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Migration, membership, and republican liberty

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ABSTRACT


Neorepublicanism holds that domination is the foremost political evil. More, it claims to be able to address today's most pressing issues. It follows that neorepublicanism should, then, speak to questions of migration, membership, and domination. However, this is not the case. Some critical voices inspired by the idea of non-domination arrive at interesting critiques of migration, membership, and domination, but their answers are often partial and in some ways problematic. They are also largely ahistorical. The contemporary paucity of neorepublican reflections on migration contrasts sharply with its centrality in republican history. In the US, from the colonial period until late into the 19th century, some republicans understood the domination of migrants and citizens as conjoined concerns. They developed a robust account of the relationship between domestic domination and exclusionary migration regimes. They conceptualized the republic as a global asylum where membership is based on volitional allegiance, and they vigorously defended the right of aliens to expatriate. Those ideas were ultimately defeated by aristocratic, oligarchic, and statist forces. This article explicates that history through a genealogical account of what I call 'insurgent republicanism'. The article then returns to contemporary theorization to diagnose its limitations, continuities, and potentials as seen from the perspective of the insurgent republican tradition.

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Introduction

What is the relationship between republican freedom and migration? The primary neorepublican texts say little about migration and its link to domination save for passing concern about mass migration and the corruption of domestic republican norms. Some normative political theorists have set out to extend and modify neorepublican ideas to circumvent those limitations, with some success. However, they do so largely from within neorepublicanism, and tend to replicate the core presuppositions generating the problematic neorepublican critique in the first place. Does the longer history of republicanism yield an alternative perspective on the relationship between domination and migration? Does that history provide critical

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insights into the limitations of contemporary republican critiques of migration and domination? This article attempts to answer those questions. It sets out a genealogy of migration politics in the American context from the colonial period to end of the nineteenth century, and then sets out a series of critical arguments and reflections on contemporary normative accounts of domination and migration. Before stating my specific arguments, I will quickly survey how contemporary republican theorists have theorized migration.

The lodestar of neorepublicanism is the idea of freedom as non-domination. On that account, to be unfree means being subject to – or dependent on – an arbitrary power. By contrast, to be free means having the capacity to control or direct those institutions shaping one's life. Here, power imbalances do not have to be destroyed. Instead, other institutional 'anti-powers' must be created (Pettit, 1996). For the purposes of this article, I need not rehearse these now well-known ideas.¹ Instead, I want to focus on the narrative Philip Pettit uses to explain the emergence of the state, because it is there that his few reflections on the politics of migration appear. Pettit provides an ahistorical account of how republican institutions come to be. Like Thomas Hobbes, the story begins in the state of nature, which is defined by a breadth of domination and the threat of arbitrary violence. For Pettit, the state is created as an anti-power to external/global domination. Upon its creation, the state becomes the foremost source of domestic domination. Hence, state power must be checked by governmental institutions. It is here that we arrive at Pettit's few reflections on migration. Pettit writes:

As historical necessity means that you have to live in one or another state, so political necessity means that in general you have no choice over whether to live in your current state or in some other. Assume that your state allows you a right of emigration and does not confine you within its boundaries; if it did, it would certainly dominate you. It is still going to be the case that other states cannot guarantee you entry, given the political necessity for states to maintain their borders and disallow open access. The fact that you have no choice over whether to live under another state is not going to be a product of domination by your own state, then, only a result of how other states behave. (Pettit, 2012, p. 161)

That is, citizens can speak of their own state and their own institutions. But they cannot control what other states do. Consequently, citizens can discuss only emigration ethics, not immigration ethics. A republican regime should permit exit rights, while a dominating regime will not support freedom of exit. In an earlier text, Pettit does reflect on the problem of refugees. There, Pettit asserts that a republic should recognize the 'plight of immigrants and refugees' (Pettit, 1997, p. 152), and may allow entry. However, the operative logics here are conditional and charitable. If refugees do not threaten to undermine the domestic virtues of the republic, then the state may allow

them to enter (Pettit, 1997, p. 152).² The reason for this is that domestic republican norms must take priority, because republican institutions presuppose those norms. Therefore, they must be defended against corruption by aliens.

Some scholars have set out to develop a more expansive critique of the relationship between migration and domination. Sarah Fine (2014) surveys a series of issues, noting that in most cases involving migration ethics, neo-republicanism often yields antithetical claims regarding the non-domination of would-be immigrants and the non-domination of the receiving state. Iseult Honohan (2014) argues that in light of the fluidity and interconnectedness of the modern world, modern border controls project domination upon agents external to the state. Hence, Honohan argues, those border controls should also be subject to democratic steering and contestation by affected aliens. Marit Hovdal-Moan (2014) and David Owen (2014) set out important arguments for how to think about membership statuses, residency, and non-domination in liberal democracies with an eye to non-domination. Alex Sager (2014, 2017) and Meghan Benton (2014) both focus on residency and denizenship, making strong claims for residency as a means to full citizenship for reasons of non-domination (Hovdal-Moan contributes to this debate as well). Benton develops a policy framework, and Sager concludes that republicanism should confer political rights on all residents: 'The neo-republican should bite this bullet and argue that not only is allowing unauthorized migrants to vote *not* absurd, justice requires it' (Sager, 2014, p. 205).

James Bohman argues for a critical theoretical approach to republicanism that rejects republican nationalism, because securing non-domination in a cloistered domestic mode begets more domination beyond the state's borders. As Bohman says, 'it does not minimize domination, but rather increases domination inside and outside the political community' (Bohman, 2012, p. 108). Against that idea – which Bohman identifies with Pettit's form of neorepublicanism – Bohman defends opening the discursive boundaries of the community to public contestation (Bohman, 2010, 2012). Cécile Laborde (2008) turns a critical eye to how republicanism has struggled to accommodate multiculturalism and ethnic diversity in contemporary French politics.

Although not neorepublican in intent, migration scholars often arrive at the problems of domination and tyranny. For example, Michael Walzer (1983, p. 59) describes guest-worker programs as a form of tyranny, in which a state's disposition toward immigrants signals its disposition toward citizens. Ayelet Shachar and Ran Hirschl (2007) show how the accepted truths of liberal citizenship promote a form of intergenerational power concentration, reflecting long-standing republican concerns with aristocratic

declension. Linda Bosniak (1988, 2008, 2010) demonstrates how modern liberal immigration regimes nurture a new caste system.

This brings me to the intended contribution of this article. A longer historical perspective reveals an account of republicanism and migration in which migration is not a tertiary concern – as it presently is for republicanism – but a core institution of republican liberty. The first purpose of this article, then, is to step back from the debates and ask whether there was a republican critique of migration, and consider what it might have entailed. The second purpose is to ask whether that history allows us to shed any light on these contemporary reflections. I believe that this approach to republicanism and migration ethics is generative on both the historical and theoretical counts. The historical contribution is to show that the colonial and postrevolutionary periods of the American republic witnessed a unique critique of migration ethics, one that was informed by the colonists' insurgency against the crown and dovetailed with emergent radical Enlightenment notions of republican liberty. This tradition pivoted on volitional allegiance, rebellious endenization, and other institutional anti-powers, and was couched within radical critiques of equality and toleration. Strikingly, among other attributes, the primary concern was not with the threat of corruption by aliens or the domination of migrants, but the institutional function that migration serves as an anti-power against the state in the service of *domestic* non-domination. Those ideas – what I call 'insurgent republicanism' – were forged before nineteenth century statism and against a competing strand of aristocratic republicanism. At least, so I hope to show.

The second contribution is analytical and theoretical. Informed by the genealogy, I set out to evaluate contemporary republican critiques of migration in terms of the history of insurgent republicanism. Because there are various positions in contemporary republican theorization on migration, I develop various points of criticism, critique, and confirmation. I argue that neorepublicanism does not yield a generative critique of the relationship between migration and domination, because it presupposes certain political institutions and norms – regarding the nature of the state and the imperative to protect republican norms, respectively – which though treated as neutral, are in fact laden with history. Specifically, they reproduce the norms and institutions that were deployed by aristocratic assailants to temper the insurgent republican tradition. Following that, I set out a series of arguments showing how contemporary extensions of Pettit's critique of migration and domination are constrained and confirmed in different ways once evaluated in light of insurgent republican history.

Methodologically, this article sets out to bridge intellectual, legal, and social history with normative political philosophy, using the former to gain

analytical and critical leverage on the latter. The hope is that a longer historical perspective yields significant insights into the hidden commitments, limitations, interrelations, and potentials of contemporary normative critiques. Part of this methodological approach is an effort to put Jonathan Israel's (2001, 2009, 2013, 2017) work on republicanism and the Enlightenment into conversation with contemporary republican theorization. The historical scholarship of Quentin Skinner and other Cambridge School historians anchor contemporary republican theorization. That history has focused on a specific set of theorists as well as a specific understanding of republican freedom. Some scholars, such as John McCormick (2011), have criticized that historical perspective as focusing on a particularly aristocratic line of republican thought. McCormick defends a democratic Machiavellian alternative instead. Machiavelli is not the pertinent anti-oligarchic voice on Israel's account (or in the history that I will recount). However, Israel's critique lends significant historical support to the criticism that neorepublicanism expresses a particularly conservative line of republicanism and is powerful foil for explicating an alternative republicanism, one with its own long history, its own understanding of the relationship between migration and domination, and which was at the core of the American Revolution.

A genealogy of the insurgent republican critique of migration and membership

From the outset, debates over migration shaped the politics of the American colonies with and against Britain. In the first half of the seventeenth century, it was often presupposed that colonies had the power to naturalize residents into the English polity. The justification was primarily based on residency. The colony of Massachusetts Bay, for example, provided that 'every person within this Jurisdiction, whether Inhabitant or forreiner', was guaranteed 'the same justice and law, that is general for the plantation' (Baseler, 1998, p. 61) including participation in town politics. These politics were always contentious. For example, late seventeenth century attempts by the British to stem the outward flow of laborers to the colonies were often met by practical and legal dissimulation on the part of colonial governors, who navigated around the constantly changing English naturalization laws with relative ease (Baseler, 1998, pp. 60–69). But local practicalities and distance made effective control of the colonies exceedingly difficult. 'By the middle of the eighteenth century', Marilyn Baseler concludes,

foreign subjects who emigrated to Britain's thirteen mainland colonies were more likely to receive bounties and free land than be shackled with alien

disabilities. The few local restrictions on the rights of aliens that existed could be quickly removed through denization in the colonies. (Baseler, 1998, p. 69)

The politics of settler colonial allegiance became a point of concern for the British following the Seven Years' War (1756–1763), and correspondingly a singular point of consternation for the colonialists. Prior to the war, the British were concerned about the demographic consequences of the mass emigration of laborers to the colonies, but allowed the practice as a bulwark against other threats to British power in the Americas. Following the war, the expansion of the colonies – largely by means of British immigrants – became a threat to centralized British power both economically and demographically, one only exacerbated by the costs of the war (Baseler, 1998, pp. 120–124; Zolberg, 2008, pp. 13, 25). Responding to these concerns, the British began to clamp down on various local colonial means of inducing emigration from Europe by disallowing statutes offering free trans-Atlantic transportation, land grants, and immediate denization (Baseler, 1998, pp. 124–125; Kettner, 1974; Zolberg, 2008, pp. 24–57).

These increasingly acrimonious migration politics were embedded in and augmented by more general debates regarding allegiance, and were the fodder of what Zolberg called the 'emerging notion of republican citizenship' (Zolberg, 2008, p. 25). The hegemonic understanding of allegiance in Europe had been that of perpetual allegiance to the crown. Some colonists, especially the landed aristocracy, found a powerful ideological narrative for expressing their divergent and increasingly antagonistic allegiance claims in the work of Locke (1988, pp. 267–302, 330–353; see also Schuck & Smith, 1985, pp. 9–41; Smith, 1999, p. 81). However, Locke's influence should not be overemphasized and needs to be contextualized within competing democratic and aristocratic currents. Many others – especially those already calling into question the legitimacy and the aristocracy and impressed by developments in radical Enlightenment philosophy – found the idea of volitional allegiance more amenable to their ends. Although the conceptual rigor of the idea should not be overplayed (Kettner, 1974), the basic idea of volitional allegiance was that free citizens and free republics are mutually defined by the choice of membership laying primarily in the hands of the alien/citizen-to-be, including the right to later expatriate or alienate oneself from that republic. Contra Locke, these claims were not fictional social contract arguments. Instead, they were understood to be concrete acts of each individual. Of course, in the revolutionary context (regime collapse, new foundations, communal continuities, and competing loyalties), these politics were of the utmost importance.

Volitional allegiance and rebellious denization combined to form the core practice of colonial republican membership. Membership as such afforded legal personhood within a colonial jurisdiction, where jurisdiction

was understood as a legal construct, not a territorially fixed space. As Jefferson wrote in his *Notes on the State of Virginia* (1785), 'A foreigner of any nation, not in open war with us, becomes naturalized by removing to the state to reside, and taking an oath of fidelity; and thereupon acquires every right of a native citizen' (Jefferson 1904a, pp. 43–44; see also Zolberg, 2008, pp. 78–87). Membership, on this account, is a recognition of one's status as person who, by their own volition, took on the rights and duties inherent to legal personhood, and has no cultural components (formally speaking). The city is subordinated to the will of the alien who chooses to become a citizen. These republican membership practices were honed in the service of partisan republican ends; the idea of volitional allegiance was made to be incompatible with the idea of perpetual allegiance (Kettner, 1974).

The anti-imperial casting of volitional allegiance claims and support for mass European migration were simultaneously forged within the practices of settler colonialism. Just as the idea of volitional allegiance was created in contrast to perpetual allegiance, volitional allegiance was also shaped to justify settler colonialism. Membership as 'consent of the governed', parsed in claims of universal equality and the rights of man, were conjoined to ascriptive expressions of racial, gender, ethnic, and religious hierarchies. The contradictions were apparent from the outset, but a self-exculpatory justification was ready at hand in the form of 'Enlightenment rationality' (Smith, 1999, p. 82). These claims – eminent in Locke (Armitage, 2012, pp. 90–113) – served to facilitate the 'enlightened' expulsion of the native populations, and to this day efface Amerindian forms of membership and politics from consideration (Tully, 1993, pp. 137–76). Natives (and blacks and woman) were assigned a place at the bottom of an emergent hierarchy of membership, one trait of which was to deny legal personhood. As Aziz Rana has noted, 'the democratic ideals themselves gained strength and meaning through frameworks of exclusion. Projects of territorial expansion and judgments about who properly counted as social insiders helped to generate and sustain the very accounts of liberty' (Rana 2010, p. 7). The insurgent republican idea – *ius domicili*³ expressed on an expansive scale and linked to notions of volitional allegiance and rebellious endenization – immanently justified settler colonialism. I will return to these important critiques.

The ideas of liberty as non-domination, volitional allegiance, and asylum developed not discretely, but in combination. They naturally translated into a republican critique of the crimping of emigration pathways (to the colonies) by an unresponsive parliament as an offense against fundamental republican principles. Consequently, resistance to – and ultimately an insurgency against – arbitrary imperial anti-endenization and foreign anti-emigration policies was central to the 'revolutionary outlook' of the colonists (Zolberg, 2008, pp. 43–51). Indeed, these insurgent republican migration

ethics would constitute tent-pole contentions justifying the war of independence, an outlook expressed in the republic's founding documents. Positively and domestically, the idea was expressed in the fourth article of confederation:

the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State.

The Declaration of Independence expresses this idea negatively and internationally: '[King George] has endeavoured to prevent the Population of these States; for that Purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their Migrations hither, and raising the Conditions of new Appropriations of Lands'.

The earliest expressions of what would become two distinct critiques of migration were already appearing. Some foresaw problems regarding a confederation's approach to unaligned naturalization policies. James Madison, for example, was quick to flag the conceptual discrepancy, and addressed the question of naturalization in the debate over the supremacy clause (Hamilton, Madison, & Jay, 2008, section 42). His primary concern seems to have been the administration of foreign naturalization claims and the slippery conceptual slope in which one state affording automatic citizenship would thereby grant it to all colonies, regardless of other colonies' stance on naturalization. But – presaging the debate to come, as Jefferson's draft of the Virginia constitution of 1776 attests – the misalignment of state membership regimes in a confederal system was also seen by some as an important tool for minimizing domination (in this case, slavery, insofar as Virginia would emancipate every slave immigrating to or passing through the state) and maximizing democratic equality (Jefferson, 1904b, pp. 158-83).

The global expression of insurgent republican migration ethics is a crucial part of this story. Zolberg (2008, p. 68) argues that the purpose of including naturalization in the Constitutional Convention was to announce to the international public a new mode of community, grounded in the inclusion of foreigners. Similarly, it was an essential (and critical) aspect of the global orientation of the Declaration of Independence (Armitage, 2008; Israel, 2017). The defense of alien expatriation, as manifested in the politics of rebellious endenization and volitional allegiance, was, in effect, a global institutional anti-power for domestic and foreign non-domination. Notably, it appears to have been globally effective, even for those who did not migrate but had a viable path to emigration. For example, laborers could demand higher wages and better working conditions by leveraging the threat of emigration (Zolberg, 2008, p. 36). The global elite reaction was

vulnerable. Keenly aware that the demographic and economic powers mustered by American insurgents were sourced from emigrants from their own states European governments of the 1770s and 1780s initiated programmatic attempts at undermining the emerging global authority of the young republic. What Baseler calls ‘Old World tales of republican perfidy, licentiousness, intolerance, and abuse’ (Baseler, 1998, p. 190) were promulgated by the European monarchies to dissuade emigration and denigrate the globally burgeoning ideas of equality and democracy.

If these insurgent republican ideas were so important, why did the Constitution instead use the term ‘natural born citizen’, an apparent *ius soli* claim? It is important to address this puzzling point in the genealogy, because it would become a touchstone for subsequent *ius soli* interpretations of federal republican and liberal theories of membership. Commentators cite four pieces of evidence as proof of the *ius soli* interpretation of the ‘natural born citizen’ clause – none of which actually support the *ius soli* interpretation on closer inspection.

One argument is that the term ‘natural born citizen’ is self-evidently carried over from the common law notion going back at least to William Blackstone’s discussion of ‘natural born subjects’, and probably further back to Edward Coke and *Calvin’s Case*, which, it is said, was an *ius soli* claim (Kettner, 1974). Those who make this argument also tend to argue that the linguistic shift from ‘citizen’ to ‘subject’ is inconsequential for understanding the meaning of the terms. This is a strikingly weak argument. First, it is a misunderstanding of Blackstone. Blackstone was not making *ius soli* claims in the modern sense. When the crown asserted perpetual allegiance, it was not an assertion of membership *right* based on *territorial* birthplace; it was an assertion of perpetual *subjection* based on one’s birth within the crown’s *dominion* (Blackstone, 1897, p. 122). To read the ‘natural born citizen’ clause as a continuity of that practice is to overlook the revolution, and, more specifically, ignore that an integral feature of the revolutionary outlook was a rejection of natural born *subjection* and supplementation with the idea of volitional allegiance. What of the change from subject to citizen? This brings me to the second argument.

The second argument is grounded in James Madison’s congressional speech in May of 1789, where he stated that:

It is an established maxim that birth is a criterion of allegiance. Birth, however, derives its force sometimes from place, and sometimes from parentage, but, in general, place is the most certain criterion; it is what applies in the United States [...] (Madison, 1904, p. 366)

Again, this passage appears to be a self-evident *ius soli* claim, and is routinely interpreted as such. But it is a misinterpretation of the speech when taken in its entirety. As Madison’s subsequent remarks make clear, the

core principle is not birthplace in either the modern sense of territory or the feudal sense of dominion. In Madison's thinking, the 'place' of birth is the political community ('membership in a society') to which one volunteers allegiance (Madison, 1904, pp. 365–369). Indeed, in an interesting rejection of the Hobbesian narrative (which, as we have seen Pettit would reprise), Madison also rejects the idea that the revolution plunged the United States into a state of nature. Instead, Madison asserts that political societies persisted. It is an *ius domicilii* claim in the sense of having concern for the *res publica* of which you are a member with legal standing.

The third pillar for the *ius soli* interpretation is that in the 1820s, the phrase 'natural born citizenship' was evidently meant as a claim regarding birthplace (McManamon, 2014). While that is true, it asserts a continuity between 1776 and the 1820s that is misleading, as will be shown. The reaction against the most radical elements of the revolution was in full swing by that point. The final pillar is John Jay's letter to Washington, imploring him to consider adding what would become the 'natural born citizen' clause, so that an alien could not take command of the military (Farrand, 1911, p. 61). Jay's letter is often understood as a general remark on membership in the United States, but it is surely more important for what it concedes and, thereby, what it implicitly supports. Namely, it assumes that every other office would be open to those who were not 'natural born citizens' with only limited naturalization conditions for senators. As the clause makes clear, many other positions – including Supreme Court Justices (Smith, 1999, p. 124) – were left open to aliens.

The unprecedented success of the revolution immediately prompted concerns for preserving the virtues facilitating the revolution's success (Baseler, 1998, pp. 190–198; Israel, 2017, pp. 321–360). The disagreement in the debates leading up to 1776 transformed into two competing republican critiques of immigration and domination: Democratic-Republican and Federalist. Both registered a newfound suspicion of the foreigner, and both, for the time being, assumed that the scope of the debate was of 'free whites', but did so in different ways. The Democratic-Republican camp continued to promote the virtues of mass-immigration, but raised concerns over the entry of foreign aristocrats less enthused by the radical philosophy of the republican revolution (like their French counterparts (Laborde, 2008, p. 214)). Certainly, their enthusiasm is less about the internationalism of the prerevolutionary decades (although that element remained), and more out of concern about what limiting immigration would mean to the nature of the republic. It was also good politics. Largely because of the momentum of the insurgent republican tradition, the Democratic-Republican critique commanded general approval in popular opinion.

The Federalists took a different ideological tact, and also won the first major legislative battle. Reflecting on the fragility of the young republican institution and the importance of republican virtues in giving

normative motivation to the revolutionary forces, the Federalists quickly shifted away from support of mass immigration toward a more conservative approach. 'Conservative', here, means both conserving the young republic and the values that fostered it. It simultaneously signaled a factional adherence to the moderate Enlightenment's preferences for aristocratic virtues. In this account, the quantity of aliens was less a concern. Instead, the focus turned to character, and to the threat of foreigners – especially paupers and vagabonds – corroding the virtues of the republic. This dovetailed with the aristocratic republican concern with protecting the intergenerational transfer of wealth. The foremost expressions of Federalist immigration ethics were the four Alien and Sedition Acts of 1798, signed by President John Adams and championed by Alexander Hamilton, at the core of which was a fear of the foreigner, in general, but the democratic foreigner in particular (Israel, 2017, pp. 350–352).

The resistance to the Federalists and the Alien and Sedition Acts generally emerged from the states and the cities, led by Jefferson (1904c, pp. 458–479). As Baseler notes, 'They argued that Federalists who succeeded in trampling on the rights of foreigners would soon expand their depredations, invade the rights of citizens, and ultimately destroy free government in America' (Baseler, 1998, p. 285). Strikingly, the grounds for popular opposition to the Alien and Sedition Acts in particular and the Federalists' approach to immigration politics in general were that, to many, they appeared as a form of republican corruption. This was due to their implied rejection of the principle of volitional allegiance and the significance of that rejection in how people (aliens and citizens) understood the demeanor of the state (Baseler, 1998; pp. 287–289; Smith, 1999, p. 155). The constitutionally enshrined language of 'people' as opposed to 'citizens' – and the still quite present concern with emergent tyrannical powers in the federal government against the states – allowed the Democratic-Republicans to assert that using state powers against foreigners signaled a turn toward despotism garbed in the discourse of conservation. Conflating the federal government's demeanor toward the foreigner with its likely desire to dominate its citizens was a winning argument, and became the ideological foundation for successful resistance to the Alien and Sedition Acts (Israel, 2017, pp. 347–360; Zolberg, 2008, pp. 96–98). Jefferson either repealed or allowed to expire three of the four Acts, and only the Alien Enemies Act (allowing for detention and expulsion during war) was left in place as an emergency measure. The Democratic-Republicans won the debate, but the debate itself established new and enduring conceptual path dependencies. More, it was clear that the conditions under which Jefferson had won the election were those of compromise with the emergent moderate and conservative normal (Israel, 2017, p. 360).

The resistance to the Alien and Sedition Acts was the high-water mark of the insurgent republican critique of migration. From that point on, the federalists made significant inroads in the cultural and ideological wars of attrition. The shift was slow and muddled at first, but as the insurgent republican migration critique progressively lost its revolutionary muster, the language of highly conditional naturalization and concern with 'good character' became more common. More, the language of 'good character' became laden with increasingly more overt forms of racist, xenophobic, aristocratic, and jingoistic language. These developments in migration politics tracked the decline of the influence of the radical Enlightenment on American political consciousness more generally (Israel, 2017, pp. 321-60). Consequently, the contradictions between universal rights claims institutionalized in residency and volitional allegiance, and the ascriptive racial hierarchies of citizenship became untenable, as an increasing number of slaves used those contradiction to challenge ascriptive forms of membership and assert their own legal personhood. Among them was Dred Scott.

Dred Scott, *Dred Scott v. Sandford*, the Civil War, and the Reconstruction Amendments would fundamentally reconfigure the terms of the membership debates, and would have unintended but radical consequences for the migration debates. The Fourteenth Amendment nullified *Dred Scott* by constitutionally enshrining *ius soli* and, thereby, formally abolishing the legal institution of slavery.⁴ The eminent racism of the majority opinion in *Dred Scott* and the constitutional establishment of *ius soli* in the Fourteenth Amendment dominate the literature on these topics.

Less appreciated is the extent to which *Dred Scott* and the Reconstruction Amendments also transformed the insurgent idea of *ius domicilii*. I will focus on that aspect (for a somewhat different critique see Schuck & Smith, 1985, pp. 72-89). The radical racism of the majority decision gave expression to the deepest sympathies of the ascriptive membership claims that had always framed American citizenship. However much these claims may have expressed truly held beliefs, the hyperbolic nature of the majority opinion must also be understood as a strategic and tactical move. The core threat was not that slaves could become citizens if they were born in certain states (Justice Taney conceded as much), but what Smith describes as 'a fear long harbored by Southern whites'. Namely,

If blacks were citizens in any state according to the privileges and immunities clause, and those blacks then visited others states, then the clause would compel those states to treat them as possessed of all the privileges and immunities they granted to their white citizens. (Smith, 1999, p. 265)

Undermining the *ius domicilii* claim in its grandest sense – in Jefferson's sense – and thereby putting an end to the abolitionist movement required denying all the means of membership which could accommodate claims of

personhood. That was the strategic reason for the arch-racism of the decision. To achieve this, the majority opinion had to concoct a racial *ius soli* theory of American citizenship, which could then be used to undermine the *ius domicilii* claims. For by asserting the perpetual legal non-personhood of blacks in *all* states, Justice Taney could make the ratcheting function of migration between states essentially moot, thereby circumventing the question of residency altogether and preserving the institution of slavery.

The dissenting opinions support this interpretation and are important for expressing different understandings of the ratcheting effects of inter-state migration. Justice Curtis's grounds his dissent in a concern with states' rights and defends the idea of *ius soli*. Where the majority asserted that the exclusion of blacks from the constitution convention implied a pre-political race ascription in which 'the people' referred to whites, Justice Curtis defended the states' rights to define citizenship themselves:

The provisions made by a Constitution on this subject must therefore be looked to as bearing directly on the question what persons are citizens under that Constitution, and as being decisive, to this extent – that all such persons as are allowed by the Constitution to exercise the elective franchise, and thus to participate in the Government of the United States, must be deemed citizens of the United States. ([Dred Scott v. Sandford, 1856, p. 581](#))

Justice Curtis dissented from the *federal* race claims of the majority, and the more outrageous claim that the constitution presupposes those race claims. But at its core, Justice Curtis's dissent does not concern itself with slavery (and as such, it lends itself to the perpetuation of the institution). The rebellious core of the insurgent republican critique of migration ethics had all but passed, and Judge Curtis's dissent clearly expresses as much. He writes that: 'Undoubtedly, this language of the Constitution was used in reference to that principle of public law, well understood in this country at the time of the adoption of the Constitution, which referred citizenship to the place of birth' ([Dred Scott v. Sandford, 1856, p. 576](#)). Justice Curtis's rendition of the 'natural born citizens' clause was decidedly modern. Crucial to my concern with *ius domicilii*, however, is less what the decision indicates regarding the rise of *ius soli* claims; that is clear enough. More important is what follows from Justice Curtis's arguments for Jefferson's ratcheting and confederal approach to membership, once membership is interpolated as a modern birthright concept. For Justice Curtis, the consequence is clear: because membership is based on *ius soli* as a citizen of a state, it means that movement across states does not entail that the slave can be liberated ([Dred Scott v. Sandford, 1856, p. 583](#)). Just the opposite. When citizenship (like servitude) is tied to birthplace, movement between different jurisdictions is inconsequential. Substantively, Justice Curtis's arguments were

meant to roll back the revolutionary rejection of perpetual allegiance, by asserting the aristocratic notion of birthright citizenship.

In his separate dissent, Justice McLean acknowledged that slave states have the power to enforce slave contracts, while noting that slavery only ever exists by way of law – and there only in uncivilized and despotic states. Those criticisms gave the dissent its moral force. However, the more practical considerations of the dissent questioned whether the widespread practices grounding volitional allegiance upon residency were enough to free slaves. Here, Justice McLean – citing a long historical, moral, and judicial record – asserted that they did. The question at hand was: would the idea of *ius domicilii* continue to have a ratcheting effect, in Jefferson's sense, whereby the politics of denizenship would function from within an unjust system to incrementally expand the scope of human emancipation? Or would the demotion of blacks to property allow for the ratcheting up of servitude? From that perspective, as Justice McLean notes, the majority opinion does not authorize black slavery. It authorizes slavery *tout court*.⁵

The importance of the Fourteenth Amendment for *ius soli* claims in the United States is well known. But what about *ius domicilii*, as manifest in the insurgent republican tradition? The Fourteenth Amendment reads: 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.' From the vantage point of the genealogy above, the Amendment reads as an argument between two different understandings of citizenship: the new *ius soli* claim emanating from the first clauses, and the much older *ius domicilii* claim lingering in the second clauses.⁶ I flag this here to presage a discussion to follow, but also to signal the lack of any standing for McLean's dissenting opinion. If the founding generation took the idea of asylum and *ius domicilii* to be self-evident and rarely in need of explication (instead, exceptions such as the 'natural born citizen' clause required expression), it certainly was not self-evident by the time of *Dred Scott*. Certainly, vestiges of the insurgent tradition remained in the second clause. But they were thin indeed. And with only fragmentary indications of its past embedded in the Fourteenth Amendment, it is no wonder that it quickly passed. Ignored – or at least, deeply undermined – was the idea of volitional allegiance in its revolutionary and migratory modes, and conceptions of membership transformed into *ius soli* in the modern sense. The constitutional foundations for emergent nationalism were set (Ross, 2005). Passed over, too, was any notion of *ius domicilii* as a ratchetting institution for non-domination (domestic or international). The insurgent republican ethos did not disappear, but it was transformed and hobbled. Following the passing of the Reconstruction Amendments, it became easier to think of *ius domicilii* less as a globally rebellious republican membership claim asserting the

effective equality of all, and more as a nested liberal national membership concept.

Nevertheless, there was still some life left in the international expression of the insurgent idea. As the Burlingame Treaty (1868) makes clear, the federal government remained eager to protect the idea of volitional allegiance against the still prevalent global norm of perpetual allegiance. Harkening back to the Declaration of Independence, one of the ‘inalienable rights’ asserted by the treaty was

the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects, respectively for purposes of curiosity, of trade, or as permanent residents.

The treaty did proclaim that ‘nothing herein contained shall be held to confer naturalization upon citizens of the United States in China, nor upon subjects of China in the United States’. But immigrants could still naturalize if they chose to apply. Similarly, the Expatriation Act of 1868 states that

Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship[.]

It then goes on to state that ‘any declaration, instruction, opinion, or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation is hereby declared inconsistent with the fundamental principles of this government’. These were not liberal universal human rights claims; they were substantive institutionalized non-domination claims. The Expatriation Act charges the President with the duty to use ‘any means’ except war to protect the constitutional rights of expatriated aliens who temporarily return to their home country. Certainly, the purpose of the Expatriation Act and the Burlingame Treaty was partly to increase Chinese immigration for economic reasons, and to do so they clearly found recourse in a language of republican migration ethics that could lend justification to those programs (Zolberg, 2008, pp. 175–184). As such, these politics prefigured the next battle. As the state building of the Reconstruction period increased economic productivity and the demand for cheap labor brought an unprecedented number of Chinese immigrants, the battle between insurgent republicanism and ascriptive federalism shifted to the international field (Zolberg, 2008, pp. 175–198).

The enthusiasm of the federal government for defending the right of aliens to expatriate would not last. By the end of the century, the federal government had completely reversed course, and the courts alone would be

left to defend the insurgent republican tradition. The writing had long been on the wall, but the old idea still had one formidable pillar of support: a constitution that did not enumerate the power to control the movement of people across the national border, but did contain a language of personhood that gave significant legal power to immigrants and pro-immigration groups. As long as those pillars lasted, the insurgent republican migration politics could at least be plausibly defended in court, despite a clear lack of public support.

The last major episode in the battle between the insurgent republicanism and federalism came in 1889 when those constitutional hindrances were effectively made moot. Three cases stand out: *Chae Chan Ping v. United States* (1889), *Nishimura Ekiu v. United States* (1892), and *Fong Yue Ting v. United States* (1893). In particular, *Chae Chan Ping* expresses the nature of this crucial juncture in the genealogy of the insurgent republicanism. There, the court found that:

The power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States as a part of those sovereign powers delegated by the Constitution, the right to its exercise at any time when, in the judgment of the government, the interests of the country require it, cannot be granted away or restrained on behalf of anyone. [...] The powers of government are delegated in trust to the United States, and are incapable of transfer to any other parties. They cannot be abandoned or surrendered. Nor can their exercise be hampered, when needed for the public good, by any considerations of private interest. The exercise of these public trusts is not the subject of barter or contract. (*Chae Chan Ping v. United States* (1889), p. 609)

It is a remarkable discursive move, epoch-making for the migration debate. The terrain upon which the republican practices of *ius domicilii* had once flourished was now near fatally undermined. In its place, the logic of territorial sovereignty was taken as a truism of immigration law. Where legal jurisdictions and frontiers were the operative spatial logics in republican migration ethics in the first century of the republic, after 1889, the frontier would slowly transform into a border, and the liberal debates about movement and rights would begin. Statism, nationalism, birthright citizenship, and various ascriptive claims could coalesce behind an absolute political/philosophical claim of federal sovereignty with an enduring rhetorical and legal force. The illiberal racism of *Chae Chan Ping* was nullified later, but the plenary powers asserted by the federal government have never been challenged, and remain to this day a bedrock for anti-immigration politics (Cleveland, 2002; Legomsky, 1984; Motomura, 1990). The new colossus now had to contend with the old leviathan.

Contemporary migration ethics from the perspective of insurgent republicanism

What does that genealogy tell us about contemporary republican normative theorization on migration? I believe it tells us quite a lot. The most general point is that whereas contemporary republican theorists treat migration ethics as new horizon for political theorization – often a purely speculative endeavor, presumably or implicitly because that topic is not considered to be one that has a history – just the opposite is the case. The question of migration has been integral to republican philosophy and practice from the outset and intensely so in the American experience. Many of the signal historical turning points of the American republic pivot upon questions of migration and they were shaped by the battle over the nature of republican liberty. It follows that there is a wealth of historical material – social, institutional, constitutional, cultural, and intellectual – on migration which should be, if not at the center of contemporary theoretical reflection on the confluence of domination and migration, then at least taken into account. In this concluding section, I consider how this history affords critical analytical leverage for reevaluating contemporary neorepublican reflections on migration ethics.

One contribution is that it allows us to properly contextualize contemporary republican theory within the much longer contestation between radical and moderate Enlightenment forms of republicanism. The genealogy above has traced two distinct critiques of republican freedom as they unfolded in the American context. In the revolutionary period, the dominant critique was what I call the insurgent republican critique: radical Enlightenment ideals put into practice under conditions of colonial resistance, colonialism, and new political foundations. It was within that framework that the institutions of asylum, rebellious endenization, volitional allegiance, and the right of expatriation were forged. The historical process of supplanting that tradition was not straightforward and had many reversals, but following the conjunction of the Federalist republican tradition with the logics of European liberal concepts of state sovereignty, it all but disappeared. The radical Enlightenment ideas of equality, democracy, and religious toleration could not withstand the moderate Enlightenment once allied with aristocratic notions of virtue, vested oligarchic interests, and state sovereignty claims.

Pettit's critique of migration ethics can be squarely situated within the moderate Enlightenment tradition. Certainly, Pettit rejects that tradition's most odious elements. Nevertheless, it is now possible to diagnose the historical and theoretical reasons why Pettit arrives at the particular critique of migration politics. Similarly, it is possible to evaluate the significance of the few passing claims on the question of migration. Two stand out:

domestic statism and the question of republican norms and republican freedoms.

Recall first that Pettit's reflections on migration are scant, almost marginal remarks. However, that makes the reflections even more remarkable. The reason for this is that it allows us to see the extent to which the conceptual order of operation generates its own conclusions: the reflections on migration do not generate the reflections on the state, instead the presuppositions regarding the state generate and naturalize the critique of migration. That in itself is interesting, but the genealogy affords us further reflections on just how much baggage that move entails. That is, we can contextualize Pettit's naturalization of the state within the genealogy of republicanism. When we do so, we find that Pettit's naturalization of the state as a modern historical necessity is analogous to – and generates the same conclusion as – *Chae Chan Ping*. By presupposing Hobbesian statism, the lodestar of non-domination is transformed into a cloistered principle. This is a neutral philosophical move for a range of political issues which do not pertain to the movement of people across borders. However, on the topic of the relationship between migration and domination, these ideas are not neutral (Sager, 2016). Far from it. For if we accept those principles, it means that migration is not fundamental to understanding domestic political non-domination, nor is it a secondary concern of social non-domination. As such, it prefigures and deprioritizes the republican critique of migration ethics. Simultaneously, it follows, in a seemingly natural way, that because republican institutions depend upon republican norms – 'current republican character' in Pettit's terms (Pettit, 1997, p. 152) – then those domestic norms take priority and demand protection. (I will return to the question of character or virtue.) Finally, as well as generating certain understandings of migration, the naturalization of the state also obviates the most radical global elements of the insurgent republican tradition. It is for this reason that Pettit can assert that we can only talk about emigration ethics and not immigration ethics, without having to confront the question of how immigration policies concern the domination of citizen and aliens alike.

Insurgent republicanism expressed a unique understanding of immigrant agency, one not found in contemporary neorepublican critiques, including those who have tried to extend Pettit's critique in more emancipatory directions. Where Federalists and aristocrats saw a potentially corrupting agent, where neorepublicans see someone in need of charity (and also potentially corrupting), the insurgent republicans recognized that having struggled against persecution and endured oppression, unjust criminalization, and arduous travels, immigrants were uniquely valuable contributors to the republic. The assumption was that immigrants understand domination in rather concrete terms, in ways that settled regimes have slowly forgotten. That perspective anchored the notion of volitional allegiance, in the sense

that it assumed that the person volunteering allegiance was actively rejecting the dictates of perpetual allegiance and domination, and committing themselves to republican governance. The fugitive was someone who had been criminalized by a dominating state. Being ‘illegalized’, in contemporary parlance, reflected positively on the character of the migrant. It connoted an agent worthy of esteem. These were substantive claims, and it is for that reason that they were given institutional expression. So, for example, alien residents fought in the Union army and, in sharp contrast, were constitutionally barred from the joining the Confederate army (Raskin, 1993, pp. 1409–14). More, it was not aristocratic republican virtues that were prized. As one early twentieth century historian noted:

[No] matter how ignorant and stupid the immigrant might be, he was more than likely to be sure of one thing – that he did not believe in holding slaves. He could not discuss states’ rights, theories of sovereignty, and nullification, but he was unequivocally opposed to the slaveholder. (Porter, 1918, p. 130; found in Raskin, 1993)

Immigration is, on this account, an institutional anti-power against the *domestic* corruption of the republic.

What of the *domicilii* claims developed by theorists who have tried to move beyond neorepublican statism, how do they fare in the historical light of insurgent republicanism? In one sense, the verdict is rather favorable. Quite without intending to – and without any discernable cognizance of the history recounted above – many of these critical voices have hit on a deeply republican principle of conferring legal status based on residency alone and against circumscribed notions of perpetual allegiance or birthright citizenship (e.g. Benton, 2014; Honohan & Hovdal-Moan, 2014; Owen, 2014; Sager, 2014). However, these critical neorepublican moves are often *internal* moves, which do not address what could be called the liberal state architecture problem. The moves toward more critical accounts are therefore important, but, as they stand, limited. The limitations are apparent when considered from the perspective of the history of republican migration ethics. This history is etched in the concepts of membership used in contemporary debates over membership and migration, where *ius domicilii* is now understood as a nested idea. However, as has been shown, before being tempered by an aristocratic reaction and European statism and nationalism, *ius domicilii* was a broad and rebellious international expression of the insurgent republican idea – *against* empire and perpetual allegiance – that the new republic would be a place of asylum in the service of non-domination of aliens and citizens alike. That idea was not only intended to address the non-domination of alien residents but was also concerned with citizens and aliens who had not migrated and may never do so. In this regard, we can see the consequences for building a critical account of

republican migration ethics from within the cloisters of neorepublicanism: doing so replicates many of the same arguments that were used to limit the insurgent republican idea.

The same historical perspective also puts the problem of settler colonialism back on the republican agenda, and on that count, the residency approach is revealed as laden with colonial history. Israel contends that the worst aspects of settler colonialism were initiated and celebrated by the moderate Enlightenment philosophers and championed by the more aristocratic and conservative republicans (Israel, 2017, p. 363). He further asserts that 'Only the Radical Enlightenment operated comprehensively and systematically against ancient régime social and legal structures *en bloc*, condemning not just slavery [...] but black social and political subordination to whites generally' (Israel, 2017, p. 364). There is some truth to this. But beyond certain philosophical circles, there is little evidence that, when in power, the more radical and democratic republicans were any less enthusiastic than the moderate and aristocratic republicans on the topic of settler colonialism. Republican migration politics were coeval, complicit, and actively supporting of racist and genocidal settler colonial practices. As noted, the idea of automatic membership based on residency underwrote settler colonialism. Most aspects of the migration that I have excavated were integral to those politics. These are contemporary concerns. As Patrick Wolfe writes, 'When invasion is recognized as a structure rather than an event, its history does not stop – or, more to the point, become relatively trivial – when it moves on from the era of frontier homicide' (Wolfe, 2006, p. 402).

So, is the insurgent republican idea of *ius domicilii* worth salvaging? If these practices are inextricable – if the non-domination afforded by insurgent republicanism is inherently tied to settler colonialism, slavery, and other ascriptive hierarchies – then the idea should be dismissed. But if they can be disaggregated, then there could be room for redeploying these ideas in a more emancipatory way. Is that the case? I believe so. It is clear from the genealogy above that these practices are extricable, and that the insurgent republican approach to migration politics was at times instrumental in real battles of non-domination. The prerevolutionary colonists certainly believed that this idea could be deployed against British imperialism. Jefferson saw it as a potential institutional ratchet for non-domination under non-ideal conditions. Dred Scott used the same logics to shame and battle the slave states. McLean's dissenting opinion in *Dred Scott* held this idea up to the shame of the majority. More, although this argument would need to be fully developed, two of the most important real-world institutions against migrant domination today – the precedent set in *Plyler v. Doe* (1982) concerning educating the children of undocumented immigrants and sanctuary cities – are established upon the constitutional remnants of the insurgent tradition. Finally, as the critical accounts of neorepublicanism have

shown, there are many important ways that this idea could be reprised in the service of contemporary migrant non-domination. This is not to absolve the insurgent tradition settler-colonial past. It is merely to stress that settler-colonialism is not inherent to the insurgent idea, and could be put in the service of non-domination today.

The genealogical approach also informs contemporary strategic considerations. One problem with contemporary normative theorization is that, to paraphrase Laborde (2008, p. 3), the guiding assumption is often that republicanism is a venerable tradition, but not a living one. As Laborde shows, that is wrong in France, and as we can now see, it is wrong in the US as well. The genealogy directs us to see that the insurgent republican tradition is still on the books and vitally important for contemporary American migration politics. Preeminently, it manifests in the radical equality claims that afford *persons* constitutional protections. Again, consider *Plyler* and contemporary sanctuary politics – fundamentally important institutional bulwarks against the political and social domination of aliens and citizens alike – both of which are rooted in the constitutional ideas stemming from the ideas of eighteenth century insurgent republicanism. These examples are auspicious indications of the potential for present day emancipatory insurgent republican politics. This shows – and this is one advantage of synthesizing the genealogical approach with normative theorization – the fallacy of naturalizing the state, as well as the limitations of treating these topics in a strictly normative or speculative mode. Simultaneously, it reveals a long line of historical reflections that would augment Sager's (2014) recent reflections on temporary workers and political rights.

Surprisingly, those theorists who appear to be least concerned with contemporary republican theorization seem to fare best of all when evaluated from the perspective of the insurgent republican tradition. Specifically, Shachar and Hirschl (2007), as well as Bosniak (1988, 2008, 2010), are correct to focus on the intergenerational power concentration and emerging caste system associated with migration regimes. They can be seen to be channeling an idea with deep roots in the radical Enlightenment tradition. The reason why these concerns are so prescient is because they fill a significant gap in the radical Enlightenment critique of republican liberty regarding institutions. The arc of republicanism has so far bent toward oligarchy because entrenched aristocratic and theocratic interests have been routinely successful in institutionalizing their politics. The radical Enlightenment was victorious in part because of the intellectual persuasiveness of their claims and in part because of the individual persuasiveness of its most eminent figures. However, those modes of politics are not dependable and are extremely demanding, respectively. They are compelling philosophical claims, but poor political foundations. The critiques of intergenerational and structural forms of domination from Bosniak, and Shachar and Hirschl

are important, as they provide clear paths forward for thinking about a reprised insurgent republican critique of migration and membership that is more thorough in its engagement with institutional concerns. Certainly, Shachar and Hirschl's concern is with questions of global distribution of citizenship and their implications. But upon an insurgent republican analysis, the critique pertains to internal forms of emergent oligarchic domination as well. Interestingly, the politics of contesting contemporary birthright regimes have affinities with those involved with countering perpetual allegiance regimes in the colonial period.

Finally, the genealogy also reveals an old republican topic that may be worth reviving: self-interest. None of the insurgent republican politics I have explicated are really about the well-being of the migrant. Their core concern is with how those migration politics inform considerations of the *domestic* non-domination of citizens. Here again, the distinctions between the insurgent republican tradition and contemporary neorepublican critiques are sharp. Some scholars begin and end their analyses by prioritizing the (non-)domination of migrants. There are obviously good reasons to be concerned with the domination of migrants. Other republicans, often those who are pushing on the virtues of deliberations and deliberation across borders, often frame the ethical political motivations as other-regarding. John Maynor expresses this sort of idea when he writes that

individuals must take account of and track others' interests before they can act without dominating them. To this end, individuals must consider how their actions may affect others and vice versa by treating them with sufficient levels of civility and mutual respect. (Maynor, 2010, p. 79)

And later, 'Not surprisingly, communication and those virtues that help foster vibrant exchanges of information play a central role in the reciprocal power of non-domination' (Maynor, 2010, p. 79). Bohman (2010, 2012) makes somewhat similar claims. The genealogy traced out does not contradict these arguments, but it certainly does not offer them any historical footings. Few republicans would have endorsed resting their political projects on such an unstable foundation. Most republicans assumed the opposite: that self-interest was a far more reliable motivation than virtuous deliberation. Indeed, deliberative concerns are wholly absent from insurgent republican reflections on migration, membership, and non-domination.⁷ However, they do manage to arrive at other-regarding politics. As Jefferson understood the problem, since citizens also live in view of the executive and the growing power of the state apparatus – and since citizens are as equally subject to its coercion as aliens – defending aliens from domination is properly understood as a form of self-interest. The basic concern is that – and here we quote Baseler's reflections on the colonial period again – those who 'succeeded

in trampling on the rights of foreigners would soon expand their depredations, invade the rights of citizens, and ultimately destroy free government in America' (Baseler, 1998, p. 285). Ideas of asylum, expatriation, and volitional allegiance are not charitable. They are expressions of self-interest properly understood, a much more dependable motivation than the hypothetical benefits of some deliberative moment. At root, the various institutions and norms that make up the insurgent republican critique of migration and membership are expressions of the self-interested desire of citizens to be free from domination.

Notes

1. See, among many others: Bohman, 2010; Buckinx, Trejo-Mathys, & Waligore, 2015; Gelderen & Skinner, 2002, 2005; Honohan & Jennings, 2015; Laborde, 2008; Lovett, 2010, 2016; Lovett & Pettit, 2009; Martí & Pettit, 2012; Pettit, 1997, 2001, 2012, 2014; Skinner, 1997, 2002a, 2002b, 2008, 2010.
2. A somewhat similar claim is made in passing by José Luis Martí and Pettit in regard to 'illegal immigrants' and amnesty (Martí & Pettit, 2012, p. 80).
3. Today, states tend to confer citizenship by way of three principles: *ius soli* (based on one's place of birth); *ius sanguinis* (based on ancestry); and naturalization. A fourth principle, *ius domicilii*, is understood as denizenship or residency that is more-than-transitory. Citizenship and denizenship do not demarcate different scales of membership; they designate different modes. Today, conceptions of denizenship and residency are understood as nested or state-cloistered, see Tomas Hammar (1990). Hammar provides a more strict delineation between residency ('the real situation') and domicile ('legally tolerated or granted residence'). On residency and migration, see also Bauböck (2003), Bauder (2012, 2014), and Song (2016).
4. Practice was decidedly different. Daniel Kato has described the post-Reconstruction structure as one of 'constitutional anarchy', whereby nonintervention by all three branches of government functioned to 'liberalize lynching'. The Fourteenth Amendment made lynching illegal, but constitutional anarchy and an 'active policy of weakness' made lynching normal (Kato, 2015, p. 25).
5. As Justice Mclean wrote: 'But if we are to turn our attention to the dark ages of the world, why confine our view to colored slavery? On the same principles, white men were made slaves. All slavery has its origin in power, and is against right' (*Dred Scott v. Sandford*, 1856, p. 538).
6. For a similar discussion, see Schuck and Smith (1985, pp. 72-89).
7. See also Sophie Guérard de Latour's (2010) critique of contemporary republican turns toward deliberation.

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