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Voting Abroad: Cultural Diversity and Democratic Institutions in a Global Era

*Mark Hayward, M.A., Ph.D.**

1. INTRODUCTION

The past decade has witnessed a dramatic increase in the number of countries that have made provisions to allow for voting in national, regional and local elections by individuals residing outside the national territory. The adoption of these policies—in place in 110 countries at the time of writing—can be seen as a response to an increase in international migration since the end of the Second World War, a period that has witnessed the movement of hundreds of millions of people around the world. Recent estimates indicate that there are between 150-200 million people currently residing outside of their countries of origin.¹ Granting migrants the right to vote has been an important step in ensuring that every individual is given a voice in government, even if that voice is not necessarily in the government of the country where that individual currently resides. In this way, these voting rights should be seen as the adaptation of institutions of democratic governance to realities of globalization.

However, it must be acknowledged that migration is not a new phenomenon. Therefore, it cannot be seen as the sole justification for the emergence of mechanisms allowing for non-resident citizens to vote. This is often referred to as “external voting”. The development of communication technologies, such as satellite television and the Internet, have changed the relationship between migrants and their country of origin, allowing for a much larger flow of information about everyday life and

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1 The International Organization for Migration puts the figure at 192 million.

political events to reach a larger number of emigrants than in previous periods of high global migration. At the same time, these technologies have often made the experience of migration more visible at “home.” Secondly, and perhaps most significantly, these rights cannot be separated from the global diffusion of policies advocating multiculturalism and promoting cultural diversity.² In light of such a context, it should come as little surprise that the question of external voting rights is and will continue to be particularly salient in countries like Canada, a country where nearly 20 percent of the population was born outside the country and a significant portion of that population is entitled to vote in the elections of other countries as well as, in the case of dual citizens, Canadian elections.

My purpose here is to provide a brief outline of the development of external voting rights, some of the different contexts in which these rights are exercised, and some of the questions they raise for governments and citizens alike. The extension of voting rights to non-resident populations raises a number of questions about relationship between migration, territorial sovereignty and the institutions of representative democracy. While there is a long history of external voting rights being granted, it is only recently that the issue has come to garner significant attention on the part of national governments, international organizations and other actors in international affairs. At present there are no clear and explicit norms and regulation for the exercise of external voting rights internationally, an absence that is echoed in the Canadian context. By way of conclusion, I suggest that this is an oversight that should be remedied at the national level and an international dialogue to which Canada could productively contribute.

2. A SHORT HISTORY OF VOTING ABROAD

Canada first recognized the right of some citizens, military and diplomatic personnel exclusively, to exercise voting rights while residing outside Canadian territory in the early days of the First World War. While not the first jurisdiction to do so—that distinction belongs to the state of Wisconsin for soldiers during the American civil war—Canada was early in recognizing the necessity of making exceptions to the requirement of

2 See Will Kymlicka's *Multicultural Odysseys* (Oxford: Oxford University Press, 2007) for a more developed discussion of the global diffusion of policies supporting multiculturalism.

residency within a particular territory as a criterion for participation in the institutions of a modern democracy.³

In most cases, as in Canada before the 1940s, the right to vote outside of the national territory was limited to a select group of citizens, most often military personnel and citizens on government missions. A few territories recognized more expansive external voting rights at the beginning of the twentieth century. Iceland and New Zealand, for example, both granted fishermen and other seafarers the right to vote. Australia made similar provisions, but the requirements were so demanding that the rights were never actually exercised. However, for the first half of the twentieth century, countries with policies for universal external voting rights remained an extremely small minority even as many major nations such as France, the United Kingdom and the United States developed policies to allow members of the military and diplomatic corps to vote while stationed abroad.

It was not until after the Second World War that the idea of granting the right of external voting to all citizens residing outside the national territory became widely diffused. France recognized the voting rights of individuals out of the country on business in 1951 and the United States expanded voting rights to all citizens four years later. In many cases, this change more or less coincided with the re-establishment of a functioning consular network during the postwar years as well as a recognition of postal voting for those overseas (a development that was not adopted by every nation), allowing for a larger number of electors to participate since it was no longer necessary to be present at a consular facility to vote. This trend has grown particularly rapidly in the past 20 years.

3. THE MECHANICS OF VOTING ABROAD

From the outset, external voting rights were subject to controversy and concern about their legitimacy as expressions of popular will. How do you balance the demand for universal voting rights with the need to ensure the integrity of the voting process when dealing with a population that is dispersed around the globe? Generally speaking, concerns about the legitimacy of voting abroad can be broken down into two categories:

3 The most complete history of external voting rights can be found in *Voting from Abroad: The International IDEA Handbook* (2007) compiled by the International Institute for Democracy and Electoral Assistance. I have made extensive use of this handbook in compiling the history presented here.

- 1) Concerns about the integrity of the voting process itself, addressing the questions about the security of ballots, elector anonymity and accurate tabulation.
- 2) Concerns about the legitimacy of non-resident elector's participation in national elections.

These are issues that echo the dilemmas faced by any institution charged with the management of elections, but the difficult issues faced in the management of a national or regional election become significantly more complicated when the territory covered is the globe itself and the institution must deal with numerous other sovereign jurisdictions in the fulfillment of its mandate. These two sets of concerns have been confronted in a variety of ways in different contexts, a fact that is evidenced in the different policies that have been adopted to serve non-resident electors. Both need to be addressed in greater detail when making sense of the status of external voting today. Let us begin with questions about the legitimacy of the voting process before moving on to the questions that have surrounded the participation of non-resident electors to vote.

One of the primary concerns in the exercise of external voting remains the integrity of the voting process. In many ways, the development of external voting has merely served as an extreme example of many of the debates about the fair conduct of elections that have garnered significant international attention for decades. Given that there are no international norms for the conduct of external voting, the history of such procedures provides numerous examples of the attempts to resolve these concerns in a timely and efficient manner. Concerns have primarily been focused on the rules regarding the actual practice of voting and, second, the role that votes cast abroad played in election results.

There are currently three primary forms for the exercise of external voting: proxy voting, allowing another person to cast a vote in the elector's stead; personal voting, requiring eligible voters to present themselves in person at embassies or consulates to vote in elections; and postal voting, which allows voters to vote by means of a ballot returned by the post. Fax voting is allowed in Australia and New Zealand, as well as in some jurisdictions in the United States. Several jurisdictions have also made limited experiments with electronic voting. Overall, these last alternatives remain a relatively small percentage of all votes, even though they deserve attention given the role they may play in the future. Several jurisdictions allow for a combination of these voting forms.

Each of these forms of voting has advantages and disadvantages when it comes to ensuring the integrity of the voting process. Proxy voting has

the advantage of being immediately part of the votes cast within a jurisdiction, but there remain questions about the process through which proxies are selected. Personal voting, wherein voters are asked to present themselves at embassies or other consular facilities to vote, has the advantage of allowing the identity of the voter to be verified as well as enabling voters to cast their own ballots. However, the demand that voters physically present themselves may prove to be an excessive obstacle to democratic participation in large territories that are served by only a handful of consular facilities.

Postal ballots would seem to resolve the problem of access to polls by allowing voters to participate at a distance. However, as already mentioned, many countries were concerned about the security and legitimacy of postal ballots and refused to recognize them. Similar concerns have dogged attempts to implement e-voting more recently. There is no generally established trend in how these different voting procedures are implemented. Canada, for example, was quick to adopt and accept postal voting as the sole means for carrying out external voting while Italy remained suspicious of the practice until 2001 and France, which implemented postal voting in the 1950s, eliminated it in 1975. Each country negotiates a solution that is dependent on the established practices of voting and their unique histories of democratic governance.

Along with differences in voting procedure, there is an equally wide variety of ways in which votes cast abroad are tabulated as part of election results. This has long been subject to controversy and seems set to remain one for the foreseeable future. In Canada, for example, initial legislation (in place until 1918) did not demand that ballots be assigned to particular ridings and even allowed for ballots to be allocated to various electoral ridings after the initial vote count had been completed. As was noted at the time, this was clearly a problematic resolution to any understanding of the representative nature of votes cast abroad. Yet, the question of how to best represent the voice of voters abroad remains open to debate with countries developing a variety of different solutions. In the case of Canada, along with the vast majority of other countries with such policies, votes cast abroad are included into the pool of all votes cast for an election. In Canada, this means that votes are allocated to the riding where the voter most recently resided. A similar system is in place in the United States. In countries where a proportional system is in place, the regional allocation is clearly less important, and the votes are simply tabulated along with others. Voters abroad are thus treated as if they were residing on national territory.

There are a few notable exceptions to this system. Eleven countries have allocated special seats in their national legislatures that represent non-resident voters specifically. Italy, for example, has granted 12 seats in the parliament and 6 in Senate to represent Italians abroad, dividing them into several global regions: South America, North America, Europe, Asia, Africa and Australia. Cape Verde has a similar system. Other countries allocate the seats according to a straightforward proportional system, making no allowance for regional differences. Finally, the French system grants twelve seats in the senate to represent French abroad. However, these senators are not selected through direct voting, but rather through a vote of the *Assemblée des Français de l'étranger*, a body made up 155 *conseillers* elected in 48 jurisdictions around the globe.

The question remains whether the needs of citizens residing abroad are better served when represented by elected members that are expressly their representatives, or if their needs can still be addressed as part of the daily business of representatives for other areas. It would seem that members elected to represent the interests of voters abroad would be best suited to the task, but this would seem to contradict the assumption that parliamentarians are able to represent and debate the needs of all citizens rather than just those who reside in the particular territory they represent. In cases where votes cast abroad do not elect specific members of the legislature (and, often, even when they do), the primary care for the rights and needs of citizens abroad remains in the hands of the ministries charged with the management of international affairs and diplomacy. Such a settlement is in keeping with the division between the parliamentary tendency to regionalism and the government's obligation to all of its citizens.

Critics of the creation of special seats for voters abroad often argue that such seats overrepresent a population, giving them say in issues which don't concern them (for example, questions of national security or economic policy). Many such critiques touch upon the second area around which concerns about the legitimacy of the participation of voters abroad in elections are often voiced, namely whether or not they should be allowed to participate in elections at all. There is a long history of debate about whether or not voters abroad are adequately engaged and informed about political issues in their country of origin to cast informed votes.

For much of the twentieth century, it was assumed that the lack of regular information from the home country, or information delivered at a considerable delay and often by means of intermediaries of questionable integrity, meant that emigrants became increasingly ignorant of life in

their countries of origin with the passing of time.⁴ Many concerns about non-resident electors being ignorant of election issues seem less significant at the present moment with the global expansion of satellite television and the Internet, allowing for the nearly instantaneous distribution of news and information. These changes, however, do not answer the broader concern about their participation: namely whether or not an individual who decides to reside abroad should retain the right to vote at all. This is less a question about informed citizenship than it is about the relationship between individuals and their countries.

Those who are critical of these voters argue that those who move away, even if they retain their citizenship (and the passive rights associated with it), forfeit the right to have a say in the governance of the country because their relationship with their home country (its interests and concerns) has changed. Many countries have negotiated the tension between the demands of universal voting rights with skepticism about the validity of non-residents' participation in election by imposing time limits on the number of years a voter may reside outside the territory. Canada, for example, allows individuals to vote for five years after they have left Canada.

The core issue at play is the balance between the demands for universal voting rights and the need to ensure the integrity of the voting process, and it is clear that there is no single way to reconcile what are at times contradictory needs. In every context, the outcome must be seen as a product of various political and institutional pressures, a balance that may not always be ideal when it comes to ensuring that the voices of citizens abroad are heard. Although rarely as blatant as the electoral manipulations that have surrounded external voting in the past, arrangements allowing for voting abroad are often the result of proposals from interested (but not necessarily altruistic) parliamentarians. There is perhaps a need for greater attention to be paid to the way that external voting is implemented since, unlike normal voting procedures, norms of fairness are more difficult to determine.

4 Furthermore, citizens abroad were sometimes seen to be the object of unfair campaigning by political parties, not necessarily bound by the same rules regulating campaigns at home. In Italy, for example, where postal ballots were not recognized and electors needed to return in person to their electoral district, political parties sponsored trains to bring Italians home for the vote from Germany and Switzerland. It was feared that these aids to voting would sway the outcome of the election.

4. EXTERNAL VOTING AT HOME

I have so far focused on the various ways in which external voting has been implemented around the world. It is here also worthwhile looking at the questions that are refocused away from the countries allowing votes to be cast abroad to the countries in which the votes are being cast. For much of the early twentieth century, concerns about infringing upon national sovereignty were cited as one of the reasons preventing the implementation of more extensive external voting. While these concerns were often based on an unexpressed political anxiety related to other concerns and were often accompanied by more practical questions about the problem of allowing for a global vote, they do acknowledge the fundamental fact that external voting requires that an election—the constitutive act of representative democracy and notions of popular sovereignty—take place outside national territory. It is at this point that questions of logistics and democratic institutions cross paths with international law, politics and diplomacy. What are the rights and obligations of the country that is hosting the electors of another country as they go to the polls?

In a recent discussion of political transnationalism, a term which encompasses a wide variety of activities among migrant and diasporic populations including external voting, Reiner Bauböck notes that traditional approaches have focused too much on how the connection between emigrants and their home countries are maintained. “Political Transnationalism,” he writes,

is not only about a narrowly conceived set of activities through which migrants become involved in the domestic politics of their home countries; it also affects collective identities and conceptions of citizenship among the native populations in both receiving and sending societies.⁵

This is an important point to keep in mind when considering the present state of external voting rights globally. The extension of voting rights to non-resident populations is not simply one that needs to be addressed as a question of national political concern, but sits on the border between internal and international political questions. It must be emphasized that the expansion of external voting rights to a larger number of migrants, sometimes residing permanently or semi-permanently abroad, calls into question the fundamental assumptions about the relationship between democratic institutions and territorial sovereignty.

5 Rainer Bauböck, “Towards a Political Theory of Migrant Transnationalism” (Fall 2003) 37:3 *International Migration Review* 700.

Some countries have addressed these concerns by imposing limits on the number of years that non-residents can reside outside of the country while still retaining voting rights and, traditionally, such questions might have been mitigated by asserting that voting by consular staff at consular facilities does not impinge upon the sovereignty due to their extra-territorial status. However, the proliferation of these rights and the expansion of non-personal voting practices (postal ballots, electronic voting, etc.) have raised these questions in new and complex ways. Such questions are of particular relevance in Canada where a small, but significant number of individuals residing within its borders are able to vote in foreign elections and often avail themselves of these rights.

In raising this issue, it is necessary to place these questions in historical perspective and note that there has never been a clear and consistent position articulated in Canada on the issue. Generally speaking, Canada has been open to allowing individuals residing on Canadian soil to participate in elections in their home countries. However, this should not be taken as evidence of a standing policy on the subject. Instead, it is important to place this approach to external voting in the context of the broader context of government approaches to international affairs and cultural diversity at home. In Canada, the right to hold a foreign election on Canadian soil is subject to approval by the Department of Foreign Affairs and International Trade. However, these decisions often involve other departments and take into account several criteria, not all of which are explicitly linked to international relations.

The recent Italian elections in Canada are a good example of the various positions that might be taken on the subject. In 2006, the government gave permission to Italians residing in Canada to vote in the upcoming election, but only on a provisional basis contingent upon the Department determining that the elections were carried out in a fair and unbiased manner. While numerous stories circulated in Italian language papers in both Canada and Italy regarding electoral fraud, the elections seem to have been conducted with little or no indication that the elections were biased. The next time that Italians went to the polls for a national election in 2008, permission was once more sought to carry out the vote. At that time, permission was granted but candidates were placed under strict restrictions regarding the kinds of publicity they were allowed to use during the campaign. Members of the Italian language press and representatives of the Italian community in Canada argued that these restrictions were a violation of the right of free speech. The decision was later reversed, undoubtedly for reasons that had as much to do with internal as

with international factors as the Italian community in Canada spoke up and exerted pressure on the government.

While the election was eventually conducted as it had been in 2006, the initial limitations placed on the vote and their eventual retraction made clear that the exercise of these electoral rights remains subject to the political will and to the administrative policies of the Canadian government. The example of the exercise of Italian voting rights in Canada makes clear an ongoing debate in host countries that questions whether these serve to promote democracy or are simply a tool through which various ethnic communities can be excited to political causes that may or may not be in the best interest of the host country. This is a debate that has recently been elaborated on in greater detail—also in connection with the Italian elections—in the Australian context by Simone Battiston and Bruno Mascitelli. This, however, is only one of the variety of ways in which external voting rights must be negotiated in relation to the legal, political and cultural norms of the host country and cannot be taken for granted.

5. CONCLUSION

It is at the intersection of the global expansion of electoral rights and the laws and political norms of individual nation-states that the conceptual and practical problems of external voting become most clearly visible. There is no general consensus on the subject because the demands of different groups of electors from different countries living in a variety of different national contexts are often treated as distinct phenomena rather than as part of an emergent global trend that needs to be addressed in a more fundamental way.

Thus, there is a tacit global consensus regarding the importance of ensuring the secure and reliable management of elections in post-conflict situations that include citizens who reside outside of the national territory.⁶ It is a consensus that acknowledges the importance of recognizing the voting rights of populations forced into exile due to political instability or war. Although implicit in discussions of such contexts is the assumption that the size and significance of external voting is temporary and that the population of electors living abroad will decrease with the return of stable political institutions. However, there is much less common ground when events leading up to the election are less extreme. When more stable

6 Two examples are the first elections after the fall of Saddam Hussein in Iraq and the elections in Kosovo in 2001.

nations implement external voting, concerns sometimes emerge that involve both the integrity of a nation's territorial sovereignty as well as how the responsibility to ensure the reliability of the electoral procedures should be shared between the nation holding the election (which is managing the election) and the nation where the voters reside (which is in charge of the various institutions and infrastructure, the postal service for example, that are being used).

It is questionable, however, whether dividing instances in which political instability plays a role from contexts in which it does not is a useful way to frame the issue. For an increasingly sizeable number of people, migration is a way of life rather than temporary passage and the notion of "homeland" can mean many things simultaneously. For this reason, it is important that voting rights are not separated from broader debates about cultural diversity and multiculturalism in a democratic state and increasingly interdependent world. This is not simply an issue that involves state institutions, but requires a broader interrogation of the relationship between political norms, citizenship and cultural identity. Ultimately, the question at the core of the issue of external voting asks what kind of belonging are assumed or engendered by means of voting rights. This should not vary depending on the context; it is an issue that gets to the heart of democratic theory.

The international dialogue that has been developing on the subject among scholars, national electoral agencies and international institutions must continue if we are to better understand this increasingly significant phenomenon. This debate must involve the elaboration of internal norms and the practice of voting rights as well as international standards that would work to ensure that political rights are protected. At present, decisions on these issues are often made in a partial and *ad hoc* manner. It is my belief that continuing to do so will only give space for the abuse of the rights of migrant populations over the long term. There is no easy solution, but making these questions more visible and allowing for a more open debate on the subject is essential to any further progress on the topic. With this in mind, I have provided a list of relevant texts and overviews of the subject that I hope will serve to facilitate further study and discussion of the subject.

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