

Should Irregular Immigrants be (Rapidly) Enfranchised?

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Abstract: Theories of voting rights differ quite sharply with regards to whether or not they support (rapid) enfranchisement of irregular immigrants. In this paper we first outline these theories and their implications. We then assess a number of reasons against rapidly enfranchising irregular immigrants. We find, on reflection, that none of these reasons are persuasive. While this result is not in itself sufficient to draw strong conclusions, it does offer some support to the more inclusive theories of voting rights, and poses a challenge to the less inclusive ones.

Keywords: Enfranchisement - Irregular immigrants — The All-affected principle – The All-subjected principle – Voting rights

1. Introduction

The right to vote is vital, and the question of who should have it, is highly important.¹ One group that is routinely denied this form of political participation is irregular immigrants.² Irregular immigrants are resident non-citizens who have been denied (or not been granted) access by the state. They have no legal right to reside on its territory, and although they typically plan to stay indefinitely, they live under constant risk of expulsion. People in this group can ordinarily not apply for citizenship, and will often remain political outcasts for the duration of their stay, which in many instances lasts a lifetime.³

Recent years have seen a surge in international migration. People flee from wars and failed states in search of a safe haven and better life prospects in liberal democracies. Because of the restrictive practices just mentioned, an increasing part of the inhabitants of such democratic states is kept from enfranchisement. Insofar as the history of modern democracy has largely been one of ever-increasing inclusion, the current restrictive practices arguably amount to a discontinuation of that history.

Still, for many people there will be something intuitively correct about those restrictive practices. Regardless of the theoretical reasons one might have for extending the right to vote, it would nonetheless seem wrong to rapidly enfranchise irregular immigrants. The aim of this paper is to critically assess that widespread intuition. Are there any good reasons *not* to rapidly enfranchise irregular immigrants?⁴

The motivation for asking this question stems from the observation that various existing voting rights principles have strikingly inclusive (and thus presumably counter-intuitive) implications on the issue of enfranchising irregular migrants. This includes the all-affected principle (AAP) (Goodin 2007), the subjected to coercion principle (SCP) (Abizadeh 2008; López-Guerra 2005), and the neo-republican principle (NRP) (Sager 2014). Although these principles constitute the ideal demos in different ways, we explicate that they all imply (rapid)

enfranchisement of irregular immigrants.⁵ This is done in section 2. There we also present an exception to these quite inclusive theories: the social membership principle (SMP), according to which a person can claim voting rights only after having spent an extended period of time within the state (cf. e.g. Carens 2005). The SMP thus coheres well with the presumed intuition against rapidly enfranchising irregular immigrants.

Our aim is not to develop a new substantive position on immigrant enfranchisement. Instead we shall add to the debate by providing a new perspective on *the plausibility of existing theories*.⁶ In section 3, we assess those reasons against enfranchising irregular immigrants that we find the most plausible and convincing. If we are correct, none of these reasons can conclusively justify exclusion. The upshot is that the more inclusive theories (AAP, SCP, and NRP) are strengthened, all else equal. If there are no good reasons against rapidly enfranchising irregular immigrants, the intuition against doing so is cast into doubt. This removes (or at least attenuates) the problem which this intuition poses for the inclusive theories. The less inclusive voting rights principle (SMP), on the other hand, loses an apparent asset.

The support our analysis provides for the more inclusive theories, however, is both indirect and tentative. It is *indirect* because we do not provide reasons *in favor* of enfranchising irregular immigrants. We only reject reasons against doing so. The support is, moreover, *tentative* for several reasons. First, although the problem of counterintuitively enfranchising irregular immigrants can be set aside, there might be other problems with all the inclusive theories. To provide an overall assessment of their plausibility falls outside our present scope. Second, the less inclusive SMP might be vindicated on other grounds than the one we examine (and reject) here. Third, although we intend to assess the most relevant reasons against enfranchising irregular immigrants, we cannot claim to be exhaustive; other (more persuasive) reasons might exist (including eventual improved versions of the reasons we

discuss). Fourth, as mentioned, we expect that the restrictive implication for irregular immigrant enfranchisement which follows from SMP will strike many as intuitively correct. Those who maintain their stance against enfranchising irregular immigrants might be happy to regard the SMP in itself as sufficient explanation for that intuition.

Before proceeding, note that we assume a premise of universal moral equality. This premise does not rule out associative duties or forms of partiality. It does, however, require convincing arguments in favor of such duties and partiality (Singer 2004). This premise, we take it, lies somewhere between Miller's concepts of 'weak' and 'strong' cosmopolitanism (2016, ch. 2). The weak form accepts (as we do) universal moral equality, but accepts in addition various forms of duties arising from associations between people, including national associations. Such duties may justify (a degree of) partiality towards one's compatriots. On strong cosmopolitanism, on the other hand, such partiality is unjustified. Our premise occupies a middle ground primarily because it neither rules out nor accepts partiality out of hand. Rather, the view is open to those forms of partiality that turn out to be justified. A consequence of this basic assumption is that the burden of proof is placed upon those who advocate *unequal* treatment in some context or other.

2. Theories of Democratic Inclusion: Enfranchising Irregular Immigrants?

Many theorists adhere to the *all-affected principle* (AAP) according to which everyone who is *affected* by a political decision should be allowed to vote over it (Arrhenius 2005; Goodin 2007). This idea can be specified in different ways, turning on what it means to be 'relevantly affected' (Arrhenius 2005; Beckman 2009, 38-50). In its most prominent statement, AAP claims that everyone who is 'possibly affected' by a political decision should be enfranchised on it (Goodin 2007, 53-55). AAP advocates dramatic increases in enfranchisement, within as well as outside a polity's borders. In an increasingly globalized world, many domestic

political decisions will *possibly* affect scores of foreigners. Within the polity's borders, the expansion of enfranchisement will also be dramatic. Insofar as the decisions of a polity will possibly affect *every* inhabitant, the AAP will enfranchise irregular immigrants. Moreover, because the state's laws will possibly affect them from the moment they set foot on its territory, they will be rapidly enfranchised.

An alternative view holds that one should have the right to vote if one is *subjected to* (or 'bound by') the state's decisions (cf. Dahl 1989, 120). To appreciate this as a distinct alternative, consider the following example: if Germany passes a law demanding manufacturers on German soil to build chimneys tall enough to carry emissions to Scandinavia, this law would affect but not subject Scandinavians (Goodin 2007, 49-50). Conversely, although a teetotaler will be subject to a law restricting the sale of alcohol, this law would arguably have little impact upon her (isolated) interest in beverage availability.

What does it mean to be 'subjected to' collective decisions? The arguably most prominent view focuses on the value of personal autonomy and the presumptive need to justify any act of *coercion*. According to the *subjected to coercion principle* (SCP), any person who is subject to a polity's coercive laws should have the right to partake in the making of those laws (Abizadeh 2008, 45; López-Guerra 2005). A state subjects a person to coercion either through a *coercive act* which "preemptively deprives a person of some options that she would otherwise have had" or a *coercive threat* which "communicates the intention to undertake an action in the future whose (anticipated) effect is to prevent a person from choosing an option that she otherwise might choose" (Abizadeh 2008, 40).

SCP and AAP share the implication that irregular immigrants should be rapidly enfranchised. A state's laws are in principle enforceable against any person present on its territory. Because irregular immigrants reside within the state's territorial borders, they are

subject to its coercive laws. According to SCP they therefore have a right to participate in the making of those laws.⁷

Taking his lead from Phillip Pettit's ideal of freedom as non-domination, Alex Sager develops a neo-republican 'instrumental' justification of enfranchisement in which voting rights are seen as "a necessary means to effectively resist domination" (2014, 191). If "[l]aws [are] made according to just procedures with proper input from those subject to them," Sager claims, then they "do not dominate" (2014, 192). Such laws do not make people liable to *arbitrary* interference. Without voting rights people become "vulnerable to abuse in the legal system when they are unable to influence legislation which binds them" (Sager 2014, 192-193). So, according to the *neo-republican (non-domination) principle* (NRP), any person vulnerable to domination by the state's laws should be enfranchised (to protect them from arbitrary interference).

The severity of the threat of domination from the state may vary across persons. For expatriates, for example, it becomes a question of whether they "retain sufficient ties to the community that leave them vulnerable to domination" (Sager 2014, 198). This must be determined on a case-by-case basis. For residents, however, there is no doubt: "When people live under the state's authority, the threshold of potential domination reaches the point where an equal say in policy becomes appropriate" (Sager 2014, 198). NRP, then, has very inclusive implications for irregular immigrants. Sager himself underlines this. As he puts it, "[r]esidents in a state, regardless of their legal status or the duration of their stay, are directly subject to the sovereign's political, administrative, and legal authority." They should therefore be enfranchised "because [political rights] are the means for equally and effectively addressing the coercive agency of the state" (2014, 204). "[U]nauthorized migrants", Sager writes, "are one of the groups most vulnerable to domination, not only by government, but also by employers"; their enfranchisement is therefore a requirement of justice (2014, 205).

Although Sager's NRP reaches the same conclusion as AAP and SCP on the issue of rapidly enfranchising irregular immigrants, it is clearly distinct from those alternative principles. This is evident, for example, in NRP's implication for expatriates. In contrast to SCP's restrictive stance, NRP is, as mentioned, open to enfranchise expatriates who retain vulnerability to domination by the policy decisions of their former community. Although they are no longer *subjected to* the coercive enforcement of those policies, expatriates can still be affected by them. NRP's focus on people's *interests being affected* suggests a connection to AAP. What sets NRP apart from the AAP, however, is that AAP operates with a (much) broader account of people's relevant interests. NRP enfranchises expatriates if and only if their interest in *non-domination* is affected. In contrast, on Goodin's AAP, expatriates will be enfranchised as long as they retain *some* interest in the outcome of the decision of their former community.

The last principle we shall present stands clearly apart from the others in that it has (much) more restrictive implications for the voting rights of irregular immigrants. According to the *social membership principle* (SMP), all but only members of the social community should vote. On Joseph Carens' influential version, social membership typically deepens over time, and this, in turn, increases one's claim for full political inclusion (Carens 2013; see also Miller 2016, 121-129; Shachar 2011, 132-137; and Beckman 2013, 50-51). Time is of course only a proxy for more fundamental forms of connection and engagement (Carens 2013, 165). SMP can be divided into different versions depending upon how comprehensive a person's integration in a community's social forms must be before she qualifies for membership. Assuming that increased comprehensiveness roughly correlates with increased time, we can call these versions short- and long-time SMP. On the long-time SMP, non-citizen residents are not to be granted rights to political participation until some substantial amount of time has

passed. Some version of long-time SMP can be expected to sit well with the intuition against rapidly enfranchising irregular migrants.⁸

Before moving on, it is worth noting that some of the principles we have presented are not mutually exclusive; their normative grounds may be simultaneously endorsed without inconsistency. This is perhaps most obvious for AAP. A proponent of AAP could incorporate concerns for people's interests in avoiding coercion and domination (as emphasized by SCP and NRP, respectively), without modifying AAP's call to enfranchise all possibly affected interests. Proponents of SCP and NRP might also endorse other grounds for enfranchisement, as long as the separate grounds are submitted as sufficient but not necessary.⁹ A proponent of SMP, on the other hand, would have a harder time combining her normative concern with any of the other views. This is unsurprising given that the practical upshot of SMP is irreconcilable with those of the other principles.¹⁰ Because our analysis does not rely upon any particular pattern of exclusivity or non-exclusivity among the four principles, however, we shall not pursue any further analysis of possible combinations of them here.

3. The Intuition and Possible Explanations of It

We have seen that most of the principles outlined above (except SMP) imply that irregular immigrants should be rapidly enfranchised – virtually from the time they set foot on the state's territory. As mentioned, we expect that this implication strike many as strongly counterintuitive. We shall therefore consider the plausibility of the belief that such a radical expansion of the electorate is indeed wrong.

The concerns we discuss in the following can be (loosely) systematized according to how they are anchored in different overarching conceptions of political participation. In the literature on democratic theory, it is possible to identify (at least) three such conceptions. On the *republican* view, civic virtue is important. People “should be actively engaged at some

level in political debate and decision-making” (Miller 1995, 194). In contrast, on the *liberal* view, a person is first and foremost “a bearer of rights and an observer of rules, someone who becomes active only to protect the constitution or to secure his interests” (Miller 1995, 194). Finally, according to *communitarianism* (broadly conceived), cultural or national communities are independently valuable, and politics and democratic theory should take this into account.¹¹ We shall start our discussion with those concerns that seem to have some connection to the republican view, as they all revolve around a putative lack of engagement in (or capacity for) political participation (sections 3.1-3.3). We then consider two concerns with a more liberal flavor, which arguably revolve around observance of rules (sections 3.4-3.5). We end our discussion with three concerns which seem linked to communitarianism (sections 3.6-3.8). Note, however, that this rough classification is only meant to systematize our discussion; nothing in our analysis hinges on whether the classification itself is accurate. What matters is the plausibility of the concerns themselves (or, as we shall argue, their lack thereof).

3.1 Lack of competence

A first (republican) concern is connected to competence. Arguably, newly arrived irregular immigrants are unlikely to have sufficient knowledge about their new state of residence to make meaningful use of a right to vote. David Miller takes such a view. In order to ensure that people “exercise their voting rights [...] in a way that respects the rights and considers the interests of other members,” the franchise should not be granted, he writes, to “[i]ncoming migrants [...] [who] won’t yet understand the explicit and implicit norms that govern the political system, the major problems that the society faces, or the range of interests that the system has to accommodate” (2016, 127).¹²

This knowledge-gap might be real, at least for many. However, one should be cautious about introducing competency-tests for voting, at least strict ones. The reason is that such tests risk disenfranchising parts of the electorate for completely spurious reasons.¹³ There is, for instance, always a risk that some will fail a test because they don't deal well with test situations, rather than because they don't know the answers. In our view, the risk of such consequences is sufficient to rule out competency-tests.

Further, if competency-tests were introduced, this raises the question of which consequences should follow for citizens. If citizens are not required to take the test, this seems unfair, because irregular immigrants are then held to a different standard than citizens. If, on the other hand, citizens *are* required to take the test, this seems unfair for the same reasons as it is unfair to let *anyone* take the test. (Some citizens might end up disenfranchised because tests make them nervous, e.g.)

Instead, suppose that newly arrived irregular immigrants were immediately given a short, mandatory course in politics in their native tongue.¹⁴ This course would give an accessible overview of the host country's political system and societal matters. It would not however, include any form of exam or testing. The only purpose would be to provide irregular immigrants with a quick access to a knowledge-base that most other residents acquire during their ordinary upbringing and education. The extent and duration of such a course is hard to specify in the abstract, but it seems clearly possible to convey the basics of a country's political system and societal matters quite rapidly.

In our view, such a course, if properly designed and implemented, would completely solve the competence-problem. One might object that it is still unfair in some sense that irregular immigrants have to attend a course in order to be enfranchised, whereas citizens do not. There is some merit to this objection, but it cannot be taken to be decisive. We have good reason to believe that new arrivals to any country will often lack the knowledge needed for meaningful

political participation. Mandatory courses without an exam would adequately address this challenge in a minimally invasive and acceptably fair manner. Of course, there is no *guarantee* that all participants in such a course will acquire sufficient competence. The same is true, however, of regular educational systems. There is no guarantee that all those graduating from high school have sufficient political competence. Lastly, it is worth pointing out that the demand for some level of political competence is in any event unsuited to exclude irregular immigrants from political participation in the long run. As time passes, immigrants will surely learn more about their new state, and their knowledge of the political and social system will expand.

3.2 Lack of Concern with One's New Country of Residence

A second republican ground for thinking that irregular immigrants should not be (rapidly) enfranchised is that people who have just arrived in a place might be less *concerned* with their new place of residence than with their old; they are thus less likely to take an interest in, and participate in, the political processes. This might well be true, but in most cases, it is reasonable to think that people are acutely concerned with the laws that apply within the jurisdictions in which they now actually lead their lives, and where, in many cases, their children will grow up.

Further, other non-immigrant residents might also vary in terms of how concerned they are with the laws that apply to them. It could be that some indigenous group, the inhabitants of some rural region, or some group with a particularly low (or high) level of education, are also less concerned with the laws and the political processes than other parts of the citizenry. If so, could this serve as a ground for disenfranchising these groups? We think not.¹⁵ First, assume for the sake of argument that irregular immigrants, as well as the other groups referred to above, really are less concerned, on the group level, than the rest of the population. If this is a

ground for disenfranchisement, we would need some principled explanation as to why the low level of concern is insufficient, whereas the higher level of concern is sufficient for being granted the right to vote. In other words, we would need a specification of *a threshold for concern* sufficient to merit enfranchisement. We have not seen any such explanation, and doubt that one is forthcoming.

Second, a mere lack of concern with the laws of the land *in itself* seems inadequate for disenfranchising individuals.¹⁶ One reason not to worry (that much) about letting such disinterested individuals vote is that they can be expected to cast their votes *randomly* (Goodin 2007, 58-59). This reason, of course, is contingent. But to the extent that such random voting is the case, letting disinterested people participate will not sway the electoral outcome. If so, the (arguably outcome-oriented) problem with lack of concern seems significantly attenuated.

Lastly, since the objection under scrutiny refers to people's concern measured on an *aggregate level*, it is worth pointing to the problems of distributing individuals' voting rights according to group characteristics. Among irregular immigrants, as well as among any other group that may be less (aggregately) concerned with the laws and the political process, there will be many individuals who are indeed very concerned. Disenfranchising these individuals with reference to group-level characteristics would be deeply unfair (even if lack of concern were relevant to voting rights, which [as our two first replies indicate] we doubt in the first place). This leads us to conclude that, within reasonable limits, suffrage should not be conditional on degree of concern for the laws of the land, and particularly not on suspicions about the aggregately measured concern of a certain *group* of people.

3.3 Weakened Democratic Allegiance

The last republican concern to be discussed is this: Given that the idea of rapidly enfranchising irregular immigrants is very controversial, it could be that a reform to that effect would weaken the democratic allegiance of other parts of the electorate. If so, and if (competent) political participation is valuable in itself, we would indeed have *a* reason for not enfranchising irregular immigrants. But it is worthwhile reflecting upon the nature of this reason. The suggestion here is not that it is wrong *per se* that irregular immigrants get to vote, but rather that (competent) others may be so provoked by this that they lose faith and interest in the democratic system and bring their own participation to a halt.

If it is not wrong in itself to let irregular immigrants vote, then we should be wary of letting the negative reactions of *others* influence the question. To be sure, at some point we might be forced to take such factors into consideration, but this would then be a pragmatic answer to a very non-ideal situation. When considering this rationale, then, we are no longer strictly discussing the credentials of democratic inclusion principles *qua normative ideals*, but rather considering to what extent they should serve as models for the *practical decision-procedures* we implement; the latter discussion would have to take into account a variety of considerations (more or less) based upon other normative ideals (cf. Arrhenius 2005).

Moreover, note that accepting this pragmatic rationale against enfranchising irregular immigrants, leads on to a slippery slope. Although perhaps successful in denying enfranchisement for such immigrants, the rationale might also justify disenfranchising naturalized or native-born citizens who are members of, say, a religious minority. That would follow if and when their disenfranchisement would sufficiently strengthen the democratic allegiance of people belonging to a larger rival religious group.¹⁷ That would surely be preposterous. Moreover, what about people who sympathize with different political parties? Perhaps several adherents of party P1, who are currently disillusioned by, say, the quality of political debates in their state, would be significantly more encouraged to participate in

democratic politics if the supporters of party P2 were disenfranchised. Be that as it may, P2's supporters should not be stripped of their voting rights for that reason.

3.4 Trespassing as Law-Breaking

Moving on to concerns of a more liberal kind, one might claim that irregular immigrants are, in some relevant respects, trespassing. They have not been admitted to the state, and they have actually broken the (immigration) laws in order to gain access, or alternatively, they have overstayed their legal admission period and are now evading lawful deportation. In light of these breaches of the state's rules, one could argue that they should clearly not be granted the (benefit of a) right to vote. In support of this line of argument, one could cite the practice of many countries, including Great Britain and other EU members, of imposing a voting ban on prisoners.¹⁸

In reply, note first that the objection cannot be against law-breaking *per se*. Many people break some law or other during their lives. We do not disenfranchise them for that reason. If we did, the electorates of liberal democracies would shrink considerably.¹⁹ The objection is presumably better cast in terms of the *severity* of the crime. Entering a country without permission, however, is arguably not a very severe crime. In comparison, when the European Court judged a voting ban to be a proportionate response, the case concerned a person convicted of murder. While it is surely hard to compare different crimes in terms of severity, irregular immigration seems far less serious than murder. Even in absolute terms, we would hold that trespassing, or even 'breaking-and-entering' is not a serious enough crime to justify disenfranchisement. This is not to say that irregular immigration is of no consequence. On the contrary, it can have significant consequences for the host country. However, such consequences are largely related to the *extent* of irregular immigration. For each *individual*

instance of irregular immigration, the consequences are arguably quite small, quite unlike serious crimes such as rape and murder.

The objection might be pressed further, however. Even if the crime committed by irregular immigrants is not very severe, it is in a sense, committed *continuously*. Most irregular immigrants are, moreover, not inclined to stop. (Recall that, as we understand them for present purposes, such migrants typically plan to stay indefinitely.) Even so, this does not seem sufficient to justify disenfranchisement. Numerous others are also continuously breaking some law or other. This diverse group includes serial tax offenders, consumers of illegal drugs, activists regularly involved in civil disobedience protests, etc. It seems wrong to deny all these people the right to vote because they are continuous lawbreakers.

Further, as Beckman notes, the rationale behind disenfranchising prisoners cannot plausibly be the fact that they have broken the law as such, but rather that lawbreakers are people with certain negative characteristics or character traits that make them (otherwise) unsuitable to be parts of the electorate (2009, 143). There are many problems with this line of argument, but there is clearly no basis for thinking that irregular immigrants as a group possess any negative character traits that speak against their democratic inclusion (regardless of whether or not something similar is true of murderers and rapists).

One might think that a distinct wrong still remains in the trespasser case, however. Unless the franchise is withheld from irregular migrants, they are themselves in a position *to make it the case* that they obtain the right to vote, by crossing the border illegally. But there must be something wrong about a scenario where an agent's own lawbreaking *generates a benefit* for that agent. In our view, this objection proves too much: it would imply that other benefits which we, presumably, would not deny irregular immigrants, would also have to be withheld. This includes e.g. the benefit of access to basic health care, or being lawfully protected against crime. As López-Guerra observes (2014, 87), some political rights, such as the right to

association and free speech are quite uncontroversially recognized for everyone who is present on a (liberal) state's territory. Insofar as such rights and benefits are due an agent merely because of her presence on the state's territory, it follows that irregular immigrants themselves generate these (beneficial) rights in virtue of their law-breaking.

Thus, in light of that arguably plausible practice among liberal democracies, it is obvious that law-breaking can be rights-generating. But equally obviously, law-breaking cannot generate *any* kinds of rights. So the case is admittedly not clear-cut. In our view, however, fundamental rights should be protected regardless of whether or not the rights-protection comes about as a result of law-breaking. Whether or not the right to vote belongs here, will of course be contested. However, it is arguably important to have some say over the laws that apply to you in the society in which you live (or intend to live from now on). We will not here enter the thorny issue of whether or not the right to vote is a human right, but it is in our view sufficiently important to be granted even as a result of law-breaking. At any rate, we hold that the present analysis is sufficient to largely shift the burden of proof. That is, if there is something to the trespassing-objection, it must be *further elaborated* before it can explain why irregular migrants should be denied the benefit of enfranchisement (as opposed to other similarly generated benefits).

So, *in its current form*, the consideration from 'trespassing as law-breaking' – regardless of version – seems all in all insufficient to explain the intuition against enfranchising irregular immigrants. Notice that our rejection of it does not hinge on the implicit idea that most irregular immigrants *ought* to be granted access, and that the state is wrong to deny them.²⁰ Nor are we suggesting that the state should not evict irregular immigrants if they are discovered by the authorities. We are only proposing that it is hard to see why the (arguably non-severe) crime of '(continuous) trespassing' explains why irregular immigrant residents should be kept from voting rights.²¹

3.5 Lack of Contribution

It could be argued that irregular immigrants should not vote in a society to which they do not relevantly contribute. (By focusing on the observance of what we might call a reciprocity-rule, this concern arguably has a liberal flavor.) Contribution to society might mean different things, but it seems most plausible to interpret it in economic terms, if only because the suggestion that irregular immigrants do not contribute in non-economic terms seems obviously false. Economic contribution might also be interpreted in two ways. Either it can mean that irregular immigrants do not contribute to the regular economy, or it can mean that they do not contribute to the more irregular economy. The latter seems implausible, so the objection is, presumably, that irregular immigrants do not have legitimate work and do not pay taxes.²² However, if lack of contribution to the regular economy is supposed to serve as a reason for disenfranchisement, it must also apply to all unemployed and non-tax-paying citizens. This seems implausible. But if we want to avoid disenfranchising these people for their lacking contribution, we must reject the view that economic contribution to society is a precondition for the right to vote. Consequently, this rationale cannot be used to explain the intuition against enfranchising irregular migrants.

Perhaps this analysis has presented the contribution-rationale in too friendly a light. Perhaps it should be interpreted more strictly, such that a citizen does not contribute economically unless she is a *net* contributor (i.e. when the tax revenue collected from a person exceeds what she costs the state in terms of what it spends on public programs to which she is eligible). That would make the rationale much more unpalatable than it appeared at first sight. It would imply disenfranchising most students, for example. Their contributions are typically negative in economic terms until they have worked and payed taxes for several years after their education. Perversely, it would imply that only the children of very rich people – who

have inherited enough assets from their parents to make them pay a significant amount of wealth tax – would be qualified for enfranchisement at the time when they come of age. It seems then, that the alleged lack of contribution on the part of irregular immigrants is not sufficient to deny them enfranchisement.

3.6 Hostile Concerted Political Action

We shall end by discussing three objections which might be labeled communitarian.²³ First, enfranchising irregular migrants would open up for hostile concerted political action instigated by a foreign power. Assume that a (populous) state A instructs its citizens to ‘flood’ a (less populous) neighboring state B in order to influence B’s policies. Most people would say that there is something wrong about this scenario, and that any view which implies that A’s actions are permissible, should be discarded. We agree that such a scenario would be objectionable. It might call for restricting enfranchisement to voters (irregular immigrants or not) who are *politically independent*, in the following very thin sense: they must not be acting politically *on behalf of* some other state.

It is also worth noting that this objectionable scenario can be expected to have a quite minor prevalence. The reason is that most liberal democracies are in fact *rather adept at controlling their borders*, to put it mildly. In Joseph Carens’s succinct phrase: “Borders have guards and the guards have guns” (2013, 225). As long as the current system of sovereign territorial states remains in place, foreign powers will be incapable of ‘flooding’ others with irregular migrants in the numbers necessary to rig the vote. For present purposes we assume that *the world is as it is* in these respects. The only issue up for discussion is whether irregular migrants residing within liberal democracies should be enfranchised or not. And even though the very existence of irregular migrant residents implies that states are not capable of *fully* sealing their borders, they are so to a considerable extent. In other words, for the most part,

the objection simply misses the mark. Because it (largely) assumes away the existence of a fairly efficient border control apparatus – contrary to the assumption of our analysis – the hostility-rationale becomes (largely) irrelevant.

3.7 Collective Self-Determination

On a related (communitarian) note, one might argue that enfranchising irregular immigrants implies that a self-determining people would lose control over its own identity. The collective's identity, as one writer puts it, is "in constant flux." It develops over time through continuous public debate among the collective's members over what the proper content of the identity should be (Miller 1995). That public debate arguably culminates in the election of the collective's political leaders, who play a significant role in upholding and revising the identity. In light of this, it seems plausible to claim that the enfranchisement of irregular migrants – whose presence is not chosen by the collective – threatens to invade the collective's self-determination. Assuming that collective self-determination is of considerable value,²⁴ this might explain why irregular migrants should not be allowed to vote.

In reply, note that the electorate of a self-determining group will constantly change, even without irregular migration. In fact, for each new election cycle, a significant number of people will either *enter* the electorate (e.g. by coming of age, or becoming naturalized) or *leave* it (e.g. by dying or emigrating and renouncing one's citizenship). The combined number of these continuous changes of cast can typically be expected to far exceed the number of irregular migrants who reside within the state or are likely to come in the future. The collective as such does *not* control the number of births nor naturalizations nor emigrations nor deaths (to any significant degree). But if so, then *those* uncontrolled changes to the electorate would, strictly speaking, pose a relevantly similar threat to collective self-determination (as would the enfranchisement of irregular migrants). In fact, if we take

seriously the collective's putative claim to control the development of its members' common identity, it might have a range of unattractive implications. First, as Brezger and Cassee (2016) has persuasively argued (in a slightly different context), such a claim gives the collective pro tanto permission to withhold an entitlement (e.g. the franchise) – at its own discretion – not only from the intended target group (e.g. irregular migrants), but also from its own members' offspring. Second, the putative claim has an unattractive upshot also for potential emigrants; it gives the collective pro tanto permission to restrict the right to leave for those members whose continued presence is deemed important for sustaining the collective identity.

One might nevertheless wonder if we have characterized the scenario correctly. Even if one grants that a polity *lacks* control over *some* changes to the demos (e.g. due to births and emigrations), a critic might object, it does not follow that it is unjustified in exercising control over *other* changes which it *can* control, such as whether or not to enfranchise irregular migrants. It thus seems wrong to say (as we do) that the state lacks control *across* the relevant cases; if so, the alleged unattractive implications might be blocked.

This, however, overlooks some crucial (and uncontroversial) background assumptions in our example. We assume that the collective will automatically enfranchise its members' children (when they come of age); that it operates with legal naturalization procedures; and that it allows people to freely move abroad and renounce their citizenship. If we follow the logic of the objection, however, these assumptions must go. After all, the state *has control*, strictly speaking, over the relevant changes to the demos in these cases too: just like it can (continue to) withhold the franchise from irregular immigrants, it *could* also outlaw emigration and naturalization, and deny the franchise for coming generations. So, unless we regard the voting rights of all these groups as an open question, it does make sense to say that the state (relevantly) *lacks control* over all these demos-changes.

Another version of the self-determination objection attempts to drive a wedge between the enfranchisement of irregular immigrants and the (future) enfranchisement of children of the collective's current members, by shifting focus from the collective's having control over people's *territorial presence* to its controlling the content of their *values and outlooks*. The idea is that although the collective does not (for the most part) control the particular composition of the people who reside within its borders, it has significantly more influence over the views of those who have been raised within the state (or who have otherwise been present for a long time). Would this shift in focus rescue the argument? We think not.

The 'control over values'-version of the argument arguably depends upon a consideration of expected outcomes. In order for the collective's influence-system to be meaningful, it should tend to produce in its subjects a set of values and outlooks which fall within a certain range defined as acceptable by the collective. (If the collective's influence-system had no effect upon the outlooks developed by its subjects, it is hard to see why having been exposed to it should be morally relevant at all. ["Yes, these are totalitarian Nazis, but at least they are the product of *our* schools!"])

Consider now Vidkun, a native-born totalitarian Nazi, who has been subject to the collective's (unsuccessful) attempt to influence the development of his values and outlooks through its educational system. Compare Vidkun to peaceful, democratically-minded irregular migrant, Mohandas, whose values and outlooks fall within the range deemed acceptable by the collective. According to the revised version of the collective self-determination argument, Vidkun should be enfranchised, whereas Mohandas should not.

Now, we shall not claim that Vidkun should be disenfranchised based upon the perversity of his views. But we fail to see why Mohandas' *lack of exposure* to the state's influence by itself should disqualify him from the right to vote. He and Vidkun seem relevantly similar with respect to the amount of control the collective has had over them. Although the

collective had no control over the development of Mohandas' values and outlooks, it had no *successful* control over Vidkun's. But because the plausibility of the values-version of the collective self-determination argument seems to rely upon outcome rather than process, it seems groundless to treat them differently. If what matters is the substantive content of the world-view which the influence system tends to instill, then it seems wrong to withhold the franchise from irregular migrants as long as they share the relevant values and outlooks.

Moreover, the number of migrants who do share such views is probably high. Commenting upon a test for "certain ground rules" which immigrants must observe when participating in the political processes of liberal democratic states (e.g. to respect freedom of speech), Miller notes that "[m]any immigrants [...] will be only too ready to embrace these principles, having experienced the effects of their violation in their home countries" (2016, 128).

3.8 Devaluing Citizenship?

Although voting rights are analytically separable from citizenship rights, some believe that we should keep the two closely aligned, because separation risks devaluing citizenship, from which *certain negative consequences* can be expected to follow. One could, then, try to oppose rapidly enfranchising irregular immigrants by first assuming that such people should not (for some reason) rapidly receive *the whole bundle* of citizenship rights, and then point to the putative ground *against unbundling* citizenship rights. (This line of argument might seem important, not least from a communitarian point of view.)

It is tempting to start our reply by criticizing the argument's first part: the assumed unjustifiability of rapid naturalization. But let's grant that assumption *arguendo*. We think the argument will (nonetheless) dissolve once we clarify its second part: the reasons against unbundling citizenship rights. As Song (2009, 615) points out, worries about a devaluation of citizenship are typically associated with nationalists (whom she calls 'ethical particularists')

who claim that “we have special obligations to our fellow compatriots over the rest of humanity”. In our view, the most plausible version of the devaluation-worry stems from the type of nationalism espoused by writers such as David Miller. Miller (1995) argues that a shared national identity is crucial for generating social trust and sufficient support for redistributive welfare state policies which promote social justice. Given that unbundling of citizenship rights creates a group of ‘second-class’ residents, and that societal status-differences tend to erode national identity, there is reason (in social justice) to keep citizenship rights together.

But if that consequentialist concern is what grounds skepticism towards unbundling citizenship rights, it becomes harder to see what is problematic about rapidly enfranchising irregular migrants. After all, Miller concedes that most irregular migrants will eventually have a moral claim to stay, as they come to develop attachments to their new place of residence and contribute to society in various ways (2016, 126-127). But if so, the relevant worry about devaluating citizenship – the hampering of social justice – might actually lead us to the opposite policy. If most irregular migrants will eventually qualify (morally) as full members of society anyway, we have at least one reason to rapidly include them in the demos: doing so gives them a quicker path away from second-class resident status, thereby attenuating the relevant threat to national identity and social justice. As Kymlicka puts it, enfranchisement may function as “a form of political socialization [...] enabling immigrants to develop bonds of trust and attachment towards national institutions” (2006, 139).

The force of this reply ultimately depends on complex descriptive analyses and empirical data. It must therefore be taken as tentative. The same goes, however, for the case ‘against unbundling’ citizenship rights. For now, the present reply is at least enough to show that the ‘devaluating citizenship’-worry is far from a knock-down argument against rapidly enfranchising irregular migrants.

4. Concluding Remarks: Enfranchising *short-term* visitors?

We have argued that many prominent theories of democratic inclusion imply that irregular immigrants should be rapidly enfranchised, and that the most plausible reasons to reject such a policy all fail. Thus, we (tentatively)²⁵ conclude that there is no particular reason to deny the right to vote to newly arrived irregular immigrants, as soon as they are minimally politically competent – something which in principle can be accomplished quite rapidly –, and so long as they are politically independent in the relevant way.

This conclusion will strike many as implausible. However, there is a potential further conclusion that might be even more implausible, and which might seem to follow from our analysis, namely: that we should also enfranchise *temporary visitors*, such as tourists, diplomats, visiting scholars, international students, and short-term guest workers. If AAP, SCP and NRP are as inclusive as we have suggested, such visitors seemingly have just as strong claims to suffrage as irregular immigrants.²⁶ Let us now end with some brief remarks on this alleged possibility.

In our view, it does not follow from our discussion that temporary visitors should be enfranchised. We have examined reasons to think that *irregular immigrants, in particular*, should not be (rapidly) enfranchised. Even if we have found no such persuasive reason, it does not follow that none can be found with regards to temporary visitors, who may differ from such migrants on a range of morally relevant variables. Most importantly, the fact that temporary visitors *intend a short-term visit* sets them clearly apart from irregular migrants. To reiterate, as we presently define such migrants, they (typically) *intend to stay for the long-term/indefinitely*.²⁷ To at least some democratic theorists, that crucial difference might be enough to block any straightforward application of our conclusions to temporary visitors.²⁸

We thus stand by our tentative conclusion: the intuition against rapidly enfranchising irregular immigrants should be discarded.

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¹ The right to vote belongs to a wider set of rights to political participation. We make no claim in this paper about this wider set.

² We follow Carens (2013) in using the term ‘irregular’ rather than ‘illegal’ immigrant.

³ *Regular* immigrants – non-citizens with legal residence – are also often denied the right to vote. We limit our discussion to *irregular* immigrants in this paper, however. We expect that any inclusive (but not exclusive) conclusion will apply straightforwardly to regular immigrants as well.

⁴ ‘Rapid enfranchisement’ refers to a situation in which irregular immigrants, including the newly arrived, get to vote as soon as *practically possible* (though perhaps with a delay necessitated by the kind of competency courses outlined in section 3.1 below).

⁵ We thus agree with (and expand) Song’s analysis (2009, 608-611, 616). Song argues that both AAP and SCP enfranchise ‘resident noncitizens’, a category which includes irregular (or what she calls ‘unauthorized’) migrants.

⁶ There are other ways of addressing the theoretical disagreement in the literature. One could e.g. critically examine the enfranchisement theories themselves, with regards to internal structure and coherence. Another alternative is to evaluate the extent to which an inclusion principle fits into a plausible broader theory of democracy (Erman 2014).

⁷ Beckman (2013, 55) defends a wider variant of SCP according to which any person who is *subjected to a polity’s legal norms* should have the right to vote over them (SNP), even if (some of these) norms are not coercive. Like SCP, it follows from SNP that irregular immigrant residents ought to be rapidly enfranchised.

⁸ Note that although SMP’s recommendations are in line with the intuition against *rapidly* enfranchising irregular immigrants, the principle implies that such migrants should be enfranchised after a certain period of time. To the extent that even such *delayed*

enfranchisement might be frowned upon by many, SMP will also have somewhat counter-intuitive implications.

⁹ López-Guerra (2005), however, presents SCP as sufficient but also necessary for enfranchisement (cf. his call for disenfranchising expatriates). For Abizadeh, in contrast, SCP is merely sufficient. He is open to regard AAP, e.g., as a further ground for enfranchisement (2008, 45).

¹⁰ This notwithstanding, Patti Lenard (2015, 125-127) defends a *long-term residence principle* for enfranchisement (LRP), which combines four considerations: first, a version of SMP; second, a version of AAP; third, a consideration from *fairness*; fourth, a version of SCP (2015, 126-127). In Lenard's view, these considerations "*together* suggest the moral relevance of residence [for enfranchisement]" (2015, 125). LRP extends the franchise to "permanent and long-term temporary" residents, not only citizens (2015, 131). Irregular migrants will thus be enfranchised, but only after they have resided on the state's territory for a certain period of time, which Lenard seems to set to maximally 5 years (2015, 126). We are somewhat skeptical about the coherence of Lenard's pluralist proposal. A main worry is how LRP can handle the tension between SMP and AAP/SCP. As noted, the practical upshots of these principles contradict each other, and it is unclear how appealing to them 'together' can avoid practical incoherence. However, it lies beyond our present scope to examine Lenard's view in detail.

¹¹ For influential versions of communitarian theory, see Walzer (1984) and Miller (1995).

¹² This objection seems based upon *other*-regarding concerns. But paternalistic reasons can also be summoned: without relevant knowledge, an immigrant might be incapable of voting in accordance with *her own* best interests.

¹³ Note that we consider competency-tests for voting, not citizenship-tests generally.

¹⁴ One might worry that irregular immigrants risk eviction when signing up for such a course (or when registering to vote). Although this is true, there are practical solutions to this.

According to Carens (2013, 132-135), ‘firewalls’ can and should be erected between different administrative areas, such that the government cannot use information from one area (e.g. competency-courses or the electoral register) in another area (i.e. enforcing immigration laws). Surely, such firewalls will be challenging to install, and difficult to maintain. Yet they remain possible. As Carens notes, similar arrangements exist, and work reasonably well, in other contexts, such as the court of law (where tainted evidence gathered by the police cannot be used by the prosecution). It is, moreover, worth underlining the general importance of such firewalls. If irregular immigrants are abused, by their employers or spouses, or become victims of (other) serious crimes, the same dilemma arises. They may go to the police, but only at the risk of deportation. It is clear, then, that it is highly important (for basic rights protection) that such firewalls are erected. If so, they could also be used to make sure that irregular immigrants can attend mandatory competence-courses (and register to vote) without risk.

¹⁵ For a similar conclusion, see Beckman (2009, 88-89).

¹⁶ Outright hostility towards one’s new (or original) place of residence, however, might be something else.

¹⁷ We owe this example to Kasper Lippert-Rasmussen.

¹⁸ According to The European Court of Human Rights, a general ban on prisoners’ voting is unlawful, but disenfranchising perpetrators of serious crimes might nevertheless be proportionate (Travis 2015). In general, there is a great diversity, globally, when it comes to policies of voting bans for prisoners (Beckman 2009, 120-121).

¹⁹ See López-Guerra (2014, 110), who employs a similar line of argument in order to undermine the claim that criminals should be disenfranchised.

²⁰ Both may at times be true, of course.

²¹ For more extensive discussion (and rejection) of further grounds for disenfranchising lawbreakers, see Beckman (2009, ch. 5) and López-Guerra (2014, 109-117).

²² This might in some cases be false, but it is probably often true.

²³ Which is not to say that one needs to be a communitarian to see their force.

²⁴ For defenses of that claim, see e.g. Joseph Raz (1986) and David Miller (1995).

²⁵ As underlined above, our tentative conclusion does not rule out that the arguments discussed in section 3 (especially the ‘trespassing’-objection) might be strengthened.

²⁶ AAP is, as noted, extremely inclusive. But also some versions of SNP and NRP imply that short-term visitors should be enfranchised. (See Beckman 2009, 83; Sager 2014, 198-206).

²⁷ Note that it will in practice, of course, be hard to distinguish between irregular immigrants who plan to stay over the long term and those who do not have such plans. Although practical questions of this kind are surely important, addressing them is beyond the scope of this theoretical paper.

²⁸ López-Guerra, for one, claims that “[t]ransients can be rightfully excluded since they would otherwise be electing decision-makers whose resolutions would not be binding on them later” (2005, 226).