

**Non-Domination Through Citizenship:  
Why We Ought to Extend Citizenship Status to Residents**

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Scholars such as David Miller rely on civic republican ideas about the normative importance of the state to defend a restrictive citizenship regime. I argue that republicanism instead mandates an inclusive membership policy, and that all non-temporary residents ought to be given access to the status of citizenship and its associated privileges. After all, the republican state can fulfill its function only when its law is non-arbitrary, and this obtains only when all those who are subject to the state's rule have the necessary means at their disposal to force the state to take their interests into account. Against Iseult Honohan, I argue that a waiting period for citizenship acquisition can also not be justified. Finally, I consider three alternatives to the extension of citizenship to residents: non-citizen voting, legal protections, and cosmopolitan citizenship.

This paper is concerned with the access by all non-citizen residents to the status of citizenship and its associated privileges, such as the right to stand for office and vote in elections. Scholars such as David Miller rely on civic republican ideas about the normative importance of the state to defend a restrictive citizenship regime. In this paper, I employ a republican framework to justify the extension of citizenship status to non-citizen residents.<sup>1</sup> I agree with Miller and others that membership in a state matters greatly – at least when that state works to reduce the domination of individuals by third parties such as corporations. However, as I see it, the claim that membership in such a state is essential for shielding individuals from domination commits republicans to a inclusive membership policy. After all, the state's law must be non-arbitrary, and it can be so only insofar as individuals have the necessary means at their disposal to force the government to take their interests into account, and to challenge decisions in a democratic forum. When non-citizen residents are subject to

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<sup>1</sup> For the purpose of the paper, I do not distinguish among temporary residents such as guest workers and foreign students and permanent residents such as immigrants. I exclude only the category of tourists, who arguably cannot be said to 'reside' in the state at all.

the law in a republican state, that law has in an important sense been coercively imposed upon them.

In the remainder of the paper, I distinguish my argument from Iseult Honohan's, and I address several objections. A civic republican, Honohan also notes the problematic character of the subjection of non-citizen residents to the state's authority. However, she envisions a waiting period for citizenship acquisition of three to five years, during which residents would gain sufficient knowledge of the political culture of the state. Her condition for extending citizenship status is unwarranted, since the potential benefits of a waiting period for the receiving community are outweighed by the very real costs born by residents experiencing domination. Instead, I argue that residents have a *prima facie* claim to citizenship at the time they take up residency.

I then discuss three proposals that might address the problem of residents' freedom without providing them with access to citizenship. Owen Fiss focuses on the role of an independent judiciary in guaranteeing residents' rights, Ron Hayduk argues for the reintroduction of voting for noncitizens, and James Bohman proposes moving beyond the state to a supranational notion of citizenship that is located in multi-layered and overlapping set of publics and institutions. I am sympathetic to all three proposals, but I argue that Fiss and Hayduk fail to provide the reliability of protection that democratic control by the citizenry does, and that Bohman mistakenly underestimates the role of the state. Finally, I accept that it may not be feasible to extend citizenship status to large numbers of residents, and I conclude by suggesting alternative ways in which states may acknowledge residents' claim to citizenship.

## I.

Several cosmopolitan theorists have advocated for liberal citizenship regimes, even open borders.<sup>2</sup> This paper, however, is not concerned with such arguments. Instead, it departs from the perspective of republicans who attach normative significance to the state. These scholars, of which David Miller is the most prominent, are also moral cosmopolitans, by which I mean that they attach “equal moral worth” to individuals, and that they treat “the individual as prior to the community.”<sup>3</sup> I do not address their claims about other categories of non-citizens, such as irregular migrants, refugees, or would-be immigrants. Instead, I focus on a very specific group, namely, those individuals who currently reside in a state that does not recognize them as citizens.

In a book and a series of articles, David Miller has made the case for a restrictive citizenship regime.<sup>4</sup> His model of citizenship has both liberal components (it focuses on equal rights and a set of responsibilities) and republican ones (it stresses the vigilance of citizens with regard to matters of governance). Staying away from primordial claims about the character of the nation, Miller argues that nations derive their purpose and legitimacy from the active participation of the citizenry in politics as well as from the culture that they embody and that the citizens share. His focus as a civic republican is on the character of

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<sup>2</sup> See e.g. Carens, J. H. 1987. Aliens and Citizens: The Case for Open Borders. *The Review of Politics*, 49 (2), 251-273; Stevens, J. 2011. *States without Nations: Citizenship for Mortals*. New York, NY: Columbia University Press. Parenthetically, Carens has in recent years moved away from an argument for open borders. E.g. Carens, J. H. 2010. *Immigrants and the Right to Stay*. Cambridge, MA: MIT Press.

<sup>3</sup> Carens, 1987, p. 252.

<sup>4</sup> See Miller, D. 1995. Citizenship and Pluralism. *Political Studies*. 43 (3), 432-450; Miller, D. 2000. *Citizenship and National Identity*. Cambridge: Polity Press; Miller, D. 2005. Immigration: The Case for Limits. *Contemporary Debates in Applied Ethics*, ed. A. Cohen and C. Wellman. Oxford: Blackwell; Miller, D. 2007. *National Responsibility and Global Justice*. Oxford: Oxford University Press; Miller, D. 2008a. Immigrants, Nations, and Citizenship. *The Journal of Political Philosophy*, 16 (4), 371–390; Miller, D. 2008b. Irregular Migrants: An Alternative Perspective. *Ethics and International Affairs*. 22 (2), 193-197. Miller, D. 2008c. Republican Citizenship, Nationality, and Europe. *Republicanism and Political Theory*, ed. C. Laborde and J. Maynor. Cambridge: Cambridge University Press; Miller, D. 2009. Justice and Boundaries. *Politics, Philosophy, and Economics*. 8 (3), 291-309; Miller, D. 2010. Why Immigration Controls are not Coercive: A reply to Arash Abizadeh. *Political Theory*. 38, 111-120.

political institutions and the role that citizens play in preserving those, and, as a liberal nationalist, he also conceives of the nation as a self-determining community with a unifying culture. Citizens' obligations to one another and the polity may thus be of a political nature or an ancestral/cultural one. Both territorial boundaries and membership have normative significance.

At times, Miller's civic republican and liberal nationalist tendencies are in tension with one another. An example is the status of non-resident citizens, who are full members of the state from the liberal nationalist perspective but not from the republican one, which values the kind of active participation that absentees do not engage in.<sup>5</sup> This distinction notwithstanding, both the republican and the liberal nationalist Miller have serious concerns about extending citizenship status to non-citizen residents.<sup>6</sup>

Miller reserves the right for communities to decide their admission policies, writing that the "general justification for immigration restrictions involves an appeal to national self-determination and in particular a people's right to shape its own cultural development."<sup>7</sup> This does not mean that a republican state will not welcome new immigrants, but it does entail that a state may deny admission to would-be immigrants on the basis of the current inhabitants' legitimate desire to preserve the state, its institutions, and its national character. In certain circumstances, "when immigration is liable to have a significant impact ... on the national identity of the receiving community,"<sup>8</sup> the cultural backgrounds of would-be immigrants can also be taken into account. Miller assumes a high degree of overlap among citizens' viewpoints about what is in the common interest, or at least a high probability of

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<sup>5</sup> See Bauböck, R. 2005. Expansive Citizenship: Voting Beyond Territory and Membership. *PS: Political Science and Politics*. 38 (4), 683-687.

<sup>6</sup> Bauböck, 2005, p. 685.

<sup>7</sup> Miller, 2007, p. 228.

<sup>8</sup> Miller, 2007, p. 229.

success in reaching a consensus on such matters in a domestic deliberative setting. Because of this, citizens have a collective interest in controlling the public culture of their state.<sup>9</sup>

However, as I mentioned previously, this paper is not concerned with would-be immigrants but with residents. About residents, Miller agrees with Kymlicka that their incorporation into society ought to be done according to ‘fair terms of integration.’<sup>10</sup> He writes:

Although states have some leeway in deciding on the conditions that must be fulfilled before the full rights of citizenship are granted, they are compelled by their own principles to leave the path to citizenship open, and this in turn constrains the way that incoming groups, even those admitted formally on short-term schemes, must be treated. *Pace* Sidgwick, the modern state can no longer subject immigrants ‘to any legal restrictions or disabilities that it may deem expedient’.<sup>11</sup>

Miller argues that modern migration has put significant pressure on democratic regimes, to the point of weakening the practice of democratic citizenship, with its social rights and distributive policies. He concludes that “some level of integration is required if culturally-diverse democracies are to work successfully”<sup>12</sup> and he proceeds to explain on what terms citizens and residents ought to interact. Citizens are allowed to ask of residents that they “accept the basic principles of democracy,”<sup>13</sup> and they may subject them to a citizenship test to ensure that there is sufficient acculturation. Residents may be denied citizenship status because of their lack of knowledge of or allegiance to the institutions of the state, or their lack of assimilation into the national community – as judged and justified by the citizenry.

In the next section, I will construct the strongest possible argument for the normative significance of citizenship on republican grounds. I will focus on the republican rather than

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<sup>9</sup> Miller, 2005, p. 200.

<sup>10</sup> Miller, 2008a, p. 372.

<sup>11</sup> Miller, 2008a, p. 378.

<sup>12</sup> Miller, 2008a, p. 380.

<sup>13</sup> Miller, 2008a, p. 384.

the liberal nationalist Miller, because I believe the former makes the more convincing case.<sup>14</sup> Later, I will go on to argue why even such an argument fails to justify Miller's restrictive citizenship regime.

## II.

The strongest republican argument for the significance of citizenship posits that freedom as non-domination can be safeguarded only when individuals are citizens of a republican state. Because freedom plays such a central role in civic republicanism, it is important to be clear about what this entails.

The republican authors that I engage with, in addition to Miller, place their work in the context of a long tradition of scholarship, starting with Roman republicans such as Cicero, Sallust, and Polybius, whose key ideas about freedom and the state were then taken up by fifteenth-century civic humanists;<sup>15</sup> Niccolò Machiavelli, Francesco Guicciardini, and James Harrington; and later, in eighteenth-century England and the colonies, by the 'commonwealthmen'.<sup>16</sup> Following other thinkers in this tradition, contemporary republicans such as Philip Pettit and John Maynor understand freedom in the following way. According to them, freedom denotes the absence of exposure to arbitrary interference by other agents as well as the absence of exposure to the capacity on these agents' part to interfere in such a

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<sup>14</sup> For a few critiques of liberal nationalism, see e.g. Mayerfeld, J. 1998. The Myth of Benign Group Identity: A Critique of Liberal Nationalism". *Polity*, 30, 555-78; Patten, A. 1999. The Autonomy Argument for Liberal Nationalism. *Nations and Nationalism*, 5 (1), 1-17.

<sup>15</sup> See Viroli, M. 2002. *Republicanism*, transl. by A. Shugaar. New York: Hill and Wang. P.48.

<sup>16</sup> Republicanism's most recent revival was initiated by J.G.A. Pocock in the 1960s, when his formulation, relying on Aristotle, noted the republicans' emphasis on civic virtue and encouragement of citizen participation in public life. Pocock's interpretation – which did not distinguish between the political thought of the Greek and the Roman republicans – was challenged in the 1980s by Quentin Skinner, who argued that the early modern republicanism of writers such as Machiavelli was in fact Roman in origin, and had a theoretical focus that differed from the Athenian one. See Pocock, J.G.A. 1975. *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*. Princeton: Princeton University Press; Skinner, Q. 1983. Machiavelli on the Maintenance of Liberty, *Politics*, 18, 2-15; Skinner, Q. 1984. The Idea of Negative Liberty. In *Philosophy in History*, ed. R. Rorty, J.B. Schneewind, and Q. Skinner. Cambridge: Cambridge University Press.

way.<sup>17</sup> A person thus lacks freedom when she is not effectively shielded from the ability of other actors to interfere on an arbitrary basis, in her decision-making. Conversely, agents who have the capacity to interfere arbitrarily in that person's decision-making stand in a dominating relationship to her, irrespective of whether they act upon this capacity.<sup>18</sup> Freedom is thus the absence of domination.

In its simplest form, domination involves an actual intervention which arbitrarily removes or modifies one of the options that a person has at his or her disposal.<sup>19</sup> An intervention is carried out on an arbitrary basis when the intervention is subject to the decision of an agent "at their pleasure... without reference to the interests, or the opinions, of those affected".<sup>20</sup> What matters is the procedure by which the decision is made, rather than the extent to which the outcome of the decision happens to accord with the wishes of the affected.

Not all forms of arbitrary interference are problematic, of course. In our society, individuals frequently face restrictions on choice, and we justify some of those by reference to the status of the target of the intervention – parents routinely intervene in the decisions of their children, for example, and we do not tend to find this a cause for alarm. We recognize that children are not free to make their own decisions, but we consider this dependency a necessary stage in human development.<sup>21</sup>

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<sup>17</sup> Pettit, P. 1997. *Republicanism: A Theory of Freedom and Government*. Oxford: Oxford University Press. P.25. See also Maynor, J.W. 2003. *Republicanism in the Modern World*. Cambridge: Polity Press. Pp.13-30; Honohan, I. 2002. *Civic Republicanism*. New York: Routledge; Skinner, Q. 1998. *Liberty before Liberalism*. Cambridge: Cambridge University Press; or Skinner, Q. 2008. Freedom as the Absence of Arbitrary Power. In *Republicanism and Political Theory*, ed. C. Laborde & J. Maynor. Oxford: Blackwell Publishing. Pp. 83-101.

<sup>18</sup> Pettit and Skinner distinguish freedom as non-domination from the two concepts of liberty described by Isaiah Berlin: that is, freedom as non-interference and freedom as self-mastery. Cf. Berlin, I. 1958. *Two Concepts of Liberty*, Oxford: Oxford University Press. See P. Pettit, 1997, and Q. Skinner, 1998.

<sup>19</sup> Pettit, P. 2008. Republican Liberty: Three Axioms, Four Theorems. In *Republicanism and Political Theory*, ed. C. Laborde & J. Maynor. Oxford: Blackwell Publishing. Pp.102-130.

<sup>20</sup> Pettit, 1997, p.55.

<sup>21</sup> The normative evaluation of domination – our approbation or condemnation of it – is thus a *separate* step, and should not be conflated with the diagnosis of the existence of (or potential for) domination.

However, in addition, not all forms of interference are arbitrary. Most saliently, individuals often face interference in the form of law, which prescribes what a person can and cannot do. A working adult in this country, for instance, does not have a choice between ‘paying taxes’ (option *x*) and ‘tax avoidance’ (option *y*). Option *y* has been altered by the legal system; it has either effectively been removed as an option, or it has been modified, such that the option is now option *y*’, with *y*’ standing for ‘not paying taxes at the substantial risk of a penalty’. However, citizens who would prefer option *y* cannot complain of *arbitrary* interference so long as the agency responsible for modifying the option is forced to track their interests. Whether citizen control of the taxing government means that taxation is not arbitrary will depend on the nature of the control and how far it is equally shared among the citizenry. In a well-functioning republic, such governmental interference is checked by citizens, and is therefore a form of *non-arbitrary* interference, and *non-alien* control.<sup>22</sup> While certainly real, the interference in this case does not give rise to a justified complaint of domination. Only when interference is arbitrary can the target of interference protest that she is a victim of domination.

Importantly, state interference cannot be justified by reference to the *putative* interests of affected individuals; interference of this kind is paternalistic and arbitrary. Instead, individuals ought to *control* the interference. This does not mean that we ought to allow each individual to veto state interference, since that would be infeasible. However, each person at least be accorded an *equal* share in the control that they jointly exercise over state interference. This corresponds to Miller’s focus on ‘equal citizenship,’ according to which each individual has the exact same set of rights and duties.<sup>23</sup>

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<sup>22</sup> See Pettit, 2008, pp. 102-130.

<sup>23</sup> Miller, 2008a.



### III.

It is difficult to overstate the importance of the state and citizenship in Roman republicanism. As Richard Bellamy has argued, civic participation is the primary condition for the protection of liberty.<sup>24</sup> Citizens are free when they participate in the political decision-making process of the republic.

When it is properly constituted, the state is indispensable because it exercises *publicly controlled power*, a form of ‘antipower’ which serves to secure liberty by promoting non-arbitrariness in decision making.<sup>25</sup> As the embodiment of the people, the republican state has two complementary goals, both of which serve to maximize the enjoyment of freedom as non-domination by individuals who live within its borders. First, it aims to restrain the dominating power of *private* actors and lessen its citizens’ vulnerability to power of this kind. Second, it recognizes that state interference is inevitable and at-times important, but it aims to make its own interference non-arbitrary in the relevant sense. The state must practice interference in order to protect citizens against private domination, but this interference should be under the control of the citizens in such a way that it is not itself the imposition of an alien will; it is non-arbitrary.

The paradigmatic case of domination, of the slave by the master, is instructive here. Roman republicans contrast the predicament of the slave with the status of the *citizen*: while the slave is in the position of supplicant, the citizen of a republic is free, because he is not subject to the power of a lord or master.<sup>26</sup> This contrasts sharply with a conception of freedom that is familiar to us from Thomas Hobbes, who asserted that the inhabitants of Constantinople, the capital of the Ottoman Empire, are as free as the citizens of the republic

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<sup>24</sup> Bellamy, R. 2000. *Rethinking Liberalism*. London: Pinter.

<sup>25</sup> Pettit, P. 1996. Freedom as Antipower. *Ethics* 106(3), 576-604.

<sup>26</sup> The citizen is not *in potestate domini*. See Pettit, 1997, p. 284.

of Lucca,<sup>27</sup> because a person is free to the extent that he is not faced with obstruction or interference. According to Hobbes, the character of the person's state of citizenship is irrelevant. Republicans, on the other hand, view law as non-arbitrary when it is governed by contestable rules and laws, and they claim that such an environment obtains in a republic. Harrington writes that the inhabitants of Lucca are, contrary to Hobbes' assertion, more free than those of Constantinople, because they are free "by the laws of Lucca".<sup>28</sup> In other words, the laws of Lucca may shape the lives of its citizens, but they ultimately control the laws that the government coercively imposes.

Republican freedom must thus be pursued in the context of the state because it is *constituted* by it. In other words, non-domination is not caused by the institutions of the state such that individuals must wait for the causal effect of the institutions to obtain before they enjoy freedom. Instead, non-domination "comes into existence simultaneously with the appropriate institutions".<sup>29</sup> This is what makes the inhabitants of Lucca free citizens and the inhabitants of Constantinople mere subjects. In a properly constituted republic, individuals can experience robust and resilient freedom. Indeed, they *trust* that their state will ensure their continued enjoyment of freedom as non-domination.<sup>30</sup> This establishes them as citizens. While national identity is not required for citizenship, Miller argues that it can certainly help boost an inclination to act as citizens.<sup>31</sup>

In order to protect the liberty of all citizens, the republican state must take on three important functions – of regulation, protection, and empowerment. The state must regulate the economic and other activity of powerful individuals and groups within society: it must

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<sup>27</sup> *Leviathan*, Part II, Ch.21, para. 8. Hobbes, T. 1994 [1651]. *Leviathan*. Indianapolis/Cambridge: Hackett Publishing Company. P.140.

<sup>28</sup> Harrington, J. 1992 [1656]. *The Commonwealth of Oceana and A System of Politics*. Cambridge: Cambridge University Press. P.20. My emphasis.

<sup>29</sup> Pettit, 1997, p.107.

<sup>30</sup> Pettit, 1997, p.8.

<sup>31</sup> E.g. Miller, 1995.

ensure that private actors in society are unable to interfere arbitrarily in the lives of its citizens, and that they are unable to dominate them in any other way. In addition, the state must be constituted such that it is forced *by the individuals whom it interferes with* to take their interests and ideas into account, so that any such interference is non-arbitrary. It must be forced to track the public interest as it is perceived or ready to be perceived by citizens – rather than the interests of a despotic government or particular groups in society. While it is understood that the state may need to interfere in the lives of its citizens – through imposing taxation or regulation more generally – it must take their interests into account when doing so. In other words, it must take care to avoid becoming an instrument of domination itself.

Republican institutionalization focuses on the rule of law, the requirement to provide reasons, the separation of powers, the sharing of powers, transparency, and contestability. First, the republican state must operate by law, rather than case by case, and this law must be formulated in general terms. This ensures that individuals are formally accorded equal status as citizens, part of which includes their equal capacity to force the law to “track the interests and ideas of those who suffer the interference”.<sup>32</sup> A constitutional regime of law can tackle the problem of private domination by affirming the equal status of all individuals irrespective of their power and status, and by allowing individuals and government officials to use the (criminal) justice system to address instances of domination by private actors. The state may need to provide essential services such as basic medical care and education in order to enhance the ability of individuals to avail themselves of these opportunities to hold dominating actors to account.

The republican state must also disperse powers across different governmental agencies and according to different – legislative, judicial, and executive – functions, thereby

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<sup>32</sup> Pettit, 1997, p.272.

ensuring that the different branches of government can function as checks on one another's power. Transparency in decision making is important because it enhances the capacity of the population to assess whether their interests and ideas are being taken into account, and whether the state is forced to do so (by them). Individuals must also be given the opportunity to contest decisions that are ostensibly made on their behalf and with their interests and ideas in mind. State institutions – the legislative branch, in particular – must be inclusive, while at the same time also making allowances for the voices of minorities in an effort to guard against the tyranny of the majority.<sup>33</sup>

#### IV.

Republicanism's singular focus on the role of citizenship as an invigorating force in politics has – in theory as well as in practice – often entailed the exclusion from political life of various categories of individuals. David Miller indeed marshals this literature in support of his restrictive citizenship regime. However, I do not believe that this position is tenable.

An initial problem is that, instead of drawing careful distinctions among inhabitants based on their political status, writers in the tradition have tended to presume that all relevant individuals – that is, those whom the state interferes with in the course of its domestic rule – are *citizens*. The republican state is pronounced superior to an empire such as Constantinople because its institutions bring into being free *citizens*, whereas the inhabitants of Constantinople are mere *subjects*. Little attention is paid, however, to the various categories of individuals in Lucca – women, for instance, or foreigners – who encounter state institutions without having the capacity to *force* them to take their interests and ideas into account. Recall that the state must prevent private domination but also aim to perform this

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<sup>33</sup> Cf. Pettit, 1997. Ch. 6, 171-205.

and its other functions in a non-arbitrary manner. In other words, it must restrain private domination while avoiding becoming an agent of domination itself. In its capacity as a domestic actor, the state is a *non-dominating* actor when it submits itself to the control of those with whom it interferes. Lucca – and its contemporary counterparts – come closer to meeting this standard of non-domination than Constantinople does, but many individuals in Lucca and contemporary republics nevertheless remain subject to the arbitrary power of the state. Women and foreigners in Lucca can certainly not be said to benefit from non-arbitrary rule.

Whereas women have now been incorporated in the republic, foreigners have not. Citizens of a republic are subject to *non-arbitrary* political rule, but for the foreigners who live in their midst, the rule of that same state remains *arbitrary*. After all, they are still excluded from participation in the (electoral) processes of accountability and contestation. I argue that this is a problem for republicans like Miller who are also moral cosmopolitans. After all, since he, at least at the level of principle, cares equally about the freedom of individuals everywhere (rather than exclusively about our own freedom or that of persons very much like us), he must be wary of the way in which our state imposes our laws on the non-citizens in our midst. A republican who is also a moral cosmopolitan must be committed to extending the status of citizenship to residents, since without it, an individual cannot be free.

The move that I am making here fits squarely in the debate about the contemporary relevance of republicanism, a debate that was started with the recent republican revival. The republican project is one of adaptation: whereas classical republicans had only male property-holders in mind, Pettit and others explicitly repudiate this restrictedness, and articulate more inclusive accounts. In explaining the aims of his project, Pettit explains that he will “break

with the élitism of traditional republicans, and assume that our concern must be universal in scope. The brand of republicanism that we shall be developing is in this respect a characteristically modern or inclusive brand”.<sup>34</sup> The exclusion of residents is therefore quite puzzling. I suggest that residents be included for much the same reasons that women and non-property-owners are: because these individuals are as likely as male property-owners to suffer from being subjected to arbitrary rule. The freedom of non-citizen residents cannot be worth less than the freedom of those who presently benefit from the privileges of citizenship.

## V.

I am not the first to note the problem that the non-citizen resident poses. Indeed, in the early 1980s, Michael Walzer worried about ‘guests’ in a republic, writing that persons who are subject to the state’s authority “must be given a say, and ultimately an equal say, in what that authority does”, since they will otherwise “experience the state as a pervasive and frightening power that shapes their lives and regulates their every move—and never asks for their opinion.”<sup>35</sup>

More recently, Iseult Honohan has problematized the uncontrolled interference in the lives of non-citizen residents by the state. She sees subjection to state authority as the basis for citizenship, and citizens as ‘involuntarily interdependent as equals in a practice or institution.’<sup>36</sup> Placing an emphasis on ‘freedom as citizenship’,<sup>37</sup> it worries her that a minority of state inhabitants who are, like citizens, subject to state authority lack this official status.<sup>38</sup>

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<sup>34</sup> Pettit, 1997, p.96.

<sup>35</sup> Walzer, M. 1983. *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books. P.61; P.59.

<sup>36</sup> Honohan, I. 2001b. Friends, Strangers or Countrymen? The Ties between Citizens as Colleagues. *Political Studies*. 49 (1), 51-69. P. 55.

<sup>37</sup> Honohan, I. 2001a. Freedom as Citizenship. *The Republic*. 2, 7-24.

<sup>38</sup> Honohan, I. 2009. Republican Requirements for Access to Citizenship. In *Citizenship Acquisition and National Belonging: Migration, Membership and the Liberal Democratic State*, ed. G. Calder, P. Cole, and J.

As far as her remedy for the problem of resident domination is concerned, she envisions a waiting period of three to five years before granting citizenship status, during which residents would gain sufficient knowledge of the political culture of the state.<sup>39</sup> According to a similar line of thought, long-term residents can be accorded citizenship status only insofar as they are willing to meet the stringent standard of republican civic virtue.<sup>40</sup> In republican thought, the citizenry play an important role: in fact, the continued existence of the republic depends on their vigilance. The development of such a demanding public virtue is facilitated when individuals identify with, and are attached to, their country. Indeed, citizens must be encouraged to regard their state with “a particular type of love, that is, *pietas* or *caritas*, which may be translated as respect and compassion.”<sup>41</sup> The Roman republican tradition thus introduces *political patriotism*, or the identification of the fatherland with *respublica*, the common good or common liberty. Citizens must be attentive to the exercise of arbitrary power and keen to ensure that the state is not captured by special interests; they must adopt a posture of constant watchfulness. Because there is an expectation of active citizenship, a waiting period is necessary in order to bring newly-arrived residents ‘up to speed’ on the complexities of political life.

## VI.

I have three concerns with Honohan’s residency condition for citizenship. First, the need for a three-to-five-year-long residency is not adequately motivated. The reason for requiring it

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Seglow, 91-104. Basingstoke, UK: Palgrave Macmillan. Pp.99-100. For other work of hers on civic republicanism and citizenship, see Honohan, I. 2002. *Civic Republicanism*. London: Routledge.

<sup>39</sup> Many scholars make the granting of citizenship conditional upon a period of residency. Other interesting proposals include Cohen, E.F. 2011. Reconsidering US Immigration Reform: The Temporal Principle of Citizenship. *Perspectives on Politics*, 9 (3), 575-583; Kostakopoulou, D. 2008. *The Future Governance of Citizenship*. Cambridge: Cambridge University Press.

<sup>40</sup> E.g. Viroli, M. 1997. *For Love of Country: An Essay on Patriotism and Nationalism*. Oxford: Oxford University Press.

<sup>41</sup> Viroli, 1997. P.19.

relates to the republican tradition's demand for active citizenship. I will, for now, assume it to be true that republics rely on, and indeed need, active citizenship on the part of all those who are full members, and I will also assume that only those with years of residency can muster the appropriate commitment. Even if we accept these two claims, however, it is not clear why this consideration should outweigh a competing one, namely, that the presence of non-citizen residents in our polity entails their domination. That is, even if it were better, all things considered, to ask of non-citizen residents that they 'prove themselves' to us in terms of their knowledge of and dedication to our state and its institutions, it is not clear why this should trump our desire, as moral cosmopolitans, to avoid being implicated in the domination of others. It seems odd that Honohan would consider the domination of non-citizen residents (by us and our laws) to be an appropriate price to pay (by them, not us) for our reassurance that we are joined by newcomers with a similar orientation towards active citizenship. In any case, an argument for this is lacking.

Intuitively, if it is indeed the case that these two genuine concerns cannot both be resolved, the balance seems to tilt in the other direction. A substantial minority of the populations in most developed republican/democratic states are non-citizens. It seems troubling that we should satisfy our need for active citizenship on the back of the (years-long) domination of tens or even hundreds of thousands of non-citizen residents. Before resorting to such measures, we should presumably first attempt to find an alternative way of ensuring that there is sufficient vigilance.

Second, even if we care deeply about active citizenship, there may be no better way to encourage belonging and vigilant, active citizenship than by making that status immediately available. My doubt here is with the presumed mechanism for creating active citizens. It is unclear why Honohan demands that the ability to engage in active citizenship should precede



the granting of formal citizenship status. Of course, the aptitude for active citizenship may in part come with years of residence, but the granting of formal citizenship status will probably do a lot to bring this aptitude about, and to bring it about more quickly. The practice of voting is for instance likely to increase one's active concern for the democratic accountability of politicians.

Third, it is unlikely that republicanism requires an 'active' level of commitment on the part of all citizens at all times. In the contemporary world, it may be impossible to expect this level of commitment on the part of citizens. Waldemar Hanasz, in particular, has highlighted some of the disadvantages of the republican model of civic virtue.<sup>42</sup> In addition, it seems that the continued existence of the republic in practice demands this level of commitment on the part of at most a certain proportion of its citizens. 'Vigilance' can include any number of behaviors, from voting politicians out of office when they fail to track the interests of the population, contesting decisions in the public sphere, to joining resistance movements in civil society. In modern societies of 10 to 300 million inhabitants, it seems clear that not all individuals must engage in these behaviors all of the time in order to ensure that the state remains forced to track the population's interests. Miller admits as much when he writes that "[n]obody needs to engage in all these activities", but he follows this statement by worrying about the health of democracy "unless there is a sufficient level of citizen commitment overall" and he therefore believes it is "reasonable to expect immigrant groups to act as citizens in this wider sense, without assuming that their pattern of engagement will precisely mirror that of longer-established groups."<sup>43</sup> While I agree that immigrant groups

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<sup>42</sup> Hanasz, W. 2006. Toward Global Republican Citizenship? *Social Philosophy and Policy*, 282-302.

<sup>43</sup> Miller, 2008a, p. 381.

should eventually be expected to display signs of active citizenship, it is simply not necessary to expect this at the outset.<sup>44</sup>

It is possible to protest here that I have overemphasized the benefits of citizenship at the expense of its corollary obligations. Perhaps there is value to be found in making the granting of citizenship conditional upon the display of the appropriate attitude towards the polity. If nothing else, it will ensure that individuals value their status as citizens and recognize that all compatriots make similar sacrifices in maintaining the polity. It will also prevent a problem of free-riding. If it becomes generally known that only certain citizens need to be active citizens, and only some of the time, individuals may be incentivized to skirt their onerous duties of citizenship.

I have two replies to this. First, again, it seems normatively problematic to put in place conditions on citizenship status when that status is necessary for the enjoyment by the individuals of the very basic and crucial value of freedom. Second, while I acknowledge that the decoupling of the benefits and duties of the status of citizenship may result in free-riding, this problem can be overcome by instituting a ‘division of labor’ for active citizenship. Active citizenship could be regulated in the way that this happens with jury duty. Some individuals must serve on juries at any time, but not everyone needs to, and not all the time. Domestic legal systems have found ways of ensuring, as best and as fairly as possible, that all individuals eventually participate. In addition, importantly, it seems appropriate to institute a period of exemption on full active citizenship – perhaps the three-to-five years that Honohan mentioned in connection with granting citizenship status – for new citizens. This is not only perfectly consistent with the requirement of vigilance, it avoids free-riding, since these newcomers will eventually be expected to contribute in the way that other citizens do.

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<sup>44</sup> I will return to this point in a moment.

Finally, the period of exemption from active citizenship also meets halfway the concern that individuals may need time to learn what active citizenship truly entails. An exemption period for new citizens is thus one way of reconciling the two concerns – the need for active citizenship, on the one hand, and the desire not to dominate residents, on the other.

The reader may object to my apparent conflation of different types of non-citizens. Surely, so the argument goes, tourists and other temporary visitors should not be accorded citizenship status in all jurisdictions that they may at one point or another fall under. I am happy to concede the point about tourists. In fact, Kant's principle of universal hospitality may be an elegant solution for the problem of the domination of travelers. While travelers must be welcomed by the state and afforded basic rights and services, they are not owed citizenship rights, because they remain primarily attached to, influenced by, and protected by their own state of citizenship.

However, the objection does not hold in the case of residents who set up a life in our state – whether on a semi-temporary basis, such as guest workers or foreign students, or on a more permanent basis, that is, with an initial intent to immigrate. Individuals who are in possession of a non-immigrant, temporary visa – such as F-1 or J-1 in the United States – will nevertheless be subject to the state's rule. Even if their state of citizenship is also a republic, it is not sufficient for the republican to respond that the freedom of residents is adequately guaranteed by their membership in that distant state. After all, the state of citizenship cannot fully ensure that their citizens are shielded from arbitrary interference by the state of residence.<sup>45</sup>

Instead, with very few exceptions, residents have a *prima facie* claim to citizenship at the time they take up residency.

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<sup>45</sup> Consular assistance and diplomatic or political pressure only go so far. Ultimately, the non-citizen resident is subject to the rule of the state of residence, not the state of citizenship.

## VII.

Thus far, I hope to have established, first, that non-citizen residents are dominated by the law in republican states; second, that this something we, as moral cosmopolitans, ought to be concerned about; and third, that this concern with domination cannot, at least not without further argumentation, be subordinated to the concern with active citizenship.

Readers who agree with me so far may still object that there must surely be alternative ways to secure non-domination for non-citizen residents, and that it is not necessary to conclude that such residents have a *prima facie* claim to citizenship. In what follows, I will briefly discuss three such alternatives, and I will explain why they are inferior to the solution of extending citizenship status to residents.

The first alternative is to ensure that non-domination is guaranteed by an independent judiciary. Owen Fiss has argued that political rights can justly be restricted to citizens, and that this does not need turn non-citizens into ‘pariahs’ who are treated badly in society.<sup>46</sup> Focusing on the American context, Fiss argues that, as members of society, non-citizens are protected by an anti-subordination principle that guarantees their social rights. By this, he means that law should reform any institutions and practices that reinforce a secondary status for certain groups in society, in this case, non-citizens. An active judiciary can thus compensate for the lack of political rights. Fiss also notes the possibility of naturalization as evidence for the time-limited and therefore less objectionable character of the political exclusion.

Unfortunately, this is not a satisfactory alternative to the extension of citizenship status to non-citizen residents. After all, in a republican/democratic state, the independent judiciary is controlled, however indirectly, by the citizenry. It is subject to checks and

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<sup>46</sup> Fiss, O. 1999. *A Community of Equals: The Constitutional Protection of New Americans*, ed. J. Cohen and J. Rogers. Boston: Beacon Press. P.19.

balances that the citizenry put in place and continues to endorse. Elected officials can speak out against the judiciary on behalf of slighted citizens, such as when Republicans lament ‘activist judges’ or Democrats decry the Citizens United decision. The same officials are not forced to respond on behalf of non-citizens and track their interests. Citizens can thus be said to control the interference of the judiciary in their lives in a way that is not the case for non-citizen residents. For residents, a well-functioning independent judiciary resembles a kind master; an actor which can normally be relied upon to protect their rights, but whose rule they ultimately do not control. It is not a sufficiently reliable guarantor for their freedom, since they cannot ensure that the judiciary will continue to play this salutary role. Even if the history of the judiciary suggests continuity in this regard, an element of arbitrariness in its dealings with residents remains. In times of political upheaval, even previously independent judiciaries have been known to become partisan actors in politics. Foreigners and others who are disenfranchised tend to lose out in such circumstances.

The second alternative is to decouple voting and citizenship status in order to allow residents to vote. Non-citizen voting has a long history. It was only abolished in the United States in 1928,<sup>47</sup> and European Union countries currently permit non-citizen voting, although it is often but not always limited to residents with other EU citizenships and to local elections. Ron Hayduk has written in support of local voting rights for non-citizen residents.<sup>48</sup> His argument focuses on the “stake and interest”<sup>49</sup> that non-citizens have in the state, its institutions, and its political decisions. Focusing on the United States, he links the project of non-citizen voting to the enfranchisement of women and African-Americans. As

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<sup>47</sup> Aylsworth, L.E. 1931. The Passing of Alien Suffrage. *American Political Science Review*. 25 (1), 114-116.

<sup>48</sup> Hayduk, R. 2004. Democracy for All: Restoring Immigrant Voting Rights in the US. *New Political Science*. 26(4), 499-523; Hayduk, R. 2006. *Democracy for All: Restoring Immigrant Voting Rights in the United States*. New York: Routledge.

<sup>49</sup> Hayduk, 2004, p. 508.

Hayduk sees it, voting is linked to rights and equality, and is therefore a necessary step towards empowerment.<sup>50</sup> Without voting rights, non-citizens are subject to the whims of politicians and citizens, whose actions are constrained by law but not by any control that non-citizens wield themselves.

My assessment to non-citizen voting mirrors that which I offered in response to Fiss' proposal. Simply put, it is not a reliable solution from the perspective of the non-citizen resident. There is no assurance that the arrangement will continue in perpetuity, and, quite to the contrary, we know from history that non-citizen voting was *abolished* in the US – a decision over which non-citizen residents presumably had no control. The citizenry are then again akin to the kind master, who rules benignly but without being forced to do so by those who are subject to his rule.

## VIII.

Finally, a third alternative exists, which decouples citizenship and territory. While several versions of transnational or global citizenship have been proposed, I will focus on the republican approach of James Bohman.<sup>51</sup>

Bohman rejects the republican claim that individuals can enjoy freedom only in the context of a republican state, and he argues that multiple, overlapping *dêmoi* are a better context for the realization of non-domination. Connected to one another by public spheres,

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<sup>50</sup> For a skeptical perspective on non-citizen voting, see Renshon, S. A. 2009. *Noncitizen Voting and American Democracy*. Lanham, MD: Rowman & Littlefield.

<sup>51</sup> Bohman, J. 2007. *Democracy across Borders: From Dêmos to Dêmoi*. MIT Press; Bohman, J. 2001. Cosmopolitan Republicanism: Citizenship, Freedom, and Global Political Authority. *The Monist*, 84 (1), 3-21. Several other projects employ a similar strategy. See e.g. Bauböck R. 1994. *Transnational Citizenship. Membership and Rights in International Migration*. Aldershot, UK: Edward Elgar; Benhabib, S. 2004. *The Rights of Others: Aliens, Residents and Citizens*. Cambridge: Cambridge University Press; Owen, D. 2009. Resident Aliens, Non-Resident Citizens and Voting Rights: Towards a Pluralist Theory of Transnational Political Equality and Modes of Political Belonging. In *Citizenship Acquisition and National Belonging*, ed. Calder, G., P. Cole and J. Seglow. Basingstoke, UK: Palgrave Macmillan.

these various political communities provide opportunities for the exercise of the normative powers of citizenship. Citizens can properly resist domination only when their right to be recognized as members in the human political community is acknowledged as a basic human right. Human rights must thus be reconceptualized as membership rights in the political community of humanity, with humanity serving as the addressee of rights claims. The optimal global institutional structure is a large and differentiated federation that disperses power at different levels and in different locations. Bohman champions the creation of a robust global public sphere, transnational civil society, and different levels of formal political institutions.

I find his proposal attractive, and I can imagine that global political and other institutions may in time complement the state in its domestic role as the guarantor of liberty. It is nevertheless unclear why Bohman neglects to take seriously the possibility that the state could undergo another process of renewal and inclusion. After all, republicanism successfully moved away from the early focus on male property-owners. Global institutions, such as those that are associated with the United Nations, may play an increasingly important role in promoting liberty, but it is too early for us to determine whether they will be worthy successors of the state, especially as far as domestic forms of domination are concerned.

Second, the topic of this paper notwithstanding, the republican state is relatively successful in its attempt to avoid becoming a source of public domination. The republican state is currently still a valuable actor: it ensures that the large proportion of citizens among the population benefit from non-arbitrary rule. This is a tremendous achievement, and one that we should not lightly cast aside in the hopes of finding a non-dominating public actor that is in some way superior, or better suited to an age of globalization. Bohman's suggestion that we jettison the conceptual connection between republican liberty and the state thus

seems to be somewhat of an overreaction to a problem of exclusion that is contained within a relatively small segment of the population. Republicanism proved capable of fully incorporating women and ethnic minorities, and it is not inappropriate to presume that it might also be capable of incorporating residents.

## IX.

In conclusion, I have argued that residents have a *prima facie* claim to citizenship status. It is normatively problematic for republicans such as Miller, who are also moral cosmopolitans, to champion a particular kind of attachment – to the republican state as a guarantor of freedom – and to withhold opportunities for that kind of attachment from residents.

Where does this leave us? It seems that republican states have no option but to become, as Richard Beardsworth puts it, “champions of cosmopolitanism.”<sup>52</sup> Citizens of republican states ought to demand of their state that it displays concern for non-citizen residents and that it offers them the same set of privileges that they themselves enjoy.

However, there is an important caveat. The global political order, with its extensive inequality and strong economic pull from certain regions to others, is so constituted that it may be impossible to extend citizenship status to the tens or hundreds of thousands of non-citizen residents who live in our midst. There may even be good reasons for holding off on granting citizenship status to residents, since doing so may attract a higher number of newcomers and exacerbate the ‘brain drain’ in countries of origin. As a matter of policy, then, it is not clear whether we can or even should make citizenship status available to all non-citizens who reside in our territory.

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<sup>52</sup> Beardsworth, R. 2011. *Cosmopolitanism and International Relations Theory*. Cambridge: Polity Press.



Even if we concede that non-citizen residents may in fact not be granted the citizenship status that they have a claim to, several courses of action are still available to us. First, it is important to acknowledge that they do have a *prima facie* claim. Second, we must search for a set of institutional and other mechanisms that, together, provide the best possible ‘second-best’ arrangement. This could include Fiss’ independent judiciary, Hayduk’s proposal for non-citizen voting, a symbolic apology to non-citizen residents, compensation,<sup>53</sup> and/or forms of surrogate representation.<sup>54</sup> Perhaps most importantly, we must change our rhetoric about non-citizen residents. Instead of asking whether they meet our standards of integration and putting financial and other obstacles in their way, we should focus on modifying our treatment of them where that falls short of what we, as moral cosmopolitan citizens of a republic, ought to aspire to.

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<sup>53</sup> Compensation could for instance take the form of loosening the requirements for qualifying as ‘in-state’ students for the purpose of public university tuition. It could also entail the reduction or abolishment of visa fees.

<sup>54</sup> Perhaps foreign-born representatives are well-placed to represent residents who lack citizenship status. See e.g. Mansbridge, J. 2003. Rethinking Representation. *American Political Science Review*, 97 (4), 515-528; Mansbridge, J. 1999. Should Blacks Represent Blacks and Women Represent Women? A Contingent Yes. *The Journal of Politics*, 61 (3), 628-657.

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