Enfranchising the disenfranchised: should refugees receive political rights in liberal democracies?

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ABSTRACT

Should refugees receive political rights in liberal democracies? I argue that they should. Refugees are special – at least when it comes to claims towards democratic inclusion. They lack exit options and are significantly impacted by decisions made in liberal democracies. Enfranchisement is a matter of urgency to them and should occur on a national level. But what justifies the democratic inclusion of refugees? I draw on the all-subjected principle in arguing that all those subjected to rule in a political unit should have a say in such rule. I show that refugees cannot be denied democratic inclusion based on the argument that transients should be excluded from participation. Refugees are not transients. Finally, I show that naturalization is not a prerequisite for enfranchisement. Political rights and citizenship can be had independently of each other. Refugees, then, should be nationally enfranchised as soon as they receive refugee status.

1. Introduction

Should refugees receive political rights in liberal democracies? In this article, I will argue that they should. My argument requires that I first provide some clarifications regarding its scope. Much excellent scholarship has appeared on the inclusion of non-citizens into the demos or the citizenry. This paper is, however, after something else. It concerns the question whether refugees should receive political rights in liberal democracies. As we shall see, one cannot answer this question merely by answering whether non-citizens generally should be enfranchised. Refugees are a special case and the question of their democratic inclusion requires the consideration of questions that are specific to them. Although some scholars, notably Ruvi Ziegler (2017), have provided a legal-political analysis regarding the possibility of refugee enfranchisement and provide good arguments from a legal and from an instrumental point of view, they lack a solid normative link. Situating refugee enfranchisement within a legal framework and arguing that it would be good for refugees does not yet equate to a normative argument for their enfranchisement. The paper should thus be understood as a complimentary piece to their efforts. But why focus on refugees?
Refugees differ from other groups of immigrants in one specific and relevant way. While regular immigrants possess a number of exit options, and thus the ability to move on or return to their countries of origin, and hence possess alternatives to subjecting themselves to the political rule of their host countries, refugees lack such options. While international law guarantees every citizen the right to return to their country of origin, refugees are barred from doing so. They lack the protection of their home state and are at risk of persecution if they were to return home. Simultaneously, onward movement by refugees is equally often not possible for refugees. Regulations such as the ‘first country of asylum’ or the ‘third country of asylum’ clauses restrict onward movement of recognized refugees or those who could have applied for international protection. While we can doubt the moral justification for these clauses themselves, they do exist. It results in a situation in which refugees essentially lack any reasonable option other than being subjected to political rule when residing in liberal democracies. Their predicament, and thus the lack of exit options, thus differs from the predicament of other non-citizen resident groups. Where other immigrants can avoid subjection to rule, refugees cannot. Yet, this is not the only reason why refugees may be special in comparison to other non-citizen residents. Although not triggering the right to vote itself, we could argue that enfranchisement is a matter of greater urgency for refugees than for regular immigrants.

A number of regulations specifically apply to refugees that significantly impact their lives. These regulations stretch from laws governing their reception conditions, to rules impacting their everyday lives during their stay and even stretch to rules deciding on the end of their refugee status. Several studies have shown that the policies of liberal democracies specifically impact both the mental health of refugees, potentially either contributing or even causing mental health disease (Ager 1993; Watters 2001), or affecting their long-term economic opportunities (Edin, Fredriksson, and Olof 2004; Fasani, Frattini, and Minale 2017). Such policies span from ‘rapid integration’ policies (Watters 2001, 1711; Ager 1993) to housing and relocation policies all the way to policies impacting the educational needs of refugees (Pittaway, Muli, and Shteir 2009; Fasani, Frattini, and Minale 2017). Finally, refugees are significantly impacted by the decisions of liberal democracies also when it comes to deciding when their refugee status should end. While the UNHCR provides recommendations, it is up to the host states to decide when the circumstances in the countries of origin of refugees have sufficiently and fundamentally changed (Hathaway 2007, 4–5). All of these policies, regulations, laws and decisions are currently made without involving or consulting refugees.

It is the often negative impact such policies have on refugees – policies that are made for but not by refugees, and thus policies that arguably represent the interests of groups other than refugees themselves – that make the specific conditions of refugees precarious and that add to the urgency for their democratic inclusion. These laws, regulations and decisions are furthermore predominantly made on a national level. Housing and relocation schemes, decisions that affect the economic performance of refugees and even sometimes decisions impacting specific educational needs are all a matter of national decision-making. Even if some scholars thus hold that other immigrants may have a particularly strong reason for being enfranchised on a municipal or regional level because of their specific subjection to local rule, the same does not apply to refugees. The matter of enfranchising refugees does thus not only possess greater urgency than the
enfranchisement of other non-citizen residents, it should also imply receiving political rights not only on municipal or regional, but on the national level.

The argument of the paper is structured as follows. First, I will consider the basis for the claim of democratic inclusion. I opt for the ‘all-subjected principle’ as a justificatory tool for discerning inclusion into the demos. Second, I argue that it serves as an instrument that does not exclude non-transient residents. I will show that though there might be reasons to exclude transients such as visiting students and tourists, the underlying rationale cannot ground an argument for excluding refugees, too. Third, I will show that the all-subjected principle functions as a justificatory tool for inclusion claims into the political community specifically, and that we can differentiate between inclusion into the political community and inclusion into the citizenry. In other words, political rights can be had independently of having citizenship.

2. Justifying democratic inclusion: the all-subjected principle

Why should refugees be included into the demos? There have been various theoretical attempts to ground arguments for democratic inclusion. The most notable ones are the all-affected, all-coerced and the all-subjected principle. I will opt here for the latter and will briefly explain why. While I believe that each of these principles have their merits, I argue that the all-subjected principle is best suited with regards to the specific question of refugee enfranchisement in liberal democracies. My choice in opting for this over other principles is thus guided by the question I attempt to answer rather than by the general overall merit of each theoretical attempt. As we shall see, each of the other principles may be better suited depending on the specific question one poses and based on the scope of the assumptions one is willing to make.

The question with which I am concerned is whether refugees should be enfranchised in liberal democracies. This question demands that one departs from non-ideal conditions. I am concerned, after all, with a problem that arises only in the context of an international system divided into states. Likewise, I ask what liberal democracies should do when it comes to refugees that reside on its territory. Although liberal democracies may possess a plentitude of other duties, ranging from duties of admission, to duties of aid to refugees elsewhere, they pose different questions that are more fruitfully discussed with reference to other principles and other theoretical frameworks. I am solely interested in whether they possess a claim to democratic inclusion given existing boundaries and political structures. I will thus opt for the all-subjected principle as a principle to guide us in determining whether refugees qualify as members of the political community.

Other theories of democratic inclusion, such as the all-affected principle, depart from a more ideal starting point. They ask different questions given the different conditions they assume. The all-affected principle asks not only ‘who’ ought to be included in an already given political unit, but asks about the scope of the boundaries (and their justification) themselves. It does not assume existing boundaries as given. While this may be a worthy endeavor for answering questions about the justifiability of borders, and the desirability of world-wide political institutions (see: Goodin 2007), it tells us relatively little with regards to the specific problem we face here and now with regards to existing political units and refugees residing in them. The all-affected principle, arguing that all those affected by political decisions should have a say in them, would only be able to tell
us either that we ought to create global political institutions, that everyone has a claim to democratic inclusion in every state, or that everyone’s interests should always be considered (a moral, not a democratic claim) (cf. Owen 2012; cf. Beckman 2009, 47).

The first option tells us little with regards to a problem we encounter here and now and how liberal democracies as existing political units should deal with a (disenfranchised) refugee population on its soil. It would merely state that many decisions affect individuals globally, such as decisions that impact climate change or economic decisions that never just have consequences in specific countries but reverberate globally. The second possible way the principle could be understood is equally unhelpful with regards to the specific question in mind here. It would result in some form of network claim of democratic inclusion: democratic inclusion of everyone in each individual state (cf. Shapiro 1999). While it would ground democratic inclusion of refugees in liberal democracies, it would have relatively little to say about why refugees particularly should have a say. It merely assumes that everyone should be included. Some may stipulate that the all-affected principle could be cropped, and that we could determine a particular scope of being affected. After all, some people are affected by specific decisions more than others. Theorists have, however, rightly rejected this interpretation of the principle, since it would 1. either require a decision-dependent demos and thus a demos that shifts its contours with every of the various distinct decisions taken, or 2. determining morally relevant ties between individuals and thus determining that only specific way of being affected or specific levels of affectedness count (Fraser 2010, 292). The latter, however, either leads to a normative hierarchy that cannot in itself be defended: why should being affected by the law be more morally relevant than being affected by decisions that significantly impact climate or the economy and thus the livelihoods of individuals? Alternatively, it would need a decision on the intensity that is required for inclusion. And who should make that decision? It reverts to problems raised in discourses of constituent power: the problem of who should make the decision on who should make the decision – a paradox that can be circumvented only by answering: everyone (as ardent cosmopolitan defenders of the all-affected principle do (see: Goodin 2007)), or stipulating existing boundaries (cf. Loughlin and Walker 2007).

The third alternative of understanding the principle argues that the all-affected principle leads to all individuals having a claim of their interests being taken into account when their interests are concerned. This, however, is a moral not a democratic claim (cf. Habermas 1996, 97). It can tell us why liberal democracies should take into consideration the interests of refugees when making foreign policy decisions, or restrictions on travel and so forth. It does not help, however, in telling us whether refugees possess a democratic claim of inclusion when residing on the territory of liberal democracies. Likewise, another approach to democratic inclusion – the citizenship stakeholder principle – is not well suited for the specific question I ask here. It conflates inclusion into the political community with inclusion into the citizenry. Yet, what I am after here is whether refugees should be enfranchised as refugees and not whether they should become citizens of the respective liberal democratic states. I will return to it in section 4, which discusses why inclusion into the political community and inclusion as citizens can be treated differentially.

Finally, the all-coerced principle is sometimes invoked as a third distinct principle to the all-subjected principle when it is understood as enfranchising those coerced by
specific decisions (Tomlinson 2015, 95). Although sympathetic to its underlying argument, I hope to avoid criticism of the kind David Miller (2010) makes in response to Arash Abizadeh’s (2008) claim that would-be immigrants should be included in making decisions on immigration related issues by opting for a distinct understanding of subjection to rule and coercion. Miller claims that coercion matters only if it can be understood as an autonomy violating instance of coercion. Since autonomy, following Raz (1986, 372), does not require all options being open to an individual but requires merely an adequate range of options available to them, immigration decisions should not be considered as decisions that impact the autonomy of individuals to a degree that matters for claiming democratic inclusion – after all, Miller argues, not being allowed to immigrate in a specific country still leaves open a range of many other options for immigration. Abizadeh (2010) replies (rightly) that immigration decisions can still be qualified as coercive. Whether that resolves the underlying worry by Miller, which I take to be that it may impact but not restrict the autonomy of individuals in a manner that they cannot escape, is not of concern here. I can sidestep the critique that Miller offers, not because it is not valid or because Abizadeh’s reply may or may not be sufficient, but because I do not need such a characterization of coercion to make my claim here. We can simply understand the all-subjected principle as claiming that all those subjected to political rule in a given territorially bounded political unit should have a say in such rule and interpret subjection to rule not as being subject to potential coercion with regards to specific decisions, but as subject to continuous threats of coercion. We can introduce a distinction between what impacts the autonomy of individuals (and immigration decisions definitely do), and what regulates the autonomy of individuals. Being subjected to political rule thus implies a regulation of the range of choices that people possess itself, and not only the availability of any one choice.

Subjection to rule then means being subject to the coercively backed collectively binding decisions in a political unit. The fact that such subjection concerns the regulation of autonomy and thus decisions on the very range of choices available to individuals (as opposed to only impacting the choices of others) has lead some theorists to refer to subjection as rule that ‘sets the ground rules of interactions’ in a community (Fraser 2008, 411), while others just refer to individuals being subject to collectively binding decisions (Dahl 1989). I take the underlying meaning of both to align in the autonomy regulating way expressed above. This also means that some formulations of the all-coerced principle take a similar, if not identical meaning to what I call the all-subjected principle here (cf. Scherz 2013, 4). This is the case when coercion is interpreted in the way I suggest above, as a general subjection to coercively backed regulation of autonomy (Verschoor 2018; Owen 2012). I use the term of the all-subjected principle primarily to suggest that a difference exists between such a formulation and one that focuses on single coercive decisions. One may thus proceed with the all-subjected principle as one that specifically suits the question of democratic inclusion given non-ideal circumstances. It departs from the non-ideal condition of an international political order divided into states and thus asks who has a claim to democratic inclusion given the existence of territorially bounded political units: liberal democracies (cf. Näström 2011, 117).

Whenever the all-subjected principle is invoked, however, scholars frequently mention limiting conditions that function as the basis for qualifying the scope of the principle. They usually re-state the two conditions mentioned originally in Dahl’s version
of the principle: that the principle applies to all those who are not ‘mentally defective’ (1989, 129) and who are non-transients. The first condition must not bother us any further, as it adds little to our question regarding refugees. The second is of greater interest. It argues that transients such as visiting students, tourists and guest-workers should be excluded from falling within the scope of the principle (Dahl 1998, 78). In the following, I must therefore ask why transients should be excluded and whether the correct justification also warrants treating refugees as transients and should hence lead to excluding them from a claim to democratic inclusion.

3. Excluding transients from the demos: are refugees transients?

The claim for excluding transients is made by nearly all scholars in determining the scope of the demos. Yet, it has been justified in various ways. As we shall see, neither of these are normatively satisfactory. A first route of argumentation claims that transients should be excluded, because they are not members of the society in question (Carens 2005, 33; Rubio-Marin 2004, 21–33). This argument holds that the longer one stays in a given community, the stronger are the connections and social attachments to other people within it (Shachar 2009, 168–69). Transients should therefore be excluded from the demos, because they have not yet formed strong ties and social attachments that would make them ‘members’ of that society. But this argument begs the question in two ways. First, if being a ‘member of society’ means being a member of the political community, then the formulation begs the question, because the purpose is exactly to find out who the members of a political community are. It would make the argument circular (Bauböck 2009, 482). If the argument, however, resorts not to membership in the political community, but to membership of society, then we need to ask why the extent to which persons possess social ties to each other matters for a claim to political participation.

This formulation assumes that the web of social interactions can be clearly demarcated. This is, however, only the case if we assume societies to be islands of communication with economic, cultural, legal and religious interactions spanning over the same population. Yet, what we can observe is that economic interactions span across state boundaries in a different way than religious communications, legal and cultural interactions. In modern societies, one cannot share the same social habitus. Rather, one participates in different social sub-systems at different times, without these being geographically limited to the boundaries of states and without these forming social entities that are holistically different from others. Even if being a ‘member of society’ refers to a shared cultural habitus, and thus the norms informing the form of social interactions, we cannot exclusively identify a geographically demarcated culture of which persons can be part or not. Different cultural affinities and shared norms of interactions can be assumed by individuals in vastly different geographical areas. A person in the Netherlands may share similar communicative norms with regards to gender equality with a person in Japan, while they differ in the way they communicate when relating to economic matters. This means that it is both possible to live in different territories but still share the same social norms, and that it is possible to live on the same territory and share none of the same social norms. This is not only a point about the possibility of social seclusion – persons living in remote parts of the country or labor migrants being housed separately from the local population. It is also a point about the scope of the
territory that should count towards such a claim. If a person lives in Bavaria and (nearly) never travels beyond regional territorial boundaries to the north of Germany, can we say that living in Bavaria leads to social connections regarding persons in the rest of the country? Yet, the social-membership argument is not primarily defective because of its underlying assumptions regarding the possibility of integration into a holistic and clearly demarcated society, but because its claim regarding political participation does not follow. Even if we set all this aside and simply assume that one can be a ‘member of society’ in this definite and exclusive form and that persons within share ‘deeper’ social ties (and should this mean: communicate more regularly?) with each other, then we are still confronted with the question why this should matter for a claim to political participation.

Take the following hypothetical example. In a group in which every member is subjected to rule, why should it matter that Peter has deep ties to Mary and to Angela, but John does not? John is equally subjected to rule and the fact that he does not really have deep ties to any other member of the group stands in no relation to his political claim of participation. Should John be excluded from having a say in the decision-making process of the group merely because he has fewer close ties to others? The all-subjected principle argues that the answer is ‘no’. Full-inclusion means just that: full-inclusion. It simply does not matter whether John interacts more or less often with other members of the group, takes part in the same activities or likes the same food. All that matters for his claim to participate is that he is subjected to the rule of the group. This argument, then, cannot lead us to the conclusion of excluding transients.

A second strand of argumentation is similarly inconclusive in this regard. It argues that time spent in a country functions as a proxy for knowing its political system. It holds that transients should be excluded because they have not yet spent enough time in the political community and thus do not have sufficient knowledge for voting in it (well) (cf. Hayduk 2006, 78–80; Renshon 2008, 10). There are two problems with this position. First, it argues that knowing the political system and its nuances is tied to living in that country. But this is doubtful. Citizens of a country may lack knowledge of its political system despite living in it their entire lives. The opposite may also be true. Not living in a country still allows for in-depth knowledge of its political system. In fact, nationals often do poorly when confronted with elements of citizenship tests that include questions on the political system and its history. Living in a country is simply not a necessary condition for knowing the nuances of its political system (Sager 2014, 206). Secondly, and perhaps even more problematic, is the claim that the right to vote should be conditional upon being able to vote well. It is problematic not only because it implies that a person knows what it means for another person to ‘vote well’. Even if we were able to pre-democratically establish what best serves the interests of others subjected to rule – which would arguably make democratic decision-making superfluous – it remains questionable whether the duty to vote well can trigger anything more than a recommendation to those who are already voters. While it would thus be preferable if persons informed themselves to their best ability before casting a vote, this argument does not lead to a justification for excluding people from the vote. Used in this fashion, it has historically served to justify the exclusion of large segments of the population, such as black people and women, arguing that they (still) lack the requisite political knowledge to vote well.
(Schriner, Ochs, and Shields 1997, 90; Hayduk 2006, 79). A presumed lack of knowledge for voting (well) can thus not justify excluding transients either.

But what can? I argue that the reason lies in the logic of the all-subjected principle itself. It is forward- and not backward-looking. It does not state that a person must first be subjected to rule and, consequently, should possess a right to participation in all further decisions taken. This would make participation a reward for being subjected to rule in the past. Rather, it argues that a person should participate in the rule that subjects her (For a similar argument, see: Goppel 2017, 34). If the principle would be backward-looking, it would defeat the purpose of providing persons with the ability to participate in decisions that subject them to rule.

Take, for instance, a group of people in which one person makes a decision that significantly impacts all others. If the all-subjected principle were backward-looking, that person would not need to consult or incorporate any other person in making that decision. All that such argument would call for is participation of these people in other decisions in the future. This is obviously incorrect. The principle provides the grounds for taking part in rule and is not a compensation for past subjection. Transients should therefore be excluded not because they have not yet spent sufficient time in the political community or because they presumably lack the requisite knowledge to participate, but because they will not be subjected to rule in the future. If given the vote, they would participate in rule that will not subject them.

Note that this argument only refutes claims that hold that the time spent in a community matters directly for a claim to participation either because it leads to social-connectedness or to requisite knowledge of the political system. It does not refute the claim that time spent in the community can serve as a proxy for estimating that individuals remain in the polity in the foreseeable future. This makes sense especially with regards to regular immigrants. Entering a country, their status as immigrants does not yet guarantee that they will remain in the country for the foreseeable future. That is because they possess a number of exit options, including the possibility to return to their country of origin at any time. The ‘time spent in the community’ standard makes sense as a proxy for them, but not because it shows that they are more connected or better educated, but because spending a significant amount of time in a polity is a good indicator for that they will remain there in the foreseeable future too. Time spent can thus be interpreted as a proxy for future residence (see: Bauböck 2009, 479). Yet, this neither means that other proxies may not exist for estimating likely future residence of immigrants – think about marriage to a resident national, the acquisition of the language or following one’s family residing in the country – nor that different proxies could not exist for non-citizens that are not regular immigrants. I will argue that the latter is the case for refugees, and that the acquisition of refugee status itself can function as a proxy for the likelihood of long-term future stay, and as a consequence, future subjection to political rule. I must thus first demonstrate that refugee status is not only temporary and that it implies long term residence.

After the end of the Second World War and thus when the Geneva Convention Relating to the Status of Refugees was negotiated, the idea that refugees ought to return to their countries of origin seemed either unthinkable or impossible. In the case of the many Jews fleeing Nazism, it seemed a cruel proposition that they return to the country that had systematically murdered them by the millions. Likewise, it seemed
impossible to demand that those who were previously Soviet prisoners of war in Germany and that had, after the war, turned into refugees, return to a home where they faced punishment for having been captured (Costello 2017, 731). During this time, refugee status was not viewed as a temporary status. This changed in the 1990’s and with the gradual introduction of alternative forms of protection, such as Temporary Protection Status (TPS) in the US and subsidiary protection in the EU, which granted temporary protection to those who were fleeing war and other generalized forms of violence (Chimni 2004). Known as the ‘decade of repatriation’, refugee status began to be perceived as temporary, implying that individuals should return home once the circumstances that caused their flight had subsided (Costello 2017, 731; Chimni 2004, 59).

Yet, refugee status did and does differ from other forms of temporary migration. It differs from the legal status of transients such as tourists or visiting students in that their legal status is not fixed. Rather, it is indeterminate, and thus open ended (Ziegler 2017, 211). This is not to say that refugee status cannot end, or that refugees do not sometimes change the country of asylum. The latter is the case when refugees are resettled. Yet, resettlement usually exists as an option for refugees who reside in refugee camps or in precarious situations in countries neighboring their states’ of origin. Liberal democracies are not sending, but destination countries in virtually all cases of resettlement. Yet even where this option exists for refugees it often remains a far distant option that will never materialize for many. Most refugees wait indefinitely for their resettlement to take place (Karlsen 2015, 4). This is because the quotas offered by (mostly liberal democratic) states are filled based on need, resulting in an indefinite delay for most refugees. In total, only about 1% of the global refugee population is resettled, and nearly exclusively to liberal democracies (Labman 2011, 55–56).

The stay of refugees may, however, come to an end based on another option. It can end because refugees are repatriated. This can happen once refugees return and ‘voluntarily re-establish’ themselves in their country of origin. Note that simply returning to their state of origin is not enough for refugee status to end, but that such return must be ‘durable’, with the causes for their displacement no longer existing (Hathaway 2005, 180, 2007, 5). While many refugees do indeed return, they often do so from countries that experience conflict themselves. These are primarily countries neighboring the conflict zones that refugees have fled and are often territories within which refugees are insecure, being subject to threats by inhabitants or refugee militias (Stein and Cuny 1994, 177). This means that refugees often return without the help or organization of the UNHCR, and often in an insecure and premature manner. All in all, the voluntariness of these returns is often questionable. Refugees often return ‘voluntarily’ not because the circumstances in their countries of origin have sufficiently changed to the extent that a durable ‘re-establishment’ is possible, but because the circumstances in their place of refuge are perceived to be more threatening than what they expect in their countries of origin (Stein and Cuny 1994, 181). Voluntary returns thus happen, and they cut the stay of refugees short in some cases. Yet, they nearly exclusively happen from countries neighboring conflict zones and not from the liberal democracies of the Global North. According to the UNHCR statistical yearbook of 2016, no ‘voluntary repatriations’ have occurred from the EU. This suggests that the measure is mainly one restricted to countries in which refugees choose one dangerous situation over another – something that should be condemned,
but which also shows that voluntary return cannot serve as an argument for claiming that refugees are transients in liberal democracies (UNHCR 2016).

Finally, the stay of refugees may come to an end following a decision that the circumstances that have caused their flight in their country of origin have fundamentally changed (Hathaway 2007, 5, 2005, 177). This decision is made by the host state, and the UNHCR provides only little guidance in this regard. Such changes must be both fundamental and enduring. They must lead to practical and lasting changes in the country of origin (Hathaway 2005, 216). Such changes include regime change, reflected in free and fair democratic elections, the repeal of oppressive laws, amnesties, the removal of security forces, or the restoration of the rule of law (UNHCR 2003). Even though the clause exists, and is sometimes invoked, it represents a scenario that does not materialize for the vast majority of refugees. Where it was recommended by the UNHCR, such recommendations were regularly prematurely made, leading refugees to be sent back into conflict zones (Hathaway 2005, 195, 199; Chimni 2002). The liberal democracies of the Global North only very rarely make use of this clause (European Commission 2019, 101–3). In 2018, a revocation examination in Germany had only withdrawn or revoked protection to 0.9% of the cases. Yet, none of these cases were revoked due to fundamental changes in the country of origin of the refugees involved, but rather on the grounds of ‘erroneous’ decisions for granting refugee status in the first place (Informationsverbund Asyl und Migration n.d.). Even though cessation of refugee status remains a legal possibility, for the vast majority of refugees it will never materialize. In practice, refugees are often incapable of returning home (Costello 2017, 731–32). Thus, once they enter liberal democratic states, they tend to stay for long periods of time. Even though their status is indeterminate, it is by no means temporary. In the EU, for instance, about 90% of refugees have spent more than 4 years, 50% more than 10 and 35% more than 20 years in their host states in 2014 (Dumont et al. 2016, 11). Refugees thus remain in liberal democracies for long periods of time, if they ever leave.

Based on the all-subjected principle, transients should still be excluded from the demos. Yet, this condition is forward- not backward-looking. Time spend in the polity is only valuable insofar as it functions as a proxy for knowing that the individuals concerned will remain in the polity in the future, and that they will be subject to the rules they participate in making. Are refugees transients on this forward-looking account? I argued that they are not. Their legal status is not limited in time. It is indeterminate. In practice, refugees remain in liberal democracies for long periods of time, if they ever leave. Just as time spent in the country, receiving refugee status functions as a proxy (and arguably a better one at that, since it is often extremely difficult for refugees to return or move on) regarding the likelihood that they will remain in the country in the future. Refugees clearly differ in their status from transients such as tourists or visiting students. The condition that transients should be excluded from the demos does thus not apply to refugees. Yet, this does not yet tell us whether refugees are qualified to receive political rights as refugees. Is receiving political rights not tied to citizenship? This is the question I will explore in the following section.

4. Political rights and citizenship: do they necessitate each other?

Finally, if one wants to know whether refugees should receive political rights in liberal democracies, one needs to show that political rights can be had without citizenship. The
two are, although often assumed to be, not inseparable. Citizenship has not (and does not) always imply possessing the right to vote (Song 2009). Historically, there are plenty of examples to show this. Rather, such right was connected to the economic position a person had, their ethnicity or gender. It was, thus, dependent on the social status of persons in the upper echelons of society and not to citizenship. In modern societies, in which what matters for participation in the political system is no longer the social status of a person, such qualifications to the access of voting rights seem outdated and normatively indefensible. What matters is simply the political relation between rulers and the ruled. But if only subjection to political rule matters for a claim to political participation, why should citizenship be a necessary condition for it? Many scholars have consequently argued for a position that disaggregates citizenship and political rights (Ziegler 2017, 119).

They have outlined many different ways in which non-citizens are politically similar to citizens. Some argue that they contribute to the state similarly as do citizens, paying taxes and even serving in the military (Raskin 1993, 1442). They argue that immigrants share the same obligations and should therefore share the same rights as citizens, including the right to vote (Avila 2003; Kini 2005; Harper-Ho 2000, 295; Raskin 1993; and Aleinikoff and Klusmeyer in.; Hayduk 2006, 43). Interestingly, this was also the argument of the first judge to decide in favor of alien voting rights in the United States (Raskin 1993, 1443). Others have argued that voting rights lead to better prospects of integration for immigrants in the future (Lenard 2015), or that such rights could lead to better outcomes for minority groups in general, assuming that these groups begin voting en bloc to support each other’s interests (Hayduk 2006). These are, undoubtedly, valuable arguments. Yet, they can only serve as auxiliary arguments for triggering a right to political participation. They provide additional reasons for why non-citizen voting rights would benefit immigrants or even other groups of the population. Yet, such benefits do not explain why they ought to possess the right to political participation. They too must hence resort to the argument of the all-subjected principle. What matters is that immigrants are, just as citizens, subjected to rule (Beckman 2006; Goppel 2017). Without political rights, non-citizens would lack the power to participate in shaping the conditions that govern their lives (Lenard 2015; Kini 2005; Brilmayer 1987). Both citizens and non-citizens are equally concerned by the decisions made and should thus have a say in making them (Hayduk 2006; Harper-Ho 2000).

Citizenship, then, simply does not matter for the right to political participation from a normative point of view. This is because citizenship provides persons with a specific legal and not a specific political status. The rights conferred to persons as citizens go over and above the right to political participation. Although many citizens have a claim to the right to vote, this does not follow from their citizenship status, but from their political status as persons subjected to rule. And indeed, many citizens are excluded from the right to vote, such as children, and some scholars argue that expatriates should be excluded too, following the logic of the all-subjected principle (López-Guerra 2005). López-Guerra argues that the reverse of resident non-citizen voting implies that expatriates should lose the right to vote. After all, they would otherwise participate in rule that does not subject them (López-Guerra 2005, 226). This should, however, not mean that they ought to lose their citizenship. Neither does it mean that either of these two are banned from voting in the future. Citizenship guarantees a person a bundle of rights, such as the right to
unconditionally return to one’s country of citizenship and retain the right to vote. It may include other rights that non-citizens do not possess, such as welfare rights, and, as other scholars have noted, rights to diplomatic protection abroad, and rights securing against deportation (Sager 2014). What it does not automatically guarantee is the right to political participation. Citizens only possess such a right because they are subjected to rule. Political rights can thus be had without possessing citizenship.

5. Conclusion

Should refugees receive political rights in liberal democracies? I argued that they should. Consulting the all-subjected principle, I argued that all those subjected to political rule in a territorially bounded political unit should have a say in such rule and that this principle applies to refugees, too. I demonstrated that refugees are not transients as are visiting students or tourists and that political rights can be had independently of having citizenship. I argued that enfranchising refugees is a matter of greater urgency than the enfranchise-ment of other non-citizen residents and that such enfranchisement should occur on a national rather than on a municipal or regional level. Unlike regular immigrants, refugees do not possess any exit options. They are subjected to rule in liberal democracies that specifically and significantly impact their lives. I may thus return to the initial question and ask: should refugees possess political rights in liberal democracies? The answer is ‘yes’.

What are the implications of this argument for the naturalization rights of refugees? I argued that the all-subjected principle provides us with a justification for the democratic inclusion of refugees, and thus for their inclusion into the political community of liberal democracies. Two implications may follow for the claim towards citizenship both of which I would like to sketch but which require consideration beyond what the scope of this paper allows me to dedicate to them. The first implication regards the justificatory structure of claims towards citizenship. The all-subjected principle is not sufficient for justifying naturalization rights, though it may be a necessary requirement. This conclusion follows if one understands the possibility of holding a particular political status as distinct from holding a particular legal status such as citizenship. The latter confers rights and duties over, above, and quite distinct from what membership in the political community confers and demands. There may thus be additional criteria that must be satisfied in order for a person to acquire citizenship. They may be related to the specific rights of citizens, such as welfare rights, or to the specific duties citizens possess, such as serving in the army. What it means, however, is that citizenship acquisition cannot only be justified on the basis of arguments of democratic inclusion. Secondly, the argument implies that citizenship loses its all-or-nothing character. Naturalization would still lead to acquiring a specific set of rights, but would no longer be the gateway to all rights and duties. Integration in the political community would be possible without assuming the specific legal status of citizen-ship. This means both that refugees would be able to democratically participate in the decisions that concern them and that acquiring citizenship would lose some of its urgency. Refugees could assume and hold a number of rights that would not necessitate them to naturalize, even if this option should nevertheless remain open to them. Whether or not refugees choose to acquire the citizenship of their host countries thus remains open to them. This does not, however, mean that their interests should remain unprotected and
unheard for as long they do not possess citizenship. Refugees can and should be enfranchised independently of their possible claims to citizenship.

Notes

1. This leads to a number of problems, just one being related to the membership claims of children. Bauböck must either argue that children are not citizens (because they are not part of the political community) or that citizenship and membership in the political community represent two distinct forms of membership. He opts for a third way out: claiming that political communities are trans-generational. The formulation does not help us, however, in discerning who should be enfranchised here and now (see: Bauböck 2017).

2. Contrary to what Bauböck (2017) suggests, I do not believe that the all-subjected principle leads only to a claim of equal protection under the law and by guaranteeing recourse to legal institutions. Even based on his understanding of the principle, it seems unclear why the control of the sovereign in this instance should be restricted to control via courts and not also include democratic control in a legally structured proceduralist democratic political system.

3. Note that this formulation does not rule out the existence of other political units. The principle can, and I have done so elsewhere, be applied to specific situations such as refugee camps developing as de facto distinct territorially bounded political units from those of host states in the global south. Here, I will focus on the question regarding liberal democracies, only.

4. A survey for the US found that only 36% of US Citizens would pass the citizenship test. See: https://woodrow.org/news/national-survey-finds-just-1-in-3-americans-would-pass-citizenship-test/.

5. For the duty to vote well not resulting in a claim to exclude from the franchise, see: Brennan (2009), for the opposite argument, paradoxically also see: Brennan (2011).

6. See resettlement data by UNHCR: https://rsq.unhcr.org/en/#Dbi3

7. UNHCR estimates that about 691,000 refugees need resettlement. Yet, resettlement countries have offered only 86,000 spots (Karlsen 2015, 4).

8. Even where it does, refugees tend to stay in Western Europe and North America, as has happened for instance with the Eritrean Diaspora (Kibreab 2003, 59).

9. Some authors have even suggested that the practical impossibility of a timely return is the reason why liberal democracies have increasingly sought to limit the numbers of refugees reaching their shores (Tarwater 2001, 617).

10. Most democracies have excluded women from the franchise until the 20th century, despite possessing citizenship. Similarly, voting rights were often restricted to property owners, wealthy citizens or persons of specific ethnicities (Raskin 1993), sometimes irrespective of their citizenship status. Today, one of the most salient examples of citizens being excluded from the franchise is the voting age qualification, excluding minors from the demos. For whether this should be the case, see Wall (2014), López-Guerra (2012).

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