign voting on their territory.

Large-scale voting on foreign territory—for example, the prospect of voting by Mexican communities in the United States, or of Turkish citizens in Germany, both numbering in the millions—could pose problems for home and host countries. Home countries may be concerned about heightened possibilities for fraud in absentee balloting, or the high expense and logistical difficulties of large-scale, in-

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in Israel. See Raja Mishra, *Anticipation of Absentee Tally Brings Hope, Fear, to Both Sides*, BOSTON GLOBE, Nov. 16, 2000, at A1; see also Mark Z. Barabak & Mike Clary, *Florida Recount Underway, Presidency Hangs in the Balance*, L.A. TIMES, Nov. 9, 2000, at A1 (noting how “stunned and thrilled” overseas voters were to realize how pivotal their vote might prove to contest). It is perhaps significant that even in the face of that possibility no political actors or commentators appeared to question the legitimacy of nonresident voting. After the 2000 election experience put the potential importance of the overseas vote into stark relief, the 2004 contest saw candidates Bush and Kerry devoting considerable resources to winning votes outside the United States. See, e.g., Richard Boudreaux, *The Race for the White House: Americans Abroad Are Itching to Get Their Hands on Ballots*, L.A. TIMES, Oct. 20, 2004, at A1 (reporting identification of “battleground states” including Iraq, South Korea, Israel, and Italy); Charles M. Sennott, *Voter Registration Abroad Surges*, BOSTON GLOBE, Oct. 28, 2004, at A24 (reporting dramatic increase in number of Americans abroad registering to vote in 2004 election).

<sup>97</sup> See Eur. Parl. Ass., *Links*, *supra* note 9, § 4.3.1 ¶ 40 (“[T]he issue . . . is essentially a matter of fundamental, inalienable human rights. It is important that all those wishing to exercise them may freely do so.”).

<sup>98</sup> The Administration and Cost of Elections (ACE) Project, an undertaking sponsored by the International Foundation for Election Systems, the International Institute for Democracy and Electoral Assistance, and the U.N. Department of Economic and Social Affairs, has issued a “best practices” background paper on the administration of foreign voting. See ACE Project, *Voting in a Foreign Country*, <http://www.aceproject.org/main/english/po/poa02c.htm> (last visited Nov. 15, 2005).

person voting at diplomatic facilities.<sup>99</sup> Host countries might want to avoid having to police intense campaign activities and election-day conduct, and possible responsibility for any disruptive or corrupt acts that may occur.

On both sides, however, these concerns are probably exaggerated and may disguise other motivations for restricting nonresident voting. In the first instance, again, recent experience suggests relatively low electoral participation rates within nonresident communities, at least for the time being. In any event, modern electoral management techniques, along with the use of international observers, should reduce the risk of fraud even in large-scale nonresident polling.<sup>100</sup> Indeed, it has been suggested that the risk of fraud may be lower with respect to external voting, especially in cases where democratic practices are better established in the country of residence than in the homeland.<sup>101</sup> The stabilization of democratic practices in most countries has also reduced the risk of disturbances that in the past may have been associated with election campaigns. Thus, some countries, including Germany and Switzerland, have recently abandoned laws under which foreign residents could vote in home-country elections only by mail.<sup>102</sup> To the extent that massive voting by nonresident communities presented serious host-country issues, they could be addressed in bilateral agreements.<sup>103</sup> Moreover, moves to facilitate external voting by mail (and, eventually, by Internet) should address many of these

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<sup>99</sup> See James F. Smith, *Expatriate Mexican Voting is Feasible, Panel Reports*, L.A. TIMES, Nov. 13, 1998, at A1 (estimating costs of administering Mexican election for nonresident citizens in United States at \$76 to \$350 million).

<sup>100</sup> The expanded possibilities for absentee voting by resident citizens also evidence the probability that such voting can be adequately insulated from abuse. In recent presidential elections in the United States, one state (Oregon) conducted all voting through mail or drop-offs; others (including California) allowed absentee voting at the voter's option. See, e.g., *The Absentees Are Also Present: Absentee Voters Make Their Mark*, THE ECONOMIST, Oct. 28, 2000, at 28; Michael Moss, *Parties See New Promise When the Ballot Is in the Mail*, N.Y. TIMES, Aug. 22, 2004, § 1, at 16.

<sup>101</sup> See Andrea Elliott, *For Dominicans, a New York Vote Cast Homeward*, N.Y. TIMES, May 17, 2004, at B1 (noting view that political disinterest of New York City police officers monitoring polling places for external voting in New York "lent them a greater legitimacy than the officers patrolling sites in the Dominican Republic"); Montlake, *supra* note 44 (asserting that external voters in Philippine elections "should be immune from the rampant vote-buying and intimidation that mar Philippine elections").

<sup>102</sup> See Eur. Parl. Ass., *Links*, *supra* note 9, § 5.1.2 ¶ 80.

<sup>103</sup> In 1998, Mexico's elections commission convened a conference to study external voting mechanisms employed by other countries. See IFE Internacional, Seminario Internacional Sobre el Voto en el Extranjero (Aug. 11–12, 1998), available at [http://www.ife.org.mx/InternetCDA/IFEInternacional/index.jsp?padre=IFE%20Internacional&hijo=seminarios%20y%20Conferencias&pagina=SEMINARIO-1&menu=menu\\_Internacional.jsp](http://www.ife.org.mx/InternetCDA/IFEInternacional/index.jsp?padre=IFE%20Internacional&hijo=seminarios%20y%20Conferencias&pagina=SEMINARIO-1&menu=menu_Internacional.jsp).

concerns, as the external voting process becomes more of an individual rather than a group undertaking.

#### D. External Voting and Plural Citizenship

The issue of external citizen voting has also been tied up in questions relating to the rise of dual citizenship. As Kim Barry emphasizes, broadening acceptance of dual citizenship has highlighted another feature of external citizenship. Most commentators now accept the maintenance of alternative citizenships as consistent with the institution (itself a major shift from the historical opprobrium associated with the status),<sup>104</sup> but some draw the line at dual voting. David Martin, most notably, has argued that dual nationals should be permitted to vote only in their country of residence.<sup>105</sup> Martin first suggests that nonresident voting by dual nationals will divert them from deeper political engagement in the places where they live.<sup>106</sup>

But that point rests on the premise that individuals have a fixed quantum of energy that they devote to political participation, and that participation in one arena will inevitably subtract from participation in another. Participation in state and local politics is not typically condemned as lowering likely engagement in federal politics. Involvement with a school board, for example, would not necessarily be inconsistent with activity in other political arenas; indeed, one might expect that the individual engaged on school issues would be more likely to maintain involvement on other civic fronts. The same goes for engagement in civil society, generally considered a virtue in the republican conception of political being. While it may be true that, in some instances, a deep commitment to non-governmental forms of association (including international ones) may limit the depth of direct political engagement, rank-and-file participation would have no such consequence on average. On the question of dual citizenship gener-

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<sup>104</sup> See generally Peter J. Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 EMORY L.J. 1411 (1997).

<sup>105</sup> See Martin, *supra* note 82, at 25–31 (explaining and defending this assertion); see also T. ALEXANDER ALEINIKOFF, BETWEEN PRINCIPLES AND POLITICS: THE DIRECTION OF U.S. CITIZENSHIP POLICY 36 (1998) (proposing bilateral agreements to limit voting of dual citizens to place of residence). Peter Schuck, by contrast, accepts arguments for voting by dual nationals in both countries of nationality. See Peter H. Schuck, *Plural Citizenships, in IMMIGRATION AND CITIZENSHIP IN THE TWENTY-FIRST CENTURY* 149, 167–69 (Noah M.J. Pickus ed., 1998).

<sup>106</sup> See Martin, *supra* note 82, at 26 (“Focusing political activity in the place where you live encourages a deeper engagement in the political process—perhaps even civic virtue—and also helps develop affective citizenship and a sense of solidarity.”); see also Phuong Ly & Nurith C. Aizenman, *Immigrant Voters’ Split Ticket: Some U.S. Citizens Also Cast Ballots in Homeland*, WASH. POST, Oct. 30, 2003, at B1 (reporting immigrant community leader’s concern that “interest in overseas politics could divert energy from those here”).

ally, Peter Schuck supposes that "it is doubtful (although possible) that parents with two sets of children from different marriages manage to devote the same amount of time to each child as they would if they had only one set of children to raise."<sup>107</sup> But that would seem rather to exaggerate the weight of our political identities. Even intensive political engagements fall short of what is demanded in the context of the true family, and would usually allow room for parallel commitments.

Martin's view may also suggest that obstructing participation in homeland politics will inevitably channel energy into the politics of the host country. That seems unlikely; the probability of casting a host country vote would not likely increase with the loss of a homeland one. People will participate in those collectivities (many or few) of which they feel a part and in which they perceive interests. Participation rights in one community will not necessarily affect the exercise of rights in another. Voting, finally, is just one form of political engagement. An immigrant who is denied the franchise in his homeland may well have other routes of participation available to him, which he will take or leave as identity and other factors determine—hence the political impact of external citizen communities on the home state even when they do not enjoy the franchise there. And to the extent that diaspora communities feel more connected to their homelands than to their host states, denying them the franchise as external citizens is unlikely to energize them as resident citizens.

Martin also objects to nonresident voting by dual nationals on the ground that it violates the equality norm central to the modern conception of citizenship.<sup>108</sup> To the extent dual nationals are permitted to vote in both countries of nationality, the argument runs, that privileges them over their mono-national counterparts. There are at least two responses. First, the argument overestimates the importance of the franchise as a citizenship right and measure of equality. As a mono-national American, I would be jealous of a dual national Irish-American colleague not because she might be able to vote in Irish elections (which, for me, would be more of a burden than a privilege), but rather because she enjoys the personal and professional advantages of E.U. citizenship (to live, travel, and work there without restriction). If rights other than the franchise loom large, the answer to the equality objection is to prohibit dual nationality altogether, not to limit the parallel political rights that may come with the status.

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<sup>107</sup> Schuck, *supra* note 105, at 171.

<sup>108</sup> Martin, *supra* note 82, at 30 ("What is most fundamentally at stake is the equality that has been a key element in the basic understanding of what it means to be a citizen.").

Second, assuming the importance of the franchise, depriving nonresident dual nationals of their right to vote presents an equality problem of its own. In the resulting framework, some citizens (resident and nonresident mono-nationals) have full political rights, while other citizens (dual nationals) do not. To the extent that the inequality is internally generated (that is, within the citizenship regime itself, rather than the result of interplay with other regimes), the problem indeed seems more serious than that posed by holding franchise rights in more than one polity. The nonresident dual national loses a voice in decisionmaking implicating her interests; to deny the franchise would seem to amount to a denial of self-government. By contrast, the mono-national, assuming that her governance interests are limited to one country, is not being deprived by the lack of voting rights in other polities. In any case, no state appears currently to make the maintenance of alternate nationality material to the extension of voting privileges.<sup>109</sup> As the acceptance of dual citizenship broadens, it seems unlikely that objections to dual citizen voting will have much traction.

### III CHANNELS OF PARTICIPATION

The choice of representation mechanism for nonresident citizens depends on context. Assimilated representation—registration and polling through last place of in-country residence—is more easily implemented in most countries, especially those, such as the United States, whose territorially-based districting system is constitutionally entrenched (the prospect of creating a separate congressional district for overseas Americans is non-existent). It is also preferable where the number of nonresident citizens is small or unengaged, and thus does not warrant discrete representation in national legislatures. Assimilated representation has the advantage of maintaining the formal equality of nonresident voters, insofar as their votes count as much as their residential counterparts'.

Where feasible as a matter of constitutional structure, however, there are an increasing number of contexts in which discrete representation would seem to be the better mechanism. Discrete representation—affording nonresident citizens separate representation—is preferable insofar as nonresident citizen interests are themselves discrete from those of resident voters.<sup>110</sup> Dispersed through in-country

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<sup>109</sup> Until recently nonresident citizens of Belgium could vote only if they were not eligible to vote in their country of residence. See Spiro, *Political Rights*, *supra* note 55, at 136–37 (describing Belgian rule); see also E-mail from Leo Cortens, *supra* note 66.

<sup>110</sup> In this respect, a justifiable distinction could be drawn between short- and long-term nonresidents. Short-term nonresidents will likely maintain an interest in matters of local

territorial jurisdictions, nonresident voters, even where their franchise is facilitated and their votes are formally equal to resident votes, may be less likely to have their distinct interests represented in national decision-making. And one can rationalize discrete representation with the foundational metric of territorial districting. The approach still works on a territorial basis—assigning representation on the basis of the voter’s location—deviating only insofar as the territory involved is outside sovereign jurisdiction and non-contiguous. But discrete representation for external citizens would not necessarily open the door to more corporatist forms of representation, in which interest groups would be directly and discretely allocated representation on the basis of factors other than territorial location.

Indeed, discrete representation would in many cases result in the election of external citizens to national legislatures. There are examples of nonresidents running for and securing national office, even in assimilated representation systems.<sup>111</sup> In some states, external citizens may be blocked from office-holding by laws requiring residence or making dual citizenship a ground for ineligibility. The latter restriction can be attributed largely to old-world conceptions of national loyalties.<sup>112</sup> As the prospect of nonresident office-holding becomes more practical and less anomalous, these obstacles appear to be dissipating.

That is not to say that such discrete representation would always need to be in proportion to numbers. In most national polities, nonresident citizens will have lesser interests in home-country policymaking than resident citizens, as reflected in lower electoral participation rates where nonresidents are permitted to vote.<sup>113</sup>

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and provincial government of the jurisdiction from which they come and plan on returning to; thus their registration would be better maintained with respect to that jurisdiction rather than transferred to a discrete nonresident “district.” Long-term nonresidents, by contrast, may appropriately be excluded from matters of local governance on the ground that they will likely have lost the requisite stake in such affairs.

<sup>111</sup> For instance, a Mexican mono-national resident in Los Angeles won a seat in the Mexican congress, having been included on the PRI’s party list for seats chosen on the basis of proportional representation. See Deborah Kong, *Mexican Immigrants Run for Congress – in Mexico*, CHARLESTON GAZETTE, June 16, 2003, at 2A.

<sup>112</sup> See Spiro, *Political Rights*, *supra* note 55, at 146–51 (describing and critiquing restrictions on office-holding by dual nationals).

<sup>113</sup> Croatia has devised an innovative model of nonresident representation that affords nonresident voters representation according to the number of nonresident voters actually casting ballots in a parliamentary election. See INT’L REPUBLICAN INST., REPUBLIC OF CROATIA PARLIAMENTARY ELECTION, JANUARY 3, 2000: ELECTION OBSERVATION MISSION REPORT AND RECOMMENDATIONS 7 (2000), available at <http://www.iri.org/pdfs/election2000.pdf> (describing representation of noncitizens in parliamentary elections). The size of Croatia’s parliament is permitted to vary from election to election; thus the approach is of limited use in those countries that constitutionally fix the size of national legislatures. See also *supra* note 55 and accompanying text.

Lower proportional levels of direct representation would justifiably reflect this diminished interest.<sup>114</sup> The argument for asymmetric representation seems particularly strong with respect to those countries that have moved to extend citizenship liberally to diaspora communities, in ways that attenuate the connection of the external citizen to homeland governance. If such diaspora citizens were extended full voting privileges, their large numbers could overwhelm resident electorates at the same time that their interests might be marginal. Although one could expect (as explained above) that external citizens with trivial interests would take a pass on any voting privileges to which they might be entitled, the risk in certain cases of mobilized, largely disconnected external voters upsetting home state politics might be substantial enough to deny participation rights. Ireland presents perhaps the best example: There are almost as many nonresident Irish citizens as resident ones, and large numbers of other non-residents (most of them in the United States and United Kingdom) are eligible for the status. As one commentator notes, “[t]his establishes a potential problem, in that the population of Irish citizens living outside Ireland . . . would form a massive political block if they all voted together.”<sup>115</sup> Although political unity would seem as far-fetched in an external community as an internal one, one could imagine plausible scenarios in which the nonresident vote leaned heavily away from the sentiment of resident voters—in the Irish context, say, on a charged issue such as abortion. This could present a legitimate normative basis for restricting external citizen voting along the lines of the “irresponsible voter” objection, in cases where the proportion of external to resident citizens is high and the threshold for the acquisition of external citizenship is low.<sup>116</sup> Other countries with

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<sup>114</sup> For instance, although diaspora Cape Verdeans number more than twice those resident in Cape Verde, they are allocated less than ten percent of the seats in the national assembly. See Wucker, *supra* note 95, at 44.

<sup>115</sup> Willem Maas, Extending Politics: Enfranchising Nonresident European Citizens, (Feb. 16–20, 1999) (unpublished paper presented at 40th Annual Convention of International Studies Association), available at <http://www.ciaonet.org/isa/maw01>.

<sup>116</sup> Transitional cases might also plausibly present themselves where extending the franchise to external citizens would pose a threat to the stability of democratic processes. Such was an argument against extending citizenship to as many as 3.5 million Hungarian ethnics, mostly resident in Romania. It was apparently assumed that voting rights would attach to external citizenship, and feared that the injection of so large a group of new, largely nationalistic voters would upset longstanding “parliamentary stability”; a referendum to extend citizenship was overwhelmingly defeated. See Mária M. Kovács, The Politics of Dual Citizenship in Hungary 1–2, 4–5, (Mar. 17–19, 2005) (unpublished paper prepared for Conference on Dual Citizenship: Rights and Security in an Age of Terror, Munk Centre for International Studies, University of Toronto, on file with the *New York University Law Review*); see also Teresa Borden, *Mexicans Voting from U.S. Could Alter Politics*, ATLANTA JOURNAL-CONST., Mar. 23, 2005, at A1 (quoting expert as saying:

proportionately large nonresident populations, especially where those populations are swollen by generous citizenship qualifications (and thus likely to be more detached), would be justified in under-representing diaspora communities in legislative allocations.

But that is not an argument for cutting diaspora populations out of the electoral picture altogether. Even a citizen who has never resided in her country of citizenship is likely to have political interests in her country's governance, if only through the association of identity and perhaps through much more. In the face of those interests, it thus seems difficult to justify the categoric disenfranchisement of such individuals. Some states that provide for nonresident voting, including the United States, require that the citizen have resided at some point in the home country.<sup>117</sup> Insofar as prior residence diminishes as a proxy for interests, the qualification may become less sustainable going forward. Along similar lines, among scholars Rainer Bauböck has suggested that the franchise not be extended beyond the first emigrant generation.<sup>118</sup> That would seem more problematic still, insofar as it excludes subsequent generations who evidence and accumulate homeland interests through some period of residence. As globalization facilitates sustained, material homeland connections into those generations, there should be no categorical bar to voting among those who are born in other countries but who may still have substantial interests in the state of which they are external citizens.

Even at lower proportional levels, from the nonresidents' perspective, discrete representation may still be preferred to assimilated representation. With discrete representation comes a direct, undiluted voice in decisionmaking. In assimilated voting systems, at least those based on territorial jurisdiction, nonresident interests are less likely to find legislative advocates. At the same time, the disadvan-

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"Mexicans that are actually in Mexico haven't really achieved representative government, and now they run the risk of having that representative government be hijacked by Mexicans abroad. Their democracy still hasn't matured to the extent that it would be wise to open it further."). Although this sort of scenario may blur into the indefensible "undisciplined voter" rationale for denying the franchise to external citizens, where democratic processes are genuinely imperiled by external citizen voting, denying the franchise could be justified on the same sort of public order grounds that justifies the imposition of immigration controls, notwithstanding the fact that they otherwise derogate from rights of movement. See BRUCE A. ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE 93–95 (1980) (arguing that immigration controls are normatively sustainable only on public order grounds).

<sup>117</sup> See 42 U.S.C. § 1973ff-6(5) (2000) (defining overseas voter as person who either was or would be qualified to vote "in the last place in which the person was domiciled before leaving the United States"). Germany requires prior continuous residence of at least three months in order to qualify for the franchise. See Maas, *supra* note 115.

<sup>118</sup> See Bauböck, *supra* note 7, at 714 ("As a general rule, extra-territorial voting rights should expire with the first generation . . . .").

tages of any form of electoral representation—and indeed of disqualification or restricted franchise—are mitigated by non-electoral forms of political participation. In many European countries, official or semi-official “councils” of nonresidents (sometimes including non-citizens of national descent) have been established to represent nonresident interests, often through ministries of foreign affairs.<sup>119</sup> The Parliamentary Assembly of the Council of Europe recently recommended the establishment of a “council of Europeans abroad,” in the interest of “representing European expatriates at the pan-European level.”<sup>120</sup> In the United States, residents abroad send a voting delegation to the Democratic Party presidential nominating convention.<sup>121</sup>

Perhaps most importantly, few (if any) countries appear to limit political campaign contributions on the basis of residence (or status as a dual national).<sup>122</sup> The wealth of emigrant communities relative to their homelands has in some cases afforded them significant political power, even where their franchise is restricted. It has become routine, for instance, for Latin American politicians to make campaign swings through emigrant populations resident in the United States, even where those populations cannot vote or where (in the absence of in-place voting mechanisms) they do not vote in large numbers.<sup>123</sup> In

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<sup>119</sup> See Eur. Parl. Ass., *Links*, *supra* note 9, § 4.4.

<sup>120</sup> See Eur. Parl. Ass., *Recommendation 1650, Links Between Europeans Living Abroad and Their Countries of Origin*, 2004 Sess., Rec. No. 1650 (2004) [hereinafter Eur. Parl. Ass., *Recommendation 1650*].

<sup>121</sup> For details, see Democrats Abroad, <http://www.democratsabroad.org/about.php> (last visited Nov. 17, 2005). See also Rick Lyman, *Far Across the Oceans, Pools of Voting Democrats*, N.Y. TIMES, Feb. 9, 2004, at A1 (noting that Democrats Abroad send nine voting delegates to Democratic National Convention). Although the creation of a separate voting congressional district for nonresident Americans would require a constitutional amendment (and thus seems a non-starter), it is plausible that a non-voting “delegate” could be established to represent nonresident interests in Congress. Such representation has been established by statute for U.S. territories such as Guam and Puerto Rico, as well as for the District of Columbia. See 48 U.S.C. § 1711 (2000) (providing for non-voting delegate from Guam); 2 U.S.C. § 25a (2000) (non-voting delegate from District of Columbia); 48 U.S.C. § 891 (2000) (providing for “Resident Commissioner” from Puerto Rico); see also U.S. GEN. ACCOUNTING OFFICE, U.S. INSULAR AREAS: APPLICATION OF THE U.S. CONSTITUTION 26–28 (1997), available at <http://www.gao.gov/archive/1998/og98005.pdf> (describing role of non-voting delegates in House of Representatives).

<sup>122</sup> Mexican law has prohibited fundraising outside of Mexico, but this ban is apparently unenforced. See Alfredo Corchada et al., *Mexicans Fight to Use Law Allowing Votes from Abroad: Many Who Left Homeland Seeking Role in its Future*, DALLAS MORNING NEWS, Apr. 5, 1998, at 1A (describing widespread fundraising activities in United States by Mexican candidates).

<sup>123</sup> See, e.g., JONES-CORREA, *supra* note 60, at 164–66 (describing Dominican and Mexican politicians’ campaign trips to United States); Anne-Marie O’Connor, *Salvadoran Political Hopeful Campaigns Among Exiles Here*, L.A. TIMES, Feb. 20, 1999, at B1; Mary Beth Sheridan, *Mexican Candidates Look to the U.S. for Swing Votes*, L.A. TIMES, May 5, 2000, at A1. In addition to campaign contributions, remittances allow nonresident commu-

addition to campaign contributions, nonresidents can engage in political speech targeted at home electorates. Indirect forms of political participation by nonresidents further demonstrate the interests of nonresident communities in home-country government, as well as the inevitability that such interests will exert themselves in available channels of influence.

### CONCLUSION: POLITICAL DIASPORA AND LIBERALISM'S CITIZENSHIP

None of these non-voting channels of participation, nor many electoral channels, eliminate the prospect of formal inequalities between resident and external citizens. If, as above, it is conceded that in some national contexts (i.e., those, like Ireland, with large populations of external citizens who retain citizenship based on very liberal standards), the proportion of discrete representation may be based on something other than one-person, one-vote, we end up confronting a system in which citizenship's equality norm has been breached. That result must sit uncomfortably with liberal theorists, for whom self-governance and equality supply first-order principles of democratic citizenship. Both would seem to point to full rights of political participation for external citizens. But cases like that of Irish diaspora citizenship do not seem to support such a requirement of political equality, perhaps because in those cases self-governance shows itself to be a matter of degree. In the sanitized model of liberal theory, one is either in or out, in a way that implicitly levels the consequences of being counted among the governed. But even though many external citizens will have substantial interests in homeland government, those interests are likely to be less extensive than those of resident citizens, as the fact of territorial absence will on average diminish the implications of governmental power. That may justify the qualification of political rights—a qualification introducing inequality into an arena in which inequality is highly disfavored. The vote is not ordinarily a governmental benefit to be extended or denied on the basis of legislative classification, and yet external citizenship appears to pose an acceptable rationing of the franchise.

That may explain the nascent possibility that the political rights of nonresidents may come into the orbit of international law. There have already been some efforts by international organizations to expand the channels for the political participation of nonresident com-

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nities to have substantial influence over the electoral preferences of friends and relatives back home, giving rise to a swing bloc of "Money Gram Mexicans." See Jocelyn Y. Stewart, *Expatriates Have Impact on Mexican Politics*, L.A. TIMES, May 7, 2000, at B1.

munities. Most notably, the Council of Europe has seized the issue now at several junctures, dating back to 1986, issuing reports and adopting recommendations strongly advocating the political rights of external citizens.<sup>124</sup> These calls have been situated, at least in part, in a human rights frame. Dismissing fears of a “hypothetical mass invasion of electors from abroad,” for instance, a 1999 Council of Europe report argued that “the issue has nothing to do with the number of people concerned, but is essentially a matter of fundamental, inalienable human rights.”<sup>125</sup> Further, “[t]he right to vote is an essential part of the democratic process, and every expatriate European should be entitled to exercise it fully in his/her country of origin.”<sup>126</sup> A 2004 report poses the possibility of “an international expatriates’ law,” to include guaranteed voting rights for external citizens.<sup>127</sup> Also indicative of the possible emergence of international law norms respecting the political rights of nonresidents is the Convention on the Rights of All Migrant Workers and Members of Their Families,<sup>128</sup> which has (with the ratification of twenty states) now come into force.<sup>129</sup> Article 41 of the Convention provides that “[m]igrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State,” a right which signatory host countries have an obligation to facilitate.<sup>130</sup> External citizens’ political rights could plausibly be located in other human rights instruments as well. The International Covenant on Civil and Political Rights, most notably, provides that

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<sup>124</sup> See Eur. Parl. Ass., *Recommendation of the Comm. of Ministers*, 394th Sess., Rec. No. R(86)8 (1986) (urging that member states allow all nonresidents to vote from their country of residence).

<sup>125</sup> Eur. Parl. Ass., *Links*, *supra* note 9, § 4.3.1 ¶ 40.

<sup>126</sup> *Id.* § 5.2.2 ¶ 84.

<sup>127</sup> Eur. Parl. Ass., *Links Between Europeans Living Abroad and Their Countries of Origin*, 2004 Sess., Doc. No. 10072 (2004). The most recent recommendation from the Council of Europe Parliamentary Assembly invites member states to make proposals for legally binding measures at the European level regarding relations with external citizens. See Eur. Parl. Ass., *Recommendation 1650*, *supra* note 120.

<sup>128</sup> International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, *opened for signature* Dec. 18, 1990, 2220 U.N.T.S. 93 [hereinafter Migrant Workers Treaty]. States that have become party to the convention to date are all countries of emigration (Mexico, the Philippines, and Turkey prominently among them). *Id.* at 247. Although that fact undercuts its coverage with respect to its primary concern—the rights of migrants in their country of residence—it gives some traction to provisions relating to external citizens.

<sup>129</sup> Press Release, United Nations, Convention on Protection of Rights of Migrant Workers to Enter into Force Next July (Mar. 19, 2003), available at <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/B87E9E85C7147498C1256CEF00385E50?opendocument>.

<sup>130</sup> Migrant Workers Treaty, *supra* note 128, art. 41. By defining a “migrant worker” to include only those who work in a state of which the worker is not a national, the convention by its terms does not apply to dual nationals. *Id.* art. 2(1).

“[e]very citizen shall have the right and the opportunity . . . without unreasonable restrictions . . . to vote”;<sup>131</sup> it would not be at all implausible for the treaty body charged with interpreting the treaty, the Human Rights Committee, to find that external citizens enjoy this right as much as any others. As state practice increasingly recognizes such rights, it may indicate an emerging norm in favor of providing some voice for nonresident communities in home-country governance.

The entrenchment of external citizen voting rights might conform to liberal expectations, although one could hardly expect that practice to emerge on a one-person, one-vote basis in anything but the very long term. But even to the extent that external citizens are fully brought into the political fold of their home countries, their presence as a population worthy of remark may prompt a larger, and impossibly formidable, challenge to democratic citizenship going forward. If nonresident citizens should in many cases be extended voting rights by virtue of their interests in the government of the state of which they are citizens, why shouldn’t nonresident non-citizens have a political voice in those states in which they have an interest, even absent the citizenship tie? In other words, interests in self-government can transcend both territorial location and citizenship status. This is the rationale that supports (only partially tongue in cheek) calls to allow all the world to vote in U.S. presidential contests, on the ground that everyone shoulders the consequences.<sup>132</sup> This presents an unmanageable affront to conceptions of bounded democratic community, at the same time that the suggestion is not so easily dismissed on a normative basis. External citizen rights presage this further challenge to liberal premises, breaching the territorial boundary in theory as in practice.

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<sup>131</sup> International Covenant on Civil and Political Rights, art. 25, Dec. 19, 1966, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S. 171, 179.

<sup>132</sup> See, e.g., Frances Stead Sellers, *A World Wishing to Cast a Vote*, WASH. POST, Nov. 21, 2004, at B1; see also Peter J. Spiro, *The Impossibility of Citizenship*, 101 MICH. L. REV. 1492 (2003).