

The Democratic Dilemma of Migration

... It is in the nation's best interest to encourage people who live here permanently to become citizens and throw in their lot with the interests of the United States. Extending the most important benefits of citizenship to those who still hold their first allegiance to another country seems counterproductive.

—“A Citizen's Right,” *New York Times*, April 19, 2004

As this quote from a *New York Times* editorial page suggests, the current era of global migration often raises difficult questions about the obligations and rights of both citizens and immigrants. These questions reflect both moral and practical dilemmas for democratic societies and their governments. For those states from which large numbers of citizens emigrate—sometimes referred to as “sending states”—their overseas migrant population may have considerable economic and political influence. Through its remittances, the émigré community is an important source of foreign exchange for many sending states. Émigrés also wield political power through channels as diverse as absentee voting, donations to political parties, or even informal networks of family and friends. Yet, despite their growing economic and political importance, these émigrés traditionally have had few political rights in their states of origin, and even fewer in their states of residence. These “host” states also face a dilemma when faced with a large and growing population of migrants. Democratic societies traditionally have asked their migrant populations to shoulder many of the civic responsibilities they impose upon the citizenry. In most democracies, migrants pay taxes, and in some, they serve in the military and are eligible for conscription. The United States even counts aliens in national censuses for purposes of

apportionment and representation in Congress. In exchange for these civic responsibilities, states gradually have given migrants some civil and economic rights. However, far fewer of these democracies have offered to these migrants the opportunity to participate in the political life of the societies in which they reside. In both host and sending states, migrants are important members of the polity yet historically they have lacked the political rights that citizens enjoy. Until the last few decades, migrants were perhaps the one remaining societal group against whom democratic states willingly—and as the *Times* quote suggests, some might say legitimately—discriminated in the allocation of the right to vote.

Yet in the latter half of the twentieth century and early in the twenty-first, democratic states gradually have expanded the opportunities for migrants to participate in democratic politics. Sending states have expanded the use of the absentee ballot, and some have created legislative districts to represent solely those citizens who reside overseas. In the 1996 presidential elections in Armenia, for example, eligible Armenian voters who resided overseas may have outnumbered those voters who resided in Armenia proper.¹ Political parties have expanded their presence abroad, from then-candidate Vicente Fox stumping in the United States for the votes of Mexican migrants, to Dominican political parties establishing offices in New York City. Sending states and host states alike increasingly tolerate “plural nationality,” or the practice of a person maintaining citizenship in more than one state. In 1997 Mexico changed its citizenship laws to draw a distinction between Mexican “nationality” and “citizenship.” Mexican émigrés overseas can now naturalize in their host states without losing their Mexican nationality and its attendant rights, most importantly the right to own land. Mexican expatriates now can reactivate their citizenship upon their return to Mexico. Democratic states also have broadened the rights of the migrants they host, so much so that Hammar for one argues that there are few substantive, but many symbolic, distinctions between the rights of citizens and aliens.² These innovative institutions and practices for the political incorporation of migrants suggest that states have disembedded the rights of citizenship from their territorial basis.

One of the more important examples of this unbundling of citizenship, place, and rights is the practice of enfranchising resident aliens in their countries of residence. In the last forty-five years, more than thirty democracies have adopted laws that entitle resident aliens to vote in at least local elections, and some even allow aliens to vote in parliamentary elections. Aliens who reside in the Swiss cantons of

Neuchâtel and Jura can vote in cantonal elections; citizens of Commonwealth states who reside in the United Kingdom can vote for candidates for Parliament; any alien who has resided for three years in Norway can vote in provincial elections; and in New Zealand, any alien who has resided for a year can vote for a member of parliament. The practice appears to have broad appeal today. The municipal government of Vienna, Austria, attempted in 2004 to enfranchise resident aliens, though national courts overturned the legislation. After the November 2005 riots in the suburbs of Paris, both Mayor Bertrand Delanoë and then Interior Minister and now President Nicolas Sarkozy expressed support for allowing immigrants in France to vote in local elections. The title of a recent book on the subject suggests the normative appeal of enfranchising resident aliens: *Democracy for All*.³

This provision of voting rights for resident aliens raises some interesting questions about the relationship between the institutions of citizenship and sovereignty. The state's practices for the incorporation of resident aliens reside at the nexus of a theoretical debate in international relations scholarship. This dialogue focuses on the sources of the state's policies for the constitution of its political community. Do states construct their polities in response to purely domestic politics and pressures? Are states responding instead to emerging international norms of human rights, the burgeoning influence of transnational organizations, or to what researchers call "global civil society"? Do incorporation practices like voting rights for resident aliens represent an erosion of the traditional links between the state, the polity, and the "nation"? That is, have states constructed their polities along "postnational" instead of "national" lines? If so, why? How have these practices changed over time?

These questions highlight a paradox that underscores this study: one can begin to understand the changing nature of citizenship and sovereignty by looking, ironically, at the ways democratic states treat their aliens. There are several good reasons to believe that an exploration of the rights of resident aliens will shed light on the changing nature of state sovereignty. In a juridical sense, citizenship policy is inextricable from the state's policies and practices toward those who are not citizens. As Salzmann notes, a primary goal of the modern, centralized state is to "individuate, enumerate, and categorize subjects as well as to mobilize their resources and bodies."⁴ Sovereignty is thus a construction not only of the territorial boundaries of the state but also of a delimited community of individuals who are the subjects of the state's authority. Similarly, Bauböck argues that citizenship policies

include not only the rights and obligations the state affords to members of a polity but the more fundamental questions of which individuals belong to the polity and the nature and shape of the polity itself.⁵ By construction, then, citizenship policies seek to exclude individuals as “not citizens” from the polity as much as they include them as citizens. Historically, at least since the French Revolution, sovereign states typically have delimited their political communities to the body known as the “citizenry” or the “nation,” rather than the medieval construction of “subjects.” Just as the French Revolution gave rise to new institutions for the enumeration and individuation of political participants, however, some scholars argue the current era of expanding rights and obligations for those individuals who are not citizens is a harbinger of changes in the form and functions of the nation-state. The state is becoming more inclusive, these scholars argue, by creating institutional alternatives to citizenship. In this sense, an examination of the political rights of migrants is an exploration of the broader meaning of state sovereignty during an era of growing transnational flows of people, ideas, and values.

Another reason to suspect the rights of noncitizens hold clues to the changing nature of sovereignty arises from what this study and others call the “transnationalist” thesis.⁶ A number of citizenship scholars argue that today the rights and obligations of citizens and noncitizens increasingly are blurred, to the point that one cannot easily disentangle the legal statuses of “citizen” and “alien,” or between “national” and “foreigner.” While states may define each largely in terms of the other in order to demarcate a juridical boundary between the two categories, the growth of civil, economic, and political rights for resident aliens erases the substantive differences between the two groups. For this reason, Sassen argues:

Immigration can be seen as a strategic research site for the examination of the relation—the distance, the tension—between the idea of sovereignty as control over who enters, and the constraints states encounter in making actual policy about the matter. Immigration is thus a sort of wrench one can throw into theories about sovereignty.⁷

The proliferation of new institutions for the incorporation of migrants—from plural nationality to absentee voting, overseas legislative districts, and this book’s subject, voting rights for resident aliens—suggests there are numerous theoretical wrenches to throw. The hypothesized erosion of the distinctions between the substantive rights of the citizen and those of the alien is a puzzle that motivated this study.

The changing relationships between “citizens” and “aliens”—or, alternatively, the changing ways in which democratic states draw a boundary between the two categories—suggests another important reason to look at aliens as an approach to questions about citizenship. Has the emergence of political rights for resident aliens caused a reconfiguration of the state, or is it a consequence of such a reconstituted state? The following analysis will provide a glimpse of an answer. By looking at both the domestic and international sources of the state’s citizenship policies, this study seeks to offer insight into the question of whether these new rights in some way have changed the institution of sovereignty, or whether such a reconfiguration presaged the emergence of these new rights. The distinction between domestic and international sources of the state’s policies may offer a tentative answer. If the state expanded the rights of resident aliens in response to domestic factors, one might surmise that rather than these rights reconfiguring sovereignty, the state itself remains the locus of institutional contestation over the rights and responsibilities of citizenship—or as Shanahan argues, “globalization has undermined neither nations nor citizenship; it has fortified them both.”⁸ If international factors explain state citizenship policies, however, one may infer that, expressed in the extreme, states no longer define their citizenry in any terms except that of totems and symbolism. The political rights of resident aliens may not necessarily *cause* changes in state sovereignty; rather, like changes in the content and meaning of sovereignty, they may be a *consequence* of a variety of transnational and global processes.

Many discussions of the evolution of the political rights of the state’s subjects begin with T. H. Marshall’s influential thesis.⁹ Marshall argued that states extend rights to citizens in a specific historical sequence that follows the institutional development of the nation-state. Citizens first gained civil and legal protections when states developed independent judiciaries. These developments enabled citizens to assert their initial claims for political participation. Only when citizens were enfranchised were they then able to gain social protections from the state. Yet as numerous other researchers have pointed out, to some degree the rights of immigrants have reversed the evolutionary sequence Marshall identified.¹⁰ Historically immigrants have acquired social protections first, followed by civil rights and, only to a limited degree, political rights. In this sense the rights of aliens are not related to the institutional development of the state, as Marshall asserted was the case with citizens’ rights. Traditionally immigrants who wished to partake in the politics of their host states could do so only through naturalization. These observations beg several important

questions. Why have migrants come to enjoy political rights only recently? Why has the institution for the incorporation of migrants historically been naturalization? Why have states recently adopted institutional alternatives to naturalization?

Underlying these questions is a historical assumption that deserves consideration: that states have tied political rights to citizenship. As the next chapter discusses, this historical assumption is not entirely accurate. Judging by history, the relationship between the institutions of citizenship and political participation is a confounding one with numerous exceptions. As both Aylsworth and Raskin note, even the United States historically has not required citizenship as a condition for political participation.¹¹ Aylsworth notes that resident aliens voted in every presidential election up until the mid-1920s. Interestingly, however, the enfranchisement of resident aliens in the United States in part served a discriminatory rather than inclusive role: it sought to legitimate property and race qualifications for voting by demonstrating to citizens—including African Americans and women—that citizenship alone did not entitle a person to the right to vote. As Raskin notes:

Alien voting occupied a logical place in a self-defined immigrant republic of propertied white men: It reflected both openness to newcomers and the idea that the defining principle for political membership was not American citizenship but the exclusionary categories of race, gender, property, and wealth.¹²

The Netherlands provides another interesting historical example. Prak notes that following the invasion of the revolutionary French armies in the 1790s, with their Napoleonic template for a bureaucratized and centralized state, the Netherlands sought to construct a “Dutch” citizenry from the polities of the seven disparate Dutch provinces.¹³ To do so, the draft constitution of 1796 and that eventually adopted in 1798 defined a “Dutch citizen” as anyone entitled to vote in one of the seven provinces. Two elements of Prak’s analysis deserve emphasis. The first is that prior to 1796 cities themselves determined citizenship practices; many allowed non-natives to purchase citizenship with its attendant rights, including the right to vote. In the merchant state, numerous non-native residents consequently became citizens of the Netherlands since they previously had purchased the rights of citizenship in their province of residence. Second, in 1798 the centralized Dutch state constructed the polity based on the right to vote. In this way the institution of the franchise

predated, and was the foundation for, the institution of national citizenship. This reverses our traditional thinking about voting rights: rather than citizenship leading to voting rights, the right to vote led to Dutch citizenship. Clearly, as the cases of the United States and the Netherlands demonstrate, it is ahistorical to assume that citizenship necessarily leads to political rights. It is neither necessary nor sufficient for the political incorporation of an individual.

Many people nevertheless seem surprised that resident aliens may enjoy such rights and object to proposals to enfranchise resident aliens. “If you divorce citizenship and voting,” one critic of such voting rights asserts, “citizenship stops having any meaning at all.”¹⁴ Likewise, in 1990 the German Constitutional Court struck down local laws that enfranchised some resident aliens in Schleswig-Holstein and Hamburg, ruling “Elections in which foreigners can vote cannot convey democratic legitimacy.”¹⁵ Joppke’s analysis of the court’s decision concludes that “alien suffrage would take away the last major privilege of citizenship: the right to vote, and devalue the later by leaving only duties, not rights as its distinguishing mark.”¹⁶ A recent initiative to enfranchise New York City’s population of resident aliens met with the opinion from *The New York Times* that forms this chapter’s epigraph. As Germany’s debate and the position of the *Times*’s editorial board indicates, the alien franchise speaks to the very meaning of citizenship and nationhood—the foundational institutions of modern democracy.¹⁷ Though these criticisms seem to regret the loss of the “meaning” of citizenship or to question the legitimacy of such voting rights, they perhaps unwittingly touch on the concerns that motivate this study. What meaning does “citizenship” now have? Moreover, what do changes in the meaning of citizenship, and by extension the political community, say about the relationship of democratic societies to their states?

This book addresses these broad questions, looking at the voting rights of resident aliens in twenty-five democratic states. Chapter 2 provides an empirical overview of the practices of more than thirty democratic states that allow resident aliens to vote at least in local elections, plus several others that have either considered but rejected or have rescinded such rights. This empirical overview shows that the practice of enfranchising resident aliens has spread over the last four decades. Chapter 3 derives hypotheses that may explain variations in the voting rights of resident aliens in the study’s population of twenty-five democracies. While some social scientists have written specifically about voting rights for resident aliens (though none to my knowledge have conducted a large-sample comparison across cases),

many have addressed broader questions about the social, economic and political integration of migrants into democratic societies. From this review of the literature, one may identify two broad theses that seek to explain how democratic societies incorporate their resident aliens. The nationalist thesis explains these variations as a product of traditional politics within the state, and asserts that such practices reinforce the historical relationship between the polity and the state. The transnationalist thesis argues, by contrast, that international and transnational factors explain variations in the incorporation of migrant communities in democratic states. Transnationalists cite the growth of practices such as plural nationality as evidence of a separation of the polity from traditional, nation-based conceptions of the political community, whether these conceptions are based on ethnicity, language, or religion. They expect a convergence of democratic practice around a common set of inclusive, nondiscriminatory principles and norms, if not a common institutional design.

In chapter 4, the study derives measures for the nationalist and transnationalist theses as well as for variables that may confound an analysis of the relationship between nationalism, transnationalism, and voting rights for resident aliens. This chapter identifies a population of twenty-five democracies for the study, selected on the basis of several criteria of democracy, and proposes to test nationalist and transnationalist hypotheses over a time span of four decades. This chapter also develops two time-series cross-sectional models for testing the nationalist and transnationalist hypotheses. Chapter 5 analyzes the findings of these models and their implications for the nationalist-transnationalist debate. A common criticism of such statistical analyses is that they tend to overlook the unique, historical and particularistic attributes of democracies. The case studies in chapter 6 redress this imbalance by tracing the popular debates in the Netherlands, Germany, and Belgium over the enfranchisement of resident aliens. This qualitative narrative illustrates how the processes highlighted in the statistical analysis played out in unique ways in each democracy. Finally, the book concludes with a discussion of the implications of the analysis of voting rights for resident aliens for our understanding of state sovereignty in a world of increasing transnational flows and growing interdependence.

One final note about the terminology that this study uses: As is evident from this introduction, the dilemma of democratic states has an analog for researchers—what does one call an alien who has rights, one who seeks them, and one who has none? In practice, the exercise in categorizing the population of the state's subjects—even those who

are citizens let alone those who lack citizenship—is somewhat difficult. Jean-Jacques Rousseau captured some of this difficulty in *The Social Contract*:

The public person thus formed by the union of all the others formerly assumed the name City and now assumes that of Republic or body politic, which its members call State when it is passive, Sovereign when it is active, Power when comparing it to similar bodies. As for the associates, they collectively assume the name people and individually call themselves Citizens as participants in the sovereign authority, and Subjects as subjected to the laws of the State. But these terms are often confused and mistaken for one another; it is enough to be able to distinguish them where they are used in their precise sense.¹⁸

How would Rousseau write this in today's era of mass migration? "Citizens" and the "people" hardly capture the entirety of the political community since many "subjects" of the law and its obligations include aliens who have little or no rights to participate in the making of policy. Among these aliens, furthermore, are distinctions with conceptual ramifications: resident aliens versus migrant workers, and documented (or "legal") versus undocumented ("illegal") aliens are two such distinctions. "Noncitizens" may be an inclusive and logically dichotomous term, but as this study shows only a subset of noncitizens—those who satisfy a residency criterion—typically receives the franchise. For this reason, from here forward this study focuses on the rights of resident aliens only—those who have resided for a period of time in their host states and have proper documentation.

It is interesting to note that the phrase "resident alien" may not have much portability across the nation-states in this study, or even across languages. The residency criteria states employ vary considerably, such that some resident aliens in New Zealand, for example, might not qualify for the same political rights if they resided in Sweden for the same period of time. As the next chapter shows, furthermore, the criterion of residency may serve discriminatory as well as inclusive goals. Even the vernacular that states use to identify their citizens reflects the ambiguity of the dichotomy between citizen and alien. Shanahan notes that the 1981 British Nationality Act divided citizenship into the constructs of British citizen, British overseas citizen, British protected persons, and British subjects.¹⁹ As already noted, Mexican law draws a distinction between Mexican "nationals" and Mexican "citizens"—all Mexican citizens are nationals, but not all Mexican nationals are citizens. German citizenship law recognizes

“status Germans” or Germans without German citizenship: “ethnic German refugees and their families, to whom the Basic Law grants a status intermediate between citizen and aliens.”²⁰ The problem is confounded, furthermore, by differences in each state’s policies for naturalization. Until recently, children of resident aliens in Germany took the foreign nationality of their parents; in the United States by contrast all children born there can become citizens. Therefore, Germany counts as “aliens” a population that the United States counts as “citizens,” with obvious problems for comparison across the cases. This proliferation of terms and laws to identify, describe, or enumerate aliens, and to distinguish them from citizens, mirrors the growth of institutions for the incorporation of migrants but confounds any analysis of the state’s policies toward aliens. Yet the fact that a diverse body of states, with disparate legal systems and terminologies for aliens, has chosen nevertheless to enfranchise people who are not citizens only underscores the puzzle that motivates this project. Why has a common practice emerged from states with such disparate cultures, policies of incorporation, and even vernaculars for enumerating their foreign populations?

This study chooses the term “resident aliens” to refer to the population of migrants in a host state that is subject to civic responsibilities under the law and that may qualify for social, economic, and political rights. While not all states may recognize a legal category of “resident aliens,” the term connotes a sense of settlement: aliens reside within and belong to a community if not a polity. The adjective “resident” seeks to separate settling residents from their “temporary” counterparts, though even this distinction defies simple categorization—Hugo notes that the circular migration of temporary migrants back and forth between states has grown to unprecedented levels.²¹ For this reason, this study eschews the term “permanent resident aliens,” since the criterion of permanency seems as inexact as other qualifications. A final reason to focus on residency as a criterion is a practical one. Most states require a period of residency before migrants may qualify for social, economic, and political benefits from the state. Though “resident aliens” is an inexact category, it captures most of the individuals that states recognize as subjects of its authorities and to whom democratic states have obligations to provide social, economic, and political opportunities.

It is also important to note this study focuses only on one type of political participation: the casting of a vote in an election for local, regional, or national public office. Resident aliens undoubtedly continue to participate in the politics of their sending states, through

absentee ballots, return migration, and personal networks. In some democracies resident aliens have, furthermore, a range of other forms of political participation that Dahrendorf labeled “secondary political rights.”²² These include the rights of resident aliens in some European states to vote for candidates for offices in works’ councils, unions, and even churches.²³ Resident aliens may also participate in the election or appointment of individuals to local, regional, or national advisory councils that specifically represent the interests of aliens to public officials.²⁴ While these are important forms of political incorporation that are theoretically interesting on their own merits, this study does not consider such secondary rights for two reasons. First, the participation of resident aliens in elections for works’ councils, unions, or churches interposes a layer of governance between resident aliens and the political life of their host states. Since citizens do not face a comparable intervening political institution, these voting practices are by construction highly discriminatory and consequently will shed no light on the question of whether or not the historical linkage between the nation and the state is eroding. This objection anticipates a second reason to ignore such practices. A number of researchers argue that the interposition of works’ council or union officials actually insulates the state from the claims of resident aliens rather than making it more receptive to them. If this argument is correct, secondary political rights demobilize resident aliens rather than integrate them into the political life of their host states. For these reasons, I examine only the rights of resident aliens to vote in elections for offices in municipal, regional, or national governments.

This study seeks to add to our understanding of why democracies choose to offer political rights to their resident aliens. In doing so, it strives to contribute to the broader debate in international relations and comparative politics about the impact of transnational migratory, commercial, and normative processes on the state’s exercise of its sovereignty. Using a longitudinal cross-sectional research design, this study offers two important additions to the existing literature on citizenship politics. First, most citizenship literature relies on a single or a small number of case studies. While these case studies often illuminate potentially important factors in citizenship policies, their small sample sizes call for the larger statistical test of significance this study provides. If systemic and transnational processes explain why democracies have given their aliens the right to vote, it behooves researchers to test these factors across a broad sample of democratic states. Evidence of a large number of democracies converging around a common practice or institution would be powerful support for those

scholars who cite the importance of transnational factors. Second, the pattern in which voting rights for resident aliens have emerged suggests the possibility that norms for voting rights for resident aliens have emerged regionally. This study explicitly probes the geographic patterns of the emergence of voting rights for resident aliens as an approach to broader questions about the evolution of normative processes among states.

The exact number of resident aliens worldwide who are entitled to vote in their states of domicile is unknown, but it almost certainly is a relatively small proportion of the electorates of the world's democracies.²⁵ Yet this small size belies the potential theoretical import of innovative citizenship practices such as voting rights for resident aliens. As migration continues to grow, international, non-governmental, and even local authorities—not to mention resident aliens themselves—increasingly contest the meaning of citizenship and the state's practices for political incorporation. Perhaps because of this increasing contentiousness of citizenship politics, social scientists paradoxically have cited these conflicts as evidence both of the state's robustness and of its permeation by transnational forces. This theoretical debate indicates the need for this study's test of the competing hypotheses of the nationalist and transnationalist schools of thought. The book's findings not only clarify the relative importance of domestic and international variables in citizenship politics but also inform broader debates within political science about the changing institutions of sovereignty and democracy in a world of growing global flows of goods, people, and ideas.