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Democracy and noncitizen voting rights

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The boundaries of democracy are typically defined by the boundaries of formal status citizenship. Such state-centered theories of democracy leave many migrants without a voice in political decision-making in the areas where they live and work, giving rise to a problem of democratic legitimacy. Drawing on two democratic principles of inclusion, the all affected interests and coercion principles, this article elaborates this problem and examines two responses offered by scholars of citizenship for what receiving states might do. The first approach involves expanding the circle of citizenship to include resident noncitizens. A second approach involves disaggregating the rights conventionally associated with citizenship from the legal status of citizenship and extending some of those rights, including voting rights, to resident noncitizens. This article argues that both approaches fall short of satisfying the democratic principles of inclusion, which call for enfranchising individuals not only beyond the boundaries of citizenship but also beyond territorial boundaries.

Keywords: borders; citizenship; democracy; noncitizens; territory; voting rights

The right to vote has long been regarded as a core right of citizenship. As the political theorist Judith Shklar observed in her analysis of American citizenship, mere possession of the right to vote confers social standing and dignity, especially in contexts where it has been denied to large segments of the citizenry (Shklar 1991). While the expansion of suffrage across class, race, and gender lines has been a key part of struggles toward more inclusive citizenship, many take for granted that it is legitimate to deny the vote to resident noncitizens. As legal scholar and prominent advocate of alien suffrage Jamin Raskin puts it, ‘We do not think of aliens, legal or illegal, as being “disenfranchised”, because we assume that voting must be based on nation-state citizenship’ (1993a, p. 433).¹ The boundaries of democracy are typically defined by the boundaries of nation-states. This way of defining democracy’s boundaries reflects the continuing power of the idea of Westphalian sovereignty in contemporary political and legal thought and practice: that a state enjoys ultimate authority over subjects within its territory, and that state boundaries demarcate the community of citizens whose will and interests are taken to form the standards of political legitimacy (Krasner 1999, p. 20). Even those scholars who are open to disaggregating the legal status of citizenship from the bundle of rights typically associated with citizenship and who advocate extending certain basic rights to noncitizens in virtue of residence seem to accept that *political* rights, in contrast to civil and social rights, should be restricted to citizens (see, for example, Carens 2005).

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There are historical and contemporary examples that challenge this tight linkage of citizenship status and political rights. For a 150-year period in US history ending in 1928, at least 22 states permitted noncitizens to vote in local, state, and federal elections (Aylsworth 1931, p. 114). Today in the US, noncitizen voting is only permitted in several municipalities: Chicago allows noncitizens to vote in school board elections, as did New York City from 1970 to 2003, and six cities in Maryland allow noncitizens to vote in local elections (Hayduk 2006). Globally, at least 45 countries permit noncitizen voting. New Zealand has the most inclusive policy with enfranchisement at local and national levels after one year of legal residence. The 1993 Maastricht Treaty granted the right to vote to any citizen of the 15 signatory states of the European Union who resides in another EU state. By 1993 Ireland, all the Scandinavian states, and the Netherlands had already introduced a universal local franchise for all residents independent of their nationality. Most recently, Luxembourg in 2003 and Belgium in 2004 extended local voting rights to third country nationals (Bauböck 2005, p. 685). These examples, however, are exceptions to the nearly universal practice of restricting suffrage to citizens.

This article explores the normative bases of the political inclusion of migrants by bringing democratic theory into conversation with leading scholarship on citizenship and migration. As a number of political theorists and legal scholars have emphasized, the presence of large numbers of noncitizens who reside in a state's territory but lack rights of participation gives rise to a problem of democratic legitimacy (Walzer 1983, p. 61, Raskin 1993b, pp. 1441–1445). Consider the US, where the percentage of resident noncitizens has grown in the last half-century. According to the US Census, the percentage of noncitizens of voting age has risen from 2.3% in 1970 to 7.6% in 2000 (Varsanyi 2005, p. 128). Many who are eligible to naturalize have chosen not to.² The estimated 11.8 million unauthorized migrants residing in the US are not eligible for citizenship (Hoefer *et al.* 2008). California has the largest absolute number and proportion of noncitizens of all the states (about 20% of the state population). It has 85 municipalities in which noncitizens comprise over one-fourth of the adult population, and 12 municipalities where noncitizens make up more than 50% of the adult population (Avila 2003). An increasing percentage of residents in the US lack voting rights; in some locales, this means that up to half the adult population has no political voice.

This article first elaborates why this situation poses a problem of democratic legitimacy and then examines two leading responses offered by citizenship scholars. While my analysis is relevant for many liberal democratic states, it draws especially from legal and theoretical debates in the US. The first approach involves expanding the circle of citizenship to include noncitizens. A second approach involves disaggregating the rights conventionally associated with citizenship from the legal status of citizenship and extending some of those rights, including voting rights, to resident noncitizens. I argue that while stronger versions of the disaggregation approach go farther than the expansive citizenship approach toward challenging the tight linkage between nation-state membership and individual rights, both approaches fall short of meeting the demands of the democratic principles of inclusion. These democratic principles call for enfranchising individuals not only beyond the boundaries of citizenship but also beyond territorial boundaries.

Democratic principles of inclusion

The nearly universal practice of restricting suffrage to legal status citizens gives rise to a problem of democratic legitimacy. This problem arises if we take seriously the democratic

idea of *popular sovereignty* – that people should rule themselves. On two leading principles of democratic legitimacy, the boundaries of the demos must be expanded beyond the boundaries of citizenship and territory to include all people who are either affected by or subject to the coercion of a state's policies.

Consider first the *all affected interests principle*, which says that all those persons (not just citizens) whose interests are affected by a state's laws and policies should have a say in their making. As Robert Dahl put it in an early formulation of the idea, 'The Principle of Affected Interests is very likely the best general principle of inclusion that you are likely to find'; it says that 'everyone who is affected by the decisions of a government should have the right to participate in that government' (Dahl [1970] 1990, pp. 64–65). Ian Shapiro provides a more recent formulation, going beyond government and electoral politics to include civil society: '[E]veryone affected by the operation of a particular domain of civil society should be presumed to have a say in its governance. This follows from the root democratic idea that the people appropriately rule over themselves' (1999, p. 37). The principle of affected interests is a causally based principle of legitimation; the right to participate derives from one's having interests affected by the particular collective decision in question. The principle offers an alternative to state-centered conceptions of democracy that define the demos in terms of membership in a nation-state.

The principle has potentially radical implications for the scope of democracy. The policies of any one state affect the interests of a great many people beyond the boundaries of citizenship and territory. For example, Dahl suggests that not only *resident noncitizens* whose interests are affected by a democratic state ('foreign workers, other foreigners, even illegal aliens') but also *nonresident noncitizens* ('persons not living within the country or subject to its decisions') should have the right to participate. He points to the Vietnamese during the Vietnam War as an example of nonresident noncitizens entitled to representation in American foreign policymaking in virtue of affected interests (1989, p. 292).

There are ways to restrict the scope of the principle, but not in a way that would make the boundaries of the demos neatly coincide with the boundaries of citizenship or territory. First, we might say that the right of participation is not an absolute or universal right, but rather a presumptive right, which may be overridden, forfeited, or simply not apply in some cases. For instance, the right might be overridden when rapid democratization threatens to destabilize an ethnically divided society. It may fail to apply as in the case of children and the severely mentally disabled on the grounds that voting rights should be restricted to those who possess certain mental capacities. Second, we might limit the kinds of interests that are to count as relevant interests. We might exclude trivial interests (which have little effect on one's welfare), other-regarding interests (which depend on whether someone else's interests are satisfied), and possibly affected interests (which may or may not actually be affected by a government's decisions). The relevant interests might be restricted to all *probably* affected interests. Most people on earth probably will not have interests affected by the outcome on any given vote (Goodin 2007).

We might restrict the scope of the principle further, to those who have basic or fundamental interests at stake, such that any person whose *basic* interests will *probably* be affected by a government's decisions has a presumptive right to participate in that government. Shapiro makes such a move to counter the all affected interests principle's presumption of universal inclusion: 'those whose basic interests are most vitally affected by a particular decision have the strongest claim to a say in its making' (1999, p. 37). Even with these restrictions, the all affected interests principle cannot resist defining the demos in a way that includes resident noncitizens. It may well be the case that pervasive

interconnections of basic interests occur mostly among people within the territorial boundaries of one state, but there are also cases in which territorial outsiders have basic interests affected by a state's policies and therefore are entitled to participate in the making of those policies. I will return this point below.

A second principle of democratic legitimacy, the *coercion principle*, says that all those subject to state coercion should have a say in how the state's coercive power is exercised. A core value of liberal and democratic theory is personal autonomy, which involves, in Joseph Raz's words, a vision of persons as 'part creators of their own moral world' who 'have a commitment to projects, relationships, and causes which affect the kind of life that is for them worth living' (Raz 1988, p. 154). On Raz's account of autonomy, there are three preconditions that must exist before a human agent can be understood as autonomous: (1) appropriate mental abilities (an individual must have the abilities to form complex intentions and must have forms of rationality sufficient to follow through on what those intentions require); (2) an adequate set of options;³ and (3) the absence of coercion. Coercion is incompatible with respecting a person's autonomy because it subjects her will to that of another (Raz 1988, p. 155). Because coercion always invades personal autonomy, coercion must either be stopped or justified to those who are coerced.

The most obvious form of coercion is that of state punishment. Coercion by criminal penalties is obviously a serious invasion of autonomy. Coercion abounds outside of criminal law in the realm of private law – the law of contracts, property, and torts (Blake 2002). Contract law is understood as a limited grant of legislative power by which individuals are empowered to make legal rules determining ownership that all must be compelled to obey. Property law is a commitment to using collective force against persons who attempt to exercise control over certain goods they are not entitled to. In addition, tax law, although not technically a part of private law, involves implicit threats of coercive state action. In all these areas of law, adjudication of disputes will involve a transfer of legal rights from one party to the other, which is ultimately enforced with coercive measures. Immigration law also involves actual coercion or the threat of coercion – denial of entry at the border, detention, and deportation. Indeed, resident aliens or would-be migrants at the border are subject to *more* actual coercion than citizens by the enforcement of immigration law.

Whatever form state coercion takes, it must be justifiable to those subject to it. *Liberalism* interprets the coercion principle as requiring hypothetical justification: what matters is the justness of the institutions and laws through which political power is exercised. In contrast, on the *democratic* version of the coercion principle, all those who are coerced by the state should actually have the opportunity to participate in the political processes that decide how state power is exercised (Abizadeh 2008, p. 41). In discussing democracy's 'problem of inclusion', Dahl also articulated a version of the coercion principle: 'Every adult subject to a government and its laws must be presumed to be qualified as, and has an unqualified right to be, a member of the demos' (1989, p. 127). This follows from two normative premises: that each person is the best judge of her own interests (personal autonomy) and that governments must give equal consideration to the interests or good of each person bound by their laws (equality). The democratic strategy of justification links personal autonomy with public autonomy: coercive infringements on personal autonomy are justified only insofar as those subject to coercion have the opportunity to govern those infringements. As Seyla Benhabib states, 'The core of democratic self-governance is the ideal of public autonomy, namely, the principle that those who are subject to the law should also be its authors' (2004, p. 217).

We might view the coercion principle as a version of the all affected interests principle, but one can embrace the former without embracing the version of the all affected interests principle presented above. On the coercion principle, a right of participation is owed not simply in virtue of state laws having causal effects on people's basic interests, but rather on the more restricted basis of being subject to state coercion. Many democratic theorists view subjection to state coercion, not affected interests, as the proper basis of democratic inclusion. I cannot pursue the nuances of the distinction further here.⁴

For our purposes, it suffices to say that the idea of popular sovereignty expressed by both of these democratic principles requires the political inclusion of persons *beyond the boundaries of citizenship* to include *resident* noncitizens and also *beyond territorial boundaries* to include some *nonresident* noncitizens. Like the all affected interests principle, the scope of the coercion principle does not line up with the boundaries of citizenship or territory. Resident noncitizens are subject to the coercion of the states within whose boundaries they live and work. There are also a great many people outside a particular state's territory who are subject to its coercive power and therefore, entitled to a voice in how that power is exercised. Taking the US as an example, this would include, among others, migrants at the border who seek to enter (Abizadeh 2008); those who live in borderlands officially outside the state's territory, such as residents of Ciudad Juárez, Mexico (Spiro 2008, p. 101); and subjects of US military occupation (Dahl 1989, p. 292). It would also include many nonresident *citizens* or expatriates.⁵ In sum, both democratic principles support decoupling not only citizenship status but also territorial presence from voting rights. They push in favor of extra-territorial conceptions of democracy: what grounds rights of political participation is not residence in a state's territory but whether one has basic interests affected by or is subject to the coercive power of the state.

In light of these normative considerations, what is to be done? I turn now to consider two leading proposals offered by citizenship scholars: (1) expanding the circle of citizenship, and (2) disaggregating the rights of citizenship from the status of citizenship.

Expanding the circle of citizenship

This proposal calls for extending the legal status of citizenship (and all its associated rights and responsibilities) to resident noncitizens. It is the proposal endorsed by the political theorist Michael Walzer in his well-known discussion of political membership. He had in mind 'guest workers', noncitizen workers who enter under temporary labor contracts: 'Men and women are either subject to the state's authority, or they are not; and if they are subject, they must be given a say, and ultimately an equal say, in what that authority does'. Notice that he views subjection to state authority as the proper normative basis for rights of political participation. Walzer's view is compatible with the proposal of extending voting rights, as well as other rights, to resident aliens, but he actually argues for giving 'guest workers' the opportunity to become citizens. Naturalization, he argues, should be 'subject only to certain constraints of time and qualification, never to the ultimate constraint of closure' (1983, pp. 60–61). In contrast to the disaggregation strategy that I discuss below, this expansive citizenship approach keeps the boundaries of democracy in line with the boundaries of citizenship; it simply expands the latter to include resident noncitizens as full members. It has the effect of maintaining the worth of citizenship by keeping the status and rights of citizenship bundled together.

The expansive citizenship approach assumes that citizenship is an ideal and institution worth preserving. This premise requires greater normative defense than scholars of citizenship typically provide. Many scholars of immigration and citizenship tend to focus

on the fact that citizenship has social, political, and legal significance rather than whether it *should* have such significance. Citizenship is usually defended, if it is defended at all, for its role as a site of important rights and responsibilities, as well as a valued collective identity. Various human associations and group affiliations are important to human flourishing, but political communities are particularly important for ensuring the conditions necessary for human flourishing. They are the best current means for discharging the obligations that human beings have to one another. As Hannah Arendt observed, statelessness is a condition of extreme vulnerability, potentially leading to the loss of all rights (Arendt [1951] 1968). Chief Justice Earl Warren echoed this sentiment when he dissented to the US Supreme Court's majority opinion upholding a lower court decision to expatriate a man who had been born in the US but had resided mostly in Mexico and voted in Mexican elections: 'Citizenship *is* man's basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen. He has no lawful claim to protection from any nation, and no nation may assert rights on his behalf.'⁶ To be sure, as Warren himself went on to note, resident aliens do enjoy some rights in spite of their lack of citizenship status, but the vindication of the full rights of citizenship, as well as human rights, has tended to depend on membership in a political community.

There are more or less inclusive versions of the expansive citizenship proposal. At one end of the spectrum, naturalization would be automatic for all who have legally resided in the country for a certain number of years (Rubio-Marín 2000). At the other end, instead of conditioning inclusion on mere territorial presence, one might be required to apply for and meet certain criteria of naturalization. Rainer Bauböck's idea of 'stakeholder citizenship' retains the idea that 'citizenship is a status of full membership in a self-governing polity and that voting rights should generally be attached to such status', but it also gives noncitizen stakeholders a claim to membership and electoral rights. Stakeholdership consists in 'expressing an interest in membership that makes an individual's fundamental rights dependent on protection by a particular polity and that ties an individual's well-being to the common good of that polity' (Bauböck 2005, p. 686, 2007, p. 2422).

Stakeholdership comes not only with an expression of interest in membership but also with the development of social ties that comes with living and working in a community. Not only legal permanent residents but also unauthorized migrants develop stakes in the societies in which they live and labor.⁷ A number of scholars have pointed to the idea of social ties or affiliation as a basis for the full inclusion of noncitizens, including unauthorized migrants (Carens 2005, Bosniak 2006). As Carens states, 'When people settle in a country, they form connections and attachments that over time make them members of the society' (Carens 2005). US immigration law grants some recognition to the importance of social ties as a proxy for *de facto* membership. For example, noncitizens who are legal permanent residents and who have resided continuously in the US for seven years are eligible to apply for a waiver of some criminal deportation grounds, and the decision to grant the waiver depends heavily on the noncitizen's ties in the US, especially the hardships that his or her deportation will cause for close relatives who are citizens or legal permanent residents (Motomura 2006, p. 98).

While the expansive citizenship approach comes closer to meeting the demands of the democratic principles of inclusion than policies that require a long period of residency before naturalization or policies that take no account of unauthorized migrants, it still falls short. The democratic principles of inclusion require greater expansion of the demos than the expansive citizenship model can accommodate, temporally and spatially. Temporally, even on the generous expansive citizenship policy of automatic naturalization after a few

years of residency, resident noncitizens would be excluded from participation in the collective decision-making of states to which they are subject for the period of time until naturalization. Spatially, while the expansive citizenship approach would include a range of territorially present noncitizens after some period of time (legal permanent residents, unauthorized migrants, and Walzer's 'guest workers'), its inclusionary logic stops at the state's territorial borders. The democratic principles of inclusion are more radically inclusionary, requiring the political inclusion of not only territorially present noncitizens but also noncitizens outside the territory who have basic interests affected by or are subject to the coercion of a state.

Disaggregating citizenship: suffrage without citizenship

The expansive citizenship approach keeps citizenship status and individual rights bundled together. An alternative approach involves disaggregating the legal status of citizenship from many of the rights associated with citizenship. Such disaggregation is already underway, encouraged by the spread of human rights law and discourse, which ground individual rights in a conception of personhood (Soysal 1994, Jacobson 1996). On Soysal's postnational model of community, 'universal personhood replaces nationhood; and universal human rights replace national rights' (1994, p. 142). This universalist position shares with the democratic principles considered above the normative premise that *persons*, not citizens, are the proper subjects of political morality, and that equal rights and recognition should be based on personhood, not citizenship status. Yet, in law and in leading scholarly discourse on immigrants' rights, the universalist position is typically limited by another condition. The condition of territorial presence, while more inclusionary than the condition of citizenship status, limits the radically inclusionary potential of the disaggregation approach.

A line of cases in US law recognizes *personhood plus territorial presence*, as opposed to citizenship status, as a normative basis of individual rights. The 1886 US Supreme Court case, *Yick Wo v. Hopkins*, declared that 'all persons within the territorial jurisdiction' of the US enjoy some protections under the Constitution.⁸ The idea of 'territorial personhood' was also the basis of the 1982 case, *Plyler v. Doe*, which struck down a Texas statute barring unauthorized children from attending public schools. The Court stated, 'Aliens, even aliens whose presence in this country is unlawful, have long been recognized as "persons" guaranteed due process of law by the Fifth and Fourteenth Amendments'.⁹ As legal scholar Linda Bosniak has argued, these cases reflect the proposition that noncitizens inhabit 'a sphere of territorial personhood' that is insulated from the government's immigration power and which entitles them to some of the same protections and benefits that citizens enjoy (2006, p. 55). In addition to protection against discriminatory local laws (*Yick Wo*) and access to public education (*Plyler*), the Court has struck down state laws that restrict state-level welfare benefits to citizens.¹⁰ These cases express the US Constitution's 'universalist' commitments to equal rights for all persons present in US territory, regardless of citizenship status, a commitment that Bosniak endorses (2006, p. 95; see also Aleinikoff 2002).

What about political rights? To what extent have they been disaggregated from the formal status of citizenship and extended to noncitizens? Bosniak observes that while certain civil rights and social benefits have been extended to noncitizens, *political* rights are largely reserved for citizens in the US. Only a few local governments have extended voting rights to noncitizens. In addition, the US Supreme Court has upheld citizenship requirements imposed by state governments for jobs involving 'political functions',

including police officers, public school teachers, and probation officers. The Court has made clear that it would not compel state governments to allow aliens to vote or hold public office (Bosniak 2006, pp. 60–63). Congress went so far as to make it a crime for noncitizens to vote in federal elections in 1996 (Schuck 1998, p. 187).

To be sure, there are other modes of political participation besides voting. Peter Spiro has argued that despite the lack of voting rights, noncitizens enjoy other avenues of political influence (Spiro 2008, p. 93). Legal permanent residents can make campaign contributions in federal elections, as well as some state elections. Churches, unions, and civil rights and immigrant advocacy organizations may represent the interests of noncitizens, including unauthorized workers. As the 2003 freedom rides and 2006 demonstrations on behalf of immigrants' rights attest, noncitizens can make their voices heard outside the arena of formal electoral politics. But it is hard to deny that the lack of voting rights translates into greater vulnerability to injustice. Because noncitizens lack voting rights, it is easy for political parties, candidates, and elected officials to ignore them. Noncitizens are more likely to enjoy civil rights or workplace protections if they also have rights of political participation, but rights of political participation in the US remain tightly linked to citizenship status.

The history of noncitizen voting in the US suggests that this linkage was not always so tight, but it would be a mistake to view this history as exemplifying a genuine commitment to the disaggregation of citizenship status and individual rights, let alone a move toward a deterritorialized, postnational model of membership. Alien suffrage, which began in the late 1700s and came to an end in the early 1900s, was typically reserved for *legal permanent residents* who formally *declared their intent* to become citizens (Raskin 1993b, pp. 1406–1407, Motomura 2006, pp. 116–119).¹¹ It was also restricted to white male propertied aliens; for much of this period, race and gender were more consequential than citizenship status in determining who could vote. Motomura seeks to recover aspects of this history for contemporary policy; he proposes that new lawful immigrants be treated like US citizens, as 'Americans in waiting', until they are eligible to apply for citizenship. This would mean that upon admission they could vote, sponsor their close relatives for immigration, and be eligible for public benefits (2006, p. 13). He stresses that extending the vote to lawful immigrants would ease their transition to citizenship, not devalue it or create disincentives for naturalization, a point he underscores by endorsing the proposal that lawful immigrants no longer be permitted to vote as lawful immigrants after they become eligible for naturalization (2006, pp. 166, 193). This idea of noncitizen voting as a way to encourage naturalization and foster political integration was also emphasized by Jamin Raskin in his important early work on alien suffrage for legal permanent residents in local elections in the US. As he put it, '[T]he practice of alien suffrage, sometimes derided as a threat to the naturalization process, can become once again, as it was in the last two centuries, a pathway to naturalized citizenship' (1993b, p. 1467).

The leading contemporary advocates of alien suffrage in the US have tended to restrict their arguments to voting rights for *legal permanent residents* at the *local* level, embracing status and territorial restrictions on voting *within* the national territory (Raskin 1993b, Motomura 2006). There are legal and political considerations that understandably lead them to restrict their arguments in this way, but the logic of the democratic principles invoked on behalf of alien suffrage is more inclusionary. The democratic principles of inclusion push in favor of extending rights of political participation to *all* resident noncitizens at *all* levels of government. All resident aliens, legal and illegal, have basic interests affected by and are subject to the coercion of local, state, and national

governments. One opponent of the Takoma Park, Maryland, referendum to enfranchise noncitizens and a former INS Commissioner recognized the inclusionary *territorial* implications of the normative arguments made by proponents: 'If local voting by noncitizens is allowed, state and federal voting could be next. Either there is a policy basis for noncitizens to vote, or there is not. If we open the door, it cannot be closed halfway' (Hayduk 2006, p. 91). In spite of this territorially expansionary logic, noncitizen voting rights campaigns in the US have tended to restrict their efforts to local-level voting, but some campaigns have sought to include all resident noncitizens, regardless of immigration status. A 2004 San Francisco ballot measure sought to include all noncitizen parents of children in public schools to vote in school board elections, and it failed partly as a result of this.¹²

It is important to understand why many contemporary advocates of alien suffrage in the US seek to retain the link between citizenship status and voting rights. For instance, Motomura proceeds on the premise that citizenship is a valuable bundle of status, identity, and rights, and he endorses alien suffrage so long as it supports, not undermines, citizenship. He endorses only a *temporary* disaggregation of citizenship and political rights until they can be rebundled through naturalization. In other words, many proponents of alien suffrage are not really proponents of disaggregation at all; they would probably oppose a strategy of extensive disaggregation because it would entail devaluation of citizenship itself. If the key rights typically associated with citizenship were extended to noncitizens, what would be left of citizenship? As Peter Schuck has emphasized, the expansion of the equality and due process principles has expanded the rights to which resident aliens are entitled, diminishing the worth of citizenship (Schuck 1998). US Senator Dianne Feinstein voiced similar concerns in opposing the campaign to enfranchise noncitizens in local school board elections in San Francisco: 'Allowing noncitizens to vote ... clearly dilutes the promise of citizenship' (Hayduk 2006, p. 126).

As a descriptive matter, the claims about citizenship's devaluation are in certain respects overblown. Citizens enjoy a right to remain, whereas noncitizens, including legal permanent residents, are subject to deportation for relatively minor crimes, especially since the 1996 immigration law which expanded the grounds for deportation to include a vastly expanded definition of 'aggravated felonies' and eliminated discretion in many deportation cases. In addition, the 1996 federal welfare reform law restricted public benefits on the basis of citizenship status. Immigrants arriving after its enactment were made ineligible for all federally funded means-tested benefit programs like Medicaid and Temporary Assistance to Needy Families (TANF), and denied food stamps and Supplemental Security Income (SSI) altogether. While Congress later restored eligibility for federal assistance, except SSI, to immigrants who had resided in the country for five years and many states have chosen to provide these immigrants with TANF and Medicaid benefits, the denial of SSI and the time restriction on access to other public benefits is not insignificant for many poor immigrants.¹³

But those worried about citizenship's devaluation are not merely making *descriptive* claims about the actual social, legal, and political significance of citizenship. They, along with proponents of expansive citizenship, are making or more commonly, presupposing *normative* claims about the value of citizenship. They are ethical particularists who believe that we have special obligations to our fellow compatriots over the rest of humanity. Particularists may disagree about what the content of those special obligations are and how they differ from our general obligations to all other human beings,

but they share the basic premise that the relationship of citizenship gives rise to special obligations (Miller 1995).

In contrast, ethical universalists are critical of the particularist's claim that compatriots should take priority. They argue that all persons should be subject to the same system of fundamental moral principles, and these principles should assign the same moral benefits and burdens to all (Pogge [2002] 2008, p. 98). For them, citizenship lacks normative significance; it is ultimately something to be transcended. On the ethical universalist view, alien suffrage is not a pathway to citizenship, but one important step toward complete disaggregation of citizenship status and individual rights.

The democratic principles of inclusion considered above accept the ethical universalist's premise that it is *personhood*, not citizenship status or territorial presence, that matters: any person who has basic interests affected by or is subject to the coercive power of the state is entitled to participate in the state's decision-making. The logic of these democratic principles of inclusion is more radically inclusionary than proponents of alien suffrage have acknowledged. The weak version of the disaggregation approach suggested by leading defenses of alien suffrage, which focuses on enfranchising only legal permanent residents at the local level, falls short of meeting the demands of the democratic principles. A stronger version of the disaggregation approach, which accepts 'territorial personhood', not citizenship status, as the normative basis for individual rights and which could lend support to voting rights for *all* resident noncitizens, including unauthorized migrants, at all levels of government comes closer to satisfying the demands of the democratic principles.¹⁴

But the democratic principles of inclusion call for an even stronger version of the disaggregation approach than scholars of citizenship have typically endorsed: *all persons beyond the boundaries of formal status citizenship and beyond territorial boundaries*, who have basic interests affected by or are subject to the coercion of a state's policies, should have the opportunity to participate in the making of those policies. The democratic principles challenge not only the linkage of individual rights and citizenship status but also the linkage of individual rights and territorial presence. For the roughly 3% of the world's population who are migrants, this means they should have the right to vote not only in receiving states but also in their countries of origin insofar as they have basic interests affected by or are subject to the coercion of their home countries.¹⁵ For the rest of the world's population, who live and die in the political communities where they are born, the democratic principles suggest that they, too, are entitled to a voice in the collective decision-making of other states insofar as they have basic interests affected by or are subject to coercion of those states.

Conclusion

Two leading democratic principles of inclusion, the affected interests and coercion principles, support expanding the boundaries of the demos beyond the boundaries of formal status citizenship and more radically, beyond the territorial boundaries of states. If one accepts these democratic principles, then it is hard to resist the conclusion that *all resident noncitizens* should have rights of participation in the polities where they live and work. The two proposals of expanding and disaggregating citizenship begin to address the problem of democratic legitimacy in the case of resident noncitizens.

Whether the disaggregation approach is more or less inclusionary than the expansive citizenship approach will depend in part on how much disaggregation between citizenship status and individual rights is permitted and also on what the criteria of admission to full

citizenship are. For instance, a policy of automatic naturalization after a few years of residency would leave resident aliens without political voice for those years, whereas a disaggregation policy that extended a range of civil, social, and political rights to resident aliens immediately after they establish residency would be more inclusive. In contrast, a policy of fast-track naturalization after a few years of residency would be more inclusive than a disaggregation approach that extended civil and some social rights, but not political rights, to resident aliens, as is the practice in the US. In some cases, what appears to be a disaggregation approach is really a way to encourage naturalization into citizenship. As we saw, this is the case for the leading proponents of alien suffrage, who view it as a policy of expansive citizenship rather than genuine disaggregation. A strong disaggregation approach rejects the underlying premise of the expansive citizenship approach: that citizenship should continue to be a basis for individual rights, including voting rights.

While the two proposals come closer to meeting the demands of the democratic principles of inclusion than the standard state-centered theories of democracy on offer, they do not go far enough. The democratic principles support expanding the demos to include not only resident noncitizens but also *nonresident noncitizens* who have basic interests affected by or are subject to the coercion of a particular state. They call for moving beyond territorial presence, as well as citizenship status, as the decisive grounds for democratic participation.

Democratic theorists face the challenge of developing extra-territorial conceptions of democracy and envisioning transnational democratic institutions. What institutional forms might transnational participation and representation take? Participation at the local and federal level, in campaigns and party politics? Development of 'diasporic bureaucracies' as in Mexico where provincial states coordinate the work of governors' offices on migration issues (Smith 2008, p. 720)? Special legislative representation schemes for territorial outsiders, as is done for expatriates in Colombia, France, Italy, and Mozambique (Bauböck 2007, pp. 2432–2433)? Representation through supranational institutions?¹⁶

For their part, if they want to resist the radically inclusionary implications of the democratic principles considered above, scholars of citizenship need to provide more robust normative defense of the value of citizenship, and explicitly theorize its connection to territoriality and democracy. Those who would reject the inclusionary logic of the democratic principles bear the burden of showing that something other than affected interests or subjection to state coercion is the proper basis of democratic legitimacy, or that these principles, properly understood, require the boundaries of democracy to line up with the territorial boundaries of states. Otherwise, they are left with the conclusion that the leading principles of democratic legitimacy require enfranchising people beyond the boundaries of citizenship and territory.

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Notes

1. I use the terms 'alien' and 'noncitizen' interchangeably in this article. The term 'alien' reflects the classifications used in US law and legal discourse, whereas 'noncitizen' is used by immigrants' rights advocates and some scholars. The category of *resident* noncitizens refers

- not only to legal permanent residents but also illegal or unauthorized migrants. The category of *nonresident* noncitizens consists of foreigners outside a state's territory.
2. Naturalization dipped to its lowest level in history (35%) in 1997 and then rose slightly to 40% in 2000; these levels are much lower than the midcentury naturalization level of 79% (Bloemraad 2006, p. 28).
 3. This is famously difficult to specify. Blake suggests that no general theory of adequacy is required; rather, the task is to identify certain circumstances or conditions as inadequate (2002, p. 268).
 4. López-Guerra (2005, p. 224) embraces subjection to state coercion and rejects affected interests as the proper basis for democratic inclusion. Abizadeh (2008, p. 45) leaves aside the all affected interests principle and develops what I am calling the coercion principle as the basis for his argument against a state's unilateral right to control its borders. Beckman (2006, p. 161) views the coercion principle as one version of the all affected interests principle. Both López-Guerra and Beckman underestimate the scope of the coercion principle.
 5. López-Guerra (2005) argues that long-term expatriates are not subject to the laws of their home countries, and therefore, should be disenfranchised by their home countries. While I agree that territorial outsiders are not subject to the same degree of state power as territorial insiders, I disagree with his premise that subjection to state coercion is restricted to the interior of a state's territory. There are a great many people outside a state's territory who are subject to its coercive power, including expatriates who have family and own property in, pay income taxes to, or are subject to military conscription by their countries of origin.
 6. *Perez v. Brownell*, 356 US 44, 64 (1958). A later case, *Afroyim v. Rusk*, 387 US 253 (1967), struck down expatriation on the grounds of voting in a foreign election unless there is some evidence that the individual intended to terminate his US citizenship.
 7. This contrasts with Walzer's view that 'second admissions (naturalization) depend on first admissions (immigration)', which would seem to restrict the reach of his argument for full inclusion of noncitizens to only those immigrants who are lawfully present in a state's territory (1983, p. 60). 'Guest workers' would be included but not noncitizens who have overstayed their visas or entered without authorization.
 8. *Yick Wo v. Hopkins*, 118 US 356, 374.
 9. *Plyler v. Doe*, 457 US 202 (1982).
 10. *Graham v. Richardson*, 403 US 365 (1971). In contrast, the Court upheld a *federal* Social Security Act provision that excluded aliens from coverage for Medicare unless they had resided in the country as lawful permanent residents for at least five years (*Mathews v. Diaz*, 426 US 67 (1976)).
 11. For the history of alien suffrage in the US, I also draw on Rosberg (1977), Neuman (1992), and Hayduk (2006).
 12. The proposal was defeated 51.45 to 48.55%. Opponents tapped into widespread anti-immigrant sentiment toward unauthorized migrants in California and nationally (Hayduk 2006, pp. 124, 132–133).
 13. The 1996 law left noncitizens worse off than citizens, but it is important to note that it reduced welfare benefits for both noncitizens and citizens (Smith 2005, p. 680).
 14. Proponents of territorial-personhood-based conceptions of rights are ambivalent about how inclusionary the scope of personhood-based conceptions of rights should be. For instance, one leading proponent, Linda Bosniak, is, on the one hand, clear-eyed about the practical limits of implementing a truly universal ethic of inclusion: she notes that 'normative alienage theorists' do not usually question whether national communities are legitimately 'hard on the outside' and that those few who advocate open borders are typically 'dismissed as utopian eccentrics' (2006, pp. 123, 205, n. 5). On the other hand, she is critical of those who take for granted the legitimacy of bounded political communities and their authority to regulate admissions and membership, and questions the 'normative nationalism' implicit in much theorizing about citizenship (pp. 75, 123, 134). Bosniak does not herself consider normative defenses of 'bounded solidarity'. The fact that she suggests only negative motivations for such solidarity – 'hatred or xenophobia or hostility toward the other' or 'selfishness, self-interestedness, or indifference' (p. 206, n. 11) – implies a skepticism about the possibility of developing any compelling normative defenses of bounded political communities. Readers are left to conclude that Bosniak is, as a matter of principle, an ethical universalist who thinks bounded solidarity cannot be normatively defended, but as a practical matter, does not see any existing alternatives

- to membership in bounded political communities that might serve as the locus of important rights and protections. Hence, the ambivalence about the scope of personhood-based conceptions of rights. See Song (forthcoming).
15. Mexico granted Mexicans abroad the right to vote in 2005, though the actual exercise of the vote has been compromised by barriers to campaigning and registering to vote abroad. Nearly 100 countries have adopted 'external vote' provisions, mostly in the last 20 years (Smith 2008).
 16. See Held (1995), Abizadeh (2008), Spiro (2008).

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