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Zsolt Kapelner

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## Vulnerable minorities and democratic legitimacy in refugee admission

Zsolt Kapelner

Department of Philosophy, Central European University, Budapest, Hungary

### ABSTRACT

In this paper I defend the view that the democratic legitimacy of refugee admission policies requires the democratic inclusion of asylum seekers. I argue that this includes not only granting them formal participation rights, but also ensuring that they have a sufficient level of participatory capabilities to exercise these rights. This leads to the specific problem of asylum seekers with vulnerable minority backgrounds. Their participatory capabilities may be hindered by social injustice stemming from their state of origin which the receiving state, one might argue, has no duty to redress. Redressing inequalities that stem from social injustice in other states may be thought of as being beyond the limits of refuge, and therefore unreasonable to demand from receiving states. I propose a defence of what I call the Inclusion Thesis against this objection based on the idea that the democratic inclusion of asylum seekers is necessary for making sure that they can enjoy their basic right to have a say. Receiving states do not generally have a duty to rectify unjust inequalities among asylum seekers that stem from their states of origin. However, when this is necessary for making sure that they can enjoy their basic rights, they may be required to do so. Therefore, since receiving states have a duty to ensure that asylum seekers with vulnerable minority backgrounds can enjoy their basic right to have a say, they also have a duty to make sure that their participatory capabilities are equalized.

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In this paper I examine the question of what duties the principles of democratic legitimacy prescribe for receiving states towards asylum seekers in general, and towards those who belong to vulnerable minority groups in particular. I argue that asylum seekers are owed some level of democratic inclusion in decision-making about refugee admission policy. I will call this claim the *Inclusion Thesis*. This requirement is quite demanding; it prescribes not only formal participation rights, but also granting asylum seekers sufficient *participatory capabilities*. This leads to the specific problem of asylum seekers with vulnerable minority backgrounds. Their participatory capabilities may be hindered by social injustice stemming from their state of origin which the receiving state, one might argue, has no duty to redress. I defend the Inclusion Thesis against this objection.

**CONTACT** Zsolt Kapelner  [kapelner\\_zsolt@phd.ceu.edu](mailto:kapelner_zsolt@phd.ceu.edu)  Central European University, Budapest, Hungary

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## Democratic legitimacy in refugee admission

Although refugee admission is strictly regulated by international law, all states must make decisions about refugee admission policies and their implementation. For example, they need to decide if and how to set up Refugee Status Determination Processes, whether to grant any status to individuals fleeing war zones or environmental devastation, and how similar their treatment should be to that of refugees, and so on. These decisions need to be legitimate: they ought to be compatible with basic moral requirements, human rights, international refugee law, and the principles of global justice. Legitimate decisions are also normally democratic,<sup>1</sup> i.e. are made or authorized by the appropriate people through a democratic procedure (Buchanan 2002; Christiano 2004; Dworkin 2011, 379).<sup>2</sup>

The ‘appropriate people’ is usually thought of as the citizenry of the state. But with refugee admission one might feel that citizens are not the only ones to be included in democratic decision-making. It may be argued that asylum seekers, for whom admission can be an extremely serious matter – even a matter of life and death – may have very strong claims for democratic inclusion; they should play at least some part in democratic decision-making on refugee admission. I will call this view the Inclusion Thesis.

In my view, the Inclusion Thesis is correct. What it entails precisely, however, greatly depends on how one justifies it. A widespread justification is based on the so-called *All-Subjected Principle* of democratic inclusion (Erman 2014, 538). It holds that those who are subjected to the state’s coercive power ought to be given a say in how that power is exercised; and since asylum seekers are subject to the state’s coercive power, they are owed democratic inclusion (Abizadeh 2008). As Sarah Fine puts it: ‘According to democratic theory, the governed must have access to participate in government, and as long as outsiders, non-citizens, are governed, they too may demand a say in the relevant processes and policies.’ (Fine 2011, 637)

The argument from the All-Subjected Principle suffers from serious shortcomings. First, it is unclear what exactly is meant by subjection to coercion, and whether this alone necessitates democratic inclusion (see Miller 2010; Saunders 2011). Second, tourists are subject to state coercion, but they clearly should not be given a democratic say on decisions that concern them, e.g. how hotels are taxed. The intuitive appeal of the Inclusion Thesis stems not primarily from the fact that the relevant decisions may result in coercion. What is relevant is that these decisions are of much greater *importance* to asylum seekers than hotel taxation is to tourists. Refugee admission policies determine how it is decided if one is granted or denied refugee status, if one is sent to a refugee camp or is deported, and so on. In other words, much is *at stake* for an asylum seeker in such a decision.

This suggests a more plausible defence of the Inclusion Thesis based on the so-called *Stakeholder Principle* of democratic inclusion (Macdonald 2008, 2012; Bauböck 2007, 2015, 2018; Lampert 2015). On this view, democratic inclusion is due when individuals

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<sup>1</sup>Some authors sharply distinguish between legitimacy and authority taking democracy to be strictly a matter of the latter rather than a former (see Garthoff 2010). In this paper I do not take such views into account.

<sup>2</sup>Note that decisions made by administrative personnel or the executive branch, that is, many decisions that pertain to refugee admission, are also subject to democratic authorization, albeit indirect.

have sufficiently high stakes in inclusion, i.e. when some or most of their fundamental interests are intertwined with, and depend upon a political community and its institutions (Bauböck 2015, 825; see Christiano 2008, 78–79, 2012, 74). What does this entail exactly? One might suspect that the Inclusion Thesis coupled with the Stakeholder principle implausibly implies that asylum seekers ought to be included on a par with citizens. After all, the Stakeholder Principle is a principle of *democratic citizenship*; it explains why citizens have particular rights, including participation rights, as opposed to non-citizens. This would indeed be an implausible implication,<sup>3</sup> but the proponent of the Inclusion Thesis does not have to accept any such conclusions.

The Stakeholder Principle claims that democratic participation rights are due whenever *most* of one's fundamental interests are deeply intertwined with *most* of a political community's institutions and institutional decisions. This principle excludes individuals who have only a *few* interests so intertwined with the relevant institutions, e.g. tourists. But what about individuals who have *most* of their interests intertwined with just a *few* institutions and institutional decisions? For example, whose basic rights depend on how certain decisions are made, e.g. how claims for refugee status are assessed? The Stakeholder Principle, I believe, demands that these individuals be given participation rights that pertain only to those specific institutions and institutional decisions on which their fundamental interests depend. This would be short of full citizenship; however, it would allow restricted participation rights and protections for individuals who are dependent only on some specific institution.

Which asylum seekers have sufficiently high stakes in admission? Asylum seekers who should be considered refugees, whether or not admitted, seem to satisfy the criteria, for they are individuals whose basic rights would lack protection upon refoulement (Carens 2013, 202–3; Miller 2016, 83; Straehle 2018, 251). Some such individuals, however, may have lesser stakes in admission to a particular state, for they may have enough resources to avoid refoulement and apply for asylum elsewhere. Yet others may be able to avoid refoulement but look to become camp refugees if their application is denied, and since circumstances in many camps can be rather inhumane (see Cherem 2016), they may have sufficiently high stakes.

It is also possible that some individuals who do not strictly speaking fit the legal or moral criteria of being a refugee become dependent for their fundamental interests on a state's institutions. If this dependence renders their stakes in receiving asylum high enough, then, I believe, the Stakeholder Principle selects them for democratic inclusion despite not falling under the moral or legal category of refugeehood. This shows that the question of who should be considered a refugee, by either legal or moral standards, and who should be admitted as a refugee are distinct. The Inclusion Thesis claims that those who should be *considered* refugees, as well as those who have as high stakes as they do, should have a democratic say in who will be *admitted* as refugees.

How do we know who has high enough stakes? And shouldn't the procedures deciding this be democratically selected? If this is a valid worry, it concerns not the Inclusion Thesis, but the Stakeholder Principle. If there is no appropriate way to know which asylum seekers have high enough stakes, then how do we know that those we normally call citizens have high

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<sup>3</sup>Although there may be good reasons for the naturalization of refugees and other immigrants over time (Rubio-Marín 2004; Owen 2011; De Schutter and Ypi 2015; Ziegler 2017).

enough stakes? Naturally, any inclusion regime based on the Stakeholder Principle would have to rely on potentially fallible mechanisms for determining stakes. Still, as long as these mechanisms make a *bona fide* and contestable and correctable effort to include those with high enough stakes, I believe that they do not have to be seen as problematic.

In this discussion I focus on the Inclusion Thesis as it applies to states, rather than international institutions. This may seem strange. After all, asylum seekers' stakes in admission in a particular state depends on the background conditions of the international refugee regime as well as other states' refugee admission policies. An asylum seeker may not have a particularly high stake in being admitted to state *A* if the international refugee regime allows her to also apply in state *B* where she has a very high chance of being admitted. In a less favourable international environment, however, the same asylum seeker may have significantly higher stakes in being admitted to *A*. Furthermore, in addition to states, international institutions, such as the UNHCR, also play an important role in shaping and implementing refugee policies. These are indeed good reasons for ensuring that the voice of asylum seekers and refugees is included in the democratic governance of the international refugee regime (Owen 2018b, 41).

One may further argue that under a proper international refugee regime no asylum seeker should have saliently high stakes in being admitted, for the rules of global refugee governance would make sure that no asylum seeker suffers significant losses upon being denied refuge by a particular state. I agree. My argument is most relevant to cases when international institutions and other states fail to comply with their duty to create a proper international refugee regime; in this specific sense it belongs to non-ideal theory or partial compliance theory (Valentini 2012, 655). But does not any discussion on refugees belong to non-ideal theory, as refugees would not exist in an ideal world? Why focus, then, on the state instead of the international institutions?

My answer is as follows. First, despite the salient role of international institutions and law in refugee governance, states remain powerful agents in the politics of asylum, whose decisions often have a far greater impact on what actually happens to asylum seekers than those of international institutions, even when these decisions remain within the confines of international refugee law. Unless supranational institutions assume more state-like roles, e.g. if EU member states confer all their rights to decide on and implement refugee policy to European institutions, asylum seekers will often remain more directly dependent on receiving states' institutions than on international institutions. Second, the requirements of democratic legitimacy for international institutions are less clear and more controversial than those in the case of states (Christiano 2012; Buchanan 2004, 314 ff.). The case of the state provides a clearer framework for discussion and for drawing out conclusions that may very well be applicable in the case of international institutions as well. Still, I would emphasize that the democratic inclusion of asylum seekers in international refugee governance is also of great importance, and whenever asylum seekers' fundamental interests depend most directly not on states' institutions, but rather on international ones, then the international level should be considered the primary site of democratic inclusion.

### The requirements of democratic inclusion

The Inclusion Thesis holds that the democratic legitimacy of refugee admission policies requires the democratic inclusion of asylum seekers. On the face of it, this simply means

that they should have some sort of opportunity to participate in democratic decision-making on refugee admission policies, either directly or through elected representatives. This claim, however, is much less straightforward than it might seem at first sight. First, one might be suspicious of the idea of issue-specific participation rights. Decisions on refugee admission affect other decisions as well simply because they make demands on the same national budget. Asylum seekers' democratic powers should certainly be, as it were, insulated to some extent by institutional design from the citizens' domain of democratic self-governance. But this insulation doesn't have to be absolute. Democratic decisions in a state *A* may affect the democratic decisions in *B* through their externalities and side effects; this is not a problem by itself as long as the decision-making powers of the citizenry of *A* and *B* are sufficiently kept apart. And there is no *a priori* reason to think that a sufficient level of separation, while possible between the citizens of *A* and *B*, is impossible between the receiving state's citizens and the democratically included asylum seekers.

Another problem is the unclarity of the term 'democratic participation'. There are at least three ways in which citizens can be said to have a right to participate in democratic decision-making (Bauböck 2018, 49; Owen 2018a, 184; Arrhenius 2018, 108). One is voting either directly on decisions, or on representatives. Another is to contest or even veto political decisions already made (Pettit 2012, 225–29). Finally, partaking in public deliberation, thus shaping decision makers' and representatives' preferences and convictions, may also be relevant. As Niko Kolodny argues, 'having the means to persuade others seems as much an opportunity to influence a decision as being able to cast a ballot oneself.' (Kolodny 2014, 333) These forms of democratic participation may be called *authorial*, *editorial*, and *discursive* or *deliberative* participation respectively (Owen 2018a, 184). Which of these participation rights are owed to asylum seekers according to the Inclusion Thesis?

One may argue that asylum seekers are owed as wide a range of participation rights as possible. Another may object that authorial rights should be reserved for citizens only. One may opt for a context-dependent solution. Note that different participation rights are usually protected by different institutions: for example, authorial participation rights by election commissions, editorial rights by courts and constitutional tribunals, and so on. Therefore, how the democratic inclusion of asylum seekers is best realized in a particular context may depend on the institutional arrangements of the receiving state, the resources different institutions have immediate access to, and other such practical factors.

A further question is whether asylum seekers' contribution to democratic decision-making should carry as much weight as that of citizens. Many authors, including advocates of the Inclusion Thesis such as Abizadeh, argue that citizens' democratic say should always have greater weight than that of foreigners (Abizadeh 2008, 55). However, the Stakeholder Principle might point to a different direction. Brighouse and Fleurbaey (2010) argue that the greater one's stake in a particular decision is, the greater weight one's contribution should carry. One might argue that this is the case regardless of the type of contribution, i.e. whether it is authorial, editorial or deliberative. But for asylum seekers this likely means that their contribution should be weightier than that of citizens. Most citizens do not depend for their right to life, autonomy, or subsistence on, for example, how a state sets up its Refugee Status Determination processes. Many, although not necessarily all, asylum seekers do.

These are all important questions. However, in this section I will not commit to any particular answer to them. Instead, I will focus on another problem, which I believe is of great importance for the viability of the Inclusion Thesis. While it seems clear that the Inclusion Thesis requires granting asylum seekers *sufficient formal participation rights* – whether authorial, editorial, or deliberative, whether of lesser, equal or greater weight than citizens’ similar rights – this cannot be sufficient for democratic inclusion. Equally important for including them as decision makers on refugee admission policies are their *participatory capabilities*, i.e. their capability to make effective use of the various means and opportunities of participation granted by the receiving state. The mere availability of means of participation – e.g. the vote – hardly counts as a genuine opportunity without the corresponding capability to utilize the means in the appropriate manner. A library card is not an opportunity for enjoying literature or for self-education if one cannot read. Similarly, it would be rather cynical to grant asylum seekers participatory rights without ensuring that they are capable of exercising these rights, i.e. without helping them develop their participatory capabilities.

One might believe that participatory capabilities are of the greatest importance in the case of deliberative participation. The fact that one has the formal opportunity to contribute to public deliberation in various fora does not mean that one can utilize this opportunity in any meaningful sense. One may be at a great disadvantage in the absence of various capabilities to present and support one’s views in a persuasive manner. However, even in the case of authorial and editorial participation the role of participatory capabilities is far from negligible. The physical ability to cast a vote is of little use to those who are not in a position to make informed decisions about the questions they vote on. Similarly, the formal right to contest decisions is useless to those who do not have the capabilities needed to file claims for contestation, deal with bureaucracy, advance their interests within the institutional setting that assesses claims for contestation, and so on.

Receiving states, then, have to ensure that democratically included asylum seekers have *sufficient* participatory capabilities, not simply formal participation rights. But what is sufficient? One may argue that receiving states have a duty to guarantee a *threshold level* of participatory capabilities for democratically included asylum seekers. For example, states must share information about how they can exercise their right to vote, how they can officially contest decisions already made, or how to access public fora, in languages asylum seekers can be expected to speak. They have to make sure that asylum seekers with disabilities can physically access the locations where they can exercise their participation rights.

In other words, any type of meaningful democratic inclusion entails ensuring that those included have a certain level of participatory capabilities. At a minimum, these capabilities must be on a level that guarantees that asylum seekers have Rawlsian fair equality of opportunity for political influence (Rawls 1993, 327). If, for example, a group of asylum seekers is entitled to deliberative participation, then the receiving state has to make sure not only that the opportunity for participation is formally open to them, but also that they all have sufficient capabilities so that each has a fair chance to speak up and influence public deliberation if they so decide.

As mentioned, this would normally mean doing away with physical and linguistic barriers to participation. In some cases, however, it may also require receiving states to

provide training, e.g. when exercising contestation rights requires much administrative knowledge and ability to navigate bureaucracy. But do receiving states' duty to develop asylum seekers' participatory capabilities to ensure democratic legitimacy in refugee admission extend any further than this? As we will see in the next section, there are good reasons to believe that in some cases it does, particularly in the case of asylum seekers with vulnerable minority backgrounds.

## Vulnerable minorities and the limits of refuge

Sometimes participatory capabilities are unequal for no objectionable reason. Some people may be poor public speakers by nature or simply decide not to improve their participatory capabilities. No one has a duty to improve these capabilities for them. Some inequalities in participatory capabilities, however, stem from social injustice and these present a difficulty for the Inclusion Thesis. Some asylum seekers, for example, belong to *vulnerable minority groups* which are marginalized, treated unjustly, or assigned an inferior social status in their society of origin. Examples include women or LGBT people in extremely sexist and homophobic societies. Members of such groups may have lesser participatory capabilities than their peers because of the injustices they had to endure, even if participatory opportunities are formally open, and a threshold level of capabilities is guaranteed. They may be less capable of making their voice heard due to the dismissive or hostile attitudes of non-minority peers and superiors, their mode of expression may be viewed as inferior and their opinions and interests presumed to carry lesser weight than others', and all this may discourage them from participation and alienate them from decision-making procedures which they rarely see as working for their benefit, and which, as a consequence, indeed become less responsive to their interests.<sup>4</sup>

Normally, such inequalities count as an injustice to be redressed. As Elizabeth Anderson remarks:

If citizens in certain social positions – for example, women, the poor, lower castes – chronically suffer from significant capability deprivations, this is evidence that their perspectives have not been heard or taken seriously in the deliberations that shape public policies. Capability deprivations may, of course, *cause* such failures as well, through adaptation of preferences to deprivation, a lack of freedom and resources to participate in public discussion, and status demotion, whereby the privileged take deprivation as a sign that the disadvantaged are not worth listening to. (Anderson 2003, 252)

Citizens cannot participate on a par with others in democratic decision-making unless inequalities in participatory capabilities which stem from social injustice are equalized (Anderson 1999, 317). But asylum seekers are not citizens. Do the same requirements apply to them? Does the democratic legitimacy of refugee admission policies demand that participatory capabilities of asylum seekers with vulnerable minority backgrounds be equalized with those of their non-minority peers?

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<sup>4</sup>Iris Marion Young (2002) calls the type of disadvantage such minorities suffer in democratic deliberation and decision-making *internal exclusion*. For an illuminating analysis of this phenomenon see chapter 2 of her *Inclusion and Democracy*.



I would answer this question in the positive. Democratic inclusion doesn't simply mean having *some* say in a given decision, but importantly that one does not have a lesser say than someone else for reasons that are morally arbitrary or otherwise objectionable, e.g. stem from injustice (Dworkin 2011, 390–91; see 1987). However, lesser participatory capabilities mean a lesser say; if I am less capable of making my voice heard or of making informed decisions, then my say is worth less than those with full participatory capabilities. This is true even if asylum seekers' democratic say is of a different type or weight than that of citizens. Even if I am only owed half a vote, if lesser participatory capabilities render it *de facto* a quarter of a vote, then there is still an injustice to be redressed. The Inclusion Thesis therefore requires that inequalities in participatory capabilities between asylum seekers with vulnerable minority backgrounds and those without such backgrounds be redressed.

This potentially poses a problem for the Inclusion Thesis. Inequalities in participatory capabilities that affect asylum seekers with vulnerable minority backgrounds stem from social injustices in their society of origin. There is a specific institution charged with the task of redressing these injustices, namely their state of origin. It is that state's job to arrange social, political, and economic relations in its society in such a way that makes sure that vulnerable minorities are not deprived of capabilities or otherwise disadvantaged. This, one might argue, is not a task for the receiving state. Or at least, it is not something that the democratic legitimacy of refugee admission policies could reasonably require receiving states to do.<sup>5</sup>

This objection does not presuppose that states have no duties to non-citizens. Human rights and global justice are both sources of such duties. States may even have duties to 'take up the slack' if other states fail to discharge their duties to their own citizens (Owen 2016; Karnein 2014; see also: Miller 2013). Still, the argument goes, making sure that upon applying for asylum in a particular state women, racial minorities, and LGBT persons are as competent and confident in public speaking, dealing with bureaucracy, making informed political decisions, and whatever else is needed for exercising their deliberative, editorial, or even authorial rights in the appropriate manner as their non-minority peers does not seem to be the duty of receiving states. Duties of human rights, global justice, and 'taking up the slack' do not pick out asylum seekers specifically as having legitimate claims against receiving states to rectify injustices that stem from their society of origin. This is simply *beyond the limits of refuge*.

Take the following analogy. States have a duty to redress unjust economic inequalities in their own society. They also have duties to contribute to alleviating global economic injustice. They may have duties to take up the slack when some states are unable or unwilling to discharge their own duties of distributive justice. Asylum seekers in receiving states may also be vastly unequal in economic terms, and some of these inequalities may stem from domestic injustices in their society of origin. Redressing these inequalities, however, is not something that receiving states owe to asylum seekers; it falls under no category of duties states have vis-à-vis unjust economic inequalities.

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<sup>5</sup>Note that the problem arises for supranational institutions as well. For example, were the EU to make and implement all refugee policy in Europe, there would still remain a question as to whether redressing democracy-hindering injustices for asylum seekers which originate in other parts of the world is a requirement of democratic legitimacy in the European level.

The argument against the Inclusion Thesis thus may be stated as follows. Receiving states do not have a duty to asylum seekers to redress unjust inequalities that stem from social injustice in their state of origin. This is beyond the limits of refuge. The Inclusion Thesis implies that receiving states ought to redress unjust inequalities in participatory capabilities for asylum seekers with vulnerable minority backgrounds. Redressing these unjust inequalities means redressing unjust inequalities that stem from social injustice in asylum seekers' state of origin. That is, the Inclusion Thesis requires receiving states to go beyond the limits of refuge which they have no duty to do. Therefore, the Inclusion Thesis is implausible.

### The basic right to have a say

I believe that this challenge to the Inclusion Thesis can be met. It is not true that receiving states never have a duty to redress unjust inequalities that stem from asylum seekers' states of origin. They do, I argue, when this is necessary for making sure that asylum seekers can enjoy their basic rights. Although tending to asylum seekers' basic rights isn't the only duty of receiving states – as though providing asylum simply meant assuming the right-protection duties of the state of origin – it is still an obligation of high priority. So high, indeed, that when it comes to making sure that asylum seekers enjoy their basic rights receiving states may even acquire a duty to redress inequalities which originate in other states.

Consider the following scenario. Members of a religious group flee persecution in their state. The group consists of two subgroups, *A* and *B*. *A* arrives with many resources, while *B* is extremely deprived to the extent that its members are incapable of ensuring their own subsistence relying on their own resources alone. The inequality is unjust, for it is the result of *B*'s economic exploitation by *A* in their state of origin. If the receiving state has enough resources to ensure the subsistence of both groups, it has no further duty to redress the unjust inequality in economic resources between the two subgroups. However, suppose that the receiving state's resources are insufficient, and it can only ensure subsistence for both *A* and *B* if it fairly redistributes *A*'s unjustly owned resources. In this case, I believe the receiving state has a duty to do so. Receiving states, therefore, may redress injustices originating in other states, when doing so is necessary for ensuring that asylum seekers can enjoy their basic rights. The fact that doing so would be otherwise beyond the limits of refuge is irrelevant in these cases.

Similarly, the claim of asylum seekers with vulnerable minority backgrounds on receiving states to equalize participatory capabilities is not a request to overtake the duties of their state of origin. It is rather a request to ensure that they can enjoy their basic rights; particularly, their basic right to have a say in the matters with which their fundamental interests are most deeply intertwined. Is this a basic right? Following Henry Shue's (1980) seminal work, basic rights, i.e. rights which are necessary for enjoying all other rights, are usually thought of as having to do with subsistence and security, not democratic inclusion. Interestingly, however, Shue himself notes that it is 'not possible to enjoy full rights to security or to subsistence without also having rights to participate effectively in the control of security and subsistence.' (Shue 1980, 75) And therefore we should think of participation rights as basic.

Similarly, Jeremy Waldron (1998), in his essay on participation as the 'right of rights,' argues that since the very idea of a right is premised upon the recognition of the individual

as an active, thinking being, in making any kind of political decision concerning one's rights 'we are hardly in a position to say that our conversation takes *his* rights seriously, if at the same time we ignore or slight anything *he* has to say about the matter.' (Waldron 1998, 332) Waldron and Shue, I believe, point to a similar idea; a state may ensure individuals' subsistence, security, and the fulfilment of other basic needs without participation, but not their enjoyment *as rights* (Shue 1980, 76). For the state to regard individuals as genuine right holders it needs to acknowledge their standing as active, thinking beings who are owed a say in the institutional decisions on which they are sufficiently dependent.

Consider a further argument. According to the Stakeholder Principle the reason why asylum seekers are owed democratic inclusion is that their fundamental interests are mainly dependent upon certain institutions of the receiving state. The Stakeholder Principle suggests that where such dependence exists people are owed a say in the decisions upon which they are so dependent. The fundamental idea is that certain matters of especially great importance should not be decided *for us*, but rather *by us*. This does not specify a procedural nicety about political decision-making; rather it points to the fact that there is indeed a basic right to be able to determine the most important aspects of our own lives.<sup>6</sup>

Note that this is not an endorsement of the much-discussed *human right to democracy* (Cohen 2006; Peter 2015; Hanisch 2016), i.e. a human right to live under democratic governments. First, because the Stakeholder Principle prescribes democratic inclusion only for individuals dependent on certain institutions; some extremely wealthy or self-sufficient individuals may not be so dependent, and therefore have no claim for democratic inclusion under the Stakeholder Principle – although other principles may require granting them democratic participation rights. Second, because the Principle in this version doesn't prescribe a right to a form of government, but rather participation rights in particular institutional decisions.

It is also important to emphasize that this argument focuses on *individuals* and their basic rights. Insofar as the problem concerns the unequal participatory capabilities of vulnerable minority groups among asylum seekers, one might argue that it suffices to empower such groups to advance their interests *collectively*; states do not have to develop the participatory capabilities of each individual group member. However, insofar as a group advances one's interest in political decision-making on one's behalf without one being able to meaningfully participate in this collective effort, one is still denied the basic right to have a say. Democratic participation may necessarily require collective action and coordination with others, but one needs to possess the individual capability to participate in these collective ventures on an equal footing.

Equalizing the participatory capabilities of asylum seekers with vulnerable minority backgrounds is necessary for ensuring that they can enjoy their basic right to have a say, that is, to meaningful participation in decision-making procedures which respects their standing as active, thinking beings and which does not allow injustice to lessen their voice in collective decisions about their fate. Note that this principle does not prescribe the equalization of participatory capabilities between asylum seekers or asylum seekers and citizens when the inequality cannot be attributed to injustice; in these cases,

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<sup>6</sup>Note that we generally recognize a basic right against total enslavement, i.e. the total loss of our capacity to determine the most important aspects of our own lives.

ensuring a threshold level of participatory capabilities may exhaust the receiving state's obligations with regard to the democratic inclusion of asylum seekers.

How should the duties of democratic inclusion be weighed against other duties receiving states have to asylum seekers? Recall that the present discussion concerns a non-ideal situation where the international refugee governance regime fails to ensure that asylum seekers' fundamental interests never depend on particular states. Determining what duties institutions have under such circumstances is greatly dependent on considerations about feasibility. Some receiving states may not have the resources to protect all of asylum seekers' basic rights, including their right to have a say, or to equalize participatory capabilities. As noted above, different forms of democratic participation, i.e. authorial, editorial and deliberative, require different types of capabilities whose development may have different costs. Offering any practically useful guidelines as to how these comparisons should be made would exceed the scope of this paper; still, it is clear that such guidelines should take into account how various participatory capabilities relate to various forms of democratic participation, and how these, in turn, relate to, and in what way contribute to the realization of the basic right to have a say.

Perhaps most importantly, the duties to asylum seekers need to be weighed against duties to the receiving state's own citizens. Some citizens, e.g. the domestic poor, may be as much in need as asylum seekers, and when resources are scarce, there may be good reasons for a state to prioritize its own citizens' interests over those of asylum seekers of equal need (Levitov and Macedo 2018). Citizens are wronged by their state when it fails to shield them from injustice, and when this happens, they may have stronger claims on the state's resources – including the resources used for democratic inclusion – than asylum-seekers of equal need, who are not necessarily wronged in this way.<sup>7</sup> While this is a genuine worry, it does not undermine the Inclusion Thesis as such. There are many cases in which the state can only imperfectly discharge its duties and needs to prioritize them. Duties with lesser priority, however, do not cease to exist. Perhaps states should assign greater weight to the interests of the victims of domestic injustice, but they may not completely disregard asylum seekers' basic right to have a say. They may have to channel fewer resources into democratic inclusion; but it simply doesn't follow from the considerations above that states may refuse implementing any measures of democratic inclusion until all domestic injustices are redressed.

## Conclusion

Democratic legitimacy in refugee admission demands the democratic inclusion of asylum seekers in decisions on which their most fundamental interests depend. This means not only granting them formal participation rights, but also an adequate level of participatory capabilities; in the case of asylum seekers with vulnerable minority backgrounds, this means not only guaranteeing a minimal threshold level of participatory capabilities, but also rectifying inequalities in participatory capabilities that stem from social injustice. This may take place through educational and training programmes, as

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<sup>7</sup>Although asylum seekers whose state of origin was in the past colonized by the receiving state or suffered from some such injustice may have as strong claims as domestic victims of injustice.

well as institutional design that encourages the participation of marginalized individuals. A lot of questions remain open; what kind of participation rights are asylum seekers owed, authorial, editorial or deliberative? Should these carry the same weight as the citizens' contribution? When scarcity prevents the simultaneous fulfilment of all duties to asylum seekers, how much importance should be assigned to democratic inclusion? These are hard questions which demand further inquiry. Still, this discussion shows that in thinking about the fundamental questions concerning refugees and asylum, we should never forget about people's fundamental interest in not being at the mercy of others when it comes to the most important decisions about their lives. In making decisions about refugee admission, therefore, states must make a genuine effort to ensure that asylum seekers have a meaningful say in how their fate will be decided.

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## References

- Abizadeh, A. 2008. "Democratic Theory and Border Coercion." *Political Theory* 36 (1): 37–65. doi:10.1177/0090591707310090.
- Anderson, E. 1999. "What Is the Point of Equality?" *Ethics* 109 (2): 287–337. doi:10.1086/233897.
- Anderson, E. 2003. "Sen, Ethics, and Democracy." *Feminist Economics* 9 (2–3): 239–261. doi:10.1080/1354570022000077953.
- Arrhenius, G. 2018. "The Democratic Boundary Problem Reconsidered." *Ethics, Politics, and Society* 1: 89–122. doi:10.21814/eps.1.1.
- Bauböck, R. 2007. "Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting." *Fordham Law Review* 75 (5): 2393–2447.
- Bauböck, R. 2015. "Morphing the Demos into the Right Shape. Normative Principles for Enfranchising Resident Aliens and Expatriate Citizens." *Democratization* 22 (5): 820–839. doi:10.1080/13510347.2014.988146.
- Bauböck, R. 2018. "Democratic Inclusion: A Pluralist Theory of Citizenship." In *Democratic Inclusion: Rainer Bauböck in Dialogue*, edited by D. Owen, 3–102. Manchester: Manchester University Press.
- Brighouse, H., and M. Fleurbaey. 2010. "Democracy and Proportionality." *Journal of Political Philosophy* 18 (2): 137–155. doi:10.1111/jopp.2010.18.issue-2.
- Buchanan, A. 2002. "Political Legitimacy and Democracy." *Ethics* 112 (4): 689–719. doi:10.1086/340313.
- Buchanan, A. 2004. *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*. Oxford: Oxford University Press.
- Carens, J. H. 2013. *The Ethics of Immigration*. Oxford: Oxford University Press.
- Cherem, M. 2016. "Refugee Rights: Against Expanding the Definition of a 'Refugee' and Unilateral Protection Elsewhere." *Journal of Political Philosophy* 24 (2): 183–205. doi:10.1111/jopp.2016.24.issue-2.
- Christiano, T. 2004. "The Authority of Democracy." *The Journal of Political Philosophy* 12 (3): 266–290. doi:10.1111/jopp.2004.12.issue-3.

- Christiano, T. 2008. *The Constitution of Equality: Democratic Authority and Its Limits*. Oxford: Oxford University Press.
- Christiano, T. 2012. "Is Democratic Legitimacy Possible for International Institutions?" In *Global Democracy: Normative and Empirical Perspectives*, edited by D. Archibugi, M. Koenig-Archibugi, and R. Marchetti, 69–95. Cambridge: Cambridge University Press.
- Cohen, J. 2006. "Is There a Human Right to Democracy?" In *The Egalitarian Conscience: Essays in Honour of G. A. Cohen*, edited by C. Sypnowich, 226–248. Oxford: Oxford University Press.
- De Schutter, H., and L. Ypi. 2015. "Mandatory Citizenship for Immigrants." *British Journal of Political Science* 45 (2): 235–251. doi:10.1017/S0007123414000568.
- Dworkin, R. 1987. "What Is Equality? Part 4: Political Equality." *University of San Francisco Law Review* 22 (1): 1–30.
- Dworkin, R. 2011. *Justice for Hedgehogs*. Cambridge, MA: Belknap.
- Erman, E. 2014. "The Boundary Problem and the Ideal of Democracy." *Constellations* 21 (4): 535–546. doi:10.1111/cons.2014.21.issue-4.
- Fine, S. 2011. "Democracy, Citizenship and the Bits in Between." *Critical Review of International Social and Political Philosophy* 14 (5): 623–640. doi:10.1080/13698230.2011.617122.
- Garthoff, J. 2010. "Legitimacy Is Not Authority." *Law and Philosophy* 29 (6): 669–694. doi:10.1007/s10982-010-9080-z.
- Hanisch, C. 2016. "A Human Right to Democracy: For and Against." *Saint Louis University Public Law Review* 35 (2): 233–256.
- Karnein, A. 2014. "Putting Fairness in Its Place: Why There Is a Duty to Take up the Slack." *The Journal of Philosophy* 111 (11): 593–607. doi:10.5840/jphil20141111138.
- Kolodny, N. 2014. "Rule over None II: Social Equality and the Value of Democracy." *Philosophy & Public Affairs* 42 (4): 287–336. doi:10.1111/papa.12037.
- Lampert, J. 2015. "Democratic Inclusion and the Governance of Immigration." *Social Theory and Practice* 41 (1): 51–76. doi:10.5840/soctheorpract20154113.
- Levitov, A., and S. Macedo. 2018. "Human Rights, Membership, and Moral Responsibility in an Unjust World." In *Human Rights: Moral or Political?*, edited by A. Etinson, 469–488. Oxford: Oxford University Press.
- Macdonald, T. 2008. *Global Stakeholder Democracy*. Oxford: Oxford University Press.
- Macdonald, T. 2012. "Citizens or Stakeholders? Exclusion, Equality and Legitimacy in Global Stakeholder Democracy." In *Global Democracy: Normative and Empirical Perspectives*, edited by D. Archibugi, M. Koenig-Archibugi, and R. Marchetti, 47–68. Cambridge: Cambridge University Press.
- Miller, D. 2010. "Why Immigration Controls are Not Coercive: A Reply to Arash Abizadeh." *Political Theory* 38 (1): 111–120. doi:10.1177/0090591709348194.
- Miller, D. 2013. "Taking up the Slack? Responsibility and Justice in Situations of Partial Compliance." Chapter. In *Justice for Earthlings*, 206–227. Cambridge: Cambridge University Press.
- Miller, D. 2016. *Strangers in Our Midst*. Cambridge, MA: Harvard University Press.
- Owen, D. 2011. "Transnational Citizenship and the Democratic State: Modes of Membership and Voting Rights." *Critical Review of International Social and Political Philosophy* 14 (5): 641–663. doi:10.1080/13698230.2011.617123.
- Owen, D. 2016. "Refugees, Fairness and Taking up the Slack: On Justice and the International Refugee Regime." *Moral Philosophy and Politics* 3 (2): 141–164. doi:10.1515/mopp-2016-0001.
- Owen, D. 2018a. "Populus, Demos and Self-Rule." In *Democratic Inclusion: Rainer Bauböck in Dialogue*, edited by D. Owen, 183–203. Manchester: Manchester University Press.
- Owen, D. 2018b. "Refugees and Responsibilities of Justice." *Global Justice: Theory Practice Rhetoric* 11 (1): 23–44.
- Peter, F. 2015. "A Human Right to Democracy?" In *Philosophical Foundations of Human Rights*, edited by R. Cruft, M. Liao, and M. Renzo, 481–490. Oxford: Oxford University Press.
- Pettit, P. 2012. *On the People's Terms: A Republican Theory and Model of Democracy*. Cambridge: Cambridge University Press.
- Rawls, J. 1993. *Political Liberalism*. New York: Columbia University Press.

- Rubio-Marín, R. 2004. *Immigration as a Democratic Challenge*. Cambridge: Cambridge University Press.
- Saunders, B. 2011. "Immigration, Rights and Democracy." *Theoria* 58 (129): 58–77. doi:[10.3167/th.2011.5812905](https://doi.org/10.3167/th.2011.5812905).
- Shue, H. 1980. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*. Princeton, N.J.: Princeton University Press.
- Straehle, C. 2018. "Justice in Migration." *Canadian Journal of Philosophy* 48 (2): 245–265. doi:[10.1080/00455091.2017.1353880](https://doi.org/10.1080/00455091.2017.1353880).
- Valentini, L. 2012. "Ideal Vs. Non-ideal Theory: A Conceptual Map." *Philosophy Compass* 7 (9): 654–664. doi:[10.1111/phco.2012.7.issue-9](https://doi.org/10.1111/phco.2012.7.issue-9).
- Waldron, J. 1998. "Participation: The Right of Rights." *Proceedings of the Aristotelian Society* 98: 307–337. doi:[10.1111/paso.1998.98.issue-3](https://doi.org/10.1111/paso.1998.98.issue-3).
- Young, I. M. 2002. *Inclusion and Democracy*. Oxford: Oxford University Press.
- Ziegler, R. 2017. *Voting Rights of Refugees*. Cambridge: Cambridge University Press.