



## *A Reading of Article 21 of the United Nations Declaration of Human Rights: Political (Dis)engagement in the Context of Brexit*

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# *A Reading of Article 21 of the United Nations Declaration of Human Rights: Political (Dis)engagement in the Context of Brexit*

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## **Abstract**

Free, regular, and open elections are sought-after qualities of a liberal democracy. Reading electoral turnout as an indicator of political engagement, though, is a reductive reading and can obscure entrenched levels of political disengagement. This article considers the implications of Article 21, subsection one, of the United Nations Declaration of Human Rights (1948) as an assessment of political participation. There are three lines of investigation. First, the paper examines the model of political engagement implied within Article 21 and its subsequent iterations. Second, theories of political participation are linked to a study of civic engagement within the British parliamentary system. Third, building upon these two arguments, the 2016 Brexit referendum is presented as a case study to demonstrate the limitations of a voter turnout measurement. Political participation must be continually (re)imagined, (re)constructed, and reflected upon otherwise engagement relies upon voting by numbers.

**Keywords:** Democracy, Participation, Brexit.

## **Introduction**

Article 21, subsection one, of the United Nations Declaration of Human Rights (UDHR) states that the individual has the right “to take part in the government of his [her] country, directly or through freely chosen representatives” (UN, 1948). While that right, enshrined in a plural political, social, and economic context, is explicit in terms of content it is not explicit in form. Even with supporting subsection three that the “will of the people shall be the basis of the authority of government...expressed in periodic and genuine elections” (UN, 1948), the form of participation is only loosely defined in relation to the exercise of voting. This paper finds difficulty with a political participation that on the one hand is universally declared as having a necessary existence, structured around elected representation, and that, on the other hand, is asserted without a broader context of meaning. Although voting is a mechanism within democratic systems, and the freedom and regularity of elections should be upheld, it is not the substance of participation as this paper sustains.

Examining the UK as a case study the limitations of Art. 21 emerge. On the 23 June 2016 72.2% of the British electorate exercised their right to vote in the Brexit referendum and “[t]urnout at the 2019 General Election was 67.3% across the UK, a decrease of 1.5 percentage points from 2017 (68.8%) but still the second-highest turnout since 1997” (McInnes, 2020, par. 2). A recent (since 1997) and relative increase in voting, however, does not indicate an increase in political engagement or an awareness of democracy as a deliberative process.

To explore the relationship between electoral practice and political participation this paper presents three lines of argument. The first section presents UDHR's Art. 21 as prescribing a form of democracy supported by free and frequent elections. The ramifications of Art. 21 are then traced through the European Protocol and British domestic law. Section two explores the consequences of Art. 21 in examining theories of political engagement shaped by elections and forms of participation beyond elections. *Connecting Citizens* (2011), a report analysing active citizenship in the UK, is discussed here. Section three examines the case study of political (dis)engagement in the Brexit Referendum by evaluating the findings of Hansard's 2019 *Audit of Political Engagement 16* report.

## 1. UDHR and political engagement

It might be asked whether the UDHR's Art. 21 specifies a particular form of political participation. Miller in his aptly named article "Is there a human right to democracy?" (2015) posits that if "we assert democracy as a human right, we are making a peremptory demand that certain institutions be introduced, and simultaneously declaring illegitimate other political institutions that do not conform to democratic principles" (p. 10). Miller's argument is grounded in subsection three of Art. 21 that there be "periodic and genuine elections" of "universal and equal suffrage...by secret vote or by equivalent free voting procedures" (UN, 1948). On Miller's understanding Art. 21 implies a liberal and open form of democracy as intrinsic to the right itself, such that a general right to participate directly or indirectly in the political life of one's country is understood within a specific vision of democracy. A right to "take part" (UN, 1948) becomes a legitimation and perpetuation of a particular model of democracy.

To counter his claim, Miller suggests that if the UDHR does not propose a "particular set of political institutions as its embodiment" then the question is "whether the right has any determinate content at all, or has become simply a placeholder for 'whatever regime in this society is likely to protect human rights in general most effectively'" (2015, p. 11). Significantly, this view widens the analysis of Art. 21 to a consideration of the UDHR as a whole, asking what kind of political system sustains the implementation of the UDHR within the context of a state.

Christiano also assesses what kind of political system would be adequate for the UDHR to be upheld and brought into fruition in particular states. For Christiano (2011) a "minimally egalitarian democracy" (p. 175) is needed, which is a "democracy that has a formal or informal constitutional structure which ensures that persons are able to participate as equals in the collective decision making of their political society" (p. 146). His claim is two-fold:

[f]irst, there is strong moral justification for states to realize minimally egalitarian democracy because such democracies are normally necessary and reliable in protecting fundamental human rights of personal integrity. Second, there is moral justification for the international community to attempt to protect and promote these democracies because they protect fundamental human rights and because international protection of democracy is a plausible indirect strategy for the protection of the human rights to personal integrity (2011, p. 175).

The latter half of Christiano's position captures the tension surrounding Art. 21. On the one hand, Art. 21 is received as declaration of a universal right to political participation in one's country. By nature of its universality the right is

broadly conceived. On the other hand, underpinning that right is a political aspiration for a type of political participation and governance that will protect the entirety of the UDHR. An open and liberal democracy with regular and free elections is implicit in the declaration of the specific right. In this way, Art. 21 is itself taken as a key for reading the UDHR as a whole.

Such is the commitment to democracy that the political implications of Art. 21 are articulated in Art. 25 of the International Convention on Civil and Political Rights (ICCPR), namely that:

[e]very citizen shall have the right and the opportunity...without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors (UN General Assembly, 1966).

Although Art. 21 of UDHR is evidently echoed in Art. 25 of the ICCPR, the level of political engagement expressed as a right remains at the level of electoral activity: be that passive (standing for election) or active (voting in an election). The language changes at the nineteenth session of the United Nations Human Rights Council (UNHRC) where it affirms that “democracy is based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives” (UN General Assembly, 2013, p. 98). The second half of this citation is significant because it acknowledges political engagement to be full rather than partial, impacting on “all aspects” of life (UN General Assembly, 2013, p. 98). Emphasis, however, remains on a structural understanding of political engagement through elections rather than on active citizenship such that the UNHRC recommends:

- (g) Taking active measures to provide equal access to persons with disabilities through means such as the identification and elimination of obstacles and barriers to accessibility, in order to ensure their full participation in all aspects of the democratic processes;
- (h) Taking appropriate measures and steps to amend electoral laws in order to enable people to vote and participate in elections, without unreasonable restrictions (UN General Assembly, 2013, p. 100).

Even in these subsequent articulations of UDHR Art. 21 the tension remains between a universal right to “take part” (UN, 1948) that is undefined and a particular structural recognition of the need for regular elections.

The relationship between the UDHR and British law must be established. First, it is important to state that the UDHR is meaningful in the context of British law. Before the completion of the Brexit transition, the UK’s Human Rights Act (1998) makes provision for the European Convention on Human Rights (ECHR), stemming directly from the UDHR. Britain’s withdrawal process from the European Union causes this provision to be reviewed. Second, Art. 21 of the UDHR, is taken into the HRA (1998) in Part II of the First Protocol where Art. 3 specifically treats the right to “free elections”, such that “the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature” (HRA, 1998). Contained within this is a direct citation of Art. 3 of Proto-

col No. 1 of the ECHR, which is significant considering the subsequent decision to leave the European Union.

Before examining the impact of Brexit upon the incorporation of the ECHR Protocol, it is necessary to describe the relevance of Art. 3 within Protocol No. 1. Beyond a symmetry of wording, the ECHR's *Guide on Article 3* (2019) offers insight into an understanding of engagement that is carried into the HRA. The *Guide* explains that the right to free elections is "subject to limitations" where "member States enjoy a certain margin of appreciation which varies depending on the context" (Council of Europe/ECHR, p. 7). For instance, states "fix a minimum age to ensure that individuals taking part in the electoral process are sufficiently mature" (CoE/ECHR, p. 8). The *Guide* explicitly makes preference for democracy, sustaining that "fundamental human rights and freedoms are best maintained by 'an effective political democracy'. Since it enshrines a characteristic principle of democracy, Article 3 of Protocol No. 1 is accordingly of prime importance in the Convention system" (CoE/ECHR, p. 5). Indeed, the right to free elections is a characteristic of democracy. The claim for democracy goes further still with the *Guide* stating the need for regular elections in order "that fundamental changes in prevailing public opinion are reflected in the opinions of the representatives of the people" (CoE/ECHR, p. 6).

Although frequent elections might indicate "changes in prevailing public opinion" (CoE/ECHR, p. 6) there are underlying premises taken for granted, namely, that (1) elections demonstrate and are determined by "public opinion" (CoE/ECHR, p. 6) rather than political party preference, and (2) that there is a sufficient quantity of electorate to justify use of the term public. With "public opinion" (CoE/ECHR, p. 6) as a driver of effective democracy other indicators of engagement are crucial otherwise the model of political participation is mostly passive rather than deliberative. The Protocol ultimately rests upon a transfer of power in the direction of "representatives of the people" (CoE/ECHR, p. 6), which is also enshrined in Art. 39 and Art. 40 of the Charter of Fundamental Rights of the EU (2000). In that same Charter the right "to vote and to stand as a candidate at elections" applies explicitly to the context of the European Parliament "in the Member State in which he or she resides" (2000, Art. 39). Art. 40 then supplements Art. 39 in declaring the right of citizens of the Union to "vote and stand as a candidate at municipal elections in the Member State in which he or she resides" (2000).

In preparation for the UK's withdrawal from the EU the Charter of Fundamental Rights is called into question and this is problematic given that the Charter contains "rights similar to those of the HRA (but it goes further by including updated versions of ECHR rights – most notably the right to data protection)" (Zoethout, 2018, p. 163). While the understanding is that "at least some of the acquired rights will continue to be protected through the Human Rights Act (HRA)", there is no longer the same foundational and external safeguard for those rights because "[a]ny treatment of acquired rights which [the British] Parliament would endorse and incorporate in domestic legislation could not be judicially overturned" (Eeckhout, 2018, pp. 171-172). Such vulnerability arises from the inability to continually protect derived EU law and from the fact that the HRA "can be repealed at any time" (Eeckhout, 2018, p. 172). On this analysis, it seems, rights are sustained but with weaker legal protection.

In the UK Government's analysis of the Charter in preparation for the EU (Withdrawal) Act (2018) these specific articles are reviewed. Referring to Art. 39 the UK Government argues that upon leaving the EU the UK "will not have representation at the European Parliament" and, consequently, the EU (Withdrawal) Act

“repeals some of the domestic legislation relating to elections to the European Parliament” (2017, p. 62). Art. 40 presents a different situation because it is repealed but also depends upon “any agreement with the EU on the rights of EU nationals in the UK, and of UK nationals in EU countries” (2017, p. 62). Nonetheless, it is affirmed that franchise within “local and devolved elections” (2017, p. 62) will be determined by the British Parliament and devolved legislatures.

Arguably, the HRA now has increased significance in the protection of citizens’ democratic rights as Art. 39 and Art. 40 of the Charter are no longer retained from EU law. The HRA, of course, maintains the verbal patterning of the ECHR’s Art. 3 of Protocol No. 1. Yet, it remains to be seen how the HRA will be upheld in practice, especially if citizens intend to challenge the UK Government according to the terms of the HRA, as the Government’s *Political Declaration* document states that the “future relationship should incorporate the United Kingdom’s continued commitment to respect the framework of the European Convention on Human Rights” (2019, para. 7) without explaining what is meant by “the framework”.

## 2. Towards a dynamic understanding of political (dis)engagement

Having outlined the legal context of political engagement, this section considers the theoretical debate surrounding participation. According to Kymlicka (2002) a vision of political engagement that is election-based became widespread after the Second World War whereby “[c]itizens were assumed to have a set of preferences, fixed prior to and independent of the political process, and the function of voting was simply to provide a fair decision-making procedure...for translating these pre-existing preferences into public decisions” (p. 293). Such a model is the opposite of a deliberative process whereby “consensus” or “an honourable compromise” (Kymlicka, 2002, p. 293) are sought and citizenship extends to the civic space beyond a polling booth.

Essentially, election-based measurement of political engagement moves between rational choice and normative approaches. Within a rational choice model individuals believe that participation is beneficial: their involvement, regarded as a cost, is decisive. Birch (2018) challenges this view claiming that “[g]iven the infinitesimal probability of a single vote altering the electoral outcome, the individual cannot be said to gain anything of substantive value from voting, aside from the satisfaction of having carried out the electoral act itself” (p. 11). Conceiving of democratic activity in a reduced lens obscures the *demos* in democracy.

Within a normative model democracy’s health depends upon individuals responding to a collective identity, with supporting attitudes and behaviours built around democracy. According to the *Connecting Citizens* (2011) report, organised by the Hansard Society promoting parliamentary democracy, “[p]arliament can engage with civil society collectively and, when it does so, an individual’s actions are not solely motivated by personal benefit but what is appropriate in a particular social context” (p. 43). Birch criticises this model too because “it cannot be said that the social norm of voting is especially strong in all social groups...we know that socially integrated individuals are more likely to vote than those who are socially isolated” (2018, p. 14). A normative approach is evident when campaigns attempting to engage so called hard-to-reach groups merely reinforce pre-existing levels of integration and civic isolation.

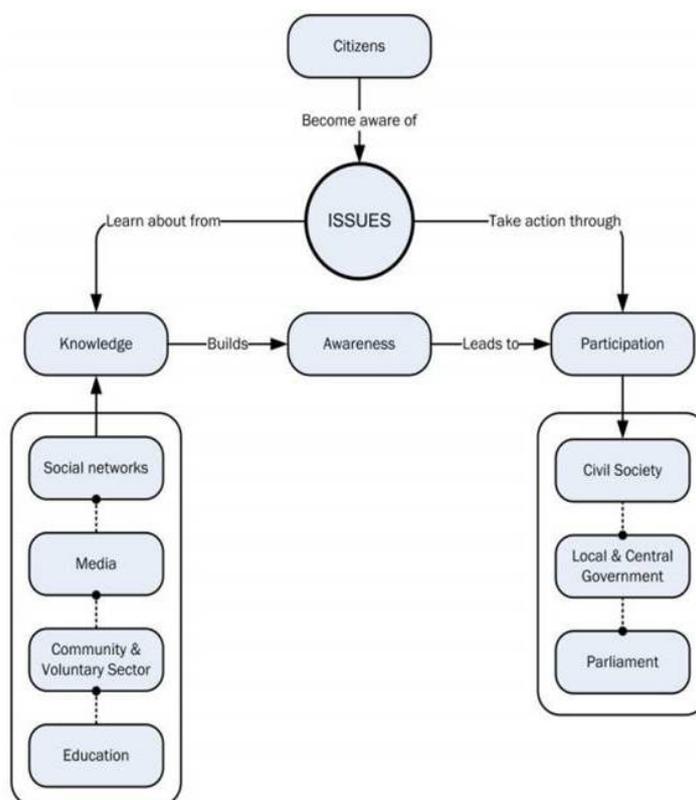
Neither model fully describes political (dis)engagement and political scientists, therefore, have an important role to play in researching participation. Boswell et al. (2019) enter this dialogue stating that “the way we do political science needs to

change to allow us to tell different stories about the motivations, beliefs and practices of political actors” (p. 57). An important starting point is in asking what constitutes political (dis)engagement outside the practice of voting.

Dempsey and Johnston (2018) argue that engagement involves “campaigning, demonstrating, and petitioning” alongside voting, while it can also be stated that “individuals and groups are politically disengaged if they are not positively engaged (in terms of attitudes and behaviours) with the political system” (p. 7). Engagement, however, is not to be understood as “approval”, rather it can “take the forms of (non-violent) protest and activism aimed at reform” (Dempsey and Johnston, 2018, p. 5). Beyond revolts, assessments of engagement must include individuals “unaware...that options for engagement exist” (Hansard Society, 2011, p. 66). Definitions of engagement must be comprehensive enough to incorporate the interplay between politics and daily life and structured enough to measure abuses of democracy and pockets of disengagement.

*Connecting Citizens* is an insightful report because it regards political participation as a dynamic process reinforced by continual and lifelong practice. The premise is that education citizenship must surpass a linear model in which primary and secondary level schooling is the time and place of political formation. Otherwise engagement levels become and remain normative at a relatively young age: the political actor stands still while politics continues apace. A cyclical model, in contrast, recognises that education “can occur at any time and is also non-linear in nature” (Hansard Society, 2011, p. 46), implying that norms of political disengagement can be observed and overcome at any age.

Fig. 1 - An overview of the framework for engagement



Source: *Connecting Citizens to Parliament* (Hansard Society, 2011, p. 47)

That political activity is reinforced is central to the diagram proposed in Figure 1. The life source of the model depends upon citizens growing in awareness of, and responding to, “issues” that in/directly affect them either formally or informally. As awareness and knowledge increase citizens grow in “confidence and self-esteem and an awareness of the benefit of participation. These factors are all enablers of increased participation” (Hansard Society, 2011, p. 46). Crucially, the diagram positions knowledge, through networks of influence, as leading to participation at all levels of civic society. Voting, which does not feature separately in Fig. 1, is assumed as part of the participation process without dominating the model.

While Fig. 1 outlines structures of political engagement, it is incomplete. The model presents citizens as a closed unit, while hiding dynamics of political engagement and interaction. Within the “Citizens” (Fig. 1) block there should be a subset for interaction between citizens and citizens with political representatives. Including circles of interaction, failed or otherwise, would enhance this model of political engagement, better reflecting Smith’s (2017) vision of political participation that:

must include both the means to participate in the opinion forming mechanisms of debate and deliberation as well as participating in the decision making process...Thus deliberative democracy and direct democracy are both inadequate on their own, as a properly participatory politics needs mechanisms to facilitate all means of politics, including speech, action, listening, and protest (p. 72).

The importance of spheres of education, included in the model, cannot be underestimated given that there are some who would obstruct participation based on a perceived lack of knowledge. For example, Smith observes that the “elitist argument looks at some of the worst examples of poor behaviour and uninformed political discourse online and then draws the conclusion that most people are incapable of serious political activity” (2017, p. 90). This position perpetuates existing disengagement without ever questioning the causes of that disengagement. As Smith continues “[i]f people were given a real opportunity to participate, the motivation to get informed becomes stronger, especially if one’s opinions will be tested in debate by others who are highly knowledgeable and educated on the topic” (2017, pp. 93-94). A dynamic and interactive model of engagement must disavow elitist attempts to continue normative patterns of disengagement because the category of knowledge also includes experiences of not-knowing, doubt, difficulty, and confusion as educational and participatory drivers rather than as obstacles.

### 3. A Brexit of the politically (dis)engaged

Turning specifically to the case study of the 2016 Brexit vote, this section analyses whether the strength of democratic engagement is measurable solely in terms of electoral turnout. Although a high proportion of the electorate (72.2%) voted in the Brexit referendum, those votes cannot necessarily be understood as evidence of political engagement. There are, at least, two ways of looking at Brexit in light of political disengagement. First, there is the level of disengagement that the referendum vote arguably indicates. Second, there is the level of disengagement that has increased since the vote as the process of withdrawal has been debated.

Hansard’s *Audit* (2019) makes for difficult reading in stating that while “[c]ore indicators of certainty to vote, and interest in and knowledge of politics, remain stable at average or above-average levels” since the Brexit vote, the “number who

‘strongly disagree’ that political involvement can change the way the UK is run (18%) has hit a 15-year high” (Blackwell et al., p. 6). Disconcertingly, the report maintains that “47% feel they have no influence at all over national decision-making” (Blackwell et al., 2019, p. 6), which is alarming given that intentions to vote and levels of voting are high, as evidenced with Brexit.

Furthermore, when presented with a list of 13 political activities after the Brexit vote there was a 10-point percentage increase (to 22%) in the number of people who would not participate in any of the listed activities compared to the previous year (2015). Intention to vote reported the largest decrease across the same period from 70% in 2015 to 58% in 2016. While 43% of the observed population would contact a political representative (2015), in 2016 this fell to 37%. Willingness to create and sign an online petition decreased from 38% to 34%, with willingness to contribute to an online discussion also decreasing from 21% to 16%. Worryingly, these are results to a question that premises that someone “feels strongly about an issue” (Blackwell et al., 2019, p. 22). It would be interesting to analyse levels of political engagement where an issue does not personally affect an individual but is no less important politically.

The data is then analysed directly in relation to Brexit voters and divided into categories of remain and leave. Among leave voters interest in politics and certainty to vote are at 47% and 64% respectively (Blackwell et al., 2019, p. 33). For remain voters interest in politics is relatively higher at 73% with 80% of the same population expressing certainty to vote (Blackwell et al., 2019, p. 33). Intention to vote remains high even as there is disbelief that political participation is effective among both groups: 30% among leave voters and 36% for remain voters (Blackwell et al., 2019, p. 34). What emerges is a deeply rooted disengagement that high levels of voting and the intention to vote do not reveal. As *Connecting Citizens* (2011) concludes “it is unlikely any single initiative would be sufficient to make a lasting, substantive change in the levels of public engagement with Parliament...Changing levels of engagement will be an ongoing, cumulative process requiring multiple strategies” (p. 43).

Closer parity between leave and remain voters is evidenced when asked about levels of satisfaction with the “present system of governing” reported as 22% and 27% respectively (Blackwell et al., 2019, p. 34). That there is little satisfaction in the governing body helps contextualise high levels of “certainty to vote” (Blackwell et al., 2019, p. 33) because an intention to vote is not necessarily approval of the governing system, but a desire to change governance through change in representation.

Parliament itself is highlighted as a barrier to engagement in *Connecting Citizens* due to “arcane traditions and the complexity of its processes and procedures, many of which require significant amounts of knowledge and understanding not possessed by most of the public” (2011, p. 53). This obstacle fosters an impression of them and us, whereby an elite are established through their knowledge and ability to manoeuvre around “processes and procedures” (2011, p. 53) with confidence and ease. This view is reinforced by the example of Prime Minister’s Questions (PMQs) which occupy “just 30 minutes of the parliamentary week, yet has the strongest public association with Parliament (Hansard Society, 2011, p. 66). Thus, parliament’s most popularly known activity is an activity in which citizens are absent, disengaged, and passive. Parvin (2018) observes that “politics is too divorced from their [citizens’] own lives to be meaningful. They talk about feeling cut off from the political process” (p. 37). In a move to close the gap some maintain that

Brexit was about “‘taking back control’ — [with] voters showing their disdain simultaneously for Brussels and Westminster” (Gietel-Basten, 2016, p. 678).

To a certain extent, it might be claimed that political engagement cannot be measured through electoral participation because, as with Brexit, voting is not necessarily an indicator of political interest, knowledge, or a conviction in the governing system. Indeed, if 72.2% voted, then a crude reading of the electorate would be that 27.8% are disengaged. Nevertheless, as this paper suggests, the 72.2% cannot be understood to be politically engaged merely because they voted. By extension, the 27.8% cannot be understood to be politically disengaged either (1) at all, or (2) in the same manner.

## Conclusion

This paper has sought to evidence the limitations of Art. 21 of the UDHR as an undefined right to “take part” (UN, 1948) in the political life of one’s country. The call for political participation through elections is a structural approach to engagement, which is understandable in a context where states are newly emerging and transitioning as democracies. There is a clear need to quantify and measure the process of democratisation. Even so, relying on a structural level alone does not acknowledge diverse forms of political involvement and disengagement at a formal and informal level. The risk is that high voter turnout masks pockets of disengagement that will not be resolved by an increase in turnout. It cannot be presumed that voting is an indicator of engagement if one adopts a dynamic and deliberative approach. As the House of Lords found in their *The Ties that Bind* report (2018) “[w]hilst voting is an important part of the democratic process it is far from being the only part” (p. 71).

Mount in the headline to his *Evening Standard* article after the referendum result makes his position clear: that there is “[n]o going back on Brexit — the biggest British vote in history for anything” (2016). Even if there is no “going back” (Mount, 2016), there must be a different way of moving forwards democratically in terms of civic engagement because political participation cannot be contained, determined, or fully expressed in a ballot. As the end of the transition period facilitating the withdrawal of the UK from the EU draws near, and as the HRA is presented through a “framework” (UK Government, 2019, para. 7) but without the safeguard of the ECHR, the strength and vitality of political engagement will be tested.

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