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## DEMOCRACY AND CITIZENSHIP: FRANCHISING RIGHT TO VOTE TO NON- CITIZENS

### Abstract

Right to vote and active participation of the members of any given society in a decision-making process are inevitable elements of the democracy. Thus, in any society, the voice of each individual is of great importance. Recent trends, especially the increasing influx of migration, are changing the nature of the societies in almost all countries and emerging diversities bring new challenges. These challenges urge governments to implement policies to deal with them. One of the challenges is the right to vote (global suffrage) for foreigners. Almost in all countries the right to vote is reserved for the citizens (nationals). The potential question here is: whether the voting rights should be extended to everyone in the society or at least to the non-citizens with legal residence. To find an answer to this question this article will first examine the reciprocal relationship between democracy and citizenship and delve into the notion of 'democracy' as a constitutional principle and will discuss its indispensable constituent components. The constitutional frameworks and legislations of the target countries, namely, New Zealand, Chile, Malawi and Uruguay and of the European states will be exemplified and compared. Later, under the light of its findings the paper will try to seek an answer to the main research question.

### Annotasiya

Səsvermə hüququ və cəmiyyətin istənilən üzvünün qərarların qəbulu prosesində fəal şəkildə iştirakı demokratiyanın əvəzolunmaz elementləridir. Belə ki, hər hansı bir cəmiyyətdə hər bir fərdin səsinin eşidilməsinin böyük əhəmiyyəti vardır. Son tendensiyalar, xüsusən də artan miqrasiya axını, demək olar ki, bütün ölkələrdə cəmiyyətlərin xarakterini dəyişir və yaranan müxtəlifliklər yeni çağırışlar gətirir. Bu çağırışlar hökumətləri onlarla mübarizə aparmaq üçün siyasət həyata keçirməyə sövq edir. Belə çağırışlardan biri əcnəbilər üçün səsvermə hüququdur (qlobal seçki hüququ). Demək olar ki, bütün ölkələrdə səsvermə hüququ vətəndaşlar üçün nəzərdə tutulur. Burada potensial sual yaranır: səsvermə hüququ cəmiyyətdəki hər kəsə və ya ən azı qanuni yaşayış yeri olan qeyri-vətəndaşlara şamil edilməlidir? Bu suala cavab tapmaq üçün bu məqalə ilk növbədə demokratiya və vətəndaşlıq arasındakı qarşılıqlı əlaqəni araşdıracaq, konstitusion prinsip kimi "demokratiya" anlayışını tədqiq edəcək və onun əvəz edilməz tərkib hissələrini müzakirə edəcəkdir. Hədəf ölkələrin, yəni Yeni Zelandiya, Çili, Malavi və Uruqvay və Avropa dövlətlərinin konstitusiyaya çərçivələri və qanunvericilikləri nümunə kimi təhlil və müqayisə ediləcəkdir. Bundan sonra, araşdırmanın nəticələrinin işığında məqalə əsas tədqiqat sualına cavab verməyə çalışacaqdır.

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## Introduction

With growing globalization after 1990s, although some say it is in decline,<sup>1</sup> it is safe to argue that, nowadays, the majority of the countries comprise people with diverse cultural backgrounds.<sup>2</sup> As of 2020 the number of international migrants was estimated to be around 281 million which equates to 3.6 per cent of the global population.<sup>3</sup> This diversity raises several significant and, perhaps, contentious questions. For instance, disputes between “aboriginal” majorities and “foreign” minorities<sup>4</sup> are becoming more frequent over the topics on language rights, regional autonomy, political representation and the right to be heard (right to vote), educational standards, land claims, immigration and naturalization laws, and even national symbols like the national anthem or holidays and so on.<sup>5</sup> Consequently, the greatest problem facing democracies today is finding solutions that are both morally justifiable and politically feasible to cope with these issues<sup>6</sup> now with an increasing influx of migrants.

One of the boiling disputes, *inter alia*, is about granting voting rights to the proportion of the population who are legal residents in any country either with the nationality of other countries or without nationality at all, thus, being stateless. This article shall humbly try to find an answer to the question whether right to vote should be franchised to these persons. To better

<sup>1</sup> Peter Zeihan, *The End of the World is Just the Beginning: Mapping the Collapse of Globalization*, 11-17 (2022).

<sup>2</sup> Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, 1-10 (1995).

<sup>3</sup> World Migration Report 2022, United Nations International Organization for Migration, available at <https://publications.iom.int/books/world-migration-report-2022> (last visited August 14, 2022).

<sup>4</sup> Rachel Busbridge, *Multicultural Politics of Recognition and Postcolonial Citizenship: Rethinking the Nation*,

<sup>5</sup> Veronica Benet-Martinez and Ying-Yi Hong, *The Oxford Handbook of Multicultural Identity*, 438-462 (2014).

<sup>6</sup> Kymlicka, *supra* note 2, 1-10.

understand the governing dynamics on the matter, this entry will first examine the reciprocal relationship between democracy and citizenship by providing historical development of these two notions basing on the existing literature and practice. The paper will then delve into the “democracy” as a constitutional principle and its indispensable constituent components, namely, the rule of law, the inclusion of the society members in the decision-making process and global suffrage shall be discussed. To shed light on the existing black letter laws, in the next section, the article will exemplify the constitutional frameworks of the target countries, namely, New Zealand, Chile, Malawi and Uruguay – countries that grant voting rights to non-citizen legal residents (although they are also limited). In comparison, the legislative schemes of Germany, the United Kingdom as well as the Nordic European countries – Denmark, Norway, and Sweden shall also be covered. Lastly, the paper will try to seek an answer to the main research question under the light of its findings.

## I. Understanding democracy and citizenship

The link between democracy and citizenship (nationality) has long been established.<sup>7</sup> To better understand this relationship this section shall discuss the main perceptions and definitions of “democracy” and “citizenship”.

“Democracy” – the word can be traced back to the ancient Greece. In the Greek language “*demos*” means “people” and “*kratos*” means “the rule, sway, governance or authority”, thus, in combined “democracy” means “the rule of people” or “popular authority or governance”.<sup>8</sup> Today, the word “democracy” is used widely all-over the world and has been reflected in most of the constitutions.

Different definitions and perceptions of the democracy do exist in the legal and political literature. For instance, Plato perceived democracy as the rule of “opinion” over the “knowledge”, therefore, he was mostly in an opposing position to it.<sup>9</sup> For Aristotle, democracy was a requirement for a good governance, however, it was by no means sufficient.<sup>10</sup> According to him, if we are discussing justice and good governance, we are referring to a complexity of various ideas, ideals, and procedures a complexity that never stays the same.<sup>11</sup>

In the words of Meriam Charles “*democracy is a form (kind) of political organization in which the majority of the community determines the general control*

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<sup>7</sup> Richard Bellamy, *Citizenship: a Very Short Introduction*, 97-124 (2008).

<sup>8</sup> Definition of Democracy, Oxford Reference, Oxford University Press, <https://www.oxfordreference.com/view/10.1093/acref/9780195148909.001.0001/acref-9780195148909-e-241> (last visited Aug. 8, 2022).

<sup>9</sup> Bernard Crick, *Democracy: A Very Short Introduction*, 1-2 (2002); *See generally* Anders Dahl Sørensen, *Plato on Democracy and Political Technē* (2016).

<sup>10</sup> Carnes Lord, *Aristotle’s Politics*, 106, 138, 169 (2013).

<sup>11</sup> Bernard Crick, *supra* note 9, 1-2.

and direction of the community in line with understandings and procedures that allow for popular involvement and agreement".<sup>12</sup> Some also argue that several additions have been made to the classical definition of the democracy, such as social or legal equality, individual liberalism, good governance and so on.<sup>13</sup> And for some scholars, since democracy's definitions and operationalizations vary, we may establish a broad difference between "minimal" and "maximal" conceptions of the democracy.<sup>14</sup> The minimal (most basic) definition of the democracy emphasizes the significance of the "means" such as fair elections, observance of the human rights and universal suffrage, while maximal definition, on the other hand, incorporate not only the democratic methods but also "ends" or "results" (such as economic and social rights).<sup>15</sup> Different doctrines have historically defined the democracy in a specific way.<sup>16</sup> For example, in the Soviet doctrine of democracy, the dictatorship of the communist party was considered as a "democracy" for the poorer proportion of the population, i.e., proletariat.<sup>17</sup> Therefore, some consider Soviet communism more dangerous for democracy than fascism (in Italy) and national socialism (in Germany).<sup>18</sup>

As it will be used in this entry, the term "democracy" broadly refers to a system of collective decision-making processes that emphasize equality among participants (citizens).<sup>19</sup> This definition focuses on collective decision-making in which decisions are taken by certain members of the community that are intended to be legally binding on all other community members.<sup>20</sup> This term also includes a wide range of organizational forms and democratic decision-making processes. And these decision-making processes are realised by the participation of the community members, thus through the right to vote.<sup>21</sup> Since, the right to vote at national elections is reserved for only citizens in all countries the citizenship stands at the centre of the discussion for the operationalisation of the democratic institutions.

**"Citizenship" (or "Nationality")** - is one of the most essential notions in

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<sup>12</sup> Charles E. Merriam, *The Meaning of Democracy*, 10 *The Journal of Negro Education* 309, 309 (1941); *See generally* Charles E. Merriam, *The New Democracy and the New Despotism* (1939); *See also* Charles E. Merriam, *What is Democracy?* (1941).

<sup>13</sup> Walter James Shepard, *Democracy*, 180 *The Annals of the American Academy of Political and Social Science* 94, 95 (1935).

<sup>14</sup> Siddhartha Baviskar, Mary Fran T. Malone, *What Democracy Means to Citizens – and Why It Matters*, 76 *European Review of Latin American and Caribbean Studies* 3, 4 (2004).

<sup>15</sup> *Ibid.*

<sup>16</sup> Only some of the doctrines could be covered in a very short research paper.

<sup>17</sup> N. S. Timasheff, *The Soviet Concept of Democracy*, 12 *The Review of Politics* 506, 506 (1950); Vladimir I. Lenin, *State and Revolution in J. Fineburg eds.*, 80 (1935); Hans Kelsen, *Foundations of Democracy*, 66 *Ethics*, 6 (1955).

<sup>18</sup> Kelsen, *supra* note 17, 1.

<sup>19</sup> Democracy, the Stanford Encyclopedia of Philosophy, <https://plato.stanford.edu/entries/democracy/> (last visited Aug. 8, 2022).

<sup>20</sup> *Ibid.*

<sup>21</sup> David S. Tatel, *The Right to Vote*, 159 *Proceedings of the American Philosophical Society*, 1 (2015).

politics, and it is also one of the most extensively debated topics among legal and political scholars.

Citizenship entails “belonging” to a select group of people who decide how a particular political community's citizens inhabit collectively.<sup>22</sup> It has, therefore, traditionally been associated with the privileges of “affiliation” or “belonging” to a specific type of political community in which those who have a certain status are permitted to take part on an equal footing with their fellow citizens in deciding how society is to be governed.<sup>23</sup> And that community's character in many ways reflects the contributions its residents make.<sup>24</sup> In particular, how much and how it respects people as equals is heavily influenced by their involvement or lack thereof.<sup>25</sup>

The starting point of the definition of the ‘citizen’ could be in Diderot and d'Alembert's *Encyclopédie* (1753) under the entry “*citoyen*”.<sup>26</sup> The *Encyclopédie* defines the citizen as “*celui qui est membre d'une société libre de plusieurs familles, qui partage les droits de cette société, et qui jouit de ses franchises*”, meaning “*citizen is the one who is a member of a free society of several families, who shares the rights of this society, and who enjoys its immunities*”.<sup>27</sup> A citizen could only be a man and families were unquestionably the foundational blocks of the society.<sup>28</sup> “Nationality” was also described in the sixth edition of the *Dictionnaire de l'Académie Française*, in 1835, as a definite term for state membership.<sup>29</sup> Swiss philosopher, diplomat and legal theorist Emmerich de Vattel characterised the “national” of a state as an extension of the sovereignty of the state itself.<sup>30</sup> This definition is quite interesting since it categorises the citizenship as extending part of state sovereignty, which means without the state, citizenship cannot exist.

In legal literature, “citizenship” and “nationality” are mostly used as interchangeable politico-legal terms with the only difference at national and international levels. As Paul Weis puts it and now the traditional view is that: “*Conceptually and linguistically, the terms “nationality” and “citizenship” emphasize two different aspects of the same notion: state membership.*<sup>31</sup> “Nationality” stresses the international and “citizenship” the national, municipal, aspect. Under the laws of the most states citizenship connotes full membership, including the possession of political rights; some states distinguish between different classes of

<sup>22</sup> John C. Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State*, 15 (2018).

<sup>23</sup> Richard Bellamy, *supra* note 7, 12.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> See generally Denis Diderot, *Citizen* (2005). Available at: <http://hdl.handle.net/2027/spo.did2222.0000.070> (last visited Aug. 8, 2022).

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> Guido Zernatto, Alfonso G. Mistretta, *Nation: The History of a Word*, 6 *The Review of Politics*, 351, 351 (1944); Maximilian Koessler, “*Subject*”, “*Citizen*”, “*National*”, and “*Permanent Allegiance*”, 56 *Yale Law Journal*, 58, 61 (1946).

<sup>30</sup> See generally Emer de Vattel, *The Law of Nations* in B. Kapossy and R. Whatmore eds. (2008).

<sup>31</sup> Paul Weis, *Nationality and Statelessness in International Law*, 4-5 (2<sup>nd</sup> ed. 1979).

*members (subjects and nationals)*".<sup>32</sup> Some also of the opinion that nationality refers to the legal "link" or "bond" that exists between a citizen/national and the state and gives rise to rights (the main right to have other rights).<sup>33</sup>

Citizenship has been also reflected in some international landmark cases. For instance, The International Court of Justice in the "Nottebohm" case held that: "*Nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties*".<sup>34</sup> Nationality is thus determined by one's social link to the country of one's nationality, and once established, confers rights and obligations on both the state and the citizen/national. Nationality has also been defined as creating "personal jurisdiction of the individual under international law against other states by the state".<sup>35</sup> In turn, "citizenship" is a means of preserving the state's common norms and values as a social and political community.<sup>36</sup> Citizenship is also the highest of municipal law's political rights/duties.<sup>37</sup> This difference between the two words is also recognized in research by the International Law Association.<sup>38</sup>

Moreover, citizenship, in political theory, typically is described as a package of individual rights and obligations as a member of the political community.<sup>39</sup> Thomas Humphrey Marshall, an author of the seminal essay on citizenship, identifies three elements of citizenship: civil, political and social rights and argues that citizenship requires the balance between these three kinds.<sup>40</sup> The civil element includes basic freedoms of the individual (speech, faith and thought etc.), liberty and the right to justice. Participation in the exercise of political power constitutes the political element of citizenship. Lastly, the social element comprises the security and welfare rights of the society members based on the livelihood standards in that particular society.<sup>41</sup>

For the purposes of the present article "citizenship" and "nationality" and consequently "citizen" and "national" shall interchangeably be used as synonyms.

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<sup>32</sup> *Ibid.*

<sup>33</sup> Alice Edwards and Laura van Waas, *Nationality and Statelessness under International Law*, 11 (2014).

<sup>34</sup> *Nottebohm Case (second phase) (Liechtenstein v. Guatemala)*, International Court of Justice, I. C. J. Reports, 4 (1955).

<sup>35</sup> Alfred M. Boll, *Nationality and Obligations of Loyalty in International and Municipal Law*, 24 *Australian Yearbook of International Law* 37, 37 (2005).

<sup>36</sup> Edwards and Waas, *supra* note 33, 12.

<sup>37</sup> *Ibid.*

<sup>38</sup> *See generally* International Law Association Committee on Feminism and International Law, *Report on Women's Equality and Nationality in International Law* (2000). Available at: [www.unhcr.org/3dc7cccf4.pdf](http://www.unhcr.org/3dc7cccf4.pdf) (last visited Jun. 21, 2022).

<sup>39</sup> *See* Bryan S. Turner, *Citizenship and Social Theory* (1<sup>st</sup> ed. 1993).

<sup>40</sup> T. H. Marshall, *Citizenship and Social Class and Other Essays*, 49, 59, 61-64, 77 (1950).

<sup>41</sup> *Id.*, 8.

## II. Democracy as a constitutional principle and its constituent components

The principle of democracy is reflected in the constitutions of many countries. For example, Article 20 of the Basic Law (1949) of Germany states that “*The Federal Republic of Germany is a democratic and social federal state*”.<sup>42</sup> Similarly, Article 1 of the French constitution (1958) defines that “*France shall be an indivisible, secular, democratic and social Republic*”.<sup>43</sup> Canadian constitution also prescribes the similar democratic rights of its citizens in Article 1.<sup>44</sup> In the constitutions of these countries, defining democracy as one of the constitutional principles can be understood as an adherence to the principle of democracy and as the authority of the population that is predominantly recognised and reflected in the leading legal document of the country. With new developments, such as digital citizenship,<sup>45</sup> etc., democracy has started to entail new dimensions. For instance, the interaction (the communication) between the citizens and the state has been evolving by the application of the new technologies and through the digitalisation of society.<sup>46</sup>

Although new dimensions emerge, for the purposes of this entry, conventional elements of democracy, namely, the rule of law principle, the inclusion of the society members in the decision-making process and global suffrage shall be thoroughly explored.

### A. Rule of law

The term “rule of law”, for the first time, was used by the English republican writer James Harrington, in his tracts *The Prerogative of Popular Government* (1657) and *The Commonwealth of Oceana* (1656), in moderately different terms: “*an empire of laws and not of men*”.<sup>47</sup> Later, “rule of law” as principle arose in the 1800s and 1900s in the challenging evolution of civilian society to safeguard individual liberties against an oppressive state.<sup>48</sup>

Sovereign governments rule over human beings, but the rule of law

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<sup>42</sup> The Basic Law for the Federal Republic of Germany, adopted by the Parliamentary Council on 8 May 1949, was ratified in the week of 16 to 22 May 1949 by the parliaments of more than two thirds of the participating German Länder. Available at: [https://www.gesetze-im-internet.de/englisch\\_gg/](https://www.gesetze-im-internet.de/englisch_gg/) (last visited Aug. 8, 2022).

<sup>43</sup> The Constitution of France (1958). Available at: [https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank\\_mm/anglais/constitution\\_anglais\\_oct2009.pdf](https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constitution_anglais_oct2009.pdf) (last visited Aug. 8, 2022).

<sup>44</sup> The Constitution of Canada (1867). Available at: <https://laws-lois.justice.gc.ca/eng/const/> (last visited Aug. 8, 2022).

<sup>45</sup> Birgit Joeger, Digital Citizenship – a Review of the Academic Literature, in Thuid Hustedt (ed.), *Der Moderne Staat* (dms), 1 (2021).

<sup>46</sup> Karen Mossberger, Toward Digital Citizenship, Addressing Inequality in the Information Age in Chadwick, Andrew and Howard, Philipp N. (eds.), 173-185 (2008).

<sup>47</sup> Spencer Zifcak, *Globalisation and the Rule of Law*, 29 (1<sup>st</sup> ed. 2006).

<sup>48</sup> Political philosophers – John Locke and Immanuel Kant are prominent witnesses to this evolution. See generally *Debates in German Public Law* in Hermann Pünder and Christian Waldhoff (eds.), 99 (2014).

guarantees that the process is channelled as much as feasible through rulemaking and the efforts to apply trustworthy laws. The state assures, in other words, that each person has a fair warning before breaking laws, but if acts so, then he or she must have a right to a fair hearing (access to justice).<sup>49</sup> No one could be penalized without the laws.<sup>50</sup>

Brian Z. Tamanaha simply puts the rule of law principle as “*government officials and citizens are bound by and abide by the law*”.<sup>51</sup> This means that all the state authorities and every single member of the given society must obey the law and shall be equal before it. According to him rule of law comprise several components: i) individuals must believe in the rule of law and devote themselves to it; and ii) they must take it as a necessary and appropriate element of their culture. Only by doing so the rule of law could be durable, covering generations and occasions.<sup>52</sup> Thus these findings establish an important link between the rule of law and the principle of democracy itself.

The rule of law guarantees basic standards, how to evaluate any governmental action which impairs the individual freedom.<sup>53</sup> Thus, according to this principle, each and every intervention of the state should be justified. This justification must be provided by the state and should prove state’s actions in the light of the freedom of the person.<sup>54</sup>

Furthermore, linking the rule of law and social state is one of the strongly debated issues. As the state is built on the foundations of the rule of law, the constitution ensures freedom through the giving of rights. Every state must, however, also control the limits of liberties and those constraints which, for example, must be in place to assist the attainment of social goals for the benefit of the public.<sup>55</sup> For example, this kind of discussion has started in Germany when German Basic Law was adopted in 1949. Since then, in constitutional law context the connection between the rule of law and the social state is being examined.<sup>56</sup>

At supranational level, i.e., in the European Union (EU) law the rule of law principle has another dimension. In essence, the EU cites the rule of law as one of its *raison d’être* – the most important reason or purpose for someone or something’s existence, along with other values.<sup>57</sup> The rule of law is profoundly incorporated into EU primary law – under Article 2 of the Treaty on European

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<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> Brian Z. Tamanaha, *The History and Elements of the Rule of Law*, *Singapore Journal of Legal Studies* 232, 233 (2012).

<sup>52</sup> *Id.*, 246.

<sup>53</sup> Pünder and Waldhoff, *supra* note 48, 30.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Id.*, 97.

<sup>56</sup> *Id.*, 101.

<sup>57</sup> Oliver Mader, *Enforcement of EU Values as a Political Endeavour: Constitutional Pluralism and Value Homogeneity in Times of Persistent Challenges to the Rule of Law*, 11 *Hague Journal on the Rule of Law* 133, 136 (2019).



Union (TEU), it is recognized as one of the basic values. It also functions as one of the guiding principles for EU's external action (Article 21 TEU), is twice referenced in TEU preamble and entrenched in the Charter of Fundamental Rights of the European Union preamble.<sup>58</sup>

## **B. Citizenship and participatory democracy**

Involvement of the citizens or participation of all society members in decision-making procedure and electing representatives for these purposes are among the cornerstones of the democracy.<sup>59</sup> As mentioned in the definitions above, democracy means the rule of people, thus the participation of the population in the decision-making procedure is very important for democracy.

Citizen involvement has long been a subject of legal and political discussions and also an essential block of knowledge and action as one of the motivators of modern debates.<sup>60</sup> However, not all policymakers, politicians, NGOs and companies advocate the participation in order to achieve the democratic empowerment of non-citizens<sup>61</sup> and there are several reasons for this. First, some believe that this kind of participation may lead to a number of undesired outcomes, including higher staff workload, additional resource allocation, increasing levels of public scrutiny, unfavourable media coverage, and increased levels of indifference or distrust of government.<sup>62</sup> On the other hand, supporters of involvement of the non-citizen legal residents argue that for the better ruling – and for better governance, their participation is of utmost importance.<sup>63</sup>

The societies have become more pluralistic, and this new pluralistic nature requires specific approach. Every society has a very specific mind sets and rules and for it accepting new members from different cultures is not an easy task. There should be a commission period of that “newcomer”. However, today, the borders between different cultures, nations, and even countries become transparent. As a result, different legal systems start to coexist together where leads to the legal pluralism.<sup>64</sup> Some define legal pluralism as a coexistence of two or more legal systems on the same social level.<sup>65</sup> Legal

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<sup>58</sup> *Ibid.*

<sup>59</sup> Richard Bellamy, *supra* note 7, 12.

<sup>60</sup> Dorien Zandbergen, Rivke Jaffe, *Participation: Citizenship, Democracy and Responsibilization*, 26 *Etnofoor* 7, 7-10 (2014).

<sup>61</sup> *Ibid.*

<sup>62</sup> *See generally* Kathe Callahan, *Citizen Participation: Models and Methods*, 30 *International Journal of Public Administration* (2007); Maureen M. Berner, Justin M. Amos, Ricardo S. Morse, *What Constitutes Effective Citizen Participation in Local Government? Views from City Stakeholders*, 35 *Public Administration Quarterly* 128, 129 (2011).

<sup>63</sup> *See generally* Thamy Pogrebinski, David Samuels, *The Impact of Participatory Democracy: Evidence from Brazil's National Public Policy Conferences*, *Comparative Politics*, 46 (2014).

<sup>64</sup> Brian Z. Tamanaha, *The Rule of Law and Legal Pluralism in Development*, 2. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1886572](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1886572) (last visited Jun. 20, 2022).

<sup>65</sup> Sally Engle Merry, *Legal Pluralism*, 22 *Law & Society Review* 869, 870 (1988).

pluralism may also be characterized in terms of a conception that co-exists in the same geographic area as legal systems, networks or regimes.<sup>66</sup> None of these definitions of the “legal pluralism” is straightforward and nor widely acceptable. As these definitions imply, we might call legal pluralism if there are two or more formal or informal legal contexts at the same time. These diverse systems need not always to be comparable or “friendly” to one another. One significant question, however, is: If these alternative legal components may fulfil tasks of the rule of law that state legal systems fail to do so or do not will to do so at all?<sup>67</sup> As Paul Schiff Berman contends “*legal pluralism provides not just a broader explanation of the world we live in, but also a potentially helpful alternative approach to the construction of procedural mechanisms*”.<sup>68</sup> Granting some rights to some portion of the society can sometimes cause disagreements and this might deprive some part of the society in active decision-making procedure of that society. Here we again land in the issue of the inclusion of all in the “game”. If some portions of the pluralistic society are not included in this procedure, can we say that we have fully functioning democracy?

### **C. Global suffrage: how does international law regulate?**

As mentioned above, one of the main constituting elements of the democracy is suffrage or right to vote. The ability to modify the system is, of course, dependent on the freedom to vote without interference. It is the ultimate check on the government and the genuine guarantee of any liberty,<sup>69</sup> since the aim in a democracy is to seek the agreement and mandate of the population. Elections, defined as a method of filling public positions through a competitive battle for the people’s vote, have become associated with democracy, as they provide ordinary voters the right to pick their leaders. As a result, elections have become one of the yardsticks for determining a country’s level of democracy.<sup>70</sup>

The historical development of “right to vote” or “suffrage” are not covered in this article. However, it should be noted that it has past long way to reach to the current understanding as we have today. Not all members, even nationals of any society had the right to vote at first. Throughout history, suffrage was progressively extended to poorer males and women in Western nations. Newly developing countries tended to offer rights more broadly

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<sup>66</sup> Matej Avbelj, *The EU and the Many Faces of Legal Pluralism Toward a Coherent or Uniform EU Legal Order?*, 378 (2006).

<sup>67</sup> Tamanaha, *supra* note 64, 2.

<sup>68</sup> Paul Schiff Berman, *Global Legal Pluralism*, 80 *Southern California Review* 1155, 1156 (2007).

<sup>69</sup> *See generally* James W. Prothro, Charles M. Grigg, *Fundamental Principles of Democracy: Bases of Agreement and Disagreement*, 22 *The Journal of Politics* (1960).

<sup>70</sup> *See generally* Gerald M. Rosberg, *Aliens and Equal Protection: Why Not the Right to Vote*, 75 *Michigan Law Review* (1977); *See Concepts and Principles of Democratic Governance and Accountability*, 19 [https://www.kas.de/c/document\\_library/get\\_file?uuid=56a283ae-50ff-0c9b-7179-954d05e0aa19&groupId=252038](https://www.kas.de/c/document_library/get_file?uuid=56a283ae-50ff-0c9b-7179-954d05e0aa19&groupId=252038) (2011) (last visited July 21, 2022).

straight away, so that political rights are now universal in virtually all countries with any type of elections. However, the path from representational government to broad democracy was lengthy and winding.<sup>71</sup> Only in the second part of the twentieth century, more than 150 years after the establishment of representative institutions, did universal suffrage become an unassailable norm.<sup>72</sup>

The global suffrage, now, has been reflected in a lot of international and legal instruments. The United Nations General Assembly overwhelmingly approved the Universal Declaration of Human Rights (UDHR) in 1948<sup>73</sup>, recognizing the critical role that fair and free elections play in guaranteeing the basic right to participatory governance. Article 21 of the UDHR states: *“Everyone has the right to take part in the government of his/her country, directly or through freely chosen representatives”*.<sup>74</sup> While the right to vote is universally acknowledged as a fundamental human right, it is not effectively enforced for millions of people worldwide. Non-citizens, young people, minorities, those who commit crimes, the homeless, handicapped people, and many others are consistently disenfranchised for a number of reasons, including poverty, illiteracy, intimidation, or rigged voting processes. The development of election monitoring groups has a significant influence in combatting disenfranchisement. Governments all over the globe are struggling to fulfil the challenge posed by the UDHR in terms of free and fair elections.<sup>75</sup>

Another international instrument – the International Covenant on Civil and Political Rights (ICCPR) in Article 25 specifies that: *“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country”*.<sup>76</sup> Thus, these provisions are strongly related with Article 2 which states that: *“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”*.

While Article 2 of the ICCPR states that voting and participation in

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<sup>71</sup> See generally Adam Przeworski, *Conquered or Granted? A History of Suffrage Extensions*, 39 *British Journal of Political Science* (2009).

<sup>72</sup> *Ibid.*

<sup>73</sup> The Universal Declaration of Human Rights (1948).

<sup>74</sup> *Id.*, art. 21.

<sup>75</sup> See generally University of Minnesota Human Rights Center, Study Guide: the Right to Vote, <http://hrlibrary.umn.edu/edumat/studyguides/votingrights.html> (last visited August 8, 2022).

<sup>76</sup> The International Covenant on Civil and Political Rights, art. 25 (1966).

elections is a universal right that cannot be denied because of one's "status", people all over the globe are being systematically or unwittingly disenfranchised because of not having the citizen status in the societies that they live in.<sup>77</sup> For example, there are millions of legal residents living and working (also paying taxes as nationals do) in different countries without (or with very limited rights at local level) the right to vote and to participate in governance of the society. There are few countries which grant voting rights to non-citizens that are conditional on fulfilling certain requirements of residency. The legislative schemes of these countries shall be discussed later.

At Council of Europe level, the European Convention on Human Rights (ECHR; formally the Convention for the Protection of Human Rights and Fundamental Freedoms)<sup>78</sup> has also several articles stipulate the voting rights. For example, Article 3 of Protocol I of ECHR, state parties agree to organize free elections by secret ballot at regular intervals under conditions that would enable the free expression of the people's opinion in the choosing of the legislature. Articles 9, 10, and 11 of the Convention further regulate the right to freedom of opinion, expression, and peaceful assembly.<sup>79</sup> At United Nations – in a General Comment on ICCPR Article 25, the Committee on Human Rights, an UN-appointed group of human rights experts, defined international election standards in 1996.<sup>80</sup> According to the committee, the mandates of Article 25 should be examined in light of the following: i) Protecting every citizen's right to participate in the conduct of public affairs, including the right to vote and be elected; ii) Peoples' right to self-determination; iii) Every citizen's rights must be protected; and so on.<sup>81</sup> The United Nations and the OSCE perform extensive election monitoring efforts across the world, especially in weak democracies and post-conflict and nation-building situations.

In an American continent<sup>82</sup>, at EU level<sup>83</sup> and also within the context of other regional organizations, right to vote is prescribed as well. However, not all these international and regional instruments are covered in this article. In general, from the nature of all international and regional instruments, it can be concluded that any limits or restrictions on voting rights should be justified basing on objective and fair criteria.

### **III. Constitutional frameworks and legislative schemes on right to vote**

In general, no country is granting voting rights to the non-citizens, or they

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<sup>77</sup> *Id.*, art. 2.

<sup>78</sup> The European Convention on Human Rights (1950).

<sup>79</sup> *Id.*, art. 9, 10, and 11.

<sup>80</sup> CCPR General Comment No. 25, art. 25 (1961).

<sup>81</sup> *Id.*, para. 2, 3 and 21.

<sup>82</sup> The American Convention on Human Rights, art. 23 (1978).

<sup>83</sup> Charter of Fundamental Rights of the European Union, art. 39-40 (2000).

do so conditionally based on their residency terms and statuses. In this section, the constitutional frameworks and legislative schemes on right to vote of four target countries, namely New Zealand, Chile, Malawi and Uruguay, and of some western European countries shall be discussed.

### **A. Countries grant voting rights to non-citizens**

New Zealand is commonly regarded as having the world's most lenient and inclusive approach to non-citizen voting rights.<sup>84</sup> It is one of the nations that allow non-citizens to vote in national elections and grant voting rights to permanent residents after just one year of residency.<sup>85</sup> In 1975, with an enactment of Citizenship Act of New Zealand the right to vote expanded to include non-citizen residents,<sup>86</sup> meaning they were granted active voting rights (to elect), however, not to be elected until full naturalisation. Having dual nationality is not a bar, as well.<sup>87</sup> One of the main reasons was UK's abandoning its imperial and Commonwealth-based conceptualizations. Thus, the UK citizens had voting rights in New Zealand since 1956.<sup>88</sup> Later they were automatically granted voting rights when they dropped their attachment with the UK. Some argue that extending voting rights fosters inclusion and conveys a message that immigration is an integral part of the society.<sup>89</sup> This means that by including everyone in the decision-making process, countries may attain greater satisfaction of its society members.

Another country that grants voting rights to the non-residents is Chile, since 1925. The expansion of political participation privileges to this category was not the consequence of internal immigrant populations or special political organizations' pressure.<sup>90</sup> Instead, it looked to be a kind of acknowledgement by the Chilean state for the significant contribution made by many of those migrants to the host society. Although obviously ahead of its time, such an expansion was fairly restricted, as it only permitted certain foreigners fulfilling residency requirements.<sup>91</sup> With the adoption of the present Constitution in 1980 a more extensive involvement of non-citizen inhabitants was established. According to the Article 14 of the Chilean Constitution,

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<sup>84</sup> See generally Kate McMillan, *National Voting Rights for Permanent Residents: New Zealand's Experience*, 12 *New Zealand Journal of Public and International Law* (2014).

<sup>85</sup> *Id.*, 21.

<sup>86</sup> Fiona Barker and Kate McMillan, *Access to Electoral Rights New Zealand*, 8 (2016).

<sup>87</sup> *Ibid.*

<sup>88</sup> See Electoral Act (1956); The 1975 Electoral Amendment Act withdrew the British subject matter requirement, although it wasn't replaced with a citizenry requirement unlike Australia and Canada at its historic intersection.

<sup>89</sup> See generally Marco Martiniello, *Political Participation, Mobilisation and Representation of Immigrants and Their Offspring in Europe* in Rainer Bauböck eds. (2005); See generally Fiona Barker, Kate McMillan, *Constituting the Democratic Public: New Zealand's Extension of National Voting Rights to Non-Citizens*, 12 *New Zealand Journal of Public and International Law* (2014).

<sup>90</sup> Gabriel Echeverria, *Access to Electoral Rights Chile*, 7-9 (2015). Available at: [https://cadmus.eui.eu/bitstream/handle/1814/38291/EUDO\\_CIT\\_ER\\_2015\\_20.pdf;sequence=1](https://cadmus.eui.eu/bitstream/handle/1814/38291/EUDO_CIT_ER_2015_20.pdf;sequence=1) (last visited Aug. 9, 2022).

<sup>91</sup> *Ibid.*

foreigners who have resided in Chile for more than five years, may exercise the right to vote in the circumstances and manners prescribed by law provided that they meet certain requirements.<sup>92</sup> While Article 14 of the Constitution establishes the basic legal framework for non-citizen residents' franchise, the precise criteria, modalities, and processes are governed by Organic Constitutional Law No. 18700 on Voting and Scrutiny.<sup>93</sup> According to this law the citizens with suffrage rights and foreigners registered in the Electoral Registry who are at least 18 (eighteen) years old are entitled to vote (Article 60).<sup>94</sup> Thus, under Chilean law, all non-citizen residents from any nation have equal voting rights. Foreigners are not allowed candidacy rights since the primary requirement for running for any public office is citizenship.<sup>95</sup>

Malawi is another country that is granting voting rights to the non-citizen who are legally residing in the territory of the country. According to the Article 77 of Malawian Constitution, the ordinary non-citizens who are residing in Malawi for seven years are qualified to be registered as a voter in a constituency, are entitled to vote at national elections.<sup>96</sup> The unqualifying grounds are three-fold: i) mental incompetency of a person according to the laws in force; ii) if a person sentenced to death by a court having jurisdiction in the country either before or after the appointed day; iii) if a person violates any law relating to elections that are in force at the time of, or after, the commencement of this Constitution.<sup>97</sup> But such disqualification shall be valid only with respect to registration for the election in question and the concerned person might qualify for the next elections.<sup>98</sup> Malawian citizens or non-citizens who have been ordinarily resident in Malawi for seven years have right to vote at national elections.<sup>99</sup> Like in New Zealand and Chile this right is active voting right, thus, non-citizens cannot exercise passive voting rights, hence, they cannot be elected for public offices.

Lastly, Uruguay is among the countries extending voting rights in national elections. Article 78 of the Uruguay's Constitution specifies that Foreign men and women i) of good conduct; ii) having a family; iii) who possess some capital or property within the country or are engaged in some profession, craft, or industry; and iv) have habitually resided at least 15 (fifteen) years in the territory of the country; have the right to vote without the necessity of

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<sup>92</sup> Constitution of Chile, art. 14 (1980).

<sup>93</sup> Law No. 18.700, Organic Constitutional Law on Voting and Scrutiny (last amended in 2016), <https://www.bcn.cl/leychile/navegar?idNorma=30082> (last visited Aug. 9, 2022).

<sup>94</sup> Organic Constitutional Law on Voting and Scrutiny, art. 60 (1988).

<sup>95</sup> Echeverria, *supra* note 90, 6.

<sup>96</sup> Constitution of Malawi, art. 77 (1994).

<sup>97</sup> *Id.*, para 3.

<sup>98</sup> *Ibid.*

<sup>99</sup> Malawi National Assembly, Electoral System (1994). [http://archive.ipu.org/parline-e/reports/arc/2195\\_94.htm](http://archive.ipu.org/parline-e/reports/arc/2195_94.htm) (last visited August 9, 2022).

previously obtaining legal citizenship".<sup>100</sup> Thus, Uruguay gives right to vote to the non-citizens in national elections if they reside in Uruguay for minimum fifteen years. The residency should be proved by legal documentation. Some scholar considers the laws of Uruguay as a stark contrast to New Zealand's residency requirement of one year.<sup>101</sup> They argue that, while Uruguay's right to vote is non-discriminatory (de jure), its residency requirement raises the question of how other franchise criteria may discriminate against permanent immigrants.<sup>102</sup>

## **B. Voting rights for non-citizens in European/Nordic countries**

At European Union (EU) level, right to vote is given to all EU member countries' nationals to participate at local (municipal elections) where they reside within the EU.<sup>103</sup> Thus any person who is residing within EU (irrespective of the citizenship) has a right to vote and to stand as a candidate in municipal elections in a member state of the EU.<sup>104</sup> The concerned person must fulfil the following requirements: i) the person should be a citizen of the EU;<sup>105</sup> and ii) should not be national of the member state of residence, but in any event satisfy requirements of that state.<sup>106</sup> Thus regulation of the EU stipulates the voting rights of EU nationals (and that is only at municipal level) and granting right to vote to non-EU residents stays at whole discretion of the member states of the EU.

Some countries have extended these local election rights to non-EU countries' nationals who are residing in their territories. In 1950s, Denmark, Norway, and Sweden created the Nordic Passport Union, allowing Nordic people to freely work and live in any Nordic country.<sup>107</sup> Finland and Iceland became members in 1965.<sup>108</sup> Sweden was the first country in Western Europe to permit foreign citizens to cast ballots in local and state elections in 1975 with an equal qualification time of three years of residence.<sup>109</sup> Following the reform, this matter has been extensively contested for many years. Left-wing

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<sup>100</sup> Constitution of Uruguay, art. 78 (1966).

<sup>101</sup> David C. Earnest, *Noncitizen Voting Rights: A Survey of an Emerging Democratic Norm*, 5 (2003).

<sup>102</sup> *Id.*, 14.

<sup>103</sup> Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not national.

<sup>104</sup> Council Directive 94/80/EC of 19, art. 3 (1994).

<sup>105</sup> According to the Treaty on European Union (TEU), Article 9, every national of a Member State is a citizen of the EU, however, this citizenship is additional to and does not replace national citizenship.

<sup>106</sup> *Supra* note 104.

<sup>107</sup> Nordic Agreements and Legislation. Available at: <https://www.norden.org/en/information/nordic-agreements-and-legislation> (last visited Aug. 9, 2022).

<sup>108</sup> *See generally* Kees Groenendijk, *Local Voting Rights for Non-Nationals in Europe: What We Know and What We Need to Learn* (2008).

<sup>109</sup> *See generally* Martin Ericsson, *Enfranchisement as a Tool for Integration: The 1975 Extension of Voting Rights to Resident Aliens in Sweden*, 38 *Immigrants & Minorities* (2021).

parties sought to expand the right to vote to national elections, while right-wing parties opposed such a move.<sup>110</sup> Denmark is another Nordic country that grants foreigners with right to vote in municipal and regional elections (not in national ones) even if they do not possess Danish citizenship. For this, foreign national should meet two requirements.<sup>111</sup> First, they must have permanent residency and they must reside in Danish Commonwealth (Denmark, Faroe Islands or Greenland) for four years before the election day.<sup>112</sup>

Norway is also among the Nordic countries that grant voting rights to the non-citizen residents in only local (municipal) elections. In 1978, Nordic Passport Union citizens were granted voting and eligibility rights for municipal and county elections with a three-year residency requirement.<sup>113</sup> In 1983, these privileges were extended to all foreign residents. Registration of voters is automatic with registration of the residency. Currently, resident nationals of Nordic Passport Union nations have the same right to vote in local elections as Norwegian citizens, without regard to the period of residency.<sup>114</sup>

In Germany, apart from EU citizens (as noted earlier they are only allowed to participate in local or European elections) no voting rights are granted to the non-citizens to participate at national or local (municipal) elections. In 1989, two *Länder* - states including West Berlin established limited voting rights for resident foreigners in the Federal Republic of Germany. In Hamburg, all legally residing foreigners who had been in the state for a minimum of eight or more years were eligible to vote in municipal elections, whereas in Berlin only five years of residency was a requirement.<sup>115</sup> Schleswig-Holstein likewise gave resident foreigners' voting rights in municipal elections.<sup>116</sup> However, these two German states' franchised rights were short-lived; the Federal Constitutional Court decided in 1990 that both the Hamburg and Schleswig-Holstein's legislation breached the Basic Law.<sup>117</sup> In its decision, the court concluded that the constitutional provision providing German citizens voting rights had to be construed to include only those of German nationality. Court further asserted that the governments should make it simpler for immigrants to become naturalized rather than granting

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<sup>110</sup> *Id.*, 235.

<sup>111</sup> The Right to Vote in Denmark, <https://www.norden.org/en/info-norden/right-vote-denmark> (last visited Aug. 3, 2021).

<sup>112</sup> *Ibid.*

<sup>113</sup> Act on Elections to the Storting, para. 2.2 (2002).

<sup>114</sup> Harald Waldrauch, Electoral Rights for Foreign Nationals: a Comparative Overview of Regulations in 36 Countries, 73 (2003).

<sup>115</sup> See generally Gerald L. Neuman, *We are the People: Alien Suffrage in German and American Perspective*, 42 Michigan Journal of Law (2021).

<sup>116</sup> David C. Earnest, Voting Rights for Resident Aliens: A Comparison of 25 Democracies, 6 (2003).

<sup>117</sup> See generally Donald P. Kommers, *The Federal Constitutional Court: Guardian of German Democracy*, 603 The Annals of the American Academy of Political and Social Science (2006). Available at: <http://www.jstor.org/stable/25097759> (last visited Aug. 9, 2022).



them the right to vote in municipal elections.<sup>118</sup>

In the United Kingdom of Great Britain and Northern Ireland (the UK) the nationals of Ireland and “qualified” citizens of Commonwealth nations are granted full voting rights and the opportunity to run for office in the UK since they are not considered foreigners under the law.<sup>119</sup> This is a relic of the circumstances before to 1983, when they had the status of British subjects. Thus, the Commonwealth citizens and citizens of the Republic of Ireland may register to vote in national elections.<sup>120</sup> Brexit had a huge impact over the voting rights of EU citizens in the UK and reciprocally UK citizens’ rights in the EU countries. UK nationals no longer have the right to vote or run for office in European Parliament or municipal elections in their EU Member State of residence.<sup>121</sup>

This section of the article briefly described the selected countries’ national constitutional frameworks and legislative schemes on granting voting rights to the non-citizens (or non-citizen residents) in national or local (municipal) elections. In the next section, the main reasons behind the existing differences shall be discussed.

#### **IV. Franchising right to vote to non-citizens: discussion**

As mentioned earlier, participation of the members of any given society in a decision-making process is of utmost importance for the operationalisation of the democracy. In this context the right to vote is a tool to realise this participation. As new challenges hugely impact the composition of the communities in all countries, thus, some people migrate from one country to another, granting right to vote to “newcomers” becomes one of the debatable issues. In most countries, regardless of the duration in or proximity of their ties to the state, these groups of people are disenfranchised to attend to the decision-making processes.<sup>122</sup> Then why do nations afraid to grant these rights to non-citizens who are not “ready” to be part of that “nation”, where again this “readiness” is commissioned in accordance with the rules dictated by that very nation?

Some scholars try to classify the pro and contra-arguments for granting voting rights to the non-citizens.<sup>123</sup> Supporting arguments could be categorised as following. First, longer non-nationals live in a community, the more difficult it is to defend their exclusion from public decision-making.<sup>124</sup>

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<sup>118</sup> Groenendijk, *supra* note 108, 7.

<sup>119</sup> Earnest, *supra* note 116, 6.

<sup>120</sup> *Id.*, 10.

<sup>121</sup> EU And UK Citizens’ Rights after Brexit (2020),

[https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/651975/EPRS\\_IDA\(2020\)651975\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/651975/EPRS_IDA(2020)651975_EN.pdf) (last visited Aug. 3, 2022).

<sup>122</sup> Heather Lardy, *Citizenship and the Right to Vote*, Oxford Journal of Legal Studies, 17 (1997).

<sup>123</sup> *Supra* note 116, 5.

<sup>124</sup> Ko-Chih R. Tung, *Voting Rights for Alien Residents-Who Wants It?*, 19 The International Migration Review, 452 (1985).

By time, immigrants with “acceptable” backgrounds are becoming an integral part of the society they live, they establish strong ties with locals and after some time it becomes hard to exclude them from this general procedure. Second, all members of the community who pay taxes on a regular basis must be represented in government entities that decide how public money are spent and regulations that apply to all citizens are made.<sup>125</sup> This means, since they are contributing as all other citizen members of the society, all of them must have, in return, the right to participate in the decision-making procedure to spend those funds. Third, giving immigrants voting rights encourages their political involvement and, as a result, facilitates their assimilation into the host community.<sup>126</sup> As mentioned earlier, inclusion is one of the important elements of democracy. With 2015 Development Agenda, which some call “one of the most powerful political visions in history”,<sup>127</sup> states undertook that they promote inclusive societies in order to achieve better solutions for existing global problems. Fourth, the ability to vote in municipal elections motivates non-nationals to get naturalized to vote in national elections and obtain access to public-sector jobs.<sup>128</sup> This positive approach, however, is not welcomed in all countries. As described earlier, the German Constitutional Court has in its landmark decision concluded that, voting rights are rights of the German citizens.<sup>129</sup> State must exercise other measure to ease the naturalisation procedure rather giving voting rights to the non-citizens. Consecutively, the German Nationality Act, which came into effect in 2000, may be viewed as a fulfilment of the court’s suggestion: it enabled *jus soli* (birth right citizenship) acquisition of German nationality by children of settled immigrants and permitted dual nationality for some immigrants.<sup>130</sup> Lastly, giving the voting rights to the long-term resident immigrants signals to the majority of the population that they want to stay.<sup>131</sup> Of course, this is highly debatable. Not all local populations can easily accept the foreigner as part of their societies. However, non-acceptance of minor (or some) portion of the society cannot be regarded as a satisfactory or justifying ground to hamper the international human rights to vote of non-citizens.

Contra arguments to franchise right to vote to non-citizens could be as followings. First, governments in the countries of origin may attempt to influence the political process through their citizens. This is one of the main

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<sup>125</sup> Taxation and Representation, <https://votingrights.ie/resources/taxation-and-representation/> (last visited Aug. 3, 2021).

<sup>126</sup> See generally William J. Ball, *From Community Engagement to Political Engagement*, 38 Political Science and Politics (2005).

<sup>127</sup> See generally Samuel O. Idowu, René Schmidpeter and Liangrong Zu, *The Future of the UN Sustainable Development Goals* (1<sup>st</sup> ed. 2020).

<sup>128</sup> Lardy, *supra* note 122, 17.

<sup>129</sup> Kommers, *supra* note 117.

<sup>130</sup> *Supra* note 116, 6.

<sup>131</sup> See generally Christina Boswell and Gianni D’Amato, *Immigration and Social Systems: Collected Essays of Michael Bommes* (2012).

principles of international law that no country should interfere the integral matters of any other country with this or that way.<sup>132</sup> Second, by definition, voting rights are related to nationality; only full citizens should participate in political decision making.<sup>133</sup> However, some argue that the restriction of voting rights to people who lack legal citizenship status is difficult to reconcile with different political theories' assessments of the importance of political involvement.<sup>134</sup> Third, if certain immigrant groups develop their own political parties, others may start single-issue parties that are undermining existing local ones.<sup>135</sup> Although, this sounds against the spirit of the international human rights instruments, it is used for populist politicizations. Fourth, once local voting rights are provided, the case for withholding voting rights in national elections becomes weaker (albeit it might be claimed that national voting rights could lead to conflicting loyalties, as is the case with dual nationality).<sup>136</sup> Fifth, giving immigrants voting rights reduces their desire to get naturalized. As mentioned above, this was exactly the point of German Constitutional Court that, state must focus and simplify the naturalization procedure, instead of granting voting rights to non-citizens.<sup>137</sup> Historically, the German courts considered the right to vote as a communal, rather than an individual, right. This right is also linked to a historical notion of German nationality as an ethnic construct; thus, the right to vote is a collective right of the German nation.<sup>138</sup> Lastly, allowing non-nationals to vote disrupts the present power balance, with certain parties gaining more than others from the immigrant vote.<sup>139</sup> In some countries, some parties try to dismantle power balance by airing populist speeches and attract the votes of people with migration backgrounds and foreign origins. This process may disrupt the power balance, which in the end again may result undesired consequences.

In any given society any given rights to the citizens or non-citizens could only be guaranteed and implemented by observing principle of rule of law. If the law should be the only rule anyone who is subject to the influence of that law should be entitled to demand the right to take part in designing of that very law. At least, those residing in a community for longer period are entitled to enjoy such rights.

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<sup>132</sup> UN Charter, art. 2; Niki Aloupi, *The Right to Non-intervention and Non-interference*, 43 Cambridge Journal of International and Comparative Law 566, 588 (2016).

<sup>133</sup> Irem Bulut, Irem Mete, *Granting Privilege in Regard to Voting Rights*, 12 GSI Articleletter 156, 156 (2015); Laughlin McDonald, *Whatever Happened to the Voting Rights Act - or Restoring the White Privilege*, 7 J. S. Legal History, 207 (1999).

<sup>134</sup> Lardy, *supra* note 122, 97.

<sup>135</sup> See generally Edgar Grande, Tobias Schwarzbözl, Matthias Fatke, *Politicizing immigration in Western Europe*, 26 Journal of European Public Policy (2018).

<sup>136</sup> See generally Simon Green, *Between Ideology and Pragmatism: The Politics of Dual Nationality in Germany*, 39 The International Migration Review (2005).

<sup>137</sup> German Constitutional Court, Judgment of 13 October 1990. BVerfGE 8 3: 37.

<sup>138</sup> See generally Merih Anil, *The New German Citizenship Law and Its Impact on German Demographics: Research Notes*, 25 Population Research and Policy Review (2007).

<sup>139</sup> See generally Carole Edelsky, *Democracy in the Balance*, 82 Language Arts (2004).

Considering the international and regional human rights instruments, one may conclude that right to vote is one of the important rights of all human beings. As described almost in all these instruments, in no case human rights can be deprived from their right to elect, decide, and participate in the decision-making procedure of the society where they are themselves are part of.

Although it seems very plain, from political point of view, it is obvious that there is no single approach to this problem all over the world. As given above, untying right to vote from citizenship might also hamper the traditional conception of the citizenship. Neither citizenship is understood as same phenomena in all countries, nor the legislative schemes of all countries are homogeneous in terms of granting voting rights to the non-citizens. If one considers the citizenship as ethno-genetic relationship between the members of any given society, then inclusion of non-citizens would far more challenging and in these kinds of societies there always would be visual or invisible borders between different groups. Most of the nation states are following this trend at the moment. There are countries, where considerable portion of their residents are foreign citizens. Luxembourg is one of these countries, however, in this country right to participate in national elections is not granted even to other EU nationals, let be any other foreign national.<sup>140</sup>

In a world of rising international migration, the exclusion of a large number of resident foreigners from the electorate is a major source of concern. Many scholars believe that cultural variables primarily influence public sentiments toward immigration.<sup>141</sup> It seems it is difficult for most of the states to give up part of their sovereignty<sup>142</sup> – the right that comes with the nationality, to the non-citizens residents. As some argue, all countries including developed ones tend to overlook the existence of this or similar situations.<sup>143</sup> However, considering the global developments this can be hugely changed in the future.

## Conclusion

Even if some claim that globalization is on the decline, it is safe to conclude that today's majority of countries are made up of people from various cultural backgrounds. This diversity prompts several important and complex questions. For instance, disputes over language rights, regional autonomy, political representation, and the right to vote, educational standards, land claims, immigration and naturalization laws, and even national symbols like the national anthem or holidays are becoming more common between 'aboriginal' majorities and 'foreign' minorities. Therefore, finding solutions that are both morally acceptable and politically practical to deal with these

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<sup>140</sup> Christine Fauvelle-Aymar, *The Welfare State, Migration, and Voting Rights*, Public Choice, 111-112 (2014)

<sup>141</sup> *Id.*, 105.

<sup>142</sup> Vattel *supra* note 30.

<sup>143</sup> Ko-Chih R. Tung, *supra* note 123, 467.

difficulties now with an increasing number of migrants is the biggest challenge facing democracies today.

Giving voting rights to the fraction of the population who are legally residing in any country but have the nationality of another country or have no nationality at all, i.e., are stateless, is among the widely contested issues. This article humbly tried to find an answer to the question whether right to vote should be franchised to these persons. To better understand the governing dynamics on the matter, this entry first examined the relationship between democracy and citizenship. Since the right to vote is mostly come with citizenship, it was concluded that citizenship occupies important part thereof. Taking the “democracy” as a constitutional principle, in later section of the article, its indispensable constituent components were discussed. As one of the main elements, the rule of law is a guarantor of the equal participation of the citizens in a decision-making process. It is also a mechanism or norm that secures the equality of all citizens before the law, prevents arbitrary form of government and use of power. Then article exemplified the constitutional frameworks and legislations of the target countries, namely, New Zealand, Chile, Malawi and Uruguay and for the sake of comparison, of other western European and Nordic countries, with a purpose to illuminate the black letter laws. During the analyse of the different legislations of the countries several motives, on which countries tend to base their action in terms of granting voting rights, were revealed. For example, in Chilean case, country hugely considered the contributions of migrant workers and shaped its legislative approach basing on these contributions. In all countries right to vote is either limited with municipal elections or conditioned with very high residency requirements. One could conclude that the nations are not ready yet to franchise full voting rights to non-residents.

Lastly, as of the third decade of the XXI century, seemingly, we stand far away from the ideal democratic environment in a broader sense, where all members of the community feel to be part of that very community and have chance to have a say in the governing matters. However, there is a light in the end of the tunnel. Under the light of recent political developments, such as adapting 2030 Development Agenda and considering the vital elements of the democracy and giving a huge importance to the inclusive societies, also with unprecedented development of the technological means, existing tendencies shall presumably be subject to the positive developments in favour of the non-citizen residents in the forthcoming future.