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## Should Irish emigrants have votes? External voting in Ireland

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**Abstract:** *Ireland is one of the few countries in Europe not to offer some form of suffrage to its citizens who live abroad permanently. In contrast, it has been a front-runner in the trend towards providing more liberal voting regimes for resident non-citizens, as since 1963 it has allowed all resident for the previous six months to vote and stand in local elections. In this paper I consider the normative case for and against external voting, the current comparative context of its increasing provision among European countries, and the range of ways in which voting rights abroad combine with the extensibility of citizenship by descent abroad. Addressing the Irish case, I argue that there is no basis for a general right to vote for external citizens, but that, nonetheless, persisting connections and the rate of return migration give some reason to grant votes to first generation emigrants, if differently weighted from those of resident citizens.*

**Keywords:** Citizenship, voting rights, Ireland, emigrants, demos, subjection

### Introduction

Voting is one of the central rights or obligations of democratic citizenship, but its exercise has been largely conditional on residence, requiring citizens to be resident to register as voters, and granting local voting rights to immigrants on this basis also.<sup>1</sup> Whether there are grounds for granting votes to non-resident citizens (external citizens) raises one of the hard questions for democracy: how do we define the demos? What is the fundamental ground of democratic membership?<sup>2</sup>

The grounds for extending voting rights can be considered from two different broad perspectives.

The 'formalist' view conceives of citizenship as a unitary, all or nothing matter of legal status. This requires that all citizens are treated alike, and thus external citizens should be able to vote just as resident citizens. Conversely, on this view, voting rights for long term residents are not required - though it is legitimate to encourage long term residents to become citizens by providing reasonable access to naturalisation.

But citizenship is in fact not a unity. It is a historically evolving bundle of rights and obligations. While in the past the legal status of citizenship was necessary in order, for example, to own property or undertake public or even certain kinds of

private employment, these are now less often restricted to citizens. What today distinguishes citizenship are the right (when resident) to vote and stand in national elections, the right to enter the country, the right to the state's protection when abroad, and the symbolic status of full membership. Citizenship thus provides crucial rights and protections, of which voting rights are just one.

Furthermore, the broader sense of citizenship comprises at least three different dimensions, each of which may be embodied separately, as is clear from the different terms to which they contrast. First is the rights-holding citizen, contrasted to a 'subject' who is under the command of a ruler. Second is the formal member of a particular bounded community, contrasted to an 'alien'. Finally there is the active citizen who participates in self-government, where a simple contrast term is lacking, but something like the 'passive citizen' or 'free rider' come close. These three dimensions are not inseparable. It is possible to enjoy membership rights without having participation rights (as in the case of children, or of citizens of authoritarian states); or to have participation rights without being an active citizen. Likewise migrants may participate in political movements - described as 'enacting citizenship' - without having formal membership (Isin, 2008).

While the legal status of citizenship has traditionally been understood in terms of a single and indivisible membership of a particular territorial polity, increasing mobility and multiple interconnections across countries have been associated with the emergence of what has been called 'disaggregated' citizenship. The way 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 reflect this process. Likewise, the idea that a person should be a member of one state, and one state only, has receded, as an increasing number of states accept dual citizenship both of their own emigrants and of naturalising immigrants. These are just some of the features of what has come to be seen as the rise of 'transnational' citizenship, reflecting the way in which in a world where people increasingly move across borders, state boundaries, while still persisting, are increasingly blurred or porous with respect to citizenship.

Thus another, 'pluralist' view, identifies a variety of grounds for claims to a political voice. On this view, political rights are not inseparably linked to formal membership, but can be extended to all those with a significant interest in the polity. On this basis, voting rights both for resident non-citizens and expatriate citizens could

be justified in a similar fashion. Yet, even if we adopt this view, we need to define exactly what kinds of connection count in justifying a right to political participation.

While citizenship cannot be seen as indivisible, it remains the case that voting rights are one of the key features of democratic citizenship. It thus needs to be considered whether legal membership should entail voting rights in all circumstances, and, if not, why not?

### **The basis of voting rights**

Democracy, at its simplest, is understood as the rule of the people. 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 emigrants, *which country* should be regarded as theirs is, however, anything but simple.

This issue has attracted a number of answers in recent debates among normative thinkers. One long-standing and influential view has been to identify the ‘people’ with the nation, and to ground political rights in membership of the nation, expressed in terms of shared ancestry, heritage, culture or sense of belonging. But citizenship as membership of a self-governing community is distinct from, and does not depend on membership of a nation, which may be either under-inclusive or over-inclusive in defining the demos. While, within a democratic state, a shared identity may support a democratic culture, it is not clear that sharing a national identity or sense of belonging itself, without any substantial connection with the state, warrants a right to a say in the future of the polity.

Thus an alternative way of defining the demos might be in terms of those who are substantially connected by *contributing* in some concrete way to the collective life of the polity. But this excludes those who, by dint of age or disability for example, are unable to contribute. A contribution principle is under-inclusive in defining the demos. Rather than recognising a contribution, a vote recognises the impact of law and government on citizens’ lives, and gives them a chance to bring their government to account and to shape the laws determining their common future. On this basis, it has been suggested that the demos should rather comprise all those affected by the laws and policies of the state (Goodin, 2007). While this ‘all-affected’ principle has some attraction, because it includes young and disabled members, and also recognises

the spill-over effects of government across state boundaries, it does not provide a clear enough criterion for distinguishing between those directly and substantially affected in their life course and central interests by government and law, who should have a vote, from those further removed or affected to a lesser extent.

The normative core of democratic citizenship is that those who are subject to the authority of government should have a say in bringing that government to account and in determining their collective future. Thus, a better principle may be that those – and only those – who are ‘subjected’ to government and the authority of law should be considered for inclusion in the demos.<sup>3</sup> Yet ‘subjection’ as it stands is in turn too inclusive, as it does not exclude tourists and temporary visitors. 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, 2007). One way of defining the continuing and substantial subjection to the state that warrants political rights is in terms of ‘stakeholding’, having long term connections and central interests, as formulated by Rainer Bauböck, who argues 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).<sup>4</sup>

If such a principle is adopted as the grounds for political rights, it may be considered to apply only to those living within the territorial bounds of the state. Despite increasing globalisation and the spill-over effects of states’ actions, while the boundaries of states still define the principal limits of their governments’ writ, permanent residents in a state are still those most intensively and comprehensively subject to its laws and policies.

If only those on the territory of the state can be considered stakeholders in this sense, there is no general case for voting rights for citizens abroad. Thus Ruth Rubio Marin concludes that external voting should not be regarded as a right of external citizens. ‘as they are not directly and comprehensively affected by the decisions and policies that their participation would help to bring about even if they are likely to be affected by some of those decisions, such as those concerning remittances, nationality, and military service laws’ (Rubio Marin, 2006: 53).

It may even be argued that, as the territorial bounds of the state delimit the area of subjection, democratic principles not only do not require voting rights for emigrants, but demand their disenfranchisement (Lopez Guerra, 2005: 217).

Yet citizens abroad are subject to some laws and government decisions at least, especially those concerning constitutional matters and citizenship itself. David Owen argues that it is the fact of subjection - not a matter of degree - that counts as sufficient ground for voting rights for first generation emigrants (Owen, 2009: 64). But emigrants do not share in the politically determined life of the country; they are not subject to its working conditions and practices, they do not in general pay taxes, their children are not brought up in its education system, and so on. Thus they are not subject to the authority of government in the same direct and comprehensive way; and it is hard to see their subjection as equivalent to that of residents. Thus, even if they are in a distinct category from others affected abroad, the subjection of citizens abroad is not enough to warrant a right to vote on all matters.<sup>5</sup>

#### *Arguments from contribution and compulsion*

There are further arguments to be considered. One is *contribution*-based, noting that emigrants often make a substantial financial contribution through remittances, and arguing that excluding them from voting is analogous to taxation without representation. We have already seen that contribution is not a good general basis for defining membership of the demos. Moreover, such remittances are voluntary personal payments, not contributions to the state, and are not equivalent to the payment of taxes any more than charitable donations are. Moreover, even if some recognition for an economic contribution is warranted, it is not clear that a political voice is the appropriate return (Rubio Marin 2006:133).

A second argument points to the *involuntary nature* of emigration, which can be a result either of expulsion, or of other government actions. Enforced exile could be seen as an extreme form of subjection. On this basis, refugees and displaced persons at least may be thought of as having a right to vote (Beckmann 2009: 78-80). Furthermore, in the context of post-conflict situations or transitions to democracy, votes for those forced into exile can be seen, if only on a transitional basis, as part of a pathway to reconciliation. But emigration is more often economically-driven, and even if not wholly voluntary, provides a less clear-cut justification for voting rights than cases of forced migration. Justifying voting rights for forced exiles can be seen as a special case that is not more widely generalisable.

### **External voting – even if not required, is permissible or desirable?**

Even if the status of external citizens differs from that of resident citizens, and there is not ground for a right to vote, there may still be reasons why it may be permissible and even desirable to give at least some categories of emigrants a political voice.

Thus Rubio Marin (2006: 134) argues that, given the increasing connections and communication of emigrants, it is permissible for them to be included by a democratic decision:

under certain circumstances a country may democratically decide to allow for absentee voting of the first generation, thereby including expatriates in the political process. They may do so in recognition of the fact that it is now easier than ever to remain connected to home state politics from abroad, and thus easier to understand the set of concrete political options that a country may face. They may also do so in recognition of the fact that many emigrants live between two countries, as well as the fact that their return is increasingly becoming a real option because being abroad no longer requires the definite severing of ties that it did in the past.

More expansively, Bauböck argues that there are good reasons to grant votes to external citizens to the extent that they can be seen as stakeholders, maintaining life-long objective ties and interests. A key indicator is the comprehensive subjection entailed in prior residence in the state. Thus such a status can be associated most readily with those who have in the past been ‘biographically subjected’ (Bauböck 2009: 483). Thus, if votes are to be granted to expatriate citizens, this should be confined to first generation emigrants. Moreover, on this view, ‘[e]ven for permanent first-generation expatriates, the external franchise should not be seen as a fundamental individual right but as a permissible and often also recommendable form of including transnational stakeholders in political decisions’ (Bauböck 2009: 487).

In general the grounds for democratic citizenship should be forward looking, based on future needs and responsibilities, rather than retrospective considerations. Thus, as Bauböck acknowledges, the backward looking characteristic of first generation emigrants is only an indicator (Bauböck 2009: 481). One important consideration here is the likelihood of return migration.

*Prospects of return migration*

To the extent that emigrants may return, they have a real stake in their country of origin and share future interests with other citizens. The significant extent of return migration, and the historical and current inaccuracy of the image of the one-way emigrant voyage, are now accepted. Return migration internationally is now estimated to average between 10 and 50 per cent (Global Development Network, 2010), and is more common among first generation migrants than their descendants (Hirschman, Kasinitz, DeWind, 1999).

On what basis might this be taken account of in a grant of votes to expatriate citizens? One suggestion, a declared intention to return, seems too subjective and consequently subject to discretionary recognition. While it is reasonable to exclude those who deny such an intention, using it as a criterion for voting requires others to make an undertaking that, even in good conscience, they may never be able to fulfil. Rather we should conclude that significant contemporary probabilities of return warrant granting a vote to those first generation citizens who show sufficient commitment, for example, to register regularly as voters.

*Additional objections: size, knowledge, double voting*

Even if votes are granted to first generation citizens only, a further important question is the weight that these should be given. Especially if voting is not to be seen as a right, and the force of government affects residents more substantially, external votes do not have to carry an equal weight to those of residents.<sup>6</sup> The size of a potential external vote is a significant consideration. In a small state, if resident citizens can be outnumbered by the external vote, this makes external voting problematical. Bauböck identifies two possibilities here: the external vote may be potentially larger than the territorial vote and thus liable to swamp it, or it may be smaller but still capable of exerting a tipping force on the electoral result. According to Bauböck, the possibility of swamping provides a reason for counting votes in a reserved constituency, not to give special representation (as emigrants do not constitute a group needing affirmative action), but to reduce the weight of the potentially dominating external electorate. On the other hand, any group of electors may turn out to ‘tip’ an election, and this is not something that can be legislated against. But as a tipping power may be more likely to become a matter of concern if the external vote elects a bloc of reserved seats, Bauböck suggests that in this second context, votes are better assimilated into domestic constituencies (Bauböck 2007: 2446).

Two other arguments against external voting should be mentioned. The first is that emigrants lack the necessary *knowledge* of national politics to participate meaningfully, and that for this or other reasons, that emigrants are more likely to be mobilised to support extreme movements. It is true that emigrants can retain an image of the country that, if it ever applied, is now outdated. But being knowledgeable, informed or moderate are not required or guaranteed among resident citizens. It is also clear that expatriates today can better maintain contacts and keep abreast of political developments through television, mobile phone and internet, and are more likely to make frequent return visits. Thus, whatever about the past, such arguments carry less weight today, at least with respect to first-generation emigrants.

A second argument against votes for emigrants applies to those who have become dual citizens by naturalising in their new country of residence. This is the objection that granting votes in their country of origin will give them *double-voting* powers. But this is not a valid objection, as there is a difference between having two votes in an election for one institution, and having votes in elections for two different institutions. Having two votes is objectionable only when it involves having more than one vote in the same electoral context. If it is possible to have connections and a stake in the future in two countries, it may be reasonable to have a political voice in both these contexts.

Thus while there may be no right to vote for external citizens, there are some strong arguments for granting votes at least to first generation emigrants in ways that do not swamp resident citizens.

Underlying this question is the larger question, who should be citizens? This is a contested topic, and one which each state is considered to have the right to decide itself. However, while policies thus vary, there is an international legal norm that citizenship should be based on some 'genuine connection' with the state (International Court of Justice, *Nottebohm* 1955). Given that citizenship affords important protections, and may not be easily granted by a new host country, the conditions for extending citizenship by descent abroad should perhaps be more generous than for voting rights, but citizenship should not be indefinitely extensible in the absence of some genuine connection.

### **External voting in practice**

A brief comparative analysis gives some idea of the extent to which contemporary practice corresponds to these recommendations. A significant and fast-growing number of countries provide voting rights for citizens abroad. About 115 countries have some kind of external voting, of whom about two-thirds give rights to all external citizens, and one-third to restricted categories of citizens (IDEA 2007).

The comparative context considered here focuses on European countries, drawing examples from both member states and neighbours of the EU.<sup>7</sup> There is a remarkable and recent trend in external voting in European states. Those with a longer history include the UK (1918), Iceland (1949), Finland (1958) and Sweden (1968); in the 1970s and 80s these were followed by France (1976), Portugal (1976), Switzerland (1977), Denmark (1980), Luxembourg (1984) and Germany 1985. Since 1990 there has been a new wave in which Austria, Bulgaria, Poland, Romania (1990); Croatia, Estonia, Latvia, Lithuania, Slovenia (1992), Moldova (1993), Spain (1995), Belgium (1999), Czech Republic (2002), Italy (2003) and Hungary (2004) have all introduced schemes (IDEA, 2007). Of EU Member States, in addition to Ireland, only Cyprus, Greece, Malta, and Slovakia have no general system of external voting.<sup>8</sup>

This trend reflects not only the extent of emigration, but also a greater consciousness that emigrants maintain ties with their countries of origin. External voting has been introduced in post-conflict situations or in transitions to democracy where there had been a large political emigration. In other countries a recognition of shared national identity and heritage have been decisive. While the introduction of external voting has often depended more pragmatically on perceived political advantage by political elites, in these cases external voting may also be independently justified.

The provisions for external suffrage vary widely, and the scope, weight and accessibility of external voting in no case fully match domestic voting. External voting may be available for all or only selected types of elections – from legislative and presidential to referendums. The countries which grant votes in legislative and (where relevant) presidential elections and referendums are: Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Iceland, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Switzerland, Sweden and the UK. Votes are granted for the legislature in the Czech Republic, Germany, Moldova and

Turkey, and for the legislature and in referendums in Estonia, Hungary, Italy, and Sweden.

Most European countries include external voting along with other votes in regular territorial constituencies. Votes are counted in reserved constituencies only in Croatia, France, Italy, Portugal and Romania. The weight of these votes is determined principally by the number of reserved seats. In France, Italy and Portugal a fixed number of seats is allocated. In Croatia, the number of seats depends on the proportion of the external to the territorial vote, following criticism of the 1995 elections, when the large number of seats allocated to the external constituency gave a disproportionate weight to external citizens' votes. In most countries voting is direct, but in France it is carried out through an indirect election from an emigrant representative council.

Voters are required in most cases to travel to an embassy or consulate in their country of residence. However, a significant number of European countries provide postal voting; some offer a combination of options, including proxy voting or more flexible alternatives, notably electronic voting (Estonia, France, and, on an experimental basis, the Netherlands and Switzerland) (IDEA, 2007; ACE, 2010).

At least as important as the issues of scope, weight and access are the eligibility to vote – whether this includes all citizens, or only certain categories, and if all citizens, how extensible abroad is citizenship itself.

#### *Extensibility of citizenship abroad and eligibility to vote*

Whether votes for external citizens generally are justified may depend on how liberally citizenship is available to those who live outside the state. The basis on which formal citizenship is acquired and retained abroad varies widely even among European states; this combines with electoral provision to result in a wide range of voting eligibility for citizens abroad.

Citizenship can be acquired through descent (*ius sanguinis*) in all European states. Citizenship abroad can be extended indefinitely by birth to two citizen parents without restriction or threat of loss in the absence of residence or registration in Bulgaria, Czech Republic, Estonia, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Romania, Slovenia and Slovakia. Extension beyond the first generation born abroad requires registration in Belgium, Croatia, Cyprus, Germany, Ireland, Malta, Portugal, and the United Kingdom. Acquisition of citizenship beyond the first

generation born abroad is either restricted, or is subject to loss if residence or a substantial connection is not subsequently established in Belgium, Denmark, Finland, Iceland, Netherlands, Norway, Spain, Sweden, and Switzerland. In some of these cases, citizenship is lost by those born abroad if another citizenship is acquired by application (Austria, Czech Republic, Denmark, Estonia, Germany, Latvia, Lithuania, Norway, Slovakia and Spain) (de Groot and Vink, 2010). Thus the most expansive forms of citizenship by descent abroad are found in Bulgaria, Greece, Hungary, Italy, Luxembourg, Romania, Slovenia and Slovakia. It may be argued that an indefinite extensibility of citizenship abroad beyond the second generation, without any residence or connection requirement departs from the principle of genuine connection.

But access to citizenship translates directly into eligibility for voting only in a minority of European countries. The range of those eligible to vote varies from those normally resident, but temporarily abroad (Hungary), through those on diplomatic or military service (Ireland), or in expatriate employment (Denmark), those who have previously been resident (Norway, Sweden), and have been away for not more than a certain number of years (Germany, UK, Denmark), up to Estonia and Italy, where all citizens are eligible to vote, regardless of past residence or length of absence.

Who qualifies as an external voter thus varies widely among countries. Table 1 shows the range of combinations of electoral and citizenship extensibility abroad in a number of European countries.<sup>9</sup> Countries with the most generous system of external voting are not always those with the most generous extension of citizenship, and vice versa. On the one hand Hungary, which allows citizenship to pass by descent abroad without any restriction, provides external votes only for those temporarily abroad. Sweden and Norway offer rather generous systems of external voting, but are moderately restrictive in the extension of citizenship abroad. Estonia and Italy are among the most generous combinations, allowing all citizens to vote, and citizenship to be passed down without restriction.

<b>Table 1 Extensibility of external citizenship and external voting</b>			
	<b>Restrictive external citizenship</b> No automatic extension of citizenship abroad, and/or citizenship is liable to be lost without residence, or if a second citizenship is gained by application	<b>Moderate external citizenship</b> Extension or retaining of citizenship beyond first generation born abroad requires registration.	<b>Generous external citizenship</b> Extension of citizenship abroad is possible indefinitely without requirement of residence or registration
<b>Restrictive external voting</b> Only specified categories of citizen can vote externally	<b>Denmark</b> Only those abroad as employees of state or Danish firm, students, for health reasons, away for up to 2 years, and will return in 2 years. (Postal)	<b>Ireland</b> Only diplomatic and military personnel posted abroad. (Postal)	<b>Hungary</b> Only for temporary absentees. (Personal )
<b>Moderate external voting</b> All external citizens with certain previous residence can vote, but with time limits abroad	<b>Germany</b> Limit 25 years abroad (except for those living in Council of Europe member states) (Postal)	<b>UK</b> Limit 15 years abroad (Postal/proxy) <b>Portugal</b> 'Effective ties' defined by time-limit. (Postal – parliamentary; personal - presidential)	
<b>Substantial external voting</b> All external citizens with certain previous residence/local registration can vote with no time limit abroad	<b>Sweden</b> Must register after 10 years. (Postal, personal, proxy) <b>Norway</b> Must register after 10 years. (Postal) <b>Austria</b> No residence requirement, but must register with a municipality every 10 years. (Postal)	<b>Switzerland</b> Must register every 4 years. (Postal, personal-e-voting pilot) <b>Netherlands</b> (Postal, proxy, e-voting)	
<b>Generous external voting</b> All external citizens can vote without any residence, local registration requirement	<b>Spain</b> Must register after 10 years. (Personal and proxy)	<b>Belgium</b> Compulsory. (Postal, personal, proxy) <b>Finland</b> On population register (Postal) <b>Croatia</b> Reserved constituency (Personal)	<b>France</b> (Indirect). Registered. (Postal, e-voting) <b>Estonia</b> (Postal, personal, e-voting) <b>Italy</b> Reserved constituencies (Postal)

There would be a real danger of swamping where large emigrant populations and extensible citizenship combined with broad eligibility to vote among external citizens. In practice, only a few European countries are estimated to be subject to potential swamping by expatriate electorates, and it has been noted that these have either been slower to introduce external voting, such as Greece and Ireland, or have limited its impact by having reserved constituencies. In most cases restrictions to certain categories of citizen make the number of external citizens eligible to vote considerably smaller than the total of external citizens, and procedural and access restrictions make the turn-out and impact of external votes lower than those of domestic voters. Exceptions to this have, however, give risen to concerns about tipping. In 2006, the first Italian legislative election in which external votes were available, there was a turn out of 38.5% of the 2.7 million registered external electorate (Mascitelli and Batiston, 2008), which appeared to constitute a tipping force. Even after the adjustment of the numbers of seats available to emigrants, in the 2007 Croatian parliamentary elections the votes from external citizens were considered to be decisive (Ragazzi – Štiks, 2010: 14).<sup>10</sup> In both of these cases all citizens are eligible, and citizenship is extensible by descent abroad, if more generously in the case of Italy than of Croatia. Thus, some of the risk of swamping and tipping arises because of the extensibility of citizenship itself.

While many countries offer votes to their citizens abroad, in cases where these would potentially exert a dominant influence on political life the scope and weight of voting tends to be contained. While an expansion of remote electronic voting would make external voting more accessible, there is no strong trend in this direction, nor towards more equal scope or weight for resident and expatriate votes, or equal access for all categories of citizen. Indeed generally low turn-out and cost and security issues are cited as reasons not to introduce or to abolish external voting except in special circumstances.

### **The Irish case**

From Table 1, we see that Ireland, while relatively generous in its extension of citizenship abroad, is one of the most restrictive in external voting as it includes only those posted abroad on military and diplomatic service. If Ireland were to introduce a broader system of external voting, a range of options arise with respect to which

citizens qualify as external voters, the scope of elections, weight of votes, and access to voting.

The question of external voting has increasingly arisen. A 1991 Labour Party Bill proposed votes for those absent for less than 15 years. In the mid 1990s, when President Mary Robinson addressed a specially convened meeting of the Oireachtas on the subject of Ireland's emigrant population, a government proposal for three dedicated Senate seats was outlined. In 2002 the Task Force on Emigrants explicitly set the issue aside, and a report of the Oireachtas All-Party Committee on the Constitution concluded that the right to vote in Dáil elections should remain confined to citizens resident in the State, while recommending that the Taoiseach should nominate one or more senators 'with an awareness of emigrant issues', comparable to the treatment of Northern Ireland (All Party Committee on Constitution 2002: 59). The 2009 Programme for Government proposed an Electoral Commission to consider the feasibility of votes in Presidential elections for the Irish abroad.<sup>11</sup>

The arguments most often advanced to support extending votes to emigrants focus on three main claims. The first is the importance of recognizing the Irish diaspora. The second is that, in the past and again today, a significant proportion of emigration is involuntary, representing less a choice than the lack of economic opportunity at home, and the third, the contribution that emigrants have made and are expected to make to Irish society.<sup>12</sup>

It should be noted that most of the concrete proposals advanced have recommended votes only for people who have previously lived in Ireland, and have not been away for more than a certain period. Yet by referring to the 'Irish abroad', broader notions of national identity tend to be invoked in debates on the topic. Indeed the Constitution itself contributes to this ambiguity, Article 2 stating that 'the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage'. But the same article distinguishes this from membership of the nation and both of these from citizenship (Irish Constitution, Article 2).

Thus there is considerable ambiguity about the appropriate recognition for the wider diaspora. On the arguments above, shared national identity or sense of belonging alone does not warrant the grant of voting rights. Indeed, citizenship itself may be too expansively awarded if transferable indefinitely by descent abroad, without reference to genuine connections with the polity. Irish citizenship abroad is

quite expansive in comparative terms in Western Europe, requiring only registration from generation to generation. (Since 2004 the grant of citizenship ‘on the basis of Irish ‘associations’ has been given a narrower interpretation.) If it is not justifiable to extend citizenship abroad beyond the second generation without real connections, there may be a role for some recognition short of citizenship for those with a sense of Irishness based on descent, even if the 2010 government proposal to award Certificates of Irishness to people who wish to express their Irish identity does not quite fit the bill (Cullen, 2010).

A second recurring argument for voting rights rests on the fact that most emigrants leave out of economic need rather than freely chosen career opportunities or other goals. It has been suggested that it is ‘adding insult to injury’ for these emigrants to lose their votes when they leave (Farrell, 2010). Yet, as argued above, this kind of involuntary emigration does not in itself constitute a ground for a right to vote comparable to the case of refugees and forced exiles in civil war and democratic transitions.

Finally, it is argued that emigrants have made a significant contribution to Irish society. While traditionally this was highlighted in emigrants’ remittances (which merited a separate entry in the national accounts), current claims refer to the call on the diaspora to invest in Ireland or to contribute otherwise to the solution of the economic crisis, as for example, in the 2009 Farmleigh forum. While such contributions may indeed be admirable, the argument that political rights (and indeed citizenship) are not the appropriate reward for economic contribution prevails here.

While the arguments on national identity, involuntary emigration or contribution advanced for votes for emigrants do not provide a strong case for external votes in the Irish case, we may still find grounds for granting votes to those with significant continuing ties and future orientated interests. This supports granting votes to the first generation whose biographical subjection and prospect of return make it possible to consider them genuine stakeholders.

This is supported by significant rates of return migration among Irish emigrants. For example, the number of those born in Ireland returning is estimated to have risen continuously from 1987, reaching 27,000 in 2002, and remaining steady at under or around 20,000 per year from 2003 to 2008 (Migration Information System 2009). These figures provide evidence of a genuine connection among a significant proportion of emigrants. As argued above, if links and the possibility of return are

more significant in the first generation, and there is no reason to think Ireland is an exception in this respect, it is reasonable to confine the external vote to this category. It is not so clear that there should be a time limit in years abroad, as many emigrants, retaining their ties, return at retirement.<sup>13</sup>

Argument for votes for emigrants regularly meet a number of objections, focusing on size, knowledge and subjection.

It is argued further that external voters do not have to bear the consequences of legislation and policies. This is sometimes termed the ‘no representation without taxation’ view. This can be understood in two ways, one of which, focusing on the absence of contribution, carries little weight, but the other, focusing on the absence of subjection, is, as we have seen, a significant consideration, and undermines claims to a right to vote to external citizens per se, while not ruling out the grant of a political voice to those who have and may again been subject to the country’s law and government.

The size and possible swamping impact of such a significant number of potential voters, based on an estimate of 70 million people considering themselves Irish around the world is often cited. However, there are only about 3 million Irish passport holders outside Ireland, of whom it is estimated just under 1 million were born in Ireland. This still constitutes a significant number relative to the electorate of roughly 3 million at the general election of 2007. Thus there could be genuine concerns about swamping. But this can, as already noted, be addressed by counting external votes within a reserved constituency, whether in the Dáil or Senate (if it continues in existence).

Finally, the knowledge objection has been advanced – that emigrants are not able to keep up with changing contexts and options in Irish politics, and that this is particularly important in the context of Ireland’s PR-STV system, where preferences far down a ballot paper can contribute to electing a candidate. It has also been argued that emigrants, especially in the United States, have supported unconstitutional parties, reflected in the levels of financial support for Sinn Féin in the United States during the troubles in Northern Ireland. As argued above, such arguments do not provide definitive arguments against providing external votes.

## Conclusion

The demos should consist of those whose lives are interdependent in their subjection to a common authority, and have shared future interests. National identity, contribution or emigration out of economic necessity do not provide strong arguments for granting voting rights to emigrants. The strongest ground for external voting lies in emigrants' continuing substantial connections with the polity, and a reasonable prospect of return.

Neither normative nor comparative analysis can determine the detailed requirements for external voting in any specific case. However, it can be suggested that in Ireland, the patterns of connection and rate of return constitute good grounds for extending votes to first generation emigrants, while their potential numbers warrant containing such votes in a reserved constituency.

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## Notes

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<sup>1</sup> This paper has benefited from helpful suggestions offered by Rainer Bauböck and other participants at the UCD Citizenship and Voting Rights in Europe, 3 December 2010.

<sup>2</sup> By external citizens I refer to those permanently resident abroad. Citizens temporarily absent at election time present a simpler case, which can be accommodated with improved technology. Here I address only the principled normative grounds for external voting, and not practical concerns, including security and cost, which are important in decisions about implementing such provisions. See IDEA 2007.

<sup>3</sup> Alternatively, Beckmann defines 'affected' as 'affected by law' in a way that comes close to the subjection view (Beckman, 2009).

<sup>4</sup> Such 'interests are genuinely political ones and emerge because individuals happen to be permanently dependent on, and jointly subjected to, established institutions of government that they can accept as legitimate if they are adequately represented in these institutions.. (Bauböck 2009: 480)

<sup>5</sup> External voting concerns not only global diasporas, but also 'kin-minorities', blocs of co-nationals in a neighbouring state. The different considerations involved cannot be addressed in the space available here; it has been argued that, because of their potential impact on both states, full rights in their country of residence are more important. (Bauböck 2007: 2441) The issue of votes in Northern Ireland (with almost half a million Irish passport holders by 2010) may be considered to fall into this category (MacDonald 2010), but in view of the acknowledged right of those born in Northern Ireland to Irish citizenship, and the move to engage North and South in the Good Friday Agreement, itself passed on the basis of votes in both parts of the island, there may be a stronger claim for votes of some kind for Irish citizens living in Northern Ireland than in kin-states more generally. Chapter 5 of the 2002 Report of the Oireachtas Committee on the Constitution discusses this at greater length than the issue of votes for emigrants, but concludes that there should not be any extension of voting beyond the state, and notes that the decision on emigrant votes is influenced in part by the desirability that both categories of citizen should be treated similarly,.

<sup>6</sup> Residents who will be more immediately exposed to the political decisions that they authorize through their vote have a qualitatively stronger claim to self-government than external citizens. This is why it is legitimate to differentiate external voting rights

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so that they reflect a presumptive strength of citizenship involvement and so that domestic residents cannot be outvoted. (Bauböck 2009: 488)

<sup>7</sup> The countries considered are those included in the EUDO Citizenship research project on access to citizenship in Europe. See <http://www.eudo-citizenship.eu> .

<sup>8</sup> Malta allows external votes for some of those on public service outside the country. Greece has a constitutional provision for external votes, which has yet to be implemented. In Greece and Slovakia, those living abroad but present for the election can vote legally.

<sup>9</sup> This table is based on data drawn from the sources cited here, and from individual research. Given the difficulties of establishing exact details in this area, the classification is a preliminary one, pending the extension to electoral rights of the work of the systematic work on access to citizenship in the EUDO Citizenship project (see above n. 7)

<sup>10</sup> Though these were mainly in neighbouring Bosnia-Herzegovina.

<sup>11</sup> It can be argued that the pressure for votes for emigrants has been weakened by the fact that Irish people in Britain have automatically had a right to vote there, and that they have also been politically successful in the USA, thus accounting for two primary emigration destinations. The voting rights in Britain are indeed peculiar to Ireland, but this does not explain why the large numbers of emigrants to the USA have not led to pressure for external votes as in the case of Italy and Greece, for example. .

<sup>12</sup> For a sample of current views, see a thread on emigrant voting in the Political Reform.ie blog at <http://politicalreform.ie/2010/07/29/votes-for-emigrants/>, Global Irish.ie, <http://www.globalirish.ie/2010/tracking-the-emigrant-voting-issue/> and the websites Amhran Nua, <http://amhrannua.com/>, and Charter for a New Ireland <http://tangibleireland.com/tangible-blog/blog/charter-for-new-ireland.html>. See also . <http://ballotbox.ie/> for an emigrant internet poll carried parallel to the 2011 general election.

<sup>13</sup> This does not prevent second generation citizens establishing residence and regaining citizenship.