
1. The Act of Voting: Identities, Institutions and Locale *Johan A. Elkink and David M. Farrell*
2. European Identities in Comparative Perspective *Anthony F. Heath and Thees Spreckelsen*
3. Does Ulster Still Say ‘No’? Public Opinion and the Future of Northern Ireland *John Coakley*
4. Transnational Citizenship and Access to Electoral Rights: Defining the Demos in European States *Iseult Honohan and Derek Hutcheson* (pp. 59-79)
5. Electoral Processes and Presidential Elections in ‘Presidential Republics’ *Jean Blondel*
6. EU Treaty Referendums in Ireland and Denmark: A Comparative Analysis of Different Conceptions of Sovereignty and their Democratic Implications *Palle Svensson*
7. Confronting Europe: the Irish Referendums on Lisbon *Brigid Laffan*
8. Locality in Irish Voter Preferences *Michael O’Kelly*
9. Candidates, Parties and Constituency Relations: A Study in Irish Clientelism *Søren Risbjerg Thomsen and Jane Suiter*
10. Exploring the Non-Alignment of Party and Candidate Assessments in Ireland: Do Voters Really Follow Candidates? *Michael Marsh and Laura Maria Schwirz*
11. Intention to Vote, Reported Vote, and Validated Vote *Christopher H. Achen and André Blais*
12. Political Inequality in Second Order Elections: Resources, Campaign Mobilization and Voter Turnout *Susan Banducci*
15. The Act of Voting in Context *Johan A. Elkink and David M. Farrell*
Defining the Demos: Grounds for Granting Voting Rights

Who should have the right to vote – and who does? This chapter focuses on these two central questions, and combines discussion of the normative principles of the demos with a comprehensive mapping of the electoral rights in national elections of citizens and resident non-citizens in all 28 states of the European Union.

Participation in collective self-rule has been proclaimed as a human right: ‘Everyone has the right to take part in the government of his country, directly or through freely chosen representatives’ (Universal Declaration of Human Rights, Article 21). The answer to the question who constitutes the people and, in the case of immigrants and emigrants, which country should be regarded as theirs is, however, anything but simple.

So we have to dig deeper to find what warrants political rights, and for whom. In recent years, we have seen the emergence of ‘disaggregated’ citizenship, in which in many countries immigrants gain some, usually local, voting rights before they are eligible for citizenship, and voting rights have increasingly been extended to citizens living abroad. But for what reasons, and under what circumstances, should either or both of these have voting rights?¹

A number of different principles have been advanced as the appropriate ground for granting political rights in a democracy. It is important to bear in mind the distinction between the citizenry – the community of individuals who share a common formal status that ‘creates a legal bond between individual members and a state and endows these individuals with certain rights and obligations’ (Vink and Bauböck 2013: 622) and the ‘demos’ – those with the electoral franchise whose decisions govern the polity of a given state (Goodin 2007).

¹ This section of the chapter draws on Honohan (2011, 2013).
Throughout, we will focus on defining the ‘inner’ and ‘outer’ boundaries of the demos: that is, on the criteria that delimit those who are entitled to vote from those who are excluded.

Where should these inner and outer boundaries of the demos be located?

1. The fact of citizenship
   
   One popular answer to this question defines this simply in terms of citizenship. The citizens are those who should vote, because they are citizens. This formalist account sees a necessary congruence between the citizenry and the demos. It may be argued further that equal citizenship requires that not only that all citizens should have a vote, but that their votes should all count equally.

   But this is a problematic approach. The answer cannot be as simple as saying that all citizens should have the right to vote. To begin with, this simply transfers the need for justification of voting rights to the grounds for citizenship itself: on what basis should citizenship in a democracy be awarded? However citizenship is awarded, the idea that voting rights are necessarily congruent with it reveals a monolithic understanding of citizenship as one-dimensional. This can be contrasted to a pluralist understanding of citizenship as a more flexible, or loosely connected, set of rights and duties. On this understanding, citizenship is not a matter of a single and indivisible membership of a particular territorial polity, but a bundle of rights and duties that have changed over time, and can be different for different people. These now include state protection abroad, the right to return, and full symbolic membership of the political community. It is clear that it is important to grant citizenship to some people, such as young children, who may not meet the criteria for a right to political participation.

   With respect to treating citizens equally, even if there is some sense in which all citizens share certain rights, since the jurisdiction of each state is territorially bounded, the position of citizens living outside that jurisdiction differs in an important respect from that of citizens at home.

2. The ‘all-contributing’ principle
   
   An alternative approach sees some concrete contribution to the collective life of the polity as the basis for the right to vote. Paying taxes is often offered as a key example here; on the basis
of the maxim, ‘no taxation without representation’, it may be thought that those who contribute to the state through taxation should be able to have a say in who rules them, and, conversely, those who do not so contribute should not be represented.

While the taxation argument focuses on a financial contribution, it could be argued that there are other kinds of contribution that should be taken into account. But, apart from difficulties in deciding what kind of contribution is sufficient to warrant a vote on this basis, there is a more fundamental problem with the ‘contribution’ principle: it excludes, for example, older people and those with disabilities, who may be unable to contribute economically or in other ways, but who are clearly members of the political community who deserve political rights. Conversely, foreigners abroad may make large investments or charitable donations within a country, but in general it is not thought that all these should have the right to vote and determine policies there. Thus a contribution principle is both under-inclusive and over-inclusive in defining the demos.

It may be argued that it is not people’s contributions, but the impact of law and government on their lives that is recognised in awarding them a vote, giving them a chance to bring their government to account and shape the laws determining their common future.

To the extent that this principle can be coherently applied, it may seem more clearly to justify awarding voting rights to non-citizen residents equally with resident citizens. If contribution is taken as the guiding principle, there may seem to be little basis for granting votes to citizens abroad, who, in general, are not liable to pay taxes (the USA is an exception). Some argue, however, that emigrants do contribute through the quite substantial remittances that they typically send home. But such remittances are not contributions to the state, being voluntary personal payments, and thus more like charitable donations than paying taxes. Even if some recognition for an economic contribution is warranted, this does not explain why it should be a political voice rather than some other form of recognition (Rubio Marin 2006: 133).

3. The ‘all-affected’ principle

In order to give people some control over the things that determine their lives, the next argument to be considered sees the right to vote as properly belonging to those who are affected by the laws and policies (e.g., Dahl 1970; Goodin 2007). This ‘all-affected’ principle has the attraction of including older people and those with serious disabilities, who may not
be able to contribute substantially. It also recognises that there are spill-over effects of
government across state boundaries, an important consideration in the case of environmental
issues, for example.

This principle does not, however, provide a clear criterion for identifying who should be the
members of the demos and its boundaries. It requires us to determine first what counts as
being affected, as well as what extent of affectedness warrants a vote, and with what weight.
The demos that elects a representative body in a territorially-bounded nation state may not be
congruent with the people affected by that body’s decisions. The ‘all-affected’ principle
logically might lead to the constitution of different demoi for different issues. This is
incompatible with the principle of territorially representative democracy, which presupposes a
stable membership of the demos and a representative function for the legislature (Bauböck
2007b: 18-19). Determining who should be included in these changing demoi is also a
complicated affair: the degree to which people might be affected by a particular issue (and
should therefore be included in the demos) might not be clear until after the decision is taken,
and will furthermore be determined by whatever the decision is.

We would need to distinguish at least between those whose lives and central interests are
directly and substantially affected and those more marginally affected by a country’s laws and
policies. If I live just across the border from a dangerous nuclear power plant, perhaps I
should have some say, because this could be a matter of life or death. But if I have to change
my diet a little because another state limits salmon farming there, it is hard to see that I have a
right to a vote in that country.

This principle suggests that citizens abroad should be granted voting rights if it can be shown
that they are particularly affected by their state’s laws and policies; but this would not be a
stronger ground than for citizens of other countries affected by the state’s actions, and would
require specifying what kind and degree of affectedness would add up to justifying a grant of
political rights, and to which citizens abroad.

4. The all-subjected principle
It might then be thought that the normative core of democratic membership would be better
defined in terms of those who are subject to the authority of government and law. Thus the
next principle, that ‘all-subjected’ should be enfranchised, is based on the idea that the
coercion exercised by governments is legitimate only if those coerced have the right to a say in the way laws are made and implemented, and can bring government to account. Being subject to political rule may be seen as a specific and particularly significant way of being affected, and thus those subjected should have a say in bringing that government to account and in shaping their collective future.\(^2\) This is the archetypal definition of the demos (e.g., Dahl 1989: 120).

Because of the primarily (though not exclusively) territorial nature of state authority, it may be argued that those living within the boundaries of the state are those most immediately and comprehensively subject to government and laws. If this is the case, the ‘all subjected’ principle appears to support limiting voting rights to residents only (whether citizens or not). Some theorists thus suggest that citizens who live abroad have no right to a vote, and furthermore, that it would be illegitimate to give them votes in a democracy (López-Guerra 2005: 217). Against this, it has been pointed out, however, that citizens abroad are subject to some of the state’s laws and policies – for example, concerning the award, retention and transmission of citizenship itself, and diplomatic protection abroad – with the implication that they should have a right to participate in decisions on these matters at least. It has been argued further that it is not the degree, but the fact of subjection that counts (Owen 2009: 64). If so, then external citizens would in principle have no weaker claim on the subjection basis than citizens within the state.

There are other ways in which certain groups of citizens abroad may seem to be subjected – if, for example, they have been forced into exile. Enforced exile may also be seen as an extreme form of subjection, thus warranting a right to vote for refugees and displaced persons in states in transition (Beckman 2009: 78-80). But this can be seen as a special case. To see economic migrants as subjected may be to stretch the concept of subjection or force rather far. It has also been argued that citizens abroad should have votes as a form of compensation for having been driven out of the country. But against this, and, as in the response to the ‘contribution’ argument, we may recognise that voting is properly required not as a form of compensation for past wrongs, but as a means of having a political voice in matters that determine one’s future (Rubio-Marin 2006).

\(^2\) Alternatively, Beckman defines ‘affected’ as ‘affected by law’ in a way that comes close to the subjection view (Beckman, 2009).
While ‘subjection’ thus has considerable appeal as providing a clear and cogent basis for voting rights, it may, in turn, be considered too inclusive as a general basis for voting rights, as it does not exclude tourists and temporary visitors (Bauböck 2007a). Like the all-affected principle, it also suffers from the flaw that the claim to inclusion in the polity is primarily based on output from the past and current political processes, rather than the claim to have an input into future political outcomes (Bauböck 2007b: 20). It seems that what is needed is a definition that includes those and only those who are significantly interdependent on a continuing basis in their joint subjection to the state (Honohan 2002), and on the future wellbeing of that polity.

5. The stakeholder principle

The final account outlined here sees such long-term connections and substantial subjection to the polity as the basis for the right to vote – the ‘stakeholder’ principle. As formulated by Rainer Bauböck, the principle holds that ‘self-governing political communities should include as citizens those individuals whose circumstances of life link their individual autonomy or well-being to the common good of the political community’ (Bauböck 2009: 479). The application of this principle is less clear-cut than subjection, but less vague or indeterminate than affectedness. Evidence of a stake in a polity can be found in a person’s living there (even if they are not citizens) or having lived there (having been subjected), while still having family or other substantial connections, and maintaining the possibility of return and an orientation to a common future in the polity. It should be noted also that this principle emphasises interconnection with the polity rather than more general social contacts. Moreover it grounds voting rights in future needs and responsibilities rather than retrospective considerations.

This account offers support for granting votes to some citizens abroad – namely those who have lived in the country at some time, and who may return there in the future. It acknowledges that people may remain interconnected with a polity even after many years, particularly under modern conditions of frequent travel and direct communication. However, it excludes second-generation citizens who have inherited their citizenship but have never lived in the country. It could also require some kind of demonstration of commitment – such as regular registration to vote, and perhaps a declared intention to return – from first generation emigrants.
On this view it is not required to grant votes to citizens abroad, as it would be if they were understood as actually subjected; but it is permissible for citizens of a state to decide to grant them votes without breaching democratic principles (Bauböck 2009: 487; Rubio-Marin 2006: 134). Furthermore, it does not mean that the votes of citizens abroad have to carry the same weight as those of resident citizens, since the stake emigrants have in the country may be seen as less substantial than those whose subjection or affectedness is constant.

**Citizenship, Residence and Voting Rights**

Table x.1 summarises the key implications of the five models outlined above. It can be seen that each of them emphasises a particular characteristic in determining where the boundaries of the franchise should lie. In each case, we can identify an ‘inner boundary’ – the criteria for inclusion in the demos – and an ‘outer boundary’ – the basis of exclusion from the groups that are enfranchised by the first principle.

It is worth noting that there may be justifiable grounds for excluding certain people from voting even if they fall within the boundaries implied by each of the models in their purest form. While few would argue in favour of earlier distinctions based on gender or property restrictions, which have largely been removed (Przeworski 2009), all states in the EU still place restrictions on voting based on age, and many also circumscribe the voting rights of those suffering from mental disability (on the grounds of an incapacity to take rational decisions) or convicted of criminal activity (on grounds of justice, or a ‘bundling’ or rights and responsibilities).

In practice, as will be seen in the next section, the interaction between citizenship and residence underlies most of the distinctions in national election voting rights in European Union member states. But the normative arguments outlined in the models listed above do not explicitly distinguish people along these lines, except for citizenship. We can illustrate this by considering three groups of potential voters: resident citizens of a state; resident non-citizens; and non-resident citizens.

The inner boundary of most of the models places the majority of resident citizens inside the demos. In the citizenship model, they obtain the franchise on account of their citizenship alone (the fact of their residence is incidental). Resident citizens clearly fall within the boundaries implied in the ‘all-subjected’, ‘all-affected’ and ‘stakeholder’ views of the demos.
Only under the ‘all-contributing’ principle does the outer boundary exclude some resident citizens from the right to vote only, on account of the fact they pay no taxes. Such an interpretation, however, ignores previous or future contributions to the state, or contributions in kind, such as voluntary public service.

[Table x.1 about here]

In some cases, the inner boundary of the demos also includes resident non-citizens. Three of the approaches – the all-subjected, all-affected and stakeholder perspectives – have no objection to the enfranchisement of second- and third-country nationals resident in the state. The law affects and subjects them just as it does resident citizens, and the fact of their residence gives them a stake, at least temporarily, in the polity. The all-contributing principle does not explicitly enfranchise non-citizens as such, but since the determining aspect here is tax payment, it does not justify differential treatment of taxpayers if they are not citizens. Only the citizenship model sees the demos as being synonymous with the ‘national family’ denoted by the boundaries of citizenship, and thus by definition excludes non-citizens. Yet as we will see below, in practice electoral rights at the national level are generally the preserve of citizens only.

While there may not be grounds for an absolute right to vote for citizens abroad, there are some strong arguments for granting votes at least to first generation emigrants in ways that do not swamp resident citizens’ votes. The citizenship model clearly implies that non-resident citizens should be enfranchised, as in this case their right to vote is connected not to residence but to citizenship. Beyond this, the strongest grounds for this claim seem to lie in two sets of arguments: the extent to which they share some of the subjection of resident citizens, and the stake that they maintain in their country of citizenship over a lifetime through the interconnections with the future good of the polity. These political rights are designed to provide a say in matters that determine the citizens’ future life, rather than a necessary concomitant of formal citizenship, a return for a contribution or compensation for a wrong.

Several concerns about the effect of granting votes to citizens abroad on normative grounds should be addressed briefly. These will be addressed in principle here, and the potential solutions to them examined in practice in the next section.
1. Double voting
This will arise mainly, but not exclusively with respect to dual citizens who have naturalised in their new country of residence. It could also apply to countries in which non-citizens are enfranchised while still retaining external voting rights in their own state. Here the objection is that allowing someone to vote in their country of residence and their country of citizenship would breach the principle of electoral equality: one person, one vote. But this principle means that no one should have more than one vote in a single institution; it does not mean that they should not be able to vote in two different electoral contexts in which they may have interests at stake.

Where elections in the two countries are for the same institution, as for example in elections for the European Parliament, a person should not have a vote in two countries, as this would amount to two votes in the same electoral context. Theoretically, voting in two national elections in EU member states could be argued to lead to double representation in the Council of Ministers (where national governments are represented in the EU decision-making process). However, the long processes of principal-agent delegation from the voter to the parliament, thence to the government, and finally to the individual minister, make this double representation indirect, and in any event it only concerns decisions taken at the EU rather than the national level. Moreover, there is a far greater danger of the opposite occurring: namely, that a citizen of one EU country who moves to another (or moves to a third country) loses his or her ability to influence the government in any country; and that within the EU context, that her or she will remain unrepresented altogether in the intergovernmental bodies of the EU.

2. The size of the external vote
In small countries of large-scale emigration, votes for citizens abroad may seem to raise the spectre of the external vote dominating the domestic vote.

Two different scenarios may arise here. In the first, the external electorate is potentially larger than the domestic electorate, and may threaten to swamp it, determining laws and policies whose consequences non-residents would not bear. In the second case, the external electorate may be smaller but still capable of tipping, or causing a swing in, the vote.

In both cases, the extent to which this danger arises also depends not only on the positioning of the boundaries of the demos, but also on the factors determining citizenship itself. Groups
of non-resident citizens may be created by emigration, and by relatively easy transmission of
citizenship by descent. In any event, these ‘swamping’ or ‘tipping’ effects become politically
salient only if there is broad eligibility to vote as well, and potentially have greater direct
effect if their vote is concentrated rather than dispersed.

Four strategies for mitigating these effects can be distinguished:

1) Most simply, external citizens can be excluded from the demos. This alleviates the
immediate practical issues raised here, but, as we have seen above, there are strong
normative arguments in favour of the inclusion of at least some non-resident citizens
among the enfranchised.

2) Citizens abroad can be granted voting rights, but have their relative weight reduced by,
for example, counting the votes within one or more separate, or reserved,
constituencies. At least in some of the models, there is no requirement that, even when
enfranchised, the votes of citizens abroad need be equally weighted with those of
resident citizens. Their level of subjection, affectedness or stakeholding is arguably
lower than that of native-resident citizens. Separate representation reduces the risk of
‘swamping’, by separating out the representation of voters abroad from the
mainstream representatives. It can still contribute to ‘tipping’ if the overall election
result is close, as happened in the Italian Senate election in 2006 (Bellucci 2008: 189).
The existence of separate members of parliament whose constituency is based on
external voters can also lead to the politicisation of emigrant issues, whose interests
may be different from native residents’ (Østergaard-Nielsen and Ciornei 2013), as
well as (sometimes unfounded) concerns about the advantaging of one party over
others (Collard 2013).

3) The dangers of the votes of external citizens ‘tipping’ an election may be seen as more
likely but less serious than ‘swamping’. Any other group of voters may also constitute
a tipping force; nonetheless, concern about the tipping power or politicisation of
external voters can be allayed if the external vote is generally not concentrated in a
single constituency, but distributed across domestic constituencies (Bauböck 2007a:
2446).

4) Time limits can be placed on the non-resident citizen’s right to vote. One argument
against the enfranchisement of emigrants and other non-resident citizens is that they
might lack the necessary knowledge of national politics to participate meaningfully.
Arguably, expatriates today (at least in the first generation) can better maintain
contacts and keep abreast of political developments than in previous times, through new communication technologies and cheaper travel. Nonetheless, a person’s ‘stake’ or degree of affectedness might diminish over time, or be at best only tenuous after several decades or a lifetime abroad. Thus there could be a case for placing a time limit after last residence, or a generational cut-off (e.g., second generation) on emigrants’ voting rights.

Voting Rights in National Elections across Europe: The Empirical Picture

How closely are these principles followed in reality? Empirical evidence shows that most member states of the European Union grant electoral rights to at least some of their non-resident citizens, but that there is considerable national variation on the criteria and the eligibility principles across the continent. As such, the extent to which citizens who migrate across borders retain formal political rights in respect of national elections varies depending on the bilateral combination of countries involved. This section examines in detail the national electoral rights of resident citizens, non-resident citizens and resident non-citizens in the 28 member states of the European Union.

We focus on the inner and outer boundaries of the demos in elections at the national level, specifically, national parliamentary and presidential elections. Arguably, these most clearly exemplify the prevailing principles of a country’s construction of the demos. All decisions on the franchise in national elections are entirely within the purview of the individual member states. The picture is complicated in European and municipal elections by the existence of

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3 Electoral rights data are drawn from a comprehensive database of electoral laws at European, national, regional and local level across the 28 countries of the European Union. A catalogue of electoral legislation was compiled for each of these elections, and national experts in each country were commissioned to write individual reports to a standard template, based on the electoral laws and a detailed questionnaire. The resulting data were compiled into a matrix that contained information on the electoral rights of four categories of citizen (resident first country nationals (FCNs), second country nationals (SCNs), third country nationals (TCNs) and non-resident FCNs) across 280 combinations of electoral level and country (Arrighi and Hutcheson 2013). The country reports from which the electoral data were collated were directly funded by the EUDO-Citizenship Observatory as supplementary material for a report on electoral rights by Arrighi et al. (2013), which in turn was financed by the European Parliament (£59,995). The views and findings of this paper are the authors’ own and neither the European Union nor EUDO-Citizenship bears any responsibility for them or for any errors contained within the paper. A full catalogue of the legislation consulted can be found in Arrighi et al. (2013: 105-30).

4 Under the Treaty on the Functioning of the European Union, EU citizens in another EU state are in principle granted ‘the right to vote and to stand as candidates […] under the same conditions as nationals of that State’ (TFEU Art. 20(b); Directives 93/109/EC and 94/80/EC). These regulations concern only the EU citizen’s country of residence, rather than the country of origin.
EU obligations in respect of second-country nationals (although states are free to define expatriate voting rights at every level). National legislative elections are held in every state. Direct presidential elections take place in exactly half the EU member states (the other fourteen have indirect presidential elections, or are monarchies). We focus primarily on the right to vote, and consider only in passing the right to stand as a candidate – although there are, as we shall see, some distinctions of eligibility between these two categories of rights.

The analysis below proceeds as follows. First, we summarise the rules across Europe in respect of the three groups of voters outlined above: resident citizens, resident non-citizens, and non-resident citizens. Second, we examine in particular the voting rights of non-resident citizens in the states where these are granted, in light of the potential objections and solutions proposed in the previous section. Finally, in the next section, we examine the extent to which the principles determining voting rights for resident citizens, resident non-citizens, and non-resident citizens are compatible with the models outlined above.

1. Defining the demos: electoral rights of resident citizens, non-citizens, and non-resident citizens

Table x.2, which is based on detailed examination of the parliamentary and presidential electoral laws of all 28 EU states, summarises the rights offered to the three groups of citizens that interest us most: resident citizens, resident non-citizens of the state, and non-resident citizens (sometimes known as expatriates).

1.1. Resident citizens

In all states, most resident citizens are granted the right to vote and stand for election. Exclusions from this general principle are usually based on age, mental disability or criminal conviction. The age at which people can vote in parliamentary and presidential elections is universally set at 18 years of age, with the exception of Austria (16) and in Senate elections in Italy (25). There is more variance, however, in the minimum age for candidacy. While half the states of the EU have the same age criteria for voting and candidacy (18), the others have a higher threshold. In Austria, which had a lower voting age, candidates must have attained 18 years as in many other states. In the remaining thirteen states, parliamentary candidates generally should be aged between 21 and 25 years for lower chambers, and between 30 and
40 years for upper chambers. Similarly, although six of the states with direct presidential elections allow candidacy as young as 18, the majority impose a minimum age limit of between 35 and 40 years of age.

Other restrictions are based on mental incapacity and criminality. Most EU states deny voting rights to mentally disabled citizens, often in connection with a judicial ruling or deriving from a wider placement under guardianship. Disenfranchisement of citizens convicted of criminal offences is also subject to wide variation, with a number of states – Ireland, Croatia, Finland, Slovenia and Sweden – placing no substantive restrictions on prisoners’ electoral rights, while several others – Denmark, Spain, Latvia and Lithuania – allow prisoners to vote but not to stand for election. At the other extreme, the UK removes electoral rights from all serving prisoners (see Arrighi et al. 2013: 97-105).

1.2. Resident non-citizens

By contrast with the wide enfranchisement of resident citizens, only three states – Ireland, Portugal and the UK – offer rights to resident non-citizens in national elections (though the provision is wider in regional and local elections). Even in these cases, the rights are limited to specific nationalities only, usually based in on historical or bilateral links.

Portugal allows Brazilians to vote (and stand for election) in national parliamentary and presidential elections, after three years of residence, in accordance with a Treaty of Friendship, Cooperation and Consultation between the two countries. The UK allows Irish and Commonwealth citizens who meet the relevant residence criteria to vote (and stand for election) to the House of Commons. Ireland makes a distinction between its parliamentary and presidential elections, reciprocating to British citizens the right to vote in elections to the Dáil, but excluding them from voting in referendums, presidential elections or from standing for election in either case. In all three cases, there are clear historical links between the nationalities enfranchised and the state granting the right to vote.

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5 In Ireland, the Electoral (Amendment) Bill 1983 sought to extend voting rights specifically to British citizens in all three types of election (parliamentary, presidential and referendum), and was introduced by the government minister responsible with the express purpose of ‘redress[ing] an imbalance in the voting entitlements as between citizens of the two countries’ and ‘firmly in the context of the special relationship between [Ireland] and the United Kingdom’ (Quinn 1983). However, it was declared unconstitutional (Supreme Court of Ireland 1984). The Ninth Amendment to the Constitution Act (1984), approved by referendum in 1984, modified Art. 16.2 of the Irish Constitution to grant voting rights specifically in parliamentary elections (but not presidential elections or referendums) to ‘all
1.3. Non-resident citizens

The vast majority of EU states offer voting rights to most of their external citizens in parliamentary and presidential elections, at least in principle. Slovakia is the exception, restricting that right only to parliamentary elections, while Greece makes no provision for external voting, but does allow its external citizens to return to the country on polling day. In a number of cases (such as Germany, Sweden and the UK), the right to vote is qualified by a requirement of previous residence and may be time-limited, which excludes citizens by descent who have never lived in the state, or who left a long time ago.

Four states place much stronger restrictions on those eligible to vote from outside the country. In essence, these restrictions are based on the premise that voting rights should be enjoyed only by residents of the state, and thus all or most non-resident citizens are excluded from the demos. Cyprus, Ireland and Malta allow only diplomats, military personnel and a very selected few other expatriates to vote, and these people are technically construed as permanent residents of the state, who would be present inside the state were it not for their execution of their official duties. A Danish constitutional requirement of permanent residence for the franchise in Folketing (and other sub-national) elections parallels this, though in this case the definition of ‘permanent residence’ has been stretched as widely as possible to encompass selected other temporary absentees who are employed abroad by Danish companies or intend to return within two years as well as the aforementioned categories (Elklit et al. 2011: 15-16). Even so, the total number of people who fall under this definition numbers only a few thousand.

The focus of this study is on voting rights, but it is worth noting that six states do not allow external citizens to stand for parliamentary election, even when they allow them to vote. By contrast, three of the four states that limit voting rights to a narrow group of mainly state citizens, and such other persons in the State as may be determined by law’. The subsequent Electoral (Amendment) Act 1985 – the provisions of which have been incorporated into later electoral legislation – grants voting rights to British citizens in parliamentary elections, and, at the discretion of the Minister for Justice, also to citizens of any other (EU) Member State which enfranchises resident Irish citizens in on substantially the same terms as the national citizens in its parliamentary elections. In practice, to date no state other than the UK has such a bilateral reciprocation. The 1985 Act furthermore tied enfranchisement in referendums to the same conditions as presidential elections (i.e., restricted to national citizens only), rather than Dáil elections, as had been the case since 1942 (Electoral (Amendment) Act 1985, Art.8).

6 Constitution of Denmark, Art. 29(1).
servants – Cyprus, Ireland and Malta – place no such restrictions on candidacy (Denmark being the exception). In presidential elections, four states prevent non-resident citizens from voting, in the Bulgarian case with the very restrictive requirement of five years’ continuous residence prior to the election.

2. Representing the non-resident demos

The previous sub-section indicated that the inner and outer boundaries of the demos are defined in most cases by a combination of citizenship and residence requirements, rather than by the more all-encompassing principles outlined in the first section of this chapter. In this chapter, we are primarily focused on the normative principles of electoral rights, and empirically on the formal rights of enfranchisement. Nonetheless, it is worth noting in passing that how easy it is to realise this formal right to vote in principle is affected by how easy it is to cast that vote in practice.

Automatic registration (where a voter is automatically included in the electoral roll from other civil registration information) is practised for non-resident citizens only by 11 EU states. This is in contrast with the procedures for resident citizens, where all but France and the UK practice automatic registration within their own borders. Active registration requirements, combined with the need for periodic re-registrations in some cases (e.g., the UK, France, Sweden and Austria), may serve to reduce the registered electorate in comparison with the pool of eligible voters.

There are also multiple methods by which a ballot can be cast. Postal, proxy and internet voting can be considered more inclusive than in-country voting in person or voting at a consular premises (which potentially involve considerably more time, expense and travel on the part of the voter), but the former methods have been rejected in some countries because of concerns about the secrecy of the vote. Additional measures to prevent fraud – such as the previous requirement of Austria for a verification of identity signed by two other Austrian citizens – can also prove cumbersome. The means of accessing the ballot across Europe have been the subject of study elsewhere (Arrighi et al. 2013: 30-33).

Assuming that the eligible voters register and cast a ballot, how does (and should) this translate into representation? It will be recalled from the discussion earlier that there are concerns about the potential ‘swamping’ effect of external votes in countries that are inclusive
on measures of both citizenship and enfranchisement, where there is some potential for the creation of a large extra-territorial electorate that can be mobilised politically. Four possible models to alleviate this were put forward in the previous section.

The first – exclusion – is rare but, as we have seen, practised in Slovakian presidential elections, and to a large extent in other national elections by Cyprus, Denmark, Ireland, and Malta, where the eligible electorate beyond the state’s boundaries is very limited.

The second – discrete representation of external citizens – is practised in five EU states for parliamentary elections (Croatia, France, Italy, Portugal and Romania), though not in presidential elections, where non-resident citizens votes are generally added into the voting totals on an equal basis.

The third – the distribution of external votes into the voting totals inside the country – is the method used by most EU states in parliamentary elections, and all relevant states in presidential ones. There is, however, variation in how this is achieved. In some cases, votes are attributed to the voter’s original district of previous residence, which has the effect of dissipating any potential for tipping effects, or at least of making their effects no more discernable than that of any other group’s within the electorate. In a number of cases, votes are allocated to a particular constituency – usually in the capital – which has the effect of concentrating the external vote. A variation of this is the system used in the Czech Republic, where the external vote in parliamentary elections is allocated to a single voting district that is picked at random by lottery before the election. In 2006, when the overall electoral result was a stalemate between the two potential coalitions, the random effect of the lottery allocation nearly determined the overall result of the election (Kandalec 2013: 7).

The fourth model – time-limiting – has been seen in the UK and Germany, where the right to vote is granted only to those who have lived in the country within the previous 15 and 25 years respectively (though since 2013, there has been a potential for bypassing this in Germany if a genuine link to German civic life can be established). As noted above, the need for periodic re-registrations in countries such as Austria, France and Sweden (as well as the UK) also places a requirement on the voter to continue to demonstrate their claim to a stake in that country’s political life, alleviating some of the concerns about the diminishing connections over time.
The Boundaries of the Demos: Normative Principles in Practice

It will be recalled that five possible constructions of the demos were outlined in the first two sections. The extent to which these principles are followed or observable in practice was examined in the last section. In this final section, we examine the correlation between the inner and outer boundaries implied by the models and the empirical reality of voting rules in Europe.

Of the five models, one – citizenship – places the primary distinction on legal status, regardless of residence; three – the all-affected, the all-subjected and the stakeholder principles – encompass most citizens who are resident, but vary in the extent to which they potentially include resident non-citizens and non-resident citizens, based on the degree of interaction between the polity and the potential voter; and one – the all-contributing principle – makes no particular distinction between voters’ eligibility on grounds of residence or citizenship at all, but bases its principles on the two-way interaction between taxation and representation.

The citizenship-based model is would imply that all citizens should form part of the demos, regardless of how they came to hold that citizenship, independent of residence criteria. Anybody who is not a citizen should not be included in the demos, and anybody who is, should. Although this was found to be normatively questionable, in practice it does provide the outer boundary of the demos in many European states, by excluding most non-citizens from voting. Nonetheless, citizenship does not provide the inner boundary, as not all citizens are included.

It follows that no state uses the all-contributing, all-affected, all-subjected or stakeholder model in full in determining the boundaries of the franchise, or else certain groups of non-citizens would be granted voting rights beyond those with limited historical ties or post-colonial relationships. In particular, although many of the people included in the national demoi are taxpayers, affected by and subjected to the laws, these principles are not explicitly used to determine voting eligibility in any case, or else there would be cases of exclusion based on non-payment of taxation, or inclusion of more non-citizens and citizens of other neighbouring countries.
At some levels, the stakeholder model provides some congruence with the outer boundary of the demos, though if it provided the inner boundary, more non-citizens would be included. Stakeholding occurs as a result of biographical factors that create a genuine stake in the civic life of the country. Although citizenship is the primary determining factor in defining the demos, in many cases this is qualified by a current or previous residence criterion. This includes most resident citizens automatically, but limits the external vote to those who have at some point in the relatively recent past or at least in their lifetime lived in the country. Time limits – such as those in the UK and Germany – or generational limits to citizens by descent (which are *de facto* generated by past residence requirements) are thus in line with a principle that bases enfranchisement on a demonstrable stake in the country’s affairs, that diminishes over time and across generations.

**Conclusions**

This chapter has examined the various justifications for the granting of rights to resident citizens, external citizens, and resident non-citizens. It has been seen that the various normative models put forward to justify the composition of the demos vary in where they locate the inner and outer boundaries of that demos. In many cases there is a substantial overlap between the resident citizenry and the demos, but different models propose the inclusion and exclusion of various groups beyond or instead of that core electorate.

When we compare these normative models with the empirical reality of national electoral regimes, the main distinctions in constructing the European demos revolve around citizenship and residence. From a normative perspective of democracy and justice, citizenship and residence alone are not adequate criteria for constituting the decision-making basis of a country’s electorate, but in practice it is generally these criteria that determine inclusion or exclusion of potential voters, rather than affectedness, subjection or contribution; even the stakeholder model is reflected to only a limited extent in the definition of the demos.

**Bibliography**


Table 1: The inner and outer boundaries of the polity (summary)

<table>
<thead>
<tr>
<th>Model</th>
<th>Inner boundary (inclusion)</th>
<th>Outer boundary (exclusion)</th>
<th>Examples of those included</th>
<th>Examples of those excluded</th>
<th>Residence criterion</th>
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<tr>
<td>Citizenship</td>
<td>Citizenship</td>
<td>Non-citizenship</td>
<td>Citizens of the state worldwide, regardless of location, method of acquisition of citizenship, or other criteria</td>
<td>Non-citizens of the state, regardless of other connections to the state.</td>
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<td>All-contributing</td>
<td>Those contributing to the state financially, regardless of citizenship status</td>
<td>Non-taxpayers, regardless of citizenship status</td>
<td>Taxpayers resident in the state, regardless of citizenship; expatriates who contribute remittances through direct taxation.</td>
<td>Non-taxpayers, potentially including young people, students, elderly, disabled, etc.</td>
<td>Not necessarily, though most taxpayers will also be resident.</td>
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<td>All-affected</td>
<td>All those directly affected by the political decisions of the state.</td>
<td>Those unaffected by political decisions of the state.</td>
<td>Residents of the state, regardless of citizenship; non-residents living in adjacent states (on transnational issues); non-residents in any part of world who are significantly affected by state’s policies; expatriates with significant interests (financial, family, etc.) still in the state</td>
<td>For small/isolated/unimportant states or pre-globalisation – potentially most people not resident in the state, except for those with a genuine link and continued personal interests.</td>
<td>Includes all residents; does not necessarily exclude non-residents, but other factors (geography, finance, etc.) play more important role.</td>
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<td>All those subject to the laws of the state</td>
<td>Those not subject to the laws of the state</td>
<td>All residents of the state, regardless of citizenship; non-resident citizens, but only when issues of citizenship and/or direct interest arise.</td>
<td>Non-resident non-citizens of that state</td>
<td>Includes all residents; does not necessarily exclude non-residents, but only in areas with direct interlinkage with state affairs.</td>
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<td>Current residents; past residents (within reasonable time period); those with property and/or family in the state; those who are likely to return in the future.</td>
<td>Second-generation emigrants; (potentially) former residents who have shown no further genuine link with a state for a certain period of time</td>
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**Source:** Authors’ summary of electoral laws of the 28 EU states, derived from Arrighi and Hutcheson (2013).

**Notes:**
- Where two ages are given, the first refers to the lower chamber and the second to the upper chamber.
- The four qualifications under ‘assimilated’ refer to the way in which external votes are encompassed into the voting total – into the voter’s individual voting district (usually based on past biographical links); into a district in the capital city; into a district selected by lot; or into the national voting totals at the higher level.
- ‘CON’ = Commonwealth of Nations

a = In Bulgaria, only for citizens who do not possess another citizenship
b = In Germany, if resident 3 months since 14th birthday, in last 25 years; or other direct link is provable.
c = Those eligible may vote only if they return to the country on polling day.
d = Cases of discrete representation: France (11 districts, distributed geographically/11 deputies); Croatia (1 all-world district/3 deputies in total); Italy (4 districts, distributed by geography/6 senators + 12 Deputies in total); Portugal (2 districts – Europe and Rest of World/4 deputies in total); Romania (4 districts/4 deputies)
e = In Hungary, electoral rights apply to party list part of election only.
f = Electoral right limited only to those deemed to be permanently resident in the country while *de facto* outside it (e.g., diplomats, military personnel and other temporary absentees). Exact rules vary from case to case.
g = Except those residing on Aruba, Curaçao and St Maarten, where conditions apply.
h = In the UK, electoral rights apply only to past residents who have been registered in UK in previous 15 years