



# Migration and Differentiated Rights

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## 1 Introduction

Migration is one of the most prominent issues in political theory and political philosophy at time of writing. Especially from a political perspective, many commentators suggest that migrants should have access to the rights that citizenship in the country of migration could bring. In this view, citizenship is tantamount with access to the full set of social, civic and political rights in the community of arrival. The authors of the following papers investigate this standard claim from different perspectives.

Valeria Ottonelli and Tiziana Torressi propose that especially those who migrate under temporary foreign worker regimes may require to have access to special rights, rather than being put on the path to citizenship. Instead of postulating the universal model of citizenship rights, Ottonelli and Torressi suggest that temporary foreign workers have specific life plans that may not include permanent migration into a host country but that are best captured by their term “temporary migration projects”. At the same time, though, migrant workers also need to be protected in the country of labour against specific harms that the labour market may harbour. To address this danger, Ottonelli and Torressi suggest that temporary foreign labour migrants have access to specific labour and welfare rights to protect them in the country of labour and that help them realize their specific life plans. For instance, individual migrant workers may want to “work as much as possible when in the host country so to reach their goal as quickly as possible”. This might be an incentive to work more hours than the maximum hours allowed. Similarly, as the authors suggest, while there has been some discussion how to make welfare contributions in the country of labour portable so as to benefit the individual migrant and their family in the country of origin, many welfare provisions are most plausible for sedentary workers, rather than migrant workers. As Ottonelli and Torressi argue, besides provisions for pensions that may indeed be enjoyed once returned in the country of origin, salary deductions that finance care in later years, for instance, won’t likely be enjoyed by the workers who paid for them in their active years. Such discrepancies in benefit from universally implemented welfare provisions lead Ottonelli and Torressi to argue that “the enforcement of

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equality in work-related rights is out of focus. For these migrants, the social regulations advocated for sedentary workers provide protections that are not needed, while leaving important needs and vulnerabilities unaddressed". Instead, of adjusting the universal citizenship right model, migration scholars should thus conceive of a set of *differentiated* rights that account for the specific needs of migrant workers.

Chris Bertram examines the argument for differentiated rights for migrants from the perspective of democratic legitimacy and the interests the demos may have in forming a citizenry. Against the call of some economists who argue that in the balance of allowing more individual migrants from poor developing countries into rich developed countries against fewer rights protection, Bertram retorts that such calls are disingenuous: it suggests that the trade-off between rights for migrants vs numbers of migrants were an objective constraint on immigration policies rather than representing an unjust set-up: "we cannot treat our own reluctance to act justly as an objective external constraint to our own choices". Bertram argues that even if individual migrants consented to trading rights against the possibility of working in destination countries, such a trade-off would still remain unjust; it would be particularly unjust if the rights that were traded included membership rights and access to citizenship over time. However, and taking the democratic citizenry's right to determine migration policy, Bertram does concede that some restrictions, such as limits on work visas and access to welfare schemes could possibly be permissible. This last question as it applies to refugees is also the subject of Clara Sandelind's paper.

Both Ottonelli and Torresi's paper as well as Bertram's paper suggest that differentiated rights may be warranted – either because such rights may further the realization of migrants' life plans, or because they may pave the way for reconciling migrants' and host citizens' interests. A similar proposal made by Sarah Song is discussed in Christine Straehle's paper. In Straehle's view, the idea of differentiated rights as a way to address specific needs of especially temporary foreign migrants doesn't effectively address individual institutional vulnerabilities that temporary migrants suffer. Such vulnerabilities are also left unprotected by access to a full set of rights. Straehle illustrates her argument with the case study of Live in Caregivers in Canada who have obtained citizenship but who, after up to 10 years as citizens, still suffer from social deprivation. The measure of social deprivation that Straehle employs is the capacity of individual women to transition from carework to better remunerated work. While former Live in Caregivers who had to show their credentials in order to enter Canada as Live in Caregivers should have access to such better jobs, especially considering the need of workers in Canada's care-sector, new research shows that they are not able to transition into this line of work. This, Straehle argues, is due to the institutional vulnerability that their first path into Canada has created.

The social deprivation argument highlights that for some citizens, the promise of equal moral status that liberal democratic states make to their citizens is not fully realized for some parts of the citizenry. It also highlights one other aspect of individual lives, which are individual relational needs. Individuals need to be accepted as equals in order for their equal moral status to be preserved. Michael Blake uses the liberal promise of moral equality of citizens to investigate if citizenship tests assessing "particular values, skills or attitude" are possibly justifiable or if they are an "impermissible form of political exclusion, contrary to liberal values". Blake argues against citizenship tests – not because he thinks that they are necessarily illiberal, but because he doubts that polities will administer them justly. Like Bertram, Blake accepts the importance of membership in the polity, in particular the right to vote. According to Blake, voting rights have three functions; possibly the most important one

may be that political rights are part of the social basis of self-respect in a Rawlsian vein. Blake here joins Straehle's discussion of the social basis of self-respect – but while Straehle argues that the analysis of the social basis of self-respect needs to include institutional vulnerability that may lead to social deprivation, Blake focuses on political membership as a tool to address social deprivation. The expressive function of voting rights is paired with their defensive function: voting provides “voice against predation [and] domination”. Finally, voting helps to determine how the coercive powers of the state will be employed. According to Blake, all three functions of voting rights may legitimately ask of the individual voter to have some basic skills and at least sufficient knowledge of how the political discourse works. Based on this preliminary analysis, then, citizenship tests that assess such skills would be justified from a liberal perspective. However, Blake cautions that his public reason argument for the permissibility of citizenship tests would also possibly sanction a different view of such tests: “that there is a particular, rightful way of being a member of society, and that those who do not share this particularity – whether it is linguistic, ethnic or religious – are non-members until they assimilate into the dominant mode of self-understanding”. Such an understanding of citizenship tests would eradicate the liberal value thus eradicating the liberal value of equal moral standing in the polity. Especially in light of recent governments' decision to seemingly demand precisely this kind of assimilation into the cultural and religious norm, Blake's mistrust against illiberal abuses of citizenship tests seems warranted.

An analysis of mistrust of a different kind motivates Clara Sandelind's paper. Along the lines of Bertram's proposal that differentiated welfare rights may be justified, Sandelind investigates if ‘welfare dualism’, allowing for two different sets of provisions for refugees compared to citizens, may be justified. Sandelind's case study is Sweden, “a progressive welfare state that has recently introduced several restrictions on asylum to protect the welfare state.” Part of the motivation for such measures is mistrust among long-term Swedish residents who see the welfare state challenged by assuming responsibility for newly arrived refugees and their needs. The fear, so Sandelind, is that the welfare state that is dear to Swedes may be in peril if differentiated rights are not established. As noted earlier, the welfare dualism does take up the proposal that migration numbers may be kept steady or increased, if the rights that individual migrants may claim are restricted, or so the argument goes. The problematic aspect, as indicated by Bertram, is that such restrictions need to be justified within the polity. Sandelind agrees with this view, arguing against the methodological nationalism and unjust power structures within the polity that underlie calls for welfare dualism. Moreover, it is nigh to impossible to justify welfare dualism in the case of refugees, who do not set out on a ‘migration project’, to use Ottonelli and Torresi's term, but who flee from persecution and grave violations of their human rights. It seems implausible to suggest, then, that there might be a benefit accruing to individual refugees if welfare rights were restricted, if only because the kind of trade off between rights vs numbers would violate the humanitarian obligations of liberal states.

What precisely these obligations are, and how the responsibility for refugees should be distributed among the nation-states of the global community has been the subject of much of David Owen's work. In the article published here, Owen combines his concern for responsibility sharing among liberal states with an account of EU citizenship that refugees should have access to, possibly before they gain national citizenship within a single host state. Owen returns to the idea that citizenship is the guarantee of access to social, political and civic rights that grant individuals the necessary protection of their interests, which I discussed at the outset of this introduction. In distinction to traditional accounts of citizenship, though, Owen suggests

that refugees as a distinct group of migrants should be protected by a distinct status, namely EU citizenship. Besides accounting for their specific needs, prompt access to EU citizenship would also address the current discrepancy between, on the one hand, refugees being subject to one set of rules, namely those stipulated in the Common European Asylum System, while on the other hand waiting to gain membership in one individual EU state. As Owen explains, this discrepancy raises several important problems for individual refugees, while also posing a legitimacy problem in line with the political model of citizenship that Blake discusses in his article. If citizenship is meant to protect against the coercive power of the state, then individuals should have membership in the relevant unit. According to Owen's analysis of the plight of refugees, that unit is the EU.

The pieces in this special volume highlight that differentiated rights for migrants and refugees need to be discussed more extensively than they have been so far in order to do justice to the specific needs and interests of migrants.

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