

Policy Point-Counterpoint: Should Political Representation in a Nation-State be Reserved only for Citizens, or should it Encompass all Residents regardless of Status within a National Polity?

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Cover Page Footnote

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Policy Point-Counterpoint: Should Political Representation in a Nation-State be Reserved only for Citizens, or should it Encompass all Residents regardless of Status within a National Polity?

The question of political representation is a cornerstone of modern political theory. At the least implied since the seventeenth century by way of the work of Hobbes and Locke, it has been an increasing assumption since the Age of Revolution that all majority-age individuals should have their voices heard in political systems and that people should govern themselves. As any number of historians have noted, the growth of democracy is one of the nineteenth and twentieth centuries' major trends.¹

Two intersecting problems complicate representation: for whom and in what way? I.e., while most democracies are built off of universalistic principles, it is only recently that we have imagined “international constitutions” in the form of covenants that might guarantee freedoms to the person regardless of community membership. But do they? The Universal Declaration of Human Rights (UDHR, 1948) notes that “everyone has the right to take part in the government of his country, directly or through freely chosen representatives.”² While the general universalism of the Declaration would seem to suggest that all should be citizens, not everyone may have a nation or, as Hannah Arendt put it, a “community” in which they are sanctioned.³ Or, if not that, many may live far from their home communities for a broad number of reasons and under a range of legal statuses vis-à-vis the country in which they reside.

In 2019, the U.S. brought the question of political representation to a head with the Trump administration's attempt to include a citizenship question on the 2020 U.S. census (“Is this person a citizen of the United States?”).⁴ Though defeated in the Supreme Court, the issue involved the U.S.' system of apportioning the number of representatives to states by way of the

“whole number of persons in each state” (meaning *not* necessarily citizens).⁵ Conservatives’ concern was two things: either a) areas with large migrant populations might gain outsized influence or b) non-citizens might gain “stealth representation” as their interests would be part of a district’s overall concerns, or be potentially seen as the panoply of issues to which representatives need to tend (when their right to be seen was less than that of the citizen).⁶ This figures into a global picture accentuated by migration issues of which scholars have become increasingly aware: that there are determined stratifications between the rights of citizens and aliens who maintain a range of different statuses.⁷ Who deserves representation, or to be at least be counted in representational systems, why, and under what circumstances?

This point-counterpoint features two perspectives. One, using social contract theory and liberal nationalism, argues “for the citizen.” Investment in the social contract means the alienation of the self to a specific body (the national community in question). One has a right to expect the fullest range of returns on that investment and participate as fully as the next member in the self-determination of the nation. Absent that, citizenship is reduced in meaning or it is unclear as to why have citizenship at all. Indeed, how do we organize communities without concrete certifications and standards as to who qualifies for full-blown membership?

Alternatively, there is the universality of the person. Documents like the UDHR do not just prescribe rights for some, but civil rights should be provided for everyone, bar none. How can rights be guaranteed outside citizenship unless, at some level, all are heard or in some way counted in representational systems? Such is the argument of this debate’s second piece: that the UDHR discusses “citizens” and their nations when it really meant we all might be citizens, or that no one should be left without say in those governments which govern them or that said governments might somehow “count” their presence.

In both positions, recognition is a driving concept. How might all be recognized in their humanity, yet recognition not be *reduced* for others or somehow taken away? As Axel Honneth put it, the “struggle for recognition” might be the “moral grammar of social conflict.”⁸ How do we measure our power relative to one another and be seen as fully as possible as members of social bodies as well as human beings?

Point: Political Representation in a Nation-State should be

Reserved only for Citizens

For this debate, I will use social contract theory and liberal-nationalist theory to argue that political representation should be reserved for citizens and *not* include all residents regardless of status in a given state. To discuss this question, it is necessary to provide a definition of the concepts of political representation and citizenship. Representation is the act of making something present which is otherwise not. For it to be *political* representation, the representative makes citizens and their interests present in public policy. Representation in a political sense is a public and institutionalized arrangement within democracies involving a range of actors and groups contributing to the business of governance.⁹

As for citizenship, social contract theory generally argues that people gain citizenship rights by entering into a social compact requiring them to give up their natural freedom. From this, they gain security, civic freedom, and a more reasoned, if not moral, life. From a Lockean perspective, consenting to the social contract is done “only with an intention in everyone the better to preserve himself his liberty [and] his property.”¹⁰ From a Rousseauian perspective, the intent of the social contract is “to find a form of association which will defend the person and goods of each member with the collective force of all...under which each individual, while uniting himself with the others...remains as free as before.”¹¹ Though Locke and Rousseau differ

on many points, both pose the social contract as a question of investment in the political community from which one gains a theoretically equal measure of rights, recognition, and security in return.¹²

Again, in a representative democracy, the point of political representation is to make present the citizen in decision-making processes. From a Lockean perspective, political representatives should represent the individual interest of the citizen, who, when entering the social contract, agreed to “submit to the determination of the majority” (people consider and promote their interests, then express which path they seek through the decision-making process).¹³ This differs from the Rousseauian perspective, where it is not the individual’s will that the citizen should pursue, but the “general will,” or the larger good of the polity. However, significant is that, in either case, the point is that political representatives should make present the person who entered the social compact, whether that citizen has spoken for their individual interest or that of the society as a whole.

When people have given themselves to the social contract, they have created a political community—a “commonwealth,” in Locke’s terms, or popular sovereign in a Rousseau-like vocabulary.¹⁴ This community has a right to self-determination: to establish the nation’s future in terms of laws and norms.¹⁵ This raises the question of who should be thought of as part of the body that determines itself.

In her work on liberal nationalism, Yael Tamir argues that, through history, there has been a shift in our understanding of the nation which has resulted in “the right to self-determination... understood as equivalent to the taxpayers’ right to political representation.”¹⁶ This means that citizens—like the taxpayer—have a right to self-determination through political representation because they have invested in the community. Tamir further argues that the

political inclusion of groups previously outside the nation can undermine “the identification between citizens of the state and [its] members.”¹⁷ The relationship between a political representative and those whom they represent becomes unclear if non-citizens gain representation. In fact, that is especially if non-citizens cannot vote; how are their interests to be taken into account? Ensuring that political representation is *only* for citizens is a matter of protecting citizens’ investment in the community, which according to liberal nationalism is a good way to ensure citizens’ commitment to the community. Citizens have a right to democracy to ensure their interests are heard. However, as a function of this right, they have a right to know who is in the community and a right to know in what context decisions are made.

Another issue is the relative weight of the citizen’s voice. That is to say that if the number of representatives apportioned to a community is based on the number of residents and not citizens (like in the U.S. Census), and two districts have the same number of citizens, yet one has a bigger population with non-citizens, that community could get more representatives. This would water-down the effectiveness of the vote of the citizen in the smaller district, in effect voting for a smaller number of representatives. There is a question of if this respects the equal rights of citizens or the equal effectiveness of their vote.¹⁸

By arguing that political representation should only be for citizens, I do not argue that non-citizen residents should not have rights or gain consideration in public policy. There are human rights which may stand at a more basic level than the expansive rights of the citizen (life, shelter, etc.). My point is that the point of political representation is for members of a concretely identifiable community to have their fullest earned say in how community nation is shaped. Here, citizenship is key because it designates who, theoretically, has assented to the social contract and hence fully invested themselves in the national body.

Counter-Point: Political Representation in a Nation-State should encompass all residents

When considering the question of who should be represented within a national polity, one might take several approaches. In this write-up, I approach the problem from a human rights perspective, by which I mean civil rights that should be upheld universally.

According to the Universal Declaration of Human Rights (UDHR), “everyone has the right to take part in the government of his country.”¹⁹ By this, the UDHR indicates that citizens should have a say in how they are governed. This is in line with the “subjects-to-the-law-principle,” which Avigail Eisenberg explains as holding that “all who are subject to the law ought to have a say in formulating [it].”²⁰ Notably, the UDHR also offers a picture in which the nation-state is the main arena for political recognition, as is indicated by saying that the right is enacted “in the government of *his country*,” where, as such, the issue is citizens.²¹ However, as many note, there is a general attitude behind rights in which their spirit lies in “abstract universalism.”²² There may be a “spirit” of rights proposing political representation, if not participation, as intended to be universal—i.e., the idea was that should all be citizens. Here, we might understand the intention of human rights as to ensure that those “subject to the law” retain the “right to have rights” in the fullest sense.

Hannah Arendt introduced the terminology of the “right to have rights” to illustrate how we often do not live up to rights’ universal promises. Arendt points out that “[t]he fundamental deprivation of human rights is manifested...above all in the deprivation of a place in the world which makes opinions significant and actions effective.”²³ Here, to hold one’s rights, one must first “belong to [an] organized community.”²⁴ Following this, I suggest that we have a right to a

place in the world in which we are legally recognized and can make our opinions known, wherein our rights beyond representation can be secured and enacted.

Currently, it is nation-states that generally ensure political rights—thus, one needs to be a member of a nation (a citizen) to not risk being left rightless. This is comprehensible to an extent. As John Francis notes, many see a temporal and labor dimension in citizenship, where the right to claim the benefits of belonging to the nation is directly linked to one’s investment in national life—meaning that one has bought into a nation’s law, helped create them, worked in the nation, etc.²⁵ Yet, we must ask if rights should depend on whether we have invested ourselves in specific communities—especially given that there may be many reasons why one is where one is—or whether rights are derived from being a member of the “human species.”²⁶ In Jean-Jacques Rousseau’s words, is it not the case that we are all “born free,” wherein parceling out different kinds of rights to different humans (people) sets us on the slippery slope to no human rights at all?²⁷

Moreover, arguments for maintaining political representation as only for citizens are fraught with contradictions. Again, we might recognize the argument that there are temporal and labor dimensions to citizenship, meaning, again, that to be a citizen, one must spend a significant amount of time within a nation and invest oneself in its practices and institutions.²⁸ Francis nonetheless notes that “it is not uncommon...for people who have never lived in a certain country...to have voting rights and/or citizenship in that country” (e.g., through birth or descent from parents who have citizenship).²⁹ This illustrates the dilemmas embedded within our conceptualization of the “citizen” versus “non-citizen,” meaning that it seems contradictory for someone who has citizenship on such bases to retain the ability to participate in national life

(e.g., through voting), when, say, an illegal migrant who may have lived and worked in a particular place for years is not recognized in the same manner.

Furthermore, Wade Robison points out that “[a] citizen is an artifact.”³⁰ This means that citizens are not naturally occurring phenomena and can therefore be regarded as an example of what legal scholars call “positive law.”³¹ Positive law refers to laws that are “arbitrary,” in the sense that [they] could be different, as opposed to what has intrinsic rational or moral force by its essence or nature.”³² Here, the way in which the statuses of citizens and non-citizens, and the rights extended to those, are granted can and do differ depending on the state in question. This leads us to the question of whether we, as a global community, can be clear on when the right to political representation is achieved, wherein do we in fact maintain a universal right to such a thing?

We thus have three issues: the notion that human rights beliefs propose political representation as a theoretical right for all, the dangers of not heeding such concepts, and citizenship as an unstable idea that makes it unclear at what point people maintain political rights unless one is to say that nation-states are the only source of law. Based on these points, I argue that there is a need to rethink how political representation works as well as consider the dangers of destabilizing the universal rights that citizenship is intended to protect.

Conclusion

As we reflect on these issues, several things become clear. Firstly, vis-à-vis the American case which drove initial interest in this question, it may not be fully clear what the Supreme Court’s decision means. Rejecting the census citizenship question on the basis of the Trump administration’s stated reason for it (that it would help them enforce the Voting Rights Act [1965]), they indicated that it might not be fully illegitimate to have such a question; however,

the reasons need accord with the spirit of the Constitution, which does not pin political representation to citizenship alone. This may not accord with a “maximalist” human rights position which would *not* make political representation contingent on citizenship. However, it also might not accord with a narrow reading of social contract theory in which commonwealths or nations are only imagined as for citizens. Indeed, ultimately, it may line-up with the idea of “cosmopolitan right” proposed by Kant—which indicates that it is the “right of a stranger to not be treated in a hostile manner by another upon his arrival on the other’s territory.”³³ Citizens rights and “strangers” rights may differ. Both states and our fellow humans nonetheless need recognize the essential humanity of both.

Globally, however, we see a tendency towards states simply not seeking to engage such issues. Following increasingly popular hardlines on immigration, for example, the Danish Prime Minister recently declared her country’s interest in reaching “zero” asylum seekers and creating a system in which asylum seekers need apply for asylum at the Danish border, after which they would be flown to a third country (now speculated on as Rwanda) where they would remain even if their application were approved.³⁴ This follows changes in national law drastically reducing the amount of social benefits that asylum seekers might get when compared with Danish citizens.³⁵ In the face of such trends—present in a number of countries—one might be forced to think representation in a larger sense: where at all can one gain a legal foothold, and is any political representation available for people whose status is unclear?

ENDNOTES

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The Rise of Democracy: Revolution, War and Transformation in International Politics since 1776 (Edinburg: Edinburg University Press, 2015).

² Office of the United Nations High Commissioner for Human Rights, “Universal Declaration of Human Rights” in *The Core International Rights Treaties* (New York: United Nations, 2006), art. 19.

³; Hannah Arendt, *The Origins of Totalitarianism* (New York: Meridian, 1956), 295.

⁴ See Michael Wines, “2020 Census Won’t Have Citizenship Question as Trump Administration Drops Effort,” *The New York Times*, July 2, 2020, <https://www.nytimes.com/2019/07/02/us/trump-census-citizenship-question.html>.

⁵ “Constitution of the United States of America and Amendments,” amendment XIV, section 2 in Mary Beth North, et al., *A People and a Nation: Volume Two: Since 1865* (Boston: Houghton Mifflin, 2001), A51-A58.

⁶ See, e.g., Cal Thomas, “Censoring the Census Citizenship Question is About Politics, Not the Law,” *Fox News*, July 2, 2019, <https://www.foxnews.com/opinion/cal-thomas-censoring-the-census-us-citizenship-question-is-about-politics-not-the-law>; Edward Blum, “Are You a Citizen?: It’s a Legitimate Census Question,” *Washington Examiner*, April 25, 2019, <https://www.washingtonexaminer.com/opinion/op-eds/are-you-a-citizen-its-a-legitimate-census-question>.

⁷ See e.g., David S. Weissbrodt, *The Human Rights of Non-Citizens* (Oxford: Oxford University Press, 2008); Pauline Maillet, *Nowhere Countries: Exclusion of Non-Citizens from Rights through Extra-Territoriality at Home* (Leiden: Brill, 2020); Rhoda E. Howard-Hassmann, Margaret Walton-Roberts, eds., *The Human Right to Citizenship: A Slippery Concept* (Philadelphia: University of Pennsylvania Press, 2015).

⁸ Axel Honneth, *The Struggle for Recognition: The Moral Grammar for Social Conflicts*, trans. Joel Anderson (Cambridge: Polity, 1995).

⁹ Hanna Fenichel Pitkin, *The Concept of Representation* (Los Angeles: University of California Press, 1967), 221-22.

¹⁰ John Locke, *Second Treatise of Government: An Essay Concerning the True Original, Extent and End of Civil Government*. (Somerset: John Wiley & Sons, Incorporated, 1982), 77.

¹¹ Jean-Jacques Rousseau, *The Social Contract*, trans. Maurice Cranston (London: Penguin Books, 2004), 14.

¹² Christopher W. Morris, ed., *The Social Contract Theorists: Critical Essays on Hobbes, Locke, and Rousseau*, (Maryland: Rowman & Littlefield Publishers, Inc., 1999).

¹³ Locke, *Second Treatise*, 59. See also Ian Shapiro, “John Locke’s Democratic Theory” in *Two Treatises of Government and A Letter Concerning Toleration* (New Haven: Yale University Press, 2003), 309-40.

¹⁴ Jean-Jacques Rousseau, *The Social Contract*, trans. Maurice Cranston (London: Penguin Books, 2004), 17-20.

¹⁵ Yael Tamir, *Liberal Nationalism*, (Princeton: Princeton University Press, 1993), 57-77.

¹⁶ *Ibid.*, 60.

¹⁷ *Ibid.*, 61.

¹⁸ Avigail Eisenberg, “Voting Rights for Non-Citizens: Treasure or Fool’s Gold?” *Journal of International Migration and Integration* 16 (2015), 133-151. <https://doi-org.zorac.aub.aau.dk/10.1007/s12134-014-0331-y>.

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- ²⁰ Avigail Eisenberg, “Voting Rights for Non-citizens: Treasure or Fool’s Gold?” *Journal of International Migration and Integration* 16, no. 1 (2014), 134.
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- ²² Lynn Hunt, *Inventing Human Rights: A History* (New York: W. W. Norton, 2007), 153; Ben Dorfman, *13 Acts of Academic Journalism and Historical Commentary on Human Rights: Opinions, Interventions and the Torsions of Politics* (Frankfurt am Main: Peter Lang, 2017), 180.
- ²³ Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt Brace & Company, 1973), 296.
- ²⁴ *Ibid.*, 297.
- ²⁵ John G. Francis, “Who Else Should Vote in Local Decision-Making? Enfranchising Part time Residents and Non-citizens,” in *Citizenship and Immigration – Borders, Migration and Political Membership in a Global Age*, eds. Ann. E. Cudd & Win-chiat Lee (Cham: Springer, 2016), 109.
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- ³⁰ Wade L. Robison, “Citizens as Artifacts,” in *Citizenship and Immigration – Borders, Migration and Political Membership in a Global Age*, eds. Ann E. Cudd & Win-chiat Lee (Cham: Springer, 2016), 33.
- ³¹ James B. Murphy, *The Philosophy of Positive Law: Foundations of Jurisprudence* (London: Yale University Press, 2005), 5.
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- ³³ Immanuel Kant, “Toward Perpetual Peace: A Philosophical Sketch” in *Toward Perpetual Peace and Other Writings on Politics, Peace, and History*, ed. Pauline Kleingeld (New Haven: Yale University Press, 2006), 82.
- ³⁴ See DW, “Denmark Approves Plan to Locate Asylum Center Abroad,” June 3, 2021; <https://www.dw.com/en/denmark-approves-plan-to-locate-asylum-center-abroad/a-57768603>; Megan Specia, “Denmark Would Push Asylum Seekers Outside Europe for Processing,” *The New York Times*, June 3, 2021, <https://www.nytimes.com/2021/06/03/world/europe/denmark-asylum-process.html>.
- ³⁵ The Guardian, “Denmark to Slash Benefits for Asylum Seekers in Attempt to Deter Refugees,” July 1, 2015, <https://www.theguardian.com/world/2015/jul/01/denmark-slash-benefits-asylum-seekers-refugees>. It should be mentioned that the Danish law also extends to unemployed citizens who have lived outside the country for seven of the past eight years and it does allow a bonus for refugees who pass a language test qualifying them for education or employment.