



Inside out? Directly elected ‘special representation’ of emigrants in national legislatures and the role of popular sovereignty



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ABSTRACT

It is increasingly common for political rights to be extended to citizens who are permanently resident outside their state of citizenship. In a small minority of cases (13 countries as of October 2013) emigrants are not only able to vote but also able to vote for their own representation. Such systems of ‘special representation’ introduce members of national legislatures who are responsible for emigrants across large parts of the world. These electoral systems highlight the problematic characterisation of states as territorial entities with an ‘inside’ and an ‘outside’, since the state would then be turning itself ‘inside-out’ by performing domestic functions on foreign territory without the intervention of foreign states. Drawing on data from a recent survey of electoral systems to highlight common patterns between the 13 countries in which special representation is currently operated, the paper highlights the role of international migrants as emigrants, rather than as immigrants. It concludes that such developments cannot be explained territorially without serious problems for states that are manifestly not occurring. Special representation can only be understood as a re-emphasis of the significance of popular sovereignty. Democracy re-founds the legitimacy of the state in ‘the people’ but its extra-territorial performance results in a disarticulation between nation and state which states must creatively contain.

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Politics is a difficult career at the best of times, but few can have had it quite as hard as Rachid Lahlou, the first and only *député* for the Moroccan National Assembly’s short-lived and much derided fourth overseas district. Between 1984, when he was elected, and 1992, when the system ended, he was the ‘*député des cinq continents*’. From his base in Madrid, he represented a district which covered all Moroccan citizens resident in Spain, the UK, Sub-Saharan Africa, North and South America and all of Asia. The Moroccan electoral system of 1984 included five extra-territorial districts and was one of the first in the world to offer direct representation to non-resident citizens. The blatant impossibility of Mr Lahlou’s task (particularly in a pre-Internet age) was one of a number of reasons why the entire system was abandoned in 1992. And yet it has been widely emulated.

Although the Moroccan government no longer allows emigrants to vote in this way, 13 countries now have similar electoral systems and a further three has provisions or plans to introduce such ‘special representation’ for emigrants. Nine of the 13 countries implemented these systems since 2002 and four countries held the first elections in the previous four years (since 2010). At a global

level ‘special representation’ of emigrants therefore appears to be expanding. Such electoral systems have two key features which distinguish them from more common external voting systems: emigrants have a *direct* vote for their own *exclusive* representatives in national legislatures.

Although the transnational paradigm developed from a focus on activities which bypassed and in some cases undermined state functions there is a growing interest in the ways in which state institutions have become involved in extending services to citizens who are permanently resident outside the recognised territory of the state (Brand, 2006; Déano, 2011; Fitzgerald, 2009; Gamlen, 2008; Iskander, 2010; Levitt & Dehesa, 2003; Østergaard-Nielsen, 2003). This not only includes a range of citizenship rights (voting) and obligations (taxes) but also frequently surveillance and control. These are all functions which are exercised most widely within the territorial limits of the state and so typically do not involve those state institutions specialised in operations beyond state borders. Indeed the entire division between the ‘domestic’ and ‘foreign’ functions of the state is disturbed by the performance of domestic policy *outside* recognised state territory.

The distinction between the safe and regulated ‘inside’ and anarchic ‘outside’ is fundamental to the notion of the sovereign territorial state (Walker, 1993). Over the last 20 years, geographically focused research has destabilised that polarised distinction,

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disarticulating the relationship between state, sovereignty and territory (Agnew, 1994; Brenner, 1999; Elden, 2009; Sparke, 2005). International migration is frequently cited as one of a number of characteristics of globalisation that have undermined this relationship and a vibrant critical literature has developed this focus into an identifiable geopolitics of migration (Amoore, 2006; Coleman, 2007; 2009; Gamlen, 2008, 2013, Gill, 2010a; Hyndman, 1997, 2012; Mountz, 2010). A more critical picture emerges of the state not as a fixed territorial entity but a dynamic, continually evolving process that requires continual maintenance, continual re-founding.

These arguments have important implications for democracy. The various forms of 'transnational democracy' share an interest in the movement of democratic structures away from the nation-state (Anderson, 2002) but have been criticised for the consequent lack genuinely political content (Thaa, 2001). This paper focuses on the transnationalisation of state democracy in the form of special representation of emigrants. It provides further support for a much more fluid understanding of the state. State action is typically portrayed in the standard critical account as superficially reaffirming and reinforcing the static inside/outside dichotomy of the territorial state while inevitably and simultaneously undermining it. Institutionalising the extra-territorial, special representation of emigrants appears to contradict this picture. State institutions themselves actively undermine the territorial fiction they are supposed to maintain, performing domestic functions in foreign territory, typically without involving any institutions of the foreign state. The 'inside' is thereby turned 'out'. Systems of special representation are clearly not steps towards a non-territorial alternative form of democracy but they do gesture to ways in which the ties between sovereignty, democracy and territoriality (Agnew, 2005) are beginning to work loose or at least adapt.

Voting of non-resident citizens in national elections ('emigrant voting') is now the norm. It is permitted or facilitated by more than 80% of all states (Collyer & Vathi, 2007). In most electoral systems which provide for emigrant voting, votes of individual emigrants are either counted in their district of most recent residence or are all counted towards a specific national constituency, even when those votes are actually cast in specially established polling stations outside the state (Venice Commission, 2011). The issues raised by such systems are therefore not so obviously of a territorial nature, since electoral authority is at least symbolically contained within the defined borders of the state, though emigrant voting is undoubtedly one more indication of the flexibility of those borders.

The special representation of emigrants, such as the system that operated in Morocco between 1984 and 1992, has very different territorial implications. Emigrants' votes are not counted territorially, as if they had not left the state, but are included in a number of defined extra-territorial circumscriptions from which one or more representative is elected. Such representatives hold identical voting rights to all other representatives in national legislatures and often remain resident in the extra-territorial circumscription from which they were elected. In October 2012, 13 countries provided for special representation of emigrants. This group of countries is still small, but the recent and prospective expansions are significant. The important proviso is that such systems only operate in *national, legislative* elections.

The state necessarily provides the key unit of this analysis. In the conventional picture of the state, sovereignty is associated with the central state institutions and is linked especially strongly with the practice of democracy (Agnew, 2005) so there is a theoretical justification for this. According to the International Institute for Democracy and Electoral Assistance (IDEA, 2013) there are only four countries which hold no elections whatsoever (Brunei, Qatar, Saudi Arabia and Somalia). Remaining systems cover a range of

electoral practices from limited, indirect elections to universal liberal democracy, however imperfectly exercised. There are only a few exceptions to the connection that Agnew highlights between the imperfect, limited practice of democracy and claims to sovereignty.

The selection of the state as the unit of analysis also arises from the empirical focus on special representation. Sub-state elections frequently provide for voting beyond the territorially defined remit of the elections (municipality, district, region etc.), indeed non-resident voting has its origins in sub-state elections (Collyer, 2013a). Although there are two examples of special representation at the sub-state level: the Mexican states of Zacatecas and Michoacán where special representation was introduced in 2003 and 2007 respectively (Jimenez-Cuen, 2008) this paper will focus on state level examples for ease of comparison.¹ There is therefore a danger of 'naturalising' the state in this analysis (Gill, 2010b). The intention of the paper is exactly the opposite. By concentrating on the changing spatial arrangements of such a core state function as the organisation of democratic elections the paper contributes to debates on the evolution of states as spatial organisations.

The limited body of work on emigrant voting practices has focused particularly on normative and to a lesser extent on practical issues (Bauböck 2007, 2009; IDEA, 2007); that is, first *should* non-resident citizens be able to participate in democratic elections and if so, *how* should they participate. This paper contributes a more territorially focused analysis to this debate. The central argument of the paper is that special representation of emigrants resolves many of the normative questions which continue to pose barriers to the more widespread uptake of the external franchise. However, this also has important territorial implications, exposing the territorial fiction of the inside/outside dichotomy, which more standard practices of external voting manage to avoid. The paper argues that systems of special representation should not be seen in terms of either a deterritorialisation or reterritorialisation of state authority but that there is a necessary evolution in the relationship of such sovereign authority to territory that reveals the 'resilience' of states, in the terms of Brand's (2006) incisive analysis. It also shifts the basis for claims to legitimacy from territorial or Westphalian sovereignty to popular sovereignty.

The first section of the paper reviews the literature on emigrant engagement practices and particularly external voting. Section 2 briefly reviews the results of a recent global survey into emigrant voting practices and focuses particularly on the context of special representation. Finally, the territorial implications of these electoral systems are considered in more detail. The paper concludes that the only way the state can avoid the appearance of performing domestic functions in the foreign setting and effectively turning itself 'inside-out' in this process is through a deliberate emphasis on popular rather than Westphalian sovereignty.

The political incorporation of non-resident citizens

The explicit focus of this paper on state institutions contrasts with the deliberate prioritisation of non-state activities in most research into migrant transnationalism. This non-state focus was established in early work into transnational activities in which they were defined as 'contacts, coalitions and interactions across state boundaries that are not controlled by the central foreign policy organs of government' (Nye & Keohane, 1971: xi). This definition repeats the classic dichotomy between inside/domestic and

¹ Interestingly, the possibility to participate in the only genuinely supra-state democratic polity, the European Parliament, from beyond European territory depends on electors' nationality (Arrighi et al. 2013).

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