Shosics: Their Right to Vote and to Hold Office in the United States

Arturo Castellanos

Introduction

In every country throughout history, the right to vote and to hold office has been limited based on arbitrary distinctions such as ethnicity, sex, and income. In this paper I explore the most common, yet least challenged distinction in the American democratic system: the disenfranchisement of residents of the United States who are not American citizens. I call this group of people “shosics”.

In other words, my research focuses on the people who live in the United States, pay taxes in the United States, are essential to the economic activities of the United States, are subject to the same laws as American citizens, are affected by the policies adopted by public officials, can enlist in the American Armed Forces, whose kids or spouses are in many cases American citizens, who in many cases have been living in the United States longer than they have ever been anywhere else, but who cannot vote or hold office in the United States just because they are not American citizens.

1 February 8, 2019.
2 Cornell Law School; J.S.D. Candidate; ac2629@cornell.edu
3 Shosics, as I explain in the second section of this paper, is an acronym for the Latin concept suffragio et honorum sine civitas or suffrage and office holding without citizenship.
The fundamental reason for worrying about democratic exclusion of shosics is that public authorities often neglect people without a political voice. People who are denied political avenues for voicing their concerns are not as successful in attracting the attention of mayors, sheriffs, district attorneys, school boards, governors, presidents, legislators, and judges. Thus, people without the right to vote or to hold office may end up with a lower level of public services, legal protection, and other resources provided by the state. Furthermore, people who are denied these two basic and fundamental political rights are easy scapegoats of political candidates who benefit from creating fear and confusion around them.

This situation—which leads to exclusion and discrimination—is particularly worrying in countries like the United States, which is home to 43.3 million immigrants out of which 22.6 million are shosics. In other words, 7% of the population of the United States does not have the right to vote or hold office in their country of residence.

Preventing shosics from voting and holding office in the United States seems to have created a democratic deficit that is worthy of study and analysis. Hence, the purpose of my research is to generate a theoretical foundation that would allow shosics to vote and to hold office in the United States. Two centuries ago it seemed absurd to discuss the voting rights of women. Today, there might be people who think that the enfranchisement of shosics is a

---

ridiculous and over-ambitious proposal. Nonetheless, I believe that my research will foster a debate that will take place all over the United States rather sooner than later.

This paper will lay the groundwork to develop a novel enfranchisement parameter that would be applicable—in theory—in any court or legislature of the United States. If proven successful, such test would allow millions of shosics in the country to vote and to hold office.

I divided this paper into five sections. In the first section I explain why and how I came up with the idea of relabeling aliens, immigrants, and non-citizens as shosics. In the second section I write about the personal experience that motivated me to write about the right to vote and to hold office of shosics. In the third section I explain why this research is relevant to juridical science. In the fourth section I address all the opposing arguments that I have found or heard about shosic enfranchising. Finally, in the fifth section I explain the differences that would remain between shosics and citizens if the former were enfranchised.

I. Addressing Linguistic Problems

When I started my research on shosic enfranchisement, I felt uneasy reading and writing the labels used to refer to residents of the United States who are not American citizens: aliens, immigrants, and non-citizens. Language,
in my opinion, was perpetuating the negative connotation and vulnerability of this group of people.

Recent discoveries show how “language shapes even the most fundamental dimensions of human experience: space, time, causality and relationships to others.”\(^5\) As Lera Boroditsky—an assistant professor of cognitive psychology at Stanford University—explains, the empirical evidence that she has collected about language and behavior shows that the way we speak influences the way we think, and vice versa. In her opinion, this discovery has “important implications for law, politics and education.”\(^6\) For this reason, I devote the first section of my paper to explain why the labels currently employed to refer to residents of the United States who are not American citizens are problematic.

**Aliens**

Before you continue reading, I have something to confess. I am an alien. I am not from another galaxy or solar system, I am from Mexico. According to American law, however, those of us who are not American citizens or nationals, are aliens.\(^7\) I have nothing against aliens and I would not mind being called one, except for the fact that I do not look like them or relate to them. When one searches on Google Images the word “alien” it is almost impossible to find a picture of someone who resembles to an earthling human. It is no wonder why


many authors, judges, and communities in the United States oppose to alien suffrage. The word “alien” should be considered an inappropriate and even pejorative way to refer to a non-citizen. It may have been appropriate decades ago to call someone an “alien”, but English, as a language, has moved in a direction which makes it misleading and unsuitable to use that label to refer to any person. For such reason, I decided not to use the word alien in my paper.

**Immigrants**

Another popular word among authors to refer to non-citizens is “immigrants”. The word “immigrant” is not wrong but it is not precise either. Every non-citizen is an immigrant, but not every immigrant is a non-citizen. Immigrants who become American citizens will always be immigrants regardless of their citizenship status. Naturalized Americans migrated from their countries of origin to the United States to become U.S. nationals. They will always be immigrants. For such reason, I will not refer to non-citizens as immigrants. It would not be precise.

**Non-citizens**

Finally, I will also avoid the popular label “non-citizens” for two reasons: First, the prefix “non” of the root word “citizen”, not only perpetuates a negative connotation of the word, but it also creates unnecessary confusion. For more than a century in the United States only citizens have been able to vote and hold office in the country. Hence, when we refer to the right to vote and hold office of a “non-citizen” it seems to be a linguistically absurd proposition. Citizenship and enfranchisement are two concepts that are so indissolubly
ingrained in our brains that referring to non-citizen enfranchisement sounds as incompatible as dry water or non-alcoholic tequila.

Second, in logic it makes sense to label something for what it is not. For example, if we consider the logic statement “You are either A or B”, the negation of A or B becomes not-A or not-B. Nevertheless, using negations in laws, debates or even daily conversations creates unnecessary complications. When we label a concept for what it is not, we are limiting expressiveness, vocabulary, and comprehension. It makes sense in logic to refer to not-A but it would be confusing to ask someone for the non-men restroom instead of asking for the women restroom. Likewise, it is problematic to talk about non-citizens instead of referring to them as ____________ (fill in the blank with a new, precise, and correct word).

The English language has over one million words and grows at a pace of around 1,000 new words per year. Therefore, I considered essential to create a pertinent label for this group of people.

Finding a New Label

When I was a Law student in Mexico, Roman Law was one of my favorite topics. One of my professors, who at the time worked as a clerk at the Mexican Supreme Court, said that whenever he faced a hard case, he consulted with the Romans. Not his Italian counterparts, but ancient Roman jurists. He

---

8 BODLE, Andy; How New Words are Born; Published on The Guardian on February 4, 2016; Available at https://www.theguardian.com/media/mind-your-language/2016/feb/04/english-neologisms-new-words (Accessed on May 12, 2018)
believed that the answers to many of the questions that we are currently debating in courts had already been answered by the Romans.

While trying to find or create a new word to refer to non-citizens, I could not stop listening to my professor’s voice saying “consult with the Romans”. That voice made sense particularly because Romans were among the first societies to have something similar to what we call citizenship, and I thought that maybe they could shed some light on my research. Hence, I immersed myself in Roman Law, and even though I did not find there the exact concept I was looking for, the Roman nuances of citizenship helped me to create a precise, appropriate, and well-rounded label for an enfranchised non-citizen: **Shosic**.

Let me explain the reasoning behind the word **Shosic**.

Unlike American laws, which have created a binary distinction between citizens and non-citizens, in Ancient Rome the inhabitants of the Empire were classified into Roman citizens, peregrines, and latins or *municipes*. 

![Inhabitants of the Roman Empire](image)
Broadly speaking, the Citizens were the Romans by birth or naturalization who were the exclusive subjects of Roman *ius Civile*. Pursuant *ius Civile*, Roman Citizens possessed all of the two kinds of rights: 1. public rights (*publica iura*) and 2. private rights (*privata iura*). “The principal public rights embraced membership and voting in the popular assemblies (*ius suffragii*), access to political office (*ius honorum*), the right to serve in the army (*ius militiae*), and the right to appeal from a magistrate to the assembly against sentences involving death or the loss of personal freedom or citizenship (*ius provocationis*). The most important private rights encompassed the right to contract a regular marriage (*ius connubii*), the right to acquire and transfer property according to law (*ius comercii*), the right to create a will or inherit under a Roman will (*ius testamentifactio*), and the right to legal recognition in the courts of law.”

The *Peregrines* were the foreigners living in Rome who were not subject to Roman *ius Civile*. Peregrines were subject to *ius gentium*, which was “the

---

9 MOUSOURAKIS, George; A Legal History of Rome; p. 22;
body of laws, applicable to non-Roman citizens both in their dealings between
themselves, and in those involving Roman citizens." Hence, they did not
possess the same rights, duties and sense of membership that Roman
Citizens had.  

---

The *Latins* (also known as *Municipes*), was an intermediate term between
Citizens and Peregrines. Latins were Non-Romans who, depending on their
origin and time in history, possessed some of the same rights and duties of
Citizens. Among the different classifications of Latins, the ones that had
almost all of the rights from the *ius Civile*—except for the *ius suffragii* and *ius
honorum*—were the *Latini Veteres*. In other words, the *Latini Veteres* were
civitas sine suffragio et honorum, or citizens without the right to vote or to
hold office.

---

10 GIRDVAINYTE, Lina; *Roman Law, Roman Citizenship, Roman Identity?*; p. 11; Leiden University; 2014; Available at https://openaccess.leidenuniv.nl/bitstream/handle/1887/29509/MA%20THESIS%20final%20v%20Lina%20Girdvaine%20%20v%202012.pdf?sequence=1 ; (Accessed on July 27, 2018)
14 “From the point of view of their origin, Latins were divided into three classes: Latini Veteres, Latini Coloniarii, and the Latini lunari.”
15 The Latini Veteres were the inhabitants of Latio, within the Roman Empire, who were allies of Rome.
If we take a look at the map above, we can see that *Latini Veteres* in Ancient Rome were very similar to resident non-citizens in the United States nowadays. Both enjoy every available right for citizens except for the right to vote and to hold office. That similarity made me think that in the United States, non-citizens should aspire to obtain the *suffragio et honorum sine civitas*, or suffrage and office-holding without citizenship. In other words, an enfranchised non-citizen in the United States should be named SHoSiC, which is the acronym for *suffragio et honorum sine civitas*.

Shosic: A new word is born.

*Shosic (noun) [shō -sik]*

1. A person who has the right to vote and to hold office in her country of residence when she does not possess the citizenship of her country of residence.

**II. Kern County, California—a Rude Awakening**
On April 2017, only three months after the Inauguration of President Donald Trump, I made a trip to California that made me realize the importance of enfranchising shosics in the United States. It was Spring Break when I traveled with Cornell Law School’s Farmworker Legal Assistance Clinic to Kern County, California, America’s top agricultural county. Ranked as the country’s largest producer of grapes, second largest producer of almonds, third largest producer of citrus, and seventh largest producer of pistachios, Kern County boasts an agricultural industry that generates annual revenues estimated in 7.2 billion dollars. This buoyant industry has been possible thanks not only to the vision and capital of the farmers, but also to the effort and hard labor of the farmworkers.

Like most of the agricultural hubs in California, Kern County has historically attracted Mexican immigrants, both documented and undocumented, to work in the fields. This workforce, which has been essential to boost the local and national economy, has impacted the demographics of Kern County. The Hispanic community, according to the U.S. Census Bureau, represents a majority of the county’s population. Out of the 884,000 inhabitants of Kern County, 52.8% are Hispanic or Latino.
My interest in the right to vote and to hold office of shosics in the United States was sparked after I learned about the electoral preferences and political composition of Kern County. Despite the Hispanic majority, Donald Trump, the candidate who referred to Mexican immigrants in his campaign as rapists and criminals\textsuperscript{22} had won in Kern County by a landslide of votes over Hilary Clinton in the 2016 U.S. presidential election.\textsuperscript{23} 54.7\% of the voters in Kern County preferred Donald Trump, over Hilary Clinton who got only 39.7\% of the votes, despite her appeal among Hispanic voters.\textsuperscript{24}

The results of the 2016 General Election for the U.S. House of Representatives regarding California’s 23\textsuperscript{rd} and 21\textsuperscript{st} Congressional Districts (which include cities of Kern County) were even more appalling considering their Hispanic majority. In the 23\textsuperscript{rd} Congressional District, Republican Candidate Kevin McCarthy, who has a firm stance against undocumented immigration,\textsuperscript{25} was elected with 69.2\% of the votes.\textsuperscript{26} In the 21\textsuperscript{st} Congressional District, Republican Candidate David Valadao, whose goal is to “combat illegal immigration”,\textsuperscript{27} won with 56.7\% of the votes.\textsuperscript{28} After I learned

\textsuperscript{22} “When Mexico sends its people, they’re not sending their best. They’re not sending you. They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people.” Donald Trump’s Presidential Announcement Speech. Available at https://www.youtube.com/watch?v=apJNfksjibM (Accessed on May 9, 2018).
\textsuperscript{23} POLITICO; 2016 California Presidential Election Results; Available at https://www.politico.com/2016-election/results/map/president/california/ (Accessed on May 9, 2018)
\textsuperscript{24} PANTOJA, Adrián D.; Hillary Clinton Is Winning Decisively The Latino Millennial Vote; Published at The Huffington Post on September 27, 2016; Available at https://www.huffingtonpost.com/latino-decisions/hillary-clinton-is-winnin_b_12212974.html (Accessed on May 9, 2018).
\textsuperscript{25} REP. KEVIN MCCARTHY; Immigration; Available at https://kevinmccarthy.house.gov/issues/immigration (Accessed on May, 9, 2018)
\textsuperscript{26} BALLOTpedia; California’s 23\textsuperscript{rd} Congressional District Election; Available at https://ballotpedia.org/California%27s_23rd_Congressional_District_election_2018; (Accessed on May 9, 2018)
\textsuperscript{27} REP. DAVID G. VALADAO, Immigration; Available at https://valadao.house.gov/issues/issue/?issueID=103628 (Accessed on May 11, 2018)
\textsuperscript{28} BALLOTpedia; California’s 21\textsuperscript{st} Congressional District Election; Available at https://ballotpedia.org/California%27s_21st_Congressional_District_election_2018 (Accessed on May 11, 2018)
about the astounding results of the Presidential and Congressional Elections, it was no surprise to learn that as of 2017 only four mayors out of the eleven cities in Kern County were Hispanic.  

The explanation for the electoral preference in relation to the demographic composition of Kern County seemed perplexing at first, but obvious when I understood the root cause of that situation. Even though the majority of the population in Kern County is Hispanic, a large percentage of that community is not allowed to vote or run for office. According to the U.S. Census Bureau 20.3% of the population in Kern County is foreign born, including documented and undocumented immigrants. From that figure it is possible to infer that many of the residents of Kern County are not allowed to vote because they are not citizens of the United States. In other words, even though shosics of Kern County pay taxes, are essential to the agricultural and other economic activities of the county, are subject to the same laws as citizens, are affected by the public policies adopted by elected officials, can enlist in the American Armed Forces, whose kids or spouses are in many cases American citizens, who have enriched the culture and traditions of the county, and who have been living in Kern County longer than they have ever been anywhere else, are prevented from voting and running for office.

Hence, preventing shosics to vote and run for office in Kern County has had two consequences:

---

29 José Gurrola (Arvin, California); Grace Vallejo (Delano, California); Manuel Cantú Jr. (McFarland, California); Gilberto Reyna (Wasco, California)
30 U.S. CENSUS BUREAU; QuickFacts: Kern County, California; Available at https://www.census.gov/quickfacts/fact/table/keshosicountycalifornia/PST045216; (Accessed on May 9, 2018).
1. The winners of the elections in Kern County do not necessarily represent the interests of the majority of their constituents, but those of their voters; and

2. Most of the winners of the elections in Kern County do not belong to the same demographic group of the majority of their constituents, but to the same group of the majority of their voters.

Both consequences made me question democracy not only in Kern County, California, but in the United States as a whole. Preventing shosics from voting and holding office in the United States seems to have created a democratic deficit that is worth of study and analysis. The purpose of my paper is to show that Kern County is just an example of the democratic deficit that affects the United States.

III. Relevance of shosic enfranchisement for juridical science

The right to vote and to hold office is a fundamental human right. Pursuant article 25 of the International Covenant on Civil and Political Rights (ICCPR) and article 20 of the American Declaration of the Rights and Duties of Man, every country should protect and respect the right to vote and to hold office. The United States is a state party to both treaties. Therefore, it must abide by its international obligations.
Furthermore, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that “no state shall deny to any person within its jurisdiction the equal protection of the laws.” It is essential to recognize that the Equal Protection Clause does not prohibit making distinctions between citizens and shosics. Such distinction, however, must be rationally justified as a means to serve a legitimate social purpose.

Hence, if the states want to impose restrictions on shosics over their right to vote and to hold office, those restrictions should be required to pass tests of reasonability, proportionality, and necessity. If the restriction fails these tests, the distinction between citizens and shosics would be unconstitutional and the United States would have to grant the right to vote and hold office to the millions of shosics.

To analyze the legality of the distinction between shosics and citizens, it is essential to consider the 1982 Supreme Court decision in *Plyler v. Doe*. This case involved a Texas regulation denying children who were undocumented immigrants free admission to elementary and secondary schools. In Owen Fiss’s words, the interpretation of the Supreme Court on the Equal Protection Clause in *Plyler* “prohibits not only discrimination, but also the creation of a near-caste structure. It prohibits creating socially and economically disadvantaged groups that are forced to live at the margin of society, isolated from the mainstream, always at risk, seen in their own eyes and in those of the dominant group as inferior.”31 After reading Fiss’s interpretation of *Plyler*, one

---

31 FISS, Owen; The Immigrant as a Pariah; A Community of Equals: The constitutional protection of new Americans; p. 12. Beacon Press, Boston, 1999; Edited by Joshua Cohen and Joel Rogers.
would think that he is in favor of shosic enfranchisement. In his opinion, however, the political distinctions made about shosics are acceptable. He believes shosics should not be enfranchised under the consideration that exclusive citizen voting sustains and implements the political principles that define a nation.\textsuperscript{32}

I strongly believe that shosics should be considered by courts as a suspect class. Courts should assess whether the restrictions on voting and holding office are reasonable, proportional and necessary. This research intends to provide answers to the future hard cases that judges will address regarding shosic enfranchisement.

For such purpose it is essential to take into consideration other decisions of the Supreme Court of the United States. In \textit{Yick Wo v. Hopkins}, the Supreme Court stated that the right to vote is a fundamental right because it is preservative of all rights. In fairness, the Supreme Court they added that the political enfranchisement of voting is a fundamental but not a natural right. The Court regarded the right to vote “as a privilege merely conceded by society according to its will under certain conditions.”\textsuperscript{33}

Contrary to my theory, it is important to consider the Supreme Court case \textit{Sugarman v. Dougall}. In this decision, the Court argued that it “has never held that aliens have a constitutional right to vote or to hold high public office under the Equal Protection Clause. Indeed, implicit in many of this Court's voting

\textsuperscript{32} FISS, Owen; The Immigrant as a Pariah; A Community of Equals: The constitutional protection of new Americans; p. 5. Beacon Press, Boston, 1999; Edited by Joshua Cohen and Joel Rogers.

\textsuperscript{33} \textit{Yick Wo v. Hopkins}, 118 U.S. 356 (1886)
rights decisions is the notion that citizenship is a permissible criterion for limiting such rights.\textsuperscript{34}

Also contrary to my thesis, we must review the Supreme Court decision in \textit{Kramer v. Union Free}. In that case the Supreme Court ruled that "the states have the power to impose reasonable citizenship, age, and residency requirements on the availability of the ballot."\textsuperscript{35}

\textit{Kramer v. Union Free} is very interesting because it reminds us that the decision about who can vote is within the competence of each state. As Jennifer Gordon argues, "contrary to popular understanding, the law imposes no impediment to non-citizens voting in the United States, even on the federal level. The Constitution does not require voters be citizens; the decision about who can vote in federal elections rests in the hands of each state."

Now that we know that the enfranchisement of shosics depend on each state, it is fundamental to analyze the Colorado Supreme Court holding in \textit{Skafte v. Rorex}. In this case, Peter Skafte, a permanent resident alien, sought a declaratory judgment that the Colorado statutes that deny aliens the right to vote in school elections were unconstitutional. The Colorado Supreme Court ruled that "the state has a rational interest in limiting participation in government to those persons within the political community. Aliens are not a part of the political community."\textsuperscript{36}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{34} Sugarman v. Dougall, 413 U.S. 634 (1973).
\item \textsuperscript{35} Kramer v. Union Free Sch. Dist. No. 15, 395 U.S. 621 (1969)
\item \textsuperscript{36} Skafte v. Rorex; 553 P.2d 830 (1976)
\end{itemize}
\end{footnotesize}
A lot has changed in the United States since these cases were decided. The political arena, migration dynamics, and human rights values in this country have evolved in a direction that makes it essential to reconsider the aforementioned resolutions. As stated in previous paragraphs, shosics represent 7% of the population of the United States. Hence, regardless of what the Supreme Court has ruled in the past, I strongly believe it is time to enfranchise the people who pay taxes in the United States, are essential to the economic activities of the United States, are subject to the same laws as American citizens, are affected by the policies adopted by public officials, can enlist in the American Armed Forces, whose kids or spouses are in many cases American citizens, and who in many cases have been living in the United States longer than they have ever been anywhere else.

As Roscoe Pound stated many years ago, “the law must be stable, but it must not stand still.” In that same regard, I believe that political enfranchisement must not stand still. It must take into consideration all the new factors and realities of the American polity.

**Comparative Jurisprudence**

For purposes of my research, I consider essential to review what international and national courts have ruled regarding political rights. Pursuant to international and national jurisprudence, political rights can only be restricted if such limitations are necessary, proportional, and reasonable. This conclusion is adopted in the following three emblematic cases, which illustrate
the requirements to restrict any political right: a) Castañeda Gutman v. Mexico, b) Sauvé v. Canada, and c) Hirst (No. 2) v. the United Kingdom.⁷⁷

a) **Necessity Test: Castañeda Gutman v. Mexico**

In the landmark case of Castañeda Gutman v. Mexico⁷⁸, the Inter-American Court of Human Rights resolved that for a political restriction to be permitted in light of the American Convention it must be necessary for a democratic society. To evaluate whether the restrictive measures comply with this requirement, the Court must assess whether: “(a) it fulfills an urgent social need; (b) it is the measure that least restricts the protected rights, and (c) it is closely adapted to achieving a legitimate purpose (IACHR, 2008)”. Hence, this paper suggests to conduct a Necessity Test to discover whether the restriction of democratic participatory rights of shosics in the United States is necessary or not.⁷⁹

b) **Reasonableness Test: Sauvé v. Canada**

In the emblematic case Sauvé v. Canada, the Canadian Supreme Court held that prisoner disenfranchisement was unconstitutional. The Court argued that such political restriction failed to establish a reasonable connection between the denial of the right to vote and the objectives of a democratic state. The Court ruled that “to disenfranchise a segment of the population finds no place in a democracy built upon principles of inclusiveness, equality, and

---

⁷⁷ There is an infinite number of cases that can be used in this research such as Richardson v. Ramírez (418 U.S. 24 [1974]), Scoppola (No. 3) v. Italy (ECHR, 2012), Kulinski and Sabev v. Bulgaria (ECHR, 2016), and others. Even though these cases will be taken into account for purposes of the investigation, the three selected cases are very illustrative of the tests that must be conducted to restrict political rights.

⁷⁸ This case is about the international responsibility of Mexico for denying the right of a Mexican citizen to run as an independent (or non-partisan) candidate in the 2006 presidential election.

⁷⁹ The corresponding reasonableness, necessity, and proportionality tests are part of a separate paper that is still on process.
citizen participation (Supreme Court of Canada, 2002).” Thus, this paper suggests to conduct a Reasonableness Test to discover whether the restriction of democratic participatory rights of shosics in the United States is reasonably justified or not.

c) Proportionality Test: Hirst (No. 2) v. the United Kingdom

In the landmark case of Hirst (No. 2) v. the United Kingdom, the European Court of Human Rights denied the possibility of states to impose restrictions on electoral rights to all the individuals who are imprisoned. In their view, the severe measure of disenfranchisement must be justified under the principle of proportionality, which requires a discernible and sufficient link between the sanction, the conduct, and circumstances of the individual concerned. Therefore, this paper suggests to conduct a Proportionality Test to discover whether the restriction of democratic participatory rights of shosics in the United States is proportionally justified or not.

Comparative Legislation

Domestic norms of each country are fundamental to answer the research questions proposed for this investigation. For instance, “Uruguay and New Zealand grant resident non-citizens the right to vote in national elections relatively easily. Certain democracies extend suffrage to specific categories of resident non-citizens. Residents in Portugal with Brazilian passports may participate in national elections, and Irish citizens have the right to participate in the elections held in the United Kingdom. Other democracies recognize the right of all non-citizens to participate in local elections after a certain period of
Moreover, it is fundamental to review the case of Europe, where Union citizenship was introduced for the purpose of bringing the Union closer to the citizens. As a result, citizens of any member state now have the opportunity of voting in European and local elections, irrespective of place of residence within the Union. At the same time, the political exclusion of resident non-citizens is reinforced, as the introduction of Union membership makes citizenship status a decisive condition for political rights in Europe.  

IV. What are the arguments against shosic enfranchisement?

This paper recognizes that the enfranchisement of shosics is a controversial issue that raises many objections. In this section I will address all the opposing arguments that I have identified in the current literature and in various discussions. I will attempt to provide an answer to the following arguments:

a. **Shosic enfranchisement would violate the principle of self-determination of the United States**

On the contrary! Granting voting rights to shosics would be a result of self-determination. I do not intend to impose shosic enfranchisement in the

---

41 FÖLLESDAL, Andreas; Third Country Nationals as European Citizens; , 1999. Available at http://follesdal.net/ms/Follesdal-1999-3rdcntry.rtf
United States. Democratically elected legislators and judges, in representation of the American people, will eventually decide to enfranchise shosics or not. That goes in line with the principle of self-determination.

b. *Shosic enfranchisement does not require a demonstration of any American civics and historical knowledge.*

This argument is doubly fallacious. First, the proponents of this argument fail to recognize the different kinds of shosics. Most of them fall for the stereotype that shosics are low wage, uneducated, rural immigrants who do not speak English and who don’t have enough civic knowledge. That’s not necessarily the case. There’s a lot of diversity. The U.S. attracts talent from all over the world: students, professors, doctors, entrepreneurs, artists, as well as farmworkers. Furthermore, low-wage immigrants watch the news and read about their new country as much as any other shosic. Second, American citizens are not required to pass a knowledge test in order to vote. Why should there be an extra requirement for shosics? There is no legal foundation to sustain that argument.

c. *Shosic enfranchisement does not require a demonstration of the English language.*

First, English is not the official language of the United States. Second, most shosics speak English. Those who think otherwise are failing to recognize the many types of shosics. There are many types of shosics other than low-wage
workers. Third, if English were a prerequisite to vote, it would be in open
discrimination of the American deaf community who speak through ASL.
Fourth, we live in an era where news outlets translate to multiple languages
every speech, rally, and debate during the campaigns. Hence, English cannot
be a prerequisite for voting or holding office.

d. What if the political center of gravity in those places shifted decisively to
the left because of the influx of these new voters? Almost all sponsors of
shosic enfranchisement are progressives or liberal Democrats.

Again, those who use this argument fail to recognize the multiple types of
shosics. We cannot place all the shosics in the same political basket. Some of
them have liberal ideologies while others lean towards conservative agendas.
Furthermore, in Carrington v. Rash and Gray v. Sanders, the Supreme Court
ruled that “fencing out from the franchise a sector of the population because of
the way they may vote is constitutionally impermissible.”42 43

d. Shosic enfranchisement would not require any knowledge of the issues on
which the person would be voting, since the person will only have been in
the country for a short period of time.

First, in the case Dunn v. Blumstein the Supreme Court held that “durational
residence requirements are violative of the Equal Protection Clause of the
Fourteenth Amendment, as they are not necessary to further a compelling

42 Carrington v. Rash, 380 U.S. 89 (1965)
state interest." Second, if residence in the country for a long period of time were a prerequisite to vote, American citizens living abroad would be immediately disenfranchised. Third, an American citizen from Arizona who moves to New York, is allowed to vote in local elections. Why should there be different requirements for shosics? Fourth, every respectable candidate has a web page where any voter can find their political agenda. Hence, any voter can get knowledgeable of the issues on which they would be voting.

e. Naturalization should be the only way in which an immigrant should be allowed to vote.

Unfortunately not every shosic in this country is eligible for naturalization. There are thousands of students who stay for years in the United States with no possibility of naturalizing. Most farmworkers and other low-wage workers spend a lifetime in this country without being able to naturalize. There are thousands of shosic university professors that work in this country for years without the possibility of naturalizing. Moreover, naturalization would make sense if shosics demand the right to vote in a federal level. In state and local elections residence should suffice.

e. The Constitution of the United States restricts the right to vote to American citizens

44 Dunn v. Blumstein, 405 U.S. 330 (1972)
Not true. In the case of *Minor v. Happersett (1874)* the U.S. Supreme Court ruled unanimously that “the right of suffrage was not protected by the Fourteenth Amendment to the U.S. Constitution.” In that same case the Court approvingly noted that “citizenship has not in all cases been made a condition precedent to the enjoyment of the right of suffrage”\(^\text{45}\) citing Missouri, Texas, Indiana, Georgia, Alabama, Arkansas, Florida, Kansas, and Minnesota as examples of states then allowing non-naturalized immigrants to vote. Furthermore, the Supreme Court in *Breedlove v. Suttles* stated that “voting is a privilege derived not from the United States, but from the State, which may impose such conditions as it deems appropriate, subject only to the limitations of the Fifteenth and Nineteenth Amendments and other provisions of the Federal Constitution.”\(^\text{46}\) Moreover, the U.S. Supreme Court in *Pope v. Williams* argued that “while the privilege to vote may not be abridged by a state on account of race, color and previous condition of servitude, the privilege is not given by the federal Constitution or by any of its amendments, nor is it a privilege springing from citizenship of the United States.”\(^\text{47}\)

\(f\). *Noncitizen voting has been tried in a number of places. The results do not support claims of great benefits following from noncitizen voting, because even where they are legally able to, they don't register in substantial numbers, and and those who register don't vote. Then why bother?*

I suspect that no court would sustain that the right to vote or to hold office depends on the turnout. Regardless of turnout, people who are paying taxes,

\(^{45}\) Minor v. Happersett (1874) Case Law.  
\(^{46}\) Breedlove v. Suttles, 302 U.S. 277 (1937)  
\(^{47}\) Pope v. Williams, 193 U.S. 621 (1904)
living in the United States, and subject to the same laws as American citizens, should have the right to vote and to hold office.

g. Non-permanent shosics should not be allowed to vote because they do not have a stake in the outcome of an election

Non-permanent shosics do have a stake in the outcome of elections. Furthermore, there are many shosics who stay in the United States for decades under non-permanent visas. I will not deny the difficulty of arguing in defense of non-permanent shosic enfranchisement. Let me try to explain why they should be enfranchised through the following analogy:

In 2016 I came to the United States to pursue a Master of Laws (LL.M) at Cornell Law School. As soon as I was admitted to Cornell I started receiving emails from the Cornell Law Students Association (CLSA), which is a democratically elected group of J.D. students that represents the interests of all the Cornell law students, including those who are pursuing an LL.M. The way through which the CLSA board is elected works as follows: Every year before summer break, the whole student body votes for the JD candidates of their preference. LL.M.s are granted the right to vote for these candidates even though they will not be at Cornell the following academic year (the LL.M. program is one year long while the J.D. program is three years long).
That election meant that when I came to Cornell I was democratically represented by a group of people that I did not know, but who were trusted by the former LL.M. class to protect my interests. The importance of this election became evident when my class voted for the next year’s CLSA Board. There were two running candidates. One of them had many ideas that included LL.M. students, while the other candidate’s agenda showed no specific interest on the LL.M. program. The vast majority of my LL.M. classmates voted for the candidate who introduced ideas for the incoming LL.M. class. Even though, we would not directly benefit from this candidate’s agenda, the incoming LL.M. class would be represented by someone who would take them into account.

In that case I voted, not as Arturo Castellanos, but as an LL.M. In other words, I had no interest in protecting my personal interests because I would no longer be in Law School. My interest was future-oriented and my intention was to vote for someone who would represent the interests of my peers to come.

The power of the vote of the LL.M. class has forced J.D. candidates to include specific ideas for the LL.M. program. Even though we are a minority of the voters in Cornell Law School, over one hundred LL.M. votes can shift the election in one way or another.

In that regard, non-permanent residents in the United States should have the right to vote in this country. Thousands of students and temporary workers who come to the United States with a non-permanent visa pay their taxes, are essential to the economic activities of the United States, are subject to the
same laws as American citizens, and are affected by the policies adopted by public officials. They should have the right to vote for those candidates who will protect the rights and interests of the future non-permanent residents who will come to the United States after them. This right should be obvious in college towns like Ithaca, NY, where the resident non-permanent population is big due to the presence of Cornell University and Ithaca College.

**h. Non-permanent shosics should not be allowed to run for office**

Following on the CLSA analogy, even though candidacies for the CLSA Board are limited for J.D. students, the incoming LL.M. class can vote for an LL.M. representative to re-enforce the protection of their interests before the CLSA Board. In that regard, I strongly believe that non permanent residents should be allowed to run for office. If not for the presiding positions, they should have at least the right to elect someone to represent them in city councils and governments’ cabinets.

**V. What differences would there be between a shosic and a citizen, if shosics were allowed to vote and hold office?**

Contrary to what some people might think, granting political rights to shosics would not downgrade the value of citizenship. American citizenship would continue playing a vital role in defining personal and legal identity. It would not only continue being a factor in how Americans perceive themselves,
but it also would continue entailing legal rights and duties that are available exclusively to American citizens.

1. Only American citizens are eligible to obtain an American passport with all the privileges that come with it. According to the Global Passport Power Rank 2018, the American passport is tied in fifth place among the most powerful passports in the world for its total visa-free score. American citizens can visit 160 countries without any visa requirement.48

2. American passport holders also enjoy diplomatic presence all over the world. As of 2018, the United States is ranked number one as the country with the most embassies (167) and consulates (90) in the planet.49

3. American citizens are the only ones who can get consular protection from the United States in case of detention in a foreign country pursuant to the Vienna Convention on Consular Relations of 1963, to which the United States is a member State.50

4. The United States can assert jurisdiction over the acts of American citizens anywhere in the world. [Nationality Principle]

48 PASSPORT INDEX; Global Passport Power Rank 2018; Available at https://www.passportindex.org/byRank.php (Accessed on May 17, 2018)


5. The United States can assert jurisdiction over the acts committed against American citizens anywhere in the world. [Passive Personality Principle]

6. American citizens have the exclusive right/duty to serve in federal courts on a jury.\(^5^1\)

7. Under Rule 41 of the Olympic Charter, only American citizen athletes can compete representing the United States.\(^5^2\)

8. The right to apply for federal employment requiring U.S. citizenship is a right evidently reserved for American citizens.\(^5^3\)


10. The International Criminal Court would not dare to prosecute an American citizen.\(^5^4\)

VI. Conclusion

\(^{5^1}\) I strongly believe that juries should include shosics and not only citizens in order to be judged truly by peers. I will briefly refer to the importance of extending the jury qualifications to shosics, but this research will be focused on their right to vote.

\(^{5^2}\) INTERNATIONAL OLYMPIC COMMITTEE; Olympic Charter; in force as from August 2, 2015; Rule 41; Available at https://stillmed.olympic.org/Documents/olympic_charter_en.pdf (Accessed on May 18, 2018)

\(^{5^3}\) U.S. CITIZENS AND IMMIGRATION SERVICES (USCIS); Citizenship Rights and Responsibilities; Available at https://www.uscis.gov/citizenship/learners/citizenship-rights-and-responsibilities (Accessed on May 18, 2018)

It is time for us to reimagine new rules and parameters of political enfranchisement. There are millions of shosics in the United States working hard every day to create jobs, arts, revenues, and food for a country that they love. Shosics are essential members of the American polity. They should be allowed to vote and hold office in the United States. The outcome of every election that occurs in this country has a direct impact on their daily lives. Whether it is the election of sheriffs, district attorneys, school boards, mayors, judges, legislators, governors, or presidents, the stake of shosics in these processes is as relevant as it is for citizens.

You might wonder what are the new parameters of political enfranchisement that I propose. I am working on a separate paper to create a social scientific reasonableness, proportionality, and necessity test that would be applicable—in theory—in any court or legislature of the United States. If proven successful, that new parameter would allow millions of shosics in the country to vote and to hold office.

Bibliography


FÖLLESDAL, Andreas; Third Country Nationals as European Citizens; , 1999. Available at http://follesdal.net/ms/Follesdal-1999-3rdcntry.rtf


Cristina M. Rodríguez; Noncitizen voting and the extraconstitutional construction of the polity, International Journal of Constitutional Law, Volume 8, Issue 1, 1 January 2010, Pages 30–49, https://doi.org/10.1093/icon/mop032


**Additional Consulted Bibliography**


