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# Performing Representativity, Expanding Democracy

## Human Rights as a Blueprint to Demand Voting Rights for Non-citizen Migrants

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**Abstract:** The right to vote stands as a cornerstone in contemporary liberal democracies, but its limits, particularly regarding who holds this privilege, remains a contentious issue, pitting democracy against the intricate dynamics of migration. Acknowledging this tension, this article asserts that a more illuminating perspective on the nexus between voting rights, migration and democracy emerges when viewed through the lens of human rights, as opposed to the conventional framework of citizenship rights. The article develops a theoretical framework based on a practical case from Germany, where the *Demokratie für Alle* movement advocates for voting rights for non-citizens, underlining thus the importance of a human-rights-based framework in shaping political demands. The article explores the articulation of a practice and the emergent theory upon which it can be sustained, exploring thus the concept of a performing representativity within an actual and evolving context.

**Keywords:** migration, human rights, voting rights, citizenship rights, practice-based knowledge

## 1. Introduction

The right to vote is one of the touchstones of modern liberal democracies. However, the question of who can vote is part of ongoing debate where democracy as a form of government is challenged by another social logic with its specific weight: migration. The presence of newcomers to a given political system upsets its equilibrium in ways that need to be acknowledged. However, most nation states, through their governing bodies, seem to fear specific risks when some form of membership expands. They usually control the potential inclusion of newcomers through the management of citizenship.

Different critics have analysed this connection, and the second section of this article presents, in a synthetic form, the leading lines of that debate. Moreover, the article argues that a better setting from which to understand the tension within the voting rights–migration–democracy nexus can be found within the compound on human rights under which, following certain migrant non-citizen practices, it can be interpreted, as against the set of citizenship rights in which it is usually inscribed. The third section presents a theoretical framework that provides viability to this claim. The fourth section presents a practical case from Germany, where a recent movement that demands voting rights for migrant non-citizens, *Demokratie für Alle* has presented both achievements and setbacks, therefore offering an experience of its own that shows how activists rely on a human rights framework in order to shape their political demands. Following this empirical articulation, the fifth and last section of the article analyses what this implies for a theoretical frame more broadly, and explains how a sort of performing representativity in this issue can be understood.

## 2. Voting rights for non-citizens

Voting rights for migrant non-citizens can be theorised from different perspectives, yet traditionally most of them fall under the frame of the citizenship model as this has been contended by theorists of the nation state (e.g. Marshall, 1950). One of the classic criteria within the democratic tradition upon which this model was structured was to answer who takes part of the *demos*, the people of a nation that makes up a political unit. An early understanding of the *demos* made it work practically as a form of membership (Beckman, 2006), and the ways this could be granted was usually along the lines of cultural or ethnical resemblance (constituting thus the ‘stronger’ version of the notion of membership). Under this guise, the challenges posed by migration has led to a defence of the *demos* as the group of all adult citizens, members of a cultural group, who reside in the territory and only of these. This delivers a ‘constrained’ perspective of the *demos*, which implies that resident non-citizens should not be granted the right to vote (Arrighi & Bauböck, 2016). In a stark contrast, constitutional doctrines and democratic theories have increasingly developed and defended an ‘expansive’ conception of the *demos*, deepening thus our understanding of democracy. Within this perspective, democracy theorists have often presented the view that political representation should be granted to all those, and only those, subjected to the laws of the territory where these apply (López-Guerra, 2005; Abizadeh 2008; Beckman, 2006, 2009; Owen, 2012).

This first divide between constraint and expansion has set the stage for a number of theoretical propositions, often at odds with each other. However, the most progressive positions tackle political and voting rights from a more realistic perspective, where migration is a key factor for the constitution and functioning of societies. For instance, addressing the topic from a normative perspective, a handful of analyses argue why or how states grant or should grant rights to non-citizens (Varsanyi, 2005; Bauböck, 2006; Song, 2009; Garcia, 2011; Pedroza, 2014; Hayduk, 2015; Blatter et al., 2017). Drawing on Bauböck (2005), we can organise some of these views according to key principles of liberal

democracy. One of these is that of ‘territorial inclusion’, which regards a democratic polity as a community of individuals who are subjected to the same political authority and its laws and who have therefore equal rights to representation and participation in the making of these laws (Dahl, 1989; Beckman, 2006). Under this view, every permanent resident in a territorial jurisdiction should enjoy voting rights. Another approach is the ‘all-affected’ principle, which proposes defining the *demos* “decision by decision rather than people by people” (Shapiro, 2003, p. 222; see also Whelan, 1983). This viewpoint may result in the inclusion of resident non-citizens in elections, since they are clearly affected by the outcome of collective decisions, but it may also be used by expatriates if political changes made in their country of origin concern them. This principle may appear ideal, but it is in fact difficult to implement and defend. As Bauböck argues (2005, p. 686), a principle of affected interests may justify voting rights for citizen non-residents if the decisions of governments profoundly impact on the interests of other countries’ populations (for instance, in a commercial confrontation that could lead to a war). A principle of affected interests can therefore be impractical and, since most elections in representative democracies are not about instituting new specific laws (i.e. referenda) but choices about who has the authority to engage in law-making and enforcement within an already given polity, it might not help overcome the need to define the territorial and membership boundaries of the *demos*.

However prolific and alluring, these approaches still deal with a theoretical understanding of citizenship that has been instrumental to sustain the legal framework of contemporary nation states. Other paths have been opened by approaches that argue for forms of ‘global’ or ‘cosmopolitan’ citizenships (e.g. Held, 2004; Benhabib & Post, 2006), the practical idea of ‘urban citizenship’ (e.g. Rocco, 2007; Coll, 2011), as well as through the body of work prompted by the idea of ‘acts of citizenship’ (AoC) put forward by Engin Isin (2008). The ‘cosmopolitan’ or ‘global’ forms of citizenship typically emerge as a solution to what some see as an inadequate territorial citizenship, bound to ethnicity and/or dominant culture, and a logical demand to follow the impact of global processes on the territorial state. These positions claim that precisely because the state is being challenged by global processes, citizenship should be reformulated as global, or cosmopolitan, as to be made compatible with such processes (Brysk & Shafir, 2004). On its turn, advocates of ‘urban citizenships’ concentrate on practices and see local residence, rather than nationality, as the foundation for society membership and decision-making authority. Undocumented immigrants, they contend, are already *de facto* residents of specific communities and should be allowed to become *de jure* members with the ability to influence and shape its sociocultural, economic and political life (De Graauw, 2014). Finally, the AoC approach reorients citizenship discussions away from individuals and their status and towards the behaviours that give rise to political subjectivities (Aradau et al., 2010, p. 956). This means that, rather than concentrating on disentangling status, institutional politics and state authority, the AoC literature highlights practices, constitutive politics and everyday struggles of migrants *qua* claimants. In other words, this approach focuses on how migrants claim rights and perform duties, and how, by doing so, they constitute themselves as citizens, even if this does not imply acquiring the ‘official’ documents to ‘prove’ it.

While this article sympathises with these views, it also works through some of their shortcomings. In a sense, it argues that political rights, and within them the right to vote, should be decoupled from a normative understanding of citizenship (Oliveri, 2012, p. 795), but at the same time, that global or cosmopolitan forms of citizenship pose problems when trying to identify a given performing polity, for this will most probably turn to be the political unit to which migrants want to pertain to, or vote in (Tambakaki, 2010; see also a classical argument on political participation in Schmitt, 2005). On its turn, while AoC originally focus on ‘divergences’, ‘distortions’ and ‘disorders’, that is, on subjective negativities that resist legalist formalisations (Isin, 2008, p. 20), it seems that these should be understood through a closer understanding of the processes involved, and not only by inquiring acts or habits of an individual or a community, interpreted by an engaged researcher as political enactments in and of themselves. Finally, even if proponents of urban citizenships do contend that practical forms of membership emerge, they seldom reflect on the overall theoretical operations that this implies, which may have an impact on the ways we think about democracy more broadly. It would seem thus that the AoC and the urban citizenship approaches observe a similar phenomenon from opposite practical perspectives (aspiring actions in the former case; constitutive performances in the latter). Yet both seem to disengage from trying to contest the legal structure to which their observed actions respond.

Attempting to explore that ground, this article contends that, rather than through disperse and sometimes unacknowledged events, practices or examples, political agency is performed through processes of subjectivation that have different rhythms, undergo different stages and can be performed in key political articulations (Foucault, 1983). To be clear, events, practices and examples are necessary performances to observe in this process, but they are not sufficient. It rather seems that to be able to pin down how subjectivation/politisation works, it is necessary to articulate and understand the structure of collective movements, through both visible and non-visible enactments, symbolic but also practical feats, in practices that imply not only good-willed interpretations of political gestures, but also contest specific legal or democratic structures to bring about change. This article aims to make a contribution in this direction. For this, it departs from a theoretical perspective that allows us to bypass, or at least question, the formal, normative understanding of citizenship. For that aim, the next section presents a theoretical frame which, as the documented practices in the third section of the article will show, is more akin to what migrants perform specifically in their politisation process.

### 3. Human rights vs. citizenship rights

One of the main challenges to understand the migrant’s political rights and within them the right to vote in a situated context is to be able to read them beyond the framework that explicitly forbids or hinders their enactment. When the *demos* is already set and defined, newcomers are simply non-members; the defining line is clearly set, and failing to recognise it often leads to criminalisation of irregularity. Migrants represent movement in and of themselves (Nail, 2015a), and trying to have their rights recognised by institutions

that preclude it poses a dilemma. As Papadoupoulos and Tsianos (2013, p. 186) write: “The more one tries to support rights and representation through citizenship, the more one contributes to the restriction of movement.” As we will see, this is one reason why migrants, and especially irregular migrants, recur to the language of human rights to state their claims over the right to vote and other political demands. In fact, the *Universal Declaration of Human Rights* from 1948 explicitly recognises: “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives” (Article 21).<sup>1</sup> Raskin (1993, p. 1458) has already pointed out that this enunciation of basic political rights is afforded to ‘everyone’, and not just to ‘every citizen’.

However, we need to acknowledge the problems of essentialising the notion of human rights as a sort of quality or property intrinsic to human beings (Marx, 1844; Arendt, 1968; MacIntyre, 2007; Tasioulas, 2012; Menke, 2015, p. 204). It would be a very weak argument simply to rely on the pre-existence of an abstract set of rights to advocate for a specific right to vote. And yet, what has been done historically is precisely this, yet from the opposite standpoint: to argue for the functioning of human rights as if these were the exclusive properties of citizens. In the end, this is what the Arendtian maxim on “the right to have rights” implies (Shachar, 2014). If human rights are just as good as any institution’s or nation’s ability to defend them, membership to a political community, granted through citizenship, is the only possibility to guarantee protection. In that case, indeed, “the loss of a polity itself expels Man from humanity” (Arendt, 1968, p. 297; see also Tambakaki, 2010, p. 3). This points to some conceptual underpinnings that need to be acknowledged.

The right to vote or to be elected within a liberal, democratic regime has been traditionally linked, under the citizenship paradigm, to the capacity of an individual to exercise a set of rights and incur in responsibilities and obligations. As we have said, this approach is supported by a specific interpretation of democratic legitimacy, one bounded by a *demos* or representation of a specific people and accountability to a specific constituency. When this form of *demos* is demarcated by a specific culture or ethnic group, this particular approach to democracy is built over a constrained paradigm, which posits an imaginary community (Anderson, 1983), which presupposes the citizen as a consistent cultural figure and ultimately hopes to bridge differences through references to a common idea of the good and a shared future. In this view, all the citizens of the community would share in a common identity (homogeneous), transcend or suppress their own particularities (universalism), and have access to equal rights (equality). But this approach has two specific problems for pluralistic contemporary democracies. On the one hand, it relies on an understanding of politics that pretends to guarantee that the actual pluralism of a society is bounded by common values and goals, and can be guided through a single and cohesive idea of the good. This single origin is seen to ensure the homogeneity necessary for integration, stability and democratic action, and any divergence along ethnic, cultural or linguistic lines is deemed to bring only negative effects. In that sense, this view mystifies the notion of a common good as a metaphysical fact, instead of viewing it as the result of a political process as a sort of agreement, which individuals shape through their

<sup>1</sup> As Earnest (2003, p. 17) has pointed out, the language of the *Declaration* is ambiguous on whether this refers to his or her country of citizenship, or his or her country of residence.

participation in public affairs, and through which they constitute themselves as citizens in the first place. In this last sense, we could think alternatively that to be a citizen means to be part of a social covenant or a common promise that is expected to bring about a better situation through the cooperation for those involved (Margolis, 1982; Reinach, 1983). Or as Tambakaki (2010, p. 43) writes, “the affairs that are common, public and national determine the participants’ ‘we consciousness.’” As this shows, even if there is a dominant paradigm, we can count at least two opposing views to explain how citizenship emerges (Toscano, 2023).

On the other hand, the constrained or ethnic-bounded view also denies the accent on particularities that liberal democracies have been keen to stress with their valuation of the individual, and it therefore negates the inherent tensions that exist in complex modern societies. As a matter of fact, the growing number of non-national individuals (both citizens and non-citizens) within contemporary societies put the features of a constrained approach to citizenship to the test: first, many individuals do not share in the society’s national identity (heterogeneity); second, many seek a specific and public recognition of their particularity, be this described in economic, gendered, religious, class or ethnic terms (particularism); and third, many demand that equal rights entail, in some instances, differential treatment (for instance, through affirmative actions and similar policies). In other words, the constrained view of democracy is unable to address global problems and issues, is incapable of answering challenges brought about by the development of potentially post-national entities such as the European Union and is inapt to meet the issues and demands raised by ethnically diverse, complex and multi-tiered societies.

And yet, how to understand democracy under an alternative form, not as an imagined construct working over a homogenous foundation, but as a dynamic setting of competition, cooperation and mutual engagement? A key notion is here again the idea of representativity. If democracies are truly representative, they should, up to some point, mirror the changes and multiple rearrangements of a dynamic society. But for this representativity to be effective, more inclusive voting rights need to be granted and actively performed. Of course, this produces a deadlock when voting rights are insistently linked to citizenship, and when this notion is again dependent on the ideal of a national homogeneity. An argument centered on human rights can bring a different perspective. Yet how can we understand the ‘right to vote’ as a ‘human’ or ‘inherent’ right of an individual to attain a sort of community representation, without recurring to some kind of ‘natural’ attribute of human beings?

For a start, an individual’s presence in a community can be seen as performing in itself: an individual adds, communicates, relates, etc. to that community through his or her own embodied being, *taking part*, and this does not imply an essentialist assumption, but a fact. We face here a form of membership of a different sort, one that is activated by being there, even if excluded. For exclusion may be telling when it represents a state of things; in that case, it showcases a broader reality. The excluded *take part*, albeit negatively, and through that, they *present* themselves *representing* the effects of the political mechanism that bars them. Strong representativity in this sense would necessarily imply an acknowledgement of every incumbent individual within a body politic where that individual is engaged, and is ruled by the laws stemming from it. This looks again close to the all-affected principle that was previously presented. Yet, instead of pleading through

normative arguments for the inclusion of these individuals into a body politic, the incumbents play out here their own exclusion, resisting it by stressing it, and thereby embodying the contradiction that their rejection implies. When this happens, what emerges is not a flaw in the structure of a representative democracy, but precisely a performativity that delineates the gears of a system which applies different laws for distinctive sets of individuals within the same territory, and which Agamben (1998, see parallel articulations in Balibar, 2001; Bosniak, 2006; Badiou, 2009) has termed as a 'state of exception'.

As Agamben (1998, p. 160) argues, groups as refugees and irregular migrants experience the most extreme forms of 'bare life'. These groups embody "the condition of exclusion that those exempt from the normal sovereignty are subject to" (Rajaram & Grundy-Warr, 2004, p. 41). Facing the state of exception, citizenship rights cannot challenge the structure, because they are the means through which it distributes and controls political agency. Moreover, through these normalised exclusions the liberal democratic regime creates a subclass of individuals for which a different set of rules apply, challenging its own democratic standards (or aspirations). Within the subjacent tensions, particular provisions can be demanded as instantiations of human rights and, as we will see in the next section, sometimes changes that try to alleviate the consequences of exclusions do take place. In other words, if we understand the right to vote away from its articulation as a set of citizenship rights and locate it instead under the more inclusive compound of human rights, a different understanding on the issue of representativity, one that can be shaped through a performed insistence of the excluded, emerges. Yet, how would this affect the general understanding of the notion of human rights, as well as their practical implementation?

To answer this, it is, first of all, necessary to examine more closely the differences and some of the specific traits between citizenship and human rights. Drawing on Tambakaki (2010, p. 54), we can outline at least five basic differences between them. First, whereas human rights pertain to all human beings irrespective of membership in a political community (inclusion), citizenship is accorded exclusively to the members of nationally and territorially delimited communities (exclusion). Second, while human rights are conceived as universal, citizenship can only be particular because the rights and privileges it confers remain confined within particular nation states, and can only be enforced if the power of the state is realistically delimited. Third, due to their origin as a set of recognitions of the human worth, human rights are in principle moral and legal rights, even if they can take on a political role in specific democratic regimes. Citizenship rights, by contrast, have strictly political connotations: the citizen is the primary political entity embodying democratic self-determination. Fourth, while legal citizenship is exclusively granted by nation states, human rights override the capacity of states since "protection is their prime function" (Heater, 1999, p. 160). Finally, whereas human rights are commonly regarded as passive rights by virtue of their protective function, citizenship is understood as a dynamic set of entitlements that can be exercised.

These intrinsic differences bring about three important consequences that need to be acknowledged as well. First, because of their original protective function, human rights owe their force to their symbolism; they expand a formal defensive shield which is

nevertheless difficult to implement beyond the institutional framework that is needed to enforce them (the Arendtian thesis). Citizenship rights, on their turn, function more as entitlements, privileges of a membership that some nation states are keen on protecting; therefore, they owe their force to their effective exercise. Second, human rights are empowering, and can be called for to defend an individual against the violence or aggression of his/her own nation state; citizenship rights might be also empowering, albeit in a different form, by using the means and resources of the body politic to bolster the condition or political situation of an individual. Third, and perhaps most importantly, while human rights, through their inclusionary movement, tend to expand liberties (universal freedom of movement, freedom of speech, freedom to vote and be elected), citizenship rights, through their exclusionary dynamic (the construct of the *demos* as a totalising collective body) tend to strengthen equality (Balibar, 1994). While this should not be seen as an antithetical opposition, it brings about a tension, especially when citizenship is delineated along the lines of a nationalist paradigm. Tambakaki (2010, p. 11–12) recognises this tension when she writes: “Maximum individual liberty as promised by human rights weakens the unity and cohesion of the body politic, while strong unity as required by citizenship constrains individual liberty.”

Under this setting, if the right to vote is seen as expanding the freedom of individuals, it can be definitely seen as part of an inclusionary movement for human rights. But the right to vote can also have a reductive approach, and be seen as the mere performance of an entitlement under the exclusionary vision of the nation state function of citizenship. Of course, this last option reflects a specific political anxiety, and a form of control that aims at limiting an inclusionary dynamic that is seen to threaten an imaginary totality (e.g. Huntington, 1996; Sarrazin, 2010). Nevertheless, when a society diversifies itself beyond the possibilities of the nation state to control it, the right to vote, restricted as a form of citizenship right, works against the ideals of a liberal democracy. For as Rawls (1996, p. xlvi) reminds us, in a liberal democracy the notion of citizenship should reinforce the capacity of individuals to “form, revise and rationally pursue their own conceptions of the good”. In other words, the tenacious attempt of the political hegemonies to control who is able to participate may indeed work against the concrete rearrangements, cultural dynamics, and even desired improvements of the society they belong to. An ideological imposition threatens factual political representativity, and denies legally excluded minorities their inherent political and cultural worth in the society in which they already participate. In this sense, limiting the right to vote in intrinsically multicultural societies can only be made at the cost of jeopardising the liberal and representative quality of the democracy that can never be taken for granted, for it is necessarily being continually articulated, reorganised and accomplished.

#### **4. The demand for non-citizen voting rights in Germany**

The previous section has sought to delineate a theoretical framework where the ‘right to vote’ can be assessed from a perspective on human rights, instead of the citizenship rights vantage out of which it is usually interpreted. This framework is more apt to show



the tensions that a liberal democracy faces regarding the exclusion of some of its participants: migrant non-citizens who are nonetheless active members of a society. By turning now to see how the demand for the right to vote has taken place in a specific context, this section aims to understand how exclusion is played out from below, resisted, and ultimately enacted as a form of political representation, as “the self-presentation of the political existence of the inexistent” (Nail, 2015b, p. 121). After the case is presented, the fifth and last section will attempt to formalise the theoretical aspects emerging out of this practical form of engagement.

#### 4.1. The path of a migrant struggle

To understand a specific social dynamic, the following case will concentrate on a concrete political space. Germany provides a relevant case in this context, and this at least on three grounds. Firstly, because the country is nowadays the second largest receiver of migrants worldwide (IOM, 2022). Secondly, because the country hosts a large swath of permanent population that lacks political and voting rights (almost 10 million adults, or 14% of would-be voters (Brentler, 2021), which is larger than the size of Austria). And thirdly, because the country defines itself as a liberal and representative democracy. In a sense, many elements are at stake in this territory that, in an exemplary sense, will define the quality of Western democracies in the years to come.

Different articles have approached the German situation, yet again, from a normative perspective (e.g. Neuman, 1992; Earnest, 2003; Shaw, 2007; Arrighi & Bauböck, 2016). However, in order to incorporate the point of view on the performative representation of those excluded, this article wants to connect that vantage point with the struggles from below, enacted by migrants, regular or irregular, and other engaged citizens with whom effective alliances have emerged. We can locate already a substantial tradition in this field. For instance, in 1989, a series of very strong cases for non-citizen voting were presented, in a time when the country was experiencing political changes. The states of Hamburg, Schleswig-Holstein and West Berlin attempted to establish limited voting rights for resident non-citizens. Nevertheless, the initiatives were reversed by the Federal Constitutional Court in 1990, arguing that the laws violated the Basic Law [Grundgesetz], since all elections must be representative of the ‘people’, or *demos*, consisting of German citizens (Neuman, 1992; Earnest, 2003, p. 9). Different scholars have come to define this as a benchmark case for a judgment that reflects a constrained view of the *demos*, according to which citizenship is both a necessary and a sufficient condition for the franchise (Benhabib, 2004; Shaw, 2007; Arrighi & Bauböck, 2016). Furthermore, some scholars have pointed at the problematic stance of the arguments that the Constitutional Court produced. For instance, Beckman (2006, p. 156) argues that not only an ethnic-centered view upheld the notion of the ‘nation’, but also that the argumentative efforts were directed to demonstrate who ‘the people’ is (a matter of membership), and not who could vote (a matter of enfranchising individuals). Obviously, the Constitutional Court coupled together ‘citizenship’ and ‘right to vote’ under the umbrella terming of citizenship rights, without realising that a right to vote for non-citizens does not take away any rights from

Germans, under whatever conception this unit may stand. In a sense, the Court made a traditional interpretation of the Basic Law, instead of attempting a defence of its democratic framework. As Neuman (1992, p. 289) writes: “The Court found local suffrage for aliens inconsistent with the principles of democracy as currently framed in the Basic Law, not with any ‘essence’ of democracy.”

Even if controversial, this resolution implied a serious pushback for local authorities and *Bundesländer* trying to enfranchise their growing non-citizen population. But other paths have been attempted by leftist and progressive groups of civil society and by migrants themselves. In 2002, for instance, the *Freiburg Wahlkreis 100%* began campaigning for the equal political participation of migrants in the city of Freiburg, in the state of Baden-Württemberg. As an exploratory form of political organisation, their consistent commitment has raised awareness on the issue as well as inspired other democratic instigations. In the state and federal elections of 2015, 2017, 2019 and 2021, their symbolic 100% elected local council convened regularly (Sontag et al., 2022, p. 9–10) and their effort has embodied a significant praxis that has contributed to a growing European network striving for equal democratic participation.

Other political associations have engaged in specific campaigns and networking operations during the periods of state or federal elections, reminding the general public that the demand for voting rights for non-citizens is a pending issue on the democratic development of the country. This has led to the emergence of campaign clusters, active at different moments and different locations. In this guise, for instance, the campaign network *Wir wählen* [We Elect] was founded in 2017 by electoral rights activists in Berlin, Nuremberg and Freiburg, coordinating migrant representatives and organisations from 12 federal states. Similar structures and developments can be seen in the campaigns *Voting Rights for All Residents*, active since 2020; *Hier lebe ich, hier wähle ich* [Here I Live, Here I Vote], started in 2021; the growing alliance of cities signing the *Unsere Städte, unsere Stimme* [Our Cities, Our Voices] declaration, or the initiative *Pass(t) uns alle* [Passport for All/We Are All In], from 2022. In all these cases, the campaigns have contributed to uphold the democratic aspirations of the organisations, while they mobilise forms of community building and help structure more responsive local governance practices regarding different aspects of non-citizen political participation. The developments and achievements of these campaigns and associations mirror other international experiences where city officials in alliance with the civil society and migrant groups have led to successful mobilisations and help institute related policy initiatives (De Graauw, 2014; Hayduk & Coll, 2018).

#### **4.2. The Demokratie für Alle [Democracy for All] campaign – Key aspects and influence**

Out of the different campaigns named above, this analysis will now reflect on the development and implementation of a particular one, to explain how some elements stand out and play important roles in a political practice. In that sense, the campaign whose description follows will function here to explain the mechanism of a specific

node in a wider network, one which articulated a particular positionality with a specific theoretical sensibility, where the notion of political rights as derived from a human rights agenda stands at the centre, and was tactically mobilised to argue particularly about the voting situation of non-citizens in a specific context.

Towards the federal election of 2021, a group of non-citizen migrants initiated in Berlin a campaign called *Nicht ohne uns 14%* [Not Without Us 14%], to demand the right to vote on a federal level for all adults living in the country over 5 years. The campaign had some tracking at a local level and over online platforms, but it certainly exploded when major news outlets and national networks began inviting their spokespersons for interviews and discussions, and quoting their data and claims (e.g. Garbe, 2021; Prösser, 2022). Yet most importantly, it attracted the attention of a handful of local politicians from the left side of the political spectrum (*die Linke, die Grünen, die Urbane*).<sup>2</sup> After the elections took place, a coalition came to power in Berlin, made up by the *SPD, die Linke* and *die Grünen*.<sup>3</sup> And echoing the *Nicht ohne uns* campaign, this coalition explicitly stated in their governing agreement [Koalitionsvertrag] that they would seek “to create the federal legal requirements to enable active voting rights at state and district level for people without German citizenship who have lived in the city for at least five years” (SPD, Grünen & Linke, 2021, p. 68).

Nevertheless, in the face of a mere promise, the activists did not stop their campaigning. On the contrary, after the elections, other organisations came together to reinforce the common claims. One of the largest associations that engaged in a broader coalition was *Deutsche Wohnung & Co. Enteignern* (DWE), an organisation that had been campaigning to demand a solution to the lack of affordable housing in Berlin. For that specific demand, the main instrument that DWE was trying to prompt was a form of expropriation [Enteignung] from major housing companies, and for this they attempted to trigger a referendum by collecting signatures. However, almost 30% of their collected signatures were deemed invalid (Joswig, 2021), most of them because the signatories were non-citizen residents of Berlin, a fact that showed another facet on the limitation of political rights for migrants. DWE realised that it needed to be part of a movement that demands the right to vote for non-citizens, since this is the foundation for different forms of social cooperation. In this view, the right to vote and other political rights were a *condicio sine qua non* for any social project of a comprehensive democratic dimension. Out of that conviction, and together with other associations, the *Demokratie für Alle* (DfA) campaign was launched.

The DfA initiative pushed the efforts that had begun during the federal election further along 2022. Some of its major outcomes were the presentations of the activists and

<sup>2</sup> Politicians from these parties generally show greater openness toward regulated immigration, especially at the local level. However, none have consistently committed to a national agenda for voting rights for non-citizens. *Die Urbane*, a relatively new and decolonial-focused party rooted in Berlin, has participated in local elections since 2017, though it has yet to secure a minimum percentage to participate in the government.

<sup>3</sup> The SPD [Sozialdemokratische Partei Deutschlands], or Social Democrats, is Germany’s oldest political party and is centre-left in orientation. They have distanced themselves from the issue of voting rights for non-citizens, focusing instead on an immigration policy with ‘clear rules’. *Die Linke* and *Die Grünen* are also left-leaning parties; however, all three prioritise ‘integration’ (i.e. State-controlled access) over expanding political participation as the foundation for democratic engagement.

their political claims at the House of Representatives in Berlin throughout different sessions in November that year. The protocols of those hearings are rich in data showing how non-citizen activists explained their claims, articulating the right to vote not in isolation but along the lines of a right to political expression, human dignity, self-development and autonomy, delineating thus the constellation of a human rights approach (Abgeordnetenhaus Berlin, 2022a, 2022b). Due to unexpected political circumstances, Berlin's governing agreement from 2021 could not be implemented, but this program had an unexpected influence at a federal level. Since two of its signatory parties (*SPD* and *die Grüne*) constitute part of the national governing coalition with the *FDP* (centre-right), their influence grew to pass in 2023–2024 the new federal Law for Naturalisation [Einbürgerungsgesetz], as a sort of answer to a growing political concern.<sup>4</sup> This new law has revised the possibility for naturalisation down from 8 to 5 years of continuous residency within the country, and for the first time it includes provisions to allow one person to have more than one nationality, a hurdle that may have explained the lower numbers of naturalised persons from previous reforms (see Diehl & Blohm, 2003, p. 146). Due to space constraints, this article cannot delve into the intricacies of the new naturalisation law, nor into the new residency permits that were introduced in adjacent legislations. Yet, it is worth noting how the mobilisation of a set of demands can, under the right political circumstances, lead to some legal changes and the advancement of a social agenda. Of course, what the non-citizen activists and their citizen allies were demanding was articulated along the lines of an inclusion of interested partakers, as an expansion of human rights, and the answer by the state came in the form of a loosening of the requirements for citizenship, which is a statutory form that it can control. The core of the democratic demand was not met, but some provisions that ease the demands to acquire traditional citizenship were introduced.

## **5. Performing representativity: Key points on non-citizen democratic participation**

As the movement for the right to vote for non-citizens in Germany shows, political rights are not simply granted by ways of exposing the better arguments in a normative guise. Non-EU migrants have been active in a struggle to demand participation in a democratic framework, engaging themselves in processes of subjectivation and politisation that are of a transformative nature, both for them and for the context in which they are active. Within this process, migrants cannot make use of the terminology and status afforded by the nation-state-managed notion of citizenship, which actually hinders their actions. For as Johnson (2015, p. 957) writes, “citizenship is a paradigm that is built fundamentally on exclusion and othering, upon the lines that divide. In translating noncitizen (sic) agency into a framework that remains described by

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<sup>4</sup> The FDP (Free Democrats) is a centre-right party that emphasises a regulated, skills-based approach to immigration. While prioritising integration, they also advocate for limited access for asylum seekers and other forms of irregular migration.

citizenship, we lose the capacity to understand and engage non-citizenship as a political subjectivity that exists in an autonomous way.” Instead, what we observe is that migrant non-citizens rely on a vocabulary of rights that is common parlance in human rights struggles and demands (e.g. Abgeordnetenhaus Berlin, 2022a, 2022b; see also Ataç, 2013; Ataç et al., 2015). But this is exactly their cogency. For as Amartya Sen (2006) argues, enclosing human rights within a legal framework obscures the tremendous diversity of ways in which they are given shape and force in everyday life.

Furthermore, using a human rights framework to encode the activists’ demand for the right to vote is also possible because these are structured in a different form than citizenship rights, as we have already seen. Human rights are inclusive, symbolic in nature yet full of political force, and even if they do not rely on (and cannot be summoned through) actual legislation for non-citizens, they have a moral grounding that is actually part of their intrinsic cultural value in democratic societies. This implies that, even if human rights may not be argued as ‘natural’ rights of migrants and therefore cannot be assumed as a pre-existent set of principles, non-citizen activists can rely on an ethical sensitivity that clearly understands a demand for equal basic moral status (Tasioulas, 2012, pp. 9, 26). In that sense, if the term ‘liberal democracy’ is to be synonymous with a political regime that protects individual civil liberties, abides by the rule of law, is based on constitutionalism, and is committed to the protection of ethnic and cultural minorities, then the protection of human rights is an intrinsic demand that can and must be continuously instigated.

Evidently, this does not mean that the human rights agenda is a safe way. As other scholars have shown, human rights may easily fall under the securitisation trap, which limits critically their reach (Banai & Kreide, 2017). However, human rights, as distinct from citizenship rights, carry a universalist promise and a sense of hope, which are often triggers in politisation processes from below. Moreover, non-citizen migrants in Germany have mobilised themselves embodying precisely a unique form of symbolisation (Monforte & Dufour, 2013, p. 5), which may have proved an asset within a human rights agenda. They have repurposed their non-citizenship status as a way to delineate a specific system that applies different laws to a common population sharing the same territory and even facing similar everyday challenges (Kanalán, 2015). Their movement both demands that they are acknowledged in the decision-making processes of the communities where they reside and highlights a form of discrimination. As such, they embody a representational lack, the not-yet-achieved yet ever aspirational promise of a liberal democratic regime. Consequently, non-citizen campaigns are forms in which this lack performs, by presenting the existence of the non-existent. In this guise, by the very presentation of their existence, and the descriptive statements about their situation, their movement exposes “the split created between the state, the nation, the territory and the law” (Nail, 2015b, p. 115).

Through campaigns that strive for the right to vote, the migrant non-citizen emerges as a political figure. And as Nail (2015b, p. 118) states, “a political figure [...] is the proper name of the subjective commitment to a new political truth”. In this sense, active migrant non-citizens not only expose the inherent contradictions and atavisms of a so-called democratic order, but they also play out their own role exposing the structure of a ‘state of exception’. This has effects for both citizens and non-citizens which cannot be wholly

delineated in this text. But it is important to view this as a democratic contribution. This may seem to be theoretical in nature, but as proponents of a so-called ‘urban citizenship’ have argued (Rocco, 2007; Coll, 2011; De Graauw, 2014), this organisation also has real effects on the everyday struggles of individuals, as they guide different community’s efforts to expand the rights and benefits of non-citizen migrants in areas that include health care, public education, employment and different forms of political representation. In this context, performed representativity can be seen as a form of participation in a democratic framework, *where each counts for one*, through which non-acknowledged members play out politically their actual belonging to the system, even when (or precisely because) they are located at the fringes of that system, and despite its exclusionary mechanisms.

## 6. Concluding remarks

The phenomenon of migration is bound to be one of the more complex topics of the century. Democratic systems are and will be necessarily challenged by its evolving dynamics. However, the question of who has a right to vote in a given territory is still a matter of debate. While theoretical discussions are welcomed, and provide informative substance, the interactional situation matters as well. This has been acknowledged by proponents of different forms of ‘urban citizenships’ and the AoC approach. These bodies of work contend that citizenship should be regarded from a different vantage point, away from the status-oriented connotations and structures ascribed by nation states. This article is in line with those concerns, yet it has sought to contribute with a case-based analysis that observes migrant non-citizen political practices contending legal structures, and basing their claims for that aim along the lines of a human rights approach.

This perspective has the advantage that it can read motivations and performances of the excluded as part of both a subjectivation process and the cohesion of a movement. The article has sought to analyse why the human rights framework can, indeed, function as a blueprint to demand political rights. This does not mean that human rights should be treated as foundational traits or mere institutional functions (Tasioulas, 2012), but that, in the way in which they are played out and performed, they actually provide a model for activists to engage productively in political undertakings, as (marginal) members of a body politic. In a sense, as Menke (2015, p. 8) argues, the declaration of rights is a political act in itself, an act that is the foundation of the political. A further understanding of this articulation would need to develop an approach to see how human rights could sustain some form of political empowerment, and under which conditions. It would also need to develop how, within this setting, human rights abandon their perceived passive, residual or compassionate standing, to become an active set of rights that reinforce mutuality, solidarity and a reciprocal search for freedom.

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