

Contextualizing Migrant Political Rights: Reconsidering State Duties

Joseph Cloward
Stanford University

Abstract: According to many theories of migrant political inclusion, states have a duty to extend political participation rights to immigrants once these immigrants stand in a qualifying relationship with the state or society in which they live: they are subjected to coercion or have strong social connections or are contributing to the economy. While it is true that state legitimacy depends on extending participation rights to those who stand in certain relationships to the state, focusing solely on immigrant relationships with the state when assigning states duties to extend participation rights leaves some immigrants out, at least temporarily. This is particularly worrying when immigrants have no access to participation rights in a country of origin. This paper supplements the relational view of state duties with a framework that more fully accounts for a weighty universal human interest in political participation and the role of states within the international system. Further, the paper proposes that state duties to protect political participation rights fall into two categories: granting institutional access and protecting particular political activities. It additionally argues that state legitimacy requires that democratic states uphold the legitimacy of the international system of states by granting political participation rights to those whose countries of origin cannot or have failed to do so. Democratic states thus have duties of political inclusion for some recent or temporary immigrants.

Keywords: immigration, rights, political participation, citizenship, state duties, legitimacy, democratic theory

Imagine three different immigrant women, all living in the United States on an H-1B visa. They have qualified for this status through their education and technical skill and by finding a sponsoring employer. The H-1B visa they each possess is a temporary work authorization—a “nonimmigrant” visa because it does not entail permanent residence. This means, among other things, that all three women have limited rights of political participation in the U.S. beyond basic liberties that all persons in the U.S. enjoy. (Granted, of course, that even these liberties may be practically limited for immigrants, whose status can be endangered by political speech and protest.)

Now let’s add one additional detail to the thought experiment: one woman is from Canada, one is from China, and one has no nationality, having been denationalized in her country of origin because of her ethnicity. Does this detail affect our intuitions about which of these women, if any, ought to have rights of political participation where she now lives? Though their immigrant status is equivalent, their access to democratic institutions of political participation is not. If the interests and rights that people have to political participation are universal, their differential access to institutions of political participation ought to be relevant for determining whether any of the three should have access in their new home.

Both international law and theories of migrant inclusion assume that individual interests ground a universal right to political participation. The Universal Declaration of Human Rights (1948) makes democratic principles foundational: “The will of the people shall be the basis of the authority of government” (Article 21, Section 3). Beyond this, however, the Declaration is hazy on the specifics. It requires only “periodic and genuine elections which shall be by universal and equal suffrage” (section 3) and asserts that “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives” (section 1).¹ Migrants pose a challenge to this

¹ The International Covenant on Civil and Political Rights (1966) uses similar language (see Steiner 1988).

declaration, since participation rights, to the extent that they exist, are rooted in states. The declaration recognizes this fact by announcing a person's right to "take part in the government of *his* country." This makes a universal human right to democracy a peculiar sort of right. It seems to require that states have particular institutions, like elections, but doesn't seem to actually apply to individuals. When a person immigrates from one state to another, the right to participate doesn't travel with them, except to the extent that they become members of a new state. Though many democratic states grant some political participation rights to emigrants, such that many migrants may continue to "take part in the government of [their] country" after becoming expats, this practice is inconsistent and sometimes criticized (López-Guerra 2005).

Political theory tends to reflect the same challenges. Theorists arguing for a universal right to democracy tend to focus on the necessity of some basic set of democratic institutions without directly addressing the corresponding individual participation rights that ought to be considered universal. If democracy is accepted as a human right – and that is, of course, controversial (Charlesworth 2013; Riker 2014) – it may entail equal voting rights, basic rights protections for all, including free expression rights, equal opportunities for deliberating and running for office, and the rule of law (Christiano 2013; Sen 1999). At best, these discussions tell us what rights should be generally available in all states, but they cannot give more than rudimentary guidance on the questions raised by migration because participation rights, by their very nature, must tie specific people to specific institutions. Even if we are persuaded that participation rights should be universal, short of establishing a cosmopolitan system of government, it's hard to define exactly what this means unless we can solve the problem of determining which states have duties to which migrants. It is, therefore, not enough to simply assert a universal human right to political participation; although the *interest* in political participation may be general, the *right* to participate must be specific to institutions, such that without assigning responsibility for the corresponding duties there can be no right at all.

Thus, arguments for migrant political inclusion tend to ask when migrants stand in a proper relationship to a particular state such that the state has responsibility for opening political participation rights to them. If a state exercises coercive power over an immigrant (Song 2019; 2009; Lopez-Guerra 2005; Abizadeh 2008) or if immigrants are members of the society in some relevant sense (Carens 2013), the state may have a duty to grant them participation rights. In these arguments, political participation rights are grounded implicitly in universal human interests, but duties only arise once the appropriate relationship exists between (non)citizens and the state. Theories differ primarily according to the particular principles they choose for determining which states owe duties to which immigrants.

The typical relational approach to grounding state duties fails to capture the substantive differences in the urgency of political participation rights among the three immigrants in my opening thought experiment. From the perspective of the state, each of the three has the same limited relationship with the state, reflected in their equivalent immigration status. The stateless immigrant may, in a roundabout way, be said to have a distinct relationship with the U.S. because she is more dependent on the state and extremely vulnerable if deported. But this sort of relational claim can't easily express the difference between the Canadian and Chinese immigrants, who nevertheless have very different political participation rights in their countries of origin. No matter the principle chosen, it will inevitably leave out some individuals in a world where transnational mobility is more and more the rule. When state duties arise only from relationships with the state, migrants are not so much individuals with political participation rights as they are individuals transitioning between membership in states. While certain principles are more generous in granting participation rights to migrants than others, existing approaches all tend to view migrants in this way. States do, on these accounts, have a duty to establish and protect rights of political participation, but though the duties flow from a right that is prior to the duty, no responsibility can be assigned until there is a qualifying relationship between a state and the rights-holder.

In this chapter, I develop a theory of state duties for political participation rights that takes more seriously the possibility of a universal interest in political participation. I build on existing relational accounts of state duties by turning to the role of states in upholding the legitimacy of the international system. Leaning on Anna Stilz, I argue that state legitimacy depends in part on the success of the international system of states in establishing justice, including the protection of universal interests like the interest in political participation (Stilz 2019). States, therefore, share a collective responsibility for fostering the political participation rights of all people. Of course, some states do not foster the political participation rights of their own people or cut some peoples off from nationality and political participation. Democratic states thus have duties to protect the political participation rights of those that other states will not or cannot protect. As a result, states bear duties to some migrants who do not yet have an otherwise qualifying relationship with the state.

In making this argument, I also offer a novel description of the nature of the duties of states with respect to participation rights. Though I emphasize the way in which individual interests too often fall out of the discussion in relational approaches, individual interests are not the only interests for grounding participation rights. Reciprocal and systemic interests also ground these rights and thereby shape corresponding duties. Because political rights are necessarily particular, tied to particular institutions, the context further determines what specific duties a state will have. The context and relevant grounding interests together determine what institutional access a state must grant and what activities it must permit.

The chapter is divided into two sections. First, I lay out a framework for determining state duties that is responsive to interests and context. I briefly sketch a tripartite scheme of interests grounding rights that, together with relevant threats, can determine what specific rights protections are necessary. I then describe how states both grant institutional access and protect specific political activities in order

to instantiate legal rights to political participation. In the second section, I describe how reconsidering the role of states within the international system can reframe a discussion of which states have duties to which migrants. In doing so, I argue that states have responsibilities beyond those that arise from the relationships in which they stand with immigrant residents. In order to be justifiable as a broader system, states must also act on behalf of some of the interests of non-citizens. This proves particularly relevant for migrants with no existing access to political participation rights anywhere.

1. What Duties?

There's nothing inherently novel in either my advocacy for the political inclusion of immigrants or in my basing political inclusion on the rights and interests of the would-be participant in politics. While what I have termed "relational approaches" may not directly rely on a framework of individual rights and interests, the rights of migrants and their individual interest in political participation are often implicit in the argument. By making this background framework more explicit, however, we can find ways existing theories require further elaboration if the goal is taking individual interests in political participation seriously. In this section, I offer a reconstruction of relational accounts that highlights the rights and duties framework that implicitly undergirds them. I do so in order to sharpen some of the conceptual challenges and advantages of a rights-centered approach. While I largely agree with the arguments made in relational approaches, I revise three portions of the argument for immigrant political inclusion expressed in terms of rights and duties: first, by emphasizing how duties and rights may come apart; second, by broadening an account of the interests that undergird political rights; and third, by proposing two categories of protections that may be entailed by duties to protect political participation rights.

Consider one common family of arguments that sees subjection or coercion as the primary grounds for a state duty to extend participation rights. These arguments often begin by asking when states are

justified in coercively subjecting individuals to their laws. Sarah Song, for example, discusses a “coercion principle” that argues that state authority is only legitimate when all those who are coerced as subjects of the state are granted rights of political participation. The extent to which a person is subject to the laws of the state may determine whether the state has a duty to grant full participation rights of equal citizenship or whether the state may grant some more limited set of participation rights (2009; see also López-Guerra 2005).²

I call Song’s account and others like it “relational” because they argue that rights (and the implied duties of states to grant and protect them) flow from a particular type of relationship that can exist between an individual (whether citizen or not) and the state. In the example of the coercion principle the relationship is one of being subject to state coercion. Other theories propose alternative principles that generate a qualifying relationship. These include social belonging (Carens 2013), fair play (Song 2016; 2019), or residence and connection to place (Ochoa Espejo 2020).

Note that relational accounts tend to flow from questions about the authority of states. Sometimes these fall within a tradition that asks when state authority and coercion will be legitimate. Extending participation rights is often understood as one of the conditions for state legitimacy. For others, the motivating question is more precisely a question about the boundaries between states, particularly democratic states, asking how we can justly determine who ought to belong to the demos that both makes up and governs a democratic state. Despite the fact that relational accounts tend to begin from questions about the state and make (full) political rights dependent on a relationship with the state, it would be a mistake to argue that the ultimate basis of their arguments is not a right to political participation rooted in individual interests. It is precisely this sometimes implicit individual interest

² Alternatively, other similar coercion-based theories argue that it is coercion itself, not just subjection to coercion (in significant domains of one’s life over time) that triggers the appropriate kind of relationship (Abizadeh 2008).

and right that motivates the conclusion that state guarantees of political participation rights are an appropriate recompense for or counter to state authority.

This is most explicit in accounts like Philip Pettit's argument for democracy as a necessary condition of state legitimacy. In this family of arguments, both individual and systemic interests ground the participation rights of individuals and point toward a state duty to protect those rights. Individuals have an interest in not being dominated, in not being coerced to act against their wills, or in governing themselves autonomously. Since, however, they also have an interest in the goods that flow from limited government authority (security, economic stability, etc.), their interest in non-domination may point less toward an anarchistic renunciation of government authority and more toward a right to participate in controlling the actions of a liberal government (Pettit 2012).

Though Pettit's account does not directly address the political rights of immigrants, the same logic of individual and systemic interests operates in the background of relational theories of immigrant political inclusion. Those subject to law or to coercion have an interest in both general popular control and in equal participation and respect for minorities (given the possibility that anyone could end up in the minority). Thus, there is a systemic interest in the political inclusion of all others subject to the laws. States will have greater duties to extend political participation to migrants the longer and the more fully those migrants are subject to state coercion and law. This explains, for example, why states have no duties to extend political rights to tourists, who are only temporarily subject to a state's laws (though this may also give reason to include tourists specifically in decisions that will be coercive for them as a class). Individuals have an interest in participating in deliberation and decisions about questions that affect them; they are most affected by questions that relate to their social network and the places in which they live, work, learn, and play. Systemically, both migrants and their friends and neighbors have an epistemic interest in broad participation that can provide accurate information

about these questions. If a right to political participation is rooted in these interests, states have a greater duty to extend political participation as migrants become more deeply connected to their communities.

Pettit's more explicit focus on individual interests and rights, however, reveals one implicit challenge for accounts of immigrant political inclusion that rest on a similar logic. Within the context of a single state, it is easy to assume that individual rights are more or less synonymous with state duties, as two sides of the same coin. If individuals have a right to political participation rooted in their interest in non-domination, the state has a duty to protect their access to institutions and political activities so that they may participate in democratic government. When the relevant individuals are migrants, however, the question of assigning responsibility for protecting or granting political participation rights makes the identity of individual rights and state duties less obvious. It can be helpful, then, to clarify the conceptual relationship between rights and duties. I turn to that question next, before exploring two other ways we can sharpen a rights-based account of immigrant political inclusion.

Rights and Duties

What is the relationship between rights and duties? I largely follow Joseph Raz's view, which sees rights and duties as intrinsically related, though not identical. The content of a right determines the content of corresponding duties because rights ground duties. Rights give us reasons to hold someone responsible for fulfilling a corresponding duty. Thus, if all children have a right to education, then that is a compelling reason to argue that someone has a duty to provide a quality education to children. Rights are, in turn, grounded in important interests and values. The conclusion that children have a right to education is rooted in deeper convictions about what it means to live a good human life, perhaps because education allows children to develop autonomy or because it is essential for appreciating beauty. Since rights are both grounded in these deeper values and used to ground duties,

we can understand rights as “intermediate conclusions in arguments from ultimate values to duties” (Raz 1986, 181).³

As I noted previously, however, the case of immigrant political participation highlights the fact that assigning duties is not always straightforward. Raz is useful here because he argues that we can define a right without knowing exactly who or what duties are entailed by the right. The fact that we have agreed there is a right to childhood education does not yet tell us whether states, churches, parents, or someone else has a duty to educate children (1986, 184–85). Context matters, not only for determining who will be assigned responsibility for a particular right but also for determining what the relevant duties are in the first place. Rights can therefore generate new duties as circumstances change. Features of the context may change. Thus, in different political and cultural contexts, people who have agreed about the existence of a right to education may have been right at one time and place to believe this right only required a duty to provide a grade school education while, in another context, it requires free universal access to a college education.⁴ Similarly, in some contexts the duty for education has been assigned primarily to religious institutions, whereas in others it is a state responsibility (perhaps even to the exclusion of religious or private education).⁵ Duties, therefore, are not merely a mirror image of rights. Rights can tell us something about the necessary content of a corresponding duty, but they are not the final word, nor do they assign responsibility for the duty.

³ One reason rights talk can be useful is that we may agree on the importance of a particular right, while disagreeing about which values or interests ground that right. In this chapter I remain agnostic about the ultimate values that ground rights of political participation, though I make reference to some possibilities.

⁴ In this and in the following discussion, I do not assume that ‘context’ is a brute exogenous fact about the world. Political choices shape the context over time.

⁵ Raz gives the additional example of the rise of modern bureaucracies. The existence of bureaucracies changes the context of our rights to political participation, generating new duties based in that right that did not exist previously.

The Breadth of Interests Grounding Rights to Political Participation

We establish and recognize rights when they are necessary for protecting important interests that would be threatened in the absence of formal protections (Raz 1986, 165–68). A simple version of this conception of rights focuses on the interests of the rights-holder. A person’s interest in life and security, for example, grounds the establishment of a person’s right to not be tortured or receive other grievous bodily harm at the hands of another person. This right imposes duties on others, who may be punished for torturing another person, and on the state, which has an obligation to protect those under threat of bodily harm and the same duty that all other agents have to not inflict it.

In like manner, political participation rights protect multiple *individual* interests. The person who herself exercises participation rights has a number of reasons to be interested in participating: participation rights can bring about particular political outcomes she seeks, they can signal her political equality and dignity, and they can partially constitute her ability to shape her own world, among other possibilities. However, for some rights, including political participation, we get a better account of the grounds for the right when we expand the circle of relevant interests to include not just the rights-holder but other participants in the political system. As I argued in earlier chapters, there are *reciprocal* and *systemic* benefits of individual participation that also ground participation rights, though they are rooted in the interests of others.⁶

Reciprocal benefits are those that flow from another person’s interest in the rights-holder’s participation.

Another person may have an interest in your participation because he sees you as a political ally and

⁶ On this point, I depart from Raz, who argues that what makes rights distinct from other grounds for duties is that they tell us that duties are grounded specifically in the interests of the rights-holder. This distinct feature of rights talk can still hold true when we recognize that individual interests are not the sole grounds of some of what we commonly recognize as rights. When I assert that I have a right to participate, Raz’s presumption that the implicit grounding of the claim is my own interest in participation seems correct. When, instead, I assert that there ought to be a generally recognized right of participation for all who reside permanently in a territory, it seems to me that it is much less clear that the implicit grounding must be the individual interests of those residents alone that grounds my assertion.

will benefit from the additional support. He may, however, even have an interest in your participation when you are political adversaries. For instance, in forms of political participation that center on speech, like deliberation, petitioning, or protesting, adversarial political participation can improve the quality of discussion and push us closer to the truth. (This argument is familiar from John Stuart Mill's *On Liberty*.) Even in forms of participation, like voting, where participants move beyond expression to an exercise of power, there can be reciprocal benefits to adversarial participation. On the one hand, a current enemy may be a future ally. On the other hand, your political adversary may wish to be seen as winning by more than default; winning an uncontested election may not be as valuable as defeating an opponent.

Systemic benefits flow from another person's interest in a political system in which the rights-holder (and people like her) may participate. All people within a society can benefit when they know their voices will be treated equally and with dignity. Many systemic benefits of participation extend the reciprocal benefits. Not only might I have an interest in the participation of particular adversaries' exercise of participation rights, I also, together with my adversary, have an interest in a system of adversarial, competitive politics featuring robust debate. There are thus epistemic benefits to inclusive systems that do not systematically exclude valuable information by excluding specific groups and classes of people who may have unique perspectives or knowledge. Competition and contestation can improve policy and government and can protect against permanent domination by one's opponents.

Thus, political participation rights exist not just to protect individual interests, though this is one category of interests that ground them. For migrants, the consequence of this tripartite categorization of grounding interests is that the interests of citizens can also give reasons for the political inclusion of immigrants through the extension of political participation rights.⁷ In evaluating the need for a

⁷ The full argument for this claim is in an earlier chapter of the dissertation.

right, we consider each of these three categories of interests, weighing these against two additional considerations: on one hand, the shape and scope of the right, and on the other, the necessity and feasibility of the right.

First, interests do not only ground a right but can also give it a particular shape, including the scope and any limitations on the right. Though these three types of interests sometimes harmonize, they may also be in tension in ways that do not undermine a right but do determine its scope. Adversaries may not always benefit from the participation of their opponents, for example. Consider the Millian argument I made above that adversarial political speech can bring a political community closer to the truth. I am less optimistic than Mill. Surely the benefits of adversarial speech will depend on the quality of the political speech on offer. There might, therefore, be reasonable limitations on rights of participation in a particular deliberative process. Valuable as adversarial deliberation in the Senate may be, a Senator does not have an unlimited right to erroneously slander other Senators and can be censured for doing so. This limitation on the Senator's right to participate in deliberation is thus based in the very interests that ground her right. Similarly, if a right to participation is grounded in systemic interests in a recognition of democratic equality, it may necessarily exclude rights to some acts of participation that would directly undermine that interest, perhaps by refusing to protect certain acts of protest that directly facilitate attempts to stage a coup.

Second, Scanlon usefully argues that to claim something is a right is "to claim that some limit or requirement on policy decisions is *necessary* if unacceptable results are to be avoided, and that this particular limit or requirement is a *feasible* one" (Scanlon 2003a, 99, italics in original). We don't need to establish rights when the interests that ground the right aren't threatened or when the duties a right would entail would be impossible or unreasonably onerous. Thus, context matters for the articulation of a right (Scanlon 2003b). This is one reason why rights may be articulated in a somewhat vague or

indeterminate way in universal declarations but require specification, particularization, and determination when enacted in statutes (or in legal interpretation) (Greenberg 2020).

The point of this discussion for this chapter is that broadening and clarifying the types of interests that ground political participation rights may reveal one weakness of relational accounts. As I argued in the introduction, relying solely on an individual's relationship with a state to determine the extent of the state's duties leaves some people out of political participation rights. For these folks, the individual interests that undergird participation rights seem to fall out of the discussion in relational accounts. In discussing citizens, all three types of interests seem to synergistically support the extension of political participation rights to all. With migrants thrown in the mix, however, the interests of immigrants in participation seem to potentially conflict with the interests of citizens in their exclusion (though we should not exaggerate the extent of the conflict or ignore the way in which citizen and non-citizen interest also overlap or align). Relational accounts can too easily privilege the synergy of individual, reciprocal, and systemic interests, ignoring situations in which individual interests may primarily ground rights. Where qualifying relationships do exist, there are more likely to be systemic interests supporting immigrant political inclusion. We should not over-hastily discount the weightiness of individual interests in political participation, even when they are not significantly supplemented by interpersonal and systemic interests. I discuss how this should influence assigning state duties in the second section of the paper.

Two Protections

I have thus far argued for several reasons that establishing the duties entailed by political participation rights is not as straightforward as sometimes assumed. While I have argued for the importance of taking individual interests in political participation seriously, I have also argued that rights alone cannot tell us what duties exist or who should have responsibility for them. What's more, the context matters,

suggesting that duties associated with political participation rights may be different in different states and highly particularized. Given these challenges, what can be said generally about the duties of states or others to protect or establish political participation rights?

While the specifics of these duties may be necessarily context dependent, I propose one conceptual tool for discussing them generally. The duties generated by rights of political participation fall into two categories: granting institutional access and protecting particular activities. Meaningful political participation requires both the capacity to take part in particular types of activities (like political speech, organizing, or voting) and to access institutions where the processes of politics take place. We can describe these duties as protections in both categories. For example, one central political right is the right to vote. A duty to protect a person's right to vote includes a duty to protect their institutional access (their ability to register to vote and access a polling place) and their actual participation in voting by casting a ballot (for instance, by enacting secret balloting, such that a person can cast a vote without social pressures influencing their choice). Though duties generally entail both types of protections, we can separate them conceptually to better understand why context matters for determining the duties entailed by political participation rights and, further, to understand what may be necessary for protecting the interests of migrants to participation in politics.

Institutional Access

Much of what we think of as politics occurs within or through institutions. States and other parties that control institutional access are able to determine who may participate and in what way. Examples of granting institutional access include setting rules that determine who may register to vote, sign their name on a ballot initiative, donate to a political campaign, or attend an exclusive political event. Institutional access can be limited to a particular place or a particular political process. A non-citizen immigrant resident, for example, may have a right to vote only in a particular jurisdiction (in San

Francisco, but not in California or in the United States) or only in particular elections (a school board election but not a mayoral election).⁸

Institutional access is often formal access. For state institutions it typically means legally defining who is authorized to participate in particular activities. Other political institutions, like parties, unions, or democratic workplaces, will have their own formal requirements for accessing particular institutions. There may, however, be informal limits to institutional access, where certain individuals or groups know they are not wanted or permitted even if they are formally or legally allowed to participate. Formal and informal controls to block access can work in tandem, like the many legal Jim Crow restrictions on access to the ballot for Black Americans that buttressed an even more pervasive regime of informal (though by no means subtle) social pressure against Black folks' participation in political institutions. In other cases, there appear to be no constraints on institutional access if institutions are open to all. A city council, for example, might have a time for open comments from anyone who wishes to attend and speak. Even in such a case, however, institutional access is still a relevant facet of the right of political participation; the city council or another authority still has the power to restrict that access.

A duty to grant institutional access may require non-interference or facilitation on the part of the duty-bearer. When the duty is a duty of non-interference, the duty-bearer simply may not prevent access to the institution. If the political rights of citizens include a right to monitor the government's actions, for example, the city council may have a duty to open their meetings to all who wish to attend. Voting rights, on the other hand, are often believed to entail more active duties, such as outreach to eligible voters to inform them about polling places or registration and identification requirements.

⁸ In this example, I note that they 'may' have a right because, though San Francisco has enfranchised non-citizen parents in school board elections, courts have ruled their enfranchisement violates the California state constitution.

Which duties a state or other entity will have will depend on context—on political culture, on institutional traditions—as well as on the values and interests that ground the corresponding right. For example, since petitioning is generally understood to be a universal right permitting all who are affected by authoritative decisions to raise grievances about the negative effects of these decisions, state and other authorities have a duty to open petitioning institutions to all affected persons. Sometimes petitioning happens through formal systems and procedures, via an elected official or through a specific website. The details of the institutional context will determine further specification of the duties entailed by petitioning rights. Similarly, the right to vote arises only in the context of electoral institutions. In this case we might say that a general right to have a say in politics requires a right to vote (and a duty to extend suffrage) once the way that a person has a say in politics is through elections.

Particular Activities

Political participation rights grant not just institutional access but also the liberty to pursue particular political activities, either within specific institutions or generally. As discussed in previous chapters, I refer to these political activities as “modes of participation,” including a range of activities, like petitioning, resisting, deliberating, bargaining, voting, and more. Each of these modes can occur across a range of political sites. Rights to participate in some modes, like voting, are always tied to particular institutions; though you might vote in a corporate shareholder, union, county, or school board election, your right to vote always refers to a particular jurisdiction, not to a general right to participate in voting anywhere. Rights to participate in other modes, like petitioning, can more plausibly be granted universally. Even if we understand the concept of petitioning broadly, so that it includes all speech making a request of or complaint against those with power over you, rights to political speech could be protected such that a right to petition could be granted in all institutional contexts.

As in the previous discussion of institutional access, duties entailed by the right to participate in particular political activities can range from non-interference to more active facilitation. Rights to free political expression may primarily entail a duty to avoid censorship and repression. Voting rights, on the other hand, may entail duties to educate voters on the issues at stake in our election. Though the boundary between institutional access and engaging in political activities is admittedly blurry, the duties associated with voting in this example center on effective participation in the activity of voting, not in access to the ballot. Both are necessary for a more general right to vote.

At first glance, it may seem that duties to protect particular activities may be more similar across political contexts than duties of institutional access, which are inherently tied to particular institutions. This is not necessarily the case, however, because the political culture and institutional context determine what modes of participation are necessary for satisfying particular interests. First, the particular historical form of an institution determines the relative importance and value of different modes of participation. In a direct democracy, for instance, voting takes on additional significance for advancing one's individual interests. Second, it is fundamentally true that political activity only takes on meaning within institutions. Even general political expression, which we might think of as independently valuable, depends for its meaning on the possibility of an audience and a shared system of political concepts that would make expression intelligible. Institutions create that system of meaning and bring together that audience.

Understanding the importance of context for determining rights and duties tied to particular political activities can build on a distinction Carens makes between universal human rights, which ought to be protected for anyone anywhere, and membership-specific human rights, which ought to be protected

for anyone, but only in the particular place where they are relevant.⁹ His example is the right to seek employment. Every adult needs this right, but they only need it in the place where they reside (2013).

However, even what Carens calls universal human rights may require membership-specific specification. For example, the human right to free expression is a universal human right, generally understood to be at least partially grounded in political interests. It is not a membership-specific right in that there are strong reasons to believe our interest in free expression is strong no matter where we find ourselves. But the specific contours of what a right to free expression, particularly of a right to political expression, would require will differ based on institutional context. Differences in this right determined by context manifest themselves most often in terms of restrictions on political expression. Thus, Germany has had a prohibition on particular forms of Nazi political expression which have not been necessary elsewhere. Thus, even where we generally recognize a universal human right to free expression, there will be context-dependent aspects of the right to political speech.¹⁰

Political participation rights in general may have this same quality. Arguments for the universality of a right to political participation necessarily take on vague and general expression, as in the Universal Declaration of Human Rights. Martha Nussbaum, for example, describes a universal political capability as “being able to participate effectively in political choices that govern one’s life; having the right of political participation, protections of free speech and association” (2006, 77). We can recognize the universality of a general right while acknowledging that the right will only have meaning when given further specification, which, in turn, can only be given in a particular context.

⁹ Carens notes a third category: membership-specific discretionary rights, which are unique entitlements granted by a specific state (or other organization) to its members. They are privileges of membership, such that the sole ground for these rights is membership in an organization that has decided to extend these rights.

¹⁰ Larry Alexander argues that the idea of freedom of expression as a universal right is incoherent in part because of the highly context-dependent nature of the right (2013).

To sum up, political participation rights are protections of both institutional access and engagement in particular activities. What rights are needed in a given situation are determined both by interests and by the institutional context. Duties can be divided along these same lines. Next, I turn to the question of who ought to be assigned responsibility for the duties entailed by a right of political participation, particularly for the immigrants who get left out by relational accounts.

2. Who has duties, and for which migrants?

If everyone were a citizen of some state and happy to stay put there forever, it would be enough to say that states have a duty to grant and protect political participation rights to their citizens. This would complete the sketch of duties to grant political participation rights I described above. Migrants complicate the picture because they move between states. Even once we stipulate that it is states who have a duty entailed by participation rights, migrants lead us to ask which states have duties to which migrants. Although relational accounts provide compelling principles—beyond formal membership through citizenship—that can assign duties to protect political participation rights for many migrants, some get left out who do not currently stand in a qualifying relationship to any state willing to fulfill duties to protect political participation. In this half of the chapter, I argue that, conditional on a commitment to a weighty universal human interest in political participation, states have a collective duty to protect that right for all. State legitimacy depends, in part, on the legitimacy of a system of states, which must accommodate the rights of both settled and migrant persons. Viewed in this context, states do not act only on behalf of the interests of citizens in a contest against immigrants but instead must consider the interests of all. The upshot is that, for each individual, one or more states should have responsibility for protecting their political participation. In some cases, this leads to a stronger obligation to include some immigrants than relational approaches make.

Nothing in what I have said so far necessitates a focus on states when assigning duties entailed by political participation rights. Especially if political participation rights are grounded in general interests like autonomy or non-domination, they can easily imply duties on workplaces, universities, and economic institutions to protect democratic rights internally. I'll set this broader question aside to focus on states, however, because of the importance for immigrants of states' decisions to acknowledge or reject duties to protect their political participation rights. I similarly choose to focus here on democratic states—though I don't believe they are the only states with duties to protect political participation. Democratic states show themselves willing to protect political participation rights for many, sometimes including some non-citizen immigrants. They can, therefore, play a role in protecting individual political participation rights for those that have been failed by other states.

In the international realm, too, there are non-state actors that may have duties to protect or facilitate political participation rights. Consider international refugee regimes, for example, which attempt to justly facilitate the sharing of the burden of protecting refugees among states. Though these regimes are far from perfect, they are an essential piece of a broader attempt to make the international state system more legitimate and just. By recognizing state failures and redistributing duties to protect particular groups of refugees to other states, they make an effort to ensure the basic rights of all individuals are protected by some state. International governance structures might have a similar duty to ensure the provision of basic political participation rights to all peoples, though what this entails exactly becomes less clear in a world where far fewer states grant democratic participation rights than protect the basic human rights of would-be refugees.

Which migrants? Which states?

Migrants pose a unique problem for assigning duties precisely because there are multiple states on which they could make a claim. This matters particularly for political participation rights because they

are rights that depend so much on institutional context. Relational accounts pick up on the significance of institutional context for granting and defining participation rights. Principles like coercion, fair play, or social belonging tell us which institutions are most relevant, even when immigrants do not yet enjoy full membership via formal citizenship. To the extent, however, that we agree that political participation rights are at least partly grounded in weighty universal interests, we can recognize the fact that some immigrants do not (or do not yet) qualify for participation rights via relationship with the state as a political and moral problem worth solving.

Having made the argument more fully in a previous chapter, I mostly take it for granted here that there are compelling and overlapping reasons to believe we ought to recognize a universal human right to political participation. At the least, the view that there are weighty general human interests at stake in political participation is consistent with a range of traditions. Most non-instrumental defenses of democracy make an argument of this kind (although political equality is not identical with participation rights per se, only with equal participation rights). Contemporary republicanism, similarly, sees political participation rights as necessary protections of weighty human interests in autonomy and non-domination. As noted earlier, Nussbaum also explicitly includes political participation among the basic human capabilities. All of these traditions give us reason to take individual interests in political participation seriously, such that the exclusion of some people from political participation rights, especially when they have no access to these rights anywhere, should give us pause.

Note, however, that my conception of three types of interests grounding political participation rights raises an additional challenge for defining a universal, individual human right to political participation. Because the interests of the individual in political participation are only one part of the calculus, we must always have some knowledge of context to understand the role that reciprocal and systemic

interests play in grounding and giving shape to a right to political participation. Individual interests, on their own, ground a defeasible right to political participation, but reciprocal and systemic interests will in some cases strengthen and in others temper the rights of a particular person to participate in particular ways and in particular institutions. We're already used to this balancing in questions of immigration. A student spending a year studying in a foreign country surely has some interest in participating in political processes that will affect her, but the reciprocal and systemic interests of others in her participation will be less than in a place where she has permanent residence.

If we return to the thought experiment with which I began, we can see one way in which we might wish to give particular priority to individual interests, even when other grounding interests are not yet strong or when the individual does not yet have strong ties to a particular society and its institutions. Immigrants with otherwise similar circumstances may differ in the extent to which they have access to political participation rights back in their country of origin. (In my introductory thought experiment, they were immigrants from Canada and China and a third immigrant with no legal nationality.) Relational approaches do not easily respond to this difference. The status of their existing political participation rights, from a relational perspective, has no bearing on whether the state in which they now reside has a duty to grant them political participation rights.

And yet, this difference may have enormous significance for the urgency of their respective individual interest in political participation. Those with no current access to formal political participation rights will have a stronger interest in accessing them where they are. At first glance, this may seem to contradict what I argued earlier – that political participation rights are context- and institution-dependent. If we assume these three migrants have otherwise equivalent status and interests, why wouldn't they have the same interest in political participation rights when confronted with the same institutional context in their new home?

The answer is that the relevant political context for migrants cannot be contained solely within the territorial confines of a single state. A de-nationalized refugee, for example, may have a strong interest in securing a home in which she can advocate for herself and her oppressed, minoritized group through political participation. Where she has deep connections to her original home, the best-case scenario may have been securing political participation rights and adequate protection in her home country. Having been violently displaced, however, she may now have a strong interest in political participation rights in her current home. There she may advocate for foreign policy that pressures her country of origin to acknowledge human rights violations or for domestic policies that allow people from her group to establish a stable and secure diasporic community. These interests differ, at least in their urgency, from the interests of those who retain political participation rights in a home country. Some states fail to adequately protect these rights. Because they do, those whom they fail have reason to seek political participation rights where they can.

Why do these differences in individual interests in political participation rights matter for assigning duties to the state? To answer this question, we must look to the role of the state in the international system. Anna Stilz has argued that the international system of states could be legitimate in part to the extent that it functions as an effective system for protecting basic liberties and enabling collective self-determination (2019). Thus, when states fail to protect political participation rights, they also harm the legitimacy of the international system of states. This, in turn, harms the legitimacy of even those states who grant political participation rights to their citizens, since they become complicit in a system of states that claims enormous authority without disposing its basic legitimizing duties. Consequently, even when there are not state-specific reasons for a particular state to have duties to protect the political participation rights of a particular group of residents, there may be duties rooted in the state's position within the international system.

Democratic states thus have non-relational reasons to grant political participation rights to some immigrants residing within their borders who otherwise have no access to political participation rights. Though these immigrants may not (yet) qualify under reasonable relational principles, states may still owe them duties of political inclusion. These duties are grounded both in the individual interest and right of persons to political participation and in the obligation of the state to work toward the justice of the state system of which it is a part.

In arguing that democratic states have duties to attend to the differential status of immigrants' political participation rights, I am not making a blanket argument that democratic states have an indefeasible duty to extend political participation rights to immigrants from non-democratic states. States may have a limited capacity to do so, which is a relevant constraint on duty. Rights will still be shaped by reciprocal and systemic interests and there may still be other countervailing reasons against assigning such a duty to a particular state. The point, however, still stands that a rights-based approach helps us be attentive to this important difference in migrants' interests.

An international perspective also illuminates other ways in which states and the institutional context shape individual interests that ground political participation rights. Relationships among states or between particular states and particular groups of people may determine the urgency of individual interests. The influence of these relationships is already often a part of the legal regimes governing political participation rights. Post-colonial relationships are one such relationship that help ground particular duties for colonizing states.

The UK, for example, grants political participation rights more easily and quickly for migrants from within the British Commonwealth. The former colonial relationship gives immigrants from these states a stronger interest in political participation. Sometimes, states owe duties because their actions have necessitated displacement, such as the U.S. invasions of Iraq and Afghanistan, where

collaborators with the U.S. military needed protecting, often through immigration to the U.S. Some states also establish reciprocal relationships. The European Union, for example, grants local voting rights to all EU citizens immigrating within the EU.

3. Conclusion

A rights-based approach to assigning state duties to grant political participation rights both helps us make sense of existing policies and attend to some blind spots. In particular, it points to an often-neglected area of concern for the rights of migrants who are excluded from political rights elsewhere.

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