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Citizens without nations

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Abstract. To broach the question of whether citizenship could exist without (or beyond) community, this paper discusses genealogies of citizenship as membership that binds an individual to the community of birth (of the self or a parent). It is *birthright as fraternity* that blurs the boundary between citizenship and nationality. After briefly discussing recent critical studies on birthright citizenship (whether it is civic or ethnic or blood or soil) by Ayelet Shachar and Jacqueline Stevens, the paper discusses three critical genealogies of the relationship between birthright and citizenship by Max Weber, Hannah Arendt, and Michel Foucault. Although each provides a critical perspective into the question, Weber reduces citizenship to fraternity with nation and Arendt reduces citizenship to fraternity with the state. It is Foucault who illustrates racialization of fraternity as the connection between citizenship and nationality. Yet, since Foucault limits his genealogical investigations to the 18th and 19th centuries, a genealogy of fraternity of what he calls an immense biblical and Greek tradition remains for Derrida to articulate as a question of citizenship.

Introduction
That nation has become the dominant political community in modernity is beyond doubt. Yet, how to understand 'political community' is a vexed question. This makes how to understand the nation as a community all the more difficult (Anderson, 1983). It is customary, if not tempting, to define community especially by juxtaposing it with society. Community evokes images of belonging, togetherness, closeness, care, attention, and solidarity that are immediate and concrete. By contrast, society evokes images such as fragmentation, indifference, autonomy, separation, distance, and anonymity (or anomie) that are distant, impersonal, and ambivalent. It was Tönnies (1887) who made the most lasting impact on this distinction. Yet, in my view, opposing community and society misunderstands their intertwined genealogies. I would like to approach the problem of community from an entirely different angle. Without opposing community against society, I would like to investigate, or at least indicate how we might investigate, the conditions of possibility of mobilizing a concept called 'community' especially as a political entity whose membership bestows rights and obligations (Rose, 2000). Moreover, rather than posing the question of the conditions of possibility of political community as a theoretical or, more precisely, a philosophical question, I shall discuss it through the work of those who pose it as a genealogical question. The question is genealogical insofar as these scholars are neither interested in discovering the essence of political community nor in engaging in how it might be rethought, as Agamben (1993), Nancy (1991), and Esposito (2010) have attempted. Rather, they investigate how community has been mobilized as a strategic concept invoking certain images against others in political struggles. Thus, they are not interested in political community as an etymological, historical, or transcendental concept but as a strategic concept whose genealogical traces will help us understand the vexed relationship between citizenship and nationality or, to put it more precisely, how citizenship became membership that binds an individual to the community of birth (of the self or a parent).

Against birthright citizenship?
Critically assessing two recent proposals to eliminate birthright citizenship will sharpen what is at stake. The issue of birthright citizenship immediately exposes the question of political community as a problem of membership based on birth (of the self or a parent). The very idea of community always depends upon assumptions of consent and choice determining membership, but birthright unsettles these assumptions by revealing that membership in nations as political communities is neither consent nor choice but birth. Both Shachar (2009) and Stevens (2010) make different but related proposals for the elimination of birthright citizenship for the reason I have just indicated. The immediate value of these proposals is to make us think about citizenship in radically different terms without birthright. But they are also valuable for thinking about the relationship between citizenship and community: without necessarily making this point, both Shachar and Stevens effectively question the bonds of community understood as birthright.

Shachar (2009) starts with the observation that in both *jus soli* and *jus sanguinis* countries it is blood and soil, not choice and consent, that play a decisive role in establishing entitlement to the specific political membership that the individual possesses (page 127). Arguing how birthright citizenship privileges those who have acquired it by territory or because of parentage rather than consent or choice she says that, by contrast, immigrants, having made a commitment and choice, should be considered to have fulfilled the criteria of political membership. "If anything, their implied consent seems to be stronger than that of the natural-born citizen who has never made any life-transforming decisions about where to live and under what government" (page 126). "The word [naturalization] derives from *nasci* (Latin), which means 'to be born'; the term *natur*alization therefore suggests that the postbirth admission to citizenship is a symbolic and political rebirth into the new membership community" (page 128). In other words, despite the foundational rhetoric of nations and states on contract, choice, and consent, membership is institutionalized as birth and not consent or choice. Shachar argues that membership institutionalized as birthright citizenship "provides a state-sponsored apparatus for handing down from generation to generation the invaluable security and opportunity that attach to membership in a stable, affluent, and rule-of-law society" (page 2). As Arendt (1951) poignantly demonstrated, the adverse effects of such institutionalization of birthright range from unjust regulation of movements of people to tragic consequences of death, suffering, displacement, statelessness, and Holocaust.

Against the current system of citizenship as inheritance, Shachar (2009) offers "a new way of thinking about political membership by drawing a conceptual analogy between birthright citizenship and inherited property" (page 3). The vast majority of the people in the world today "acquires citizenship on the basis of transmission at birth based on parentage or territorial location at time of birth" (page 4). Shachar asks, "how could it be that political membership, something which is so crucial for our identity, for our rights, for our political voice and for our life opportunities, is distributed on the basis of accidents of birth?" (page 18).

It is this question, in my view, that establishes properly the political question of citizenship. Shachar's (2009) discussion of how it was legally made possible to think birthright citizenship as a right in a case in 1608 in England is instructive (page 114). It forces us to investigate histories of brotherhood, fraternity, and the emergence of nations. It shows that there are much more troubling histories of birthright citizenship than we have investigated. Having questioned birthright citizenship, Shachar proposes to overcome *jus soli* and *jus sanguinis* with what she calls *jus nexi*—a kind of citizenship that privileges connections to a polity. What worries me about this proposal is not the

critique on which it is based but whether *jus nexi* reinscribes political community as a territorially bounded state and the citizen as a member of that community, albeit now on a different principle. When the very idea of political community as a territorially bounded state is being questioned and the very defining element of our times becomes precisely the connections that traverse existing boundaries and create rights and obligations that cross them, to reinscribe the state as a political community with a different formula of membership is perhaps premature; first, we should embark on investigating the kinds of histories that Shachar's work inspires. Yet, Shachar's audacious proposal has the force of making us think critically about politics and the accident of birth, or what we shall see as the question of fraternity.

In her book *States Without Nation* (2010) Stevens, too, calls for eliminating birthright citizenship. Moreover, Stevens questions that brotherhood, fraternity, and family should remain the foundations of the state. Stevens (2010, page 3) says that in her earlier work (1999) she showed how the so-called 'natural' groups such as the family, the nation, ethnicities, and races are actually produced by laws, kinship laws in particular. Stevens (2010) thinks that the deadly consequences of hereditary membership can be traced back to long before the rise of modern state and, although she does not spell it out this way, may well be at the foundation of 'Western civilization'. She says "the intent of destroying death by overcoming its premise with war and myths of eternity, as well as laws assigning men reproductive privileges, occurs primarily through the family, nation, and religion, all of which promise immortality" (page 5). Stevens is keen to define war as psychotic denial of death (page 11). This is the running theme of the book, as indicated by its subtitle "Citizenship for Mortals". It can be read more explicitly as 'citizenship as though we accept ourselves as mortals'. She believes that groups that organize their membership along hereditary lines settle their differences with other groups via war and violence. By contrast, social groups that organize their membership without hereditary relations settle their differences through negotiation. The latter offer worldly benefits rather than immortality. "To eradicate hereditary population differences that fuel violent conflict, states would need to stop producing the laws that create nations, from the Latin *nasci*, meaning birth" (page 12). Stevens then proposes the abolition of birthright citizenship, inheritance, marriage, and land rights.

> "The institutional constraints of nationhood impose burdens similar to those of slavery or apartheid. Though it is not a single household or property to which one is confirmed, the nation's borders are regulated through the use of force in order to circumvent free movement. The national of one state is no more free to leave her homeland at will than a slave could exit the household. Whether it is internal patrols that keep people in or those of other countries to exclude foreigners, the device of birthright citizenship means that from the perspective of a potential emigrant, the effect is the same: most must reside in the state into which they are born" (Stevens, 2010, page 19).

Thus, like Shachar, Stevens emphasizes that "an individual cannot choose to live in a world without nation-states and the strange and harmful laws sustaining them, especially those that draw on psychic attachments to myths of heredity and religion" (page 22). Stevens is undaunted by the fact that "a vast majority of people endorse the nation, family, and religion as they are at present. But, as we see with slavery's legal abolition and many other changes of state policy, when the law shifts, the character of normality and common sense swiftly follows" (page 23). For Stevens "the purpose of theorizing states without nations (and, relatedly, without inheritance, marriage, and private ownership of land) on behalf of citizenship for mortals is to provide

perspective on the psychic and legal contingencies underlying mass, systemic violence and economic inequality and to initiate dialogue about alternatives" (page 26).

As does Shachar, Stevens (1999) questions birthright as the founding principle of political membership: "birth is the paradigmatic decision rule for inclusion and exclusion into all political societies, including the modern state. Territorial and descent criteria for citizenship both depend on invocations of birth. The birth rule for membership in a political society also holds for affiliations of nation, ethnicity, and race" (page 16). It follows that "one's nationality status is determined by where one was or was not born, and not the possession of certain republican competencies or individual consent. It is ironic that modern commentators so often present birth by territory as a decision rule for citizenship that is more inclusive than lineage criteria" (pages 61 – 62). The fact is that "birth is the means by which one becomes a *member* of the state of France or Germany, regardless of the form of political *participation*" (page 62). Thus, "the nation is not the new vessel that contains our innate preferences to be with our kin. Rather, the nation entails specific political conventions that produce affective, familial-like attachments. Every political society does this, which is to say that every political society exists in tandem with a familial nation" (page 107). Continuing this radical critique, Stevens emphatically states that

> "the fact that birth in a particular place renders one a member affirms the tie between a political authority and the land; it particularizes sovereignty and makes it concrete. That one might have a form of being that results from one's place of birth that is different than the form of being that results from one's ancestry is often represented through the concept of 'ethnicity' among Anglophones, which is similar to the concept associated with derivations of *ethno-* or *nasci-* in other languages" (page 143).

For these reasons "the moment there is a nationality there is a potential ethnicity" (page 143). Similarly,

> "race is the culmination of political society, family, and nation. Calling on the internal rules of political society—especially birth certificates and marriage law— as well as the familial form of nations for the constitution of racialized territories of origin—race dialectically grounds certain modern political societies as naturally different, based on laws (of nature) the state creates. Race follows from these dialectics, as the form that, when these other forms of being (and those of religion) are in flux, makes concrete the political geographical territories and political societies, by tying sub-populations to the apparently fixed dimensions of land and body" (page 173).

Both Shachar and Stevens enable us to see the connections between birthright citizenship and the biopolitical project of regulating states and their populations. They question whether consent and choice are the foundations of membership. They also illustrate that state and nation do not have autonomous or independent trajectories. The modern nation-state is a particular crossing of these trajectories, whose genealogies produce race, birthright citizenship, and nationality. That community imagined as the nation implicates sex, race, and class as its biopolitical projects. As such, they build upon an earlier study by MacCannell (1991), who argued how the enlightenment promise of liberty, equality, and fraternity failed to deliver its promises on all three grounds by becoming effectively a "regime of the brother". More significantly, MacCannell argued, "The pseudo-symbolic, formed exclusively around the male signifier, the phallus, fails to ground the community or civilization it is supposed to: it founds instead a group of male egos—a fraternity" (page 20). This leads us to the question of whether we can recast citizenship still as state citizenship albeit without birthright. Is it possible to institute states without nations? To answer that question,

I shall briefly focus on three genealogical investigations (by Weber, Arendt, and Foucault) on how birthright citizenship emerged and whether the state and birthright can be divorced from each other.

Weber: genealogy of citizenship
Now I would like to discuss three powerful genealogies of the relationships between state, nation, and community by Max Weber, Hannah Arendt, and Michel Foucault. These three genealogies answer the question just posed above and yet arrive at very different conclusions from each other.

Weber makes an extraordinary claim on the origins of political community as the source of citizenship. I shall start by discussing that claim not because I think it is extraordinary but because of how ordinary (ie, taken for granted and unquestioned) it became since he made it. Weber draws attention to a letter by Paul to the Galatians in which Paul reproaches Peter for having eaten in Antioch with the gentiles and for having withdrawn and separated himself afterward (Galatians 2:11 – 13). Weber inter-prets this incident, also known as the Antioch Incident, as an indication of how Paul wanted to overcome the ritual barriers in everyday interactions such as communal meals (Dunn, 1993). For Weber this emphasis on shattering the ritual barriers and refusing to regard any people as pariah means the origins of commensalism are specifically Christian. Paul expresses this even more emphatically: "There is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female; for you are all one in Christ Jesus" (Galatians 3:28). Commensalism here indicates an ethos that enables peoples to cut across their primordial identities and relate to each other through this ethos rather than their kinship, tribal, and family bonds. Weber (1917) expresses it as follows:

"The elimination of all ritual barriers of birth for the community of the Eucharists, as realized in Antioch, was, in connection with the religious pre-conditions, the hour of conception for the occidental 'citizenry.' This is the case even though its birth occurred more than a thousand years later in the revolutionary *coniurationes* of the medieval cities. For without commensalism—in Christian terms, without the Lord's Supper—no oath-bound fraternity and no medieval urban citizenry would have been possible" (pages 37 – 38).

This is an extraordinary claim not only for its probably intended dramatic effect but also for its teleological excess. The statement that there was "the hour of conception for the occidental 'citizenry'" and that this hour itself was nearly a thousand years before its actualization in the birth of "revolutionary" bonds of medieval cities establishes both dramatic and continuous lineages through which we observe the emergence and development of citizenship.

What are the elements of the birth and development of occidental citizenship according to this scheme? Clearly, Weber sees the elimination of all ritual barriers as essential, so that people across various gens, kinships, and families can relate to each other as members of a community rather than members of kinship groups. This is what I would like to call the Pauline ideal of the origins of citizenship. It is political membership as oath-bound fraternity, partly because it represents commensalism (consent) but also because it embodies associational character beyond and outside kinship (choice). For Weber consent and fraternity rather than blood and kinship are the founding elements of community and hence citizenship. Without exaggeration, consent and fraternity, the Pauline ideal, have been the most fundamental aspects of political community in the occidental imaginary. So what Weber emphasizes here is neither insignificant nor a merely dramatic claim but a claim that he would express

numerous times in various different publications and speeches concerning citizenship (Weber, 1909; 1916; 1917; 1919; 1921; 1927).

This Pauline ideal—that communities of consent and of kinship make fundamentally different human associations and that the former is the foundation of the state while the latter constitutes its lack of development—is constituted as the essence of modernity. But it is also paradoxical, as MacCannell, Shachar, and Stevens have so brilliantly demonstrated. For if the nation (or nation-state) is a community of association (consent) and not filiation (kinship), why is its membership based on birthright? Why is fraternity not of association, connectedness, and solidarity but birth, family, and kinship?

It is worth returning to Weber to see how he deals with this paradox. As Joachim Radkau (2009, page 29) notes, the terms 'brotherhood' and 'fraternity' for Weber acquire remarkable salience, especially after 1910. Weber considered bonding as brotherhood and associated the swearing of oaths in shared feasts of eating and drinking (in which blood and saliva are mingled) with the formation of community (Radkau, 2009, page 29). (Radkau remarks in passing that such pleasures of the feast were the primal pleasure for the young Weber.) At around this time Weber discovers phratries (brotherhood fraternities) in ancient Greece and relates all forms of occidental associations with this original form of socialization. As Radkau says, "Whereas ethnologists usually place the phratry within the context of a system, ranging it under a tribe or clan or kinship group—much as already for Aristotle it was an intermediate level between *phyle* and *genos*—brotherhood for Weber is a union of people's own natural vitality, not a function of a social system" (2009, page 30). As we shall see later, this is a significant distinction and a thread that connects Weber and Arendt. It is also important in Weber's broader generalization that placed its emphasis on the occidental origins of citizenship. As Radkau says, "In fraternity strengthened by oath, Weber thought he could detect the kernel of the medieval municipality's striving for 'freedom' and hence the origin of the West's special path in world history" (2009, page 31).

If it were only Weber who made this extraordinary claim, we could have just simply thought of it as an exception, a departure in the interpretation of the origins of citizenship. Yet I think this has become the dominant practice underlying the modern institution of citizenship. Whether it is in the 'veil of ignorance' in Rawls or the 'right to have rights' in Arendt the citizen stands as a subject position that is beyond and above any primordial affiliations; instead, citizenship is defined by consent (oath) and choice (fraternity)—the Pauline ideal. The recent revival of the Pauline ideal, especially by Badiou (2009) and Žižek (2009), are examples of this dominant lineage (see Barclay, 2010; Caputo, 2009). As Weber (1917) would claim, "the modern [European] state is the first to have the concept of the citizen of the state" according to which "the individual, for once, is not, as he is everywhere else, considered in terms of the particular professional and family position he occupies, not in relation to differences of material and social situation, but purely and simply as a citizen" (page 103). Yet this pure and simple citizen is fraternized by birth to his kind and is a brother. It is this claim whose genealogy becomes crucial for understanding the kind of community that nation has become, a community of brotherhood fraternity rather than of solidaristic association.

Arendt: genealogies of the nation as the community of citizens
We can see in Weber the assumption that the citizen emerged as purely and simply citizen with oath and fraternity, but Weber does not provide an account of how the state, especially the nation-state, became the primordial and fraternal community of citizens as brothers. For Weber the passage from medieval city to the modern state is

rather natural. It does not require explanation. There is a natural continuity from city to the state. As Balibar (1991a) states, "The history of nations, beginning with our own, is always presented to us in the form of a narrative which attributes to these entities the continuity of a subject" (page 86). The extraordinary paradox of the nation-state is perhaps the fact that, although it ideologically constitutes itself as a community of consent and choice beyond family and kinship, it reproduces itself as yet another kind of family through fraternization and birth. So the celebrated and coveted transcendence of the individual from his tribal and kinship affiliations is really not about transcendence but the scale of the transcendence: family is replaced by the nation, or the nation becomes the family of man. In her investigation of the role of 'family' during the French Revolution Hunt (1992) calls this the emergence of "the family model of the political".

How did this happen? Balibar (1991a) says that a society only reproduces itself as a nation to the extent that, through a network of apparatuses and daily practices, the individual is instituted as a national from cradle to grave, and at the same time as economic, political, religious, and so on (page 93). This suggests that the ethnic or racial origins of nations, or rather the myth of such origins of nations, can be understood to have created "fictive ethnicity"—a term Balibar uses in analogy to the juridical term *persona ficta*. "The symbolic kernel of the idea of race (and of its demographic and cultural equivalents) is the schema of genealogy, that is, quite simply the idea that the filiation of individuals transmits from generation to generation a substance both biological and spiritual and thereby inscribes them in a temporal community as 'kinship'" (Balibar, 1991a, page 100). "The idea of a racial community makes its appearance when the frontiers of kinship dissolve at the level of the clan, the neighbourhood community and, theoretically at least, the social class, to be imaginarily transferred to the threshold of nationality" (page 100). The genealogical question then becomes how the filiation of individuals was transferred from the family to the nation.

It is this question that Arendt attempts to answer in a process she calls the conquest of the state by the nation. I suggest Arendt provides the second genealogy, after Weber, of the kind of community that nation has become. For Arendt (2005),

"Nationalism signifies essentially the conquest of the state through the nation. This is the sense of the national state. The result of the nineteenth-century identification of nation and the state is twofold: while the state as a legal institution has declared that it must protect the rights of men, its identification with the nation implied the identification of the citizen as national and thereby resulted in the confusion of the rights of men with the rights of national or with national rights" (page 210).

Arendt will therefore locate that moment of threshold in the 19th century and identify the conflation of the rights of man and the rights of the citizen giving way to the identification of the state with the nation. Or it signifies the emergence of the nation as the primordial community of citizens. Eventually, the argument that Arendt puts forward and will defend throughout her work is that "[t]he state, far from being identical with the nation, is the supreme protector of a law which guarantees man his rights as man, his rights as citizen and his rights as a national" (page 210). Is this yet another way, perhaps a secular way, of restating the Pauline ideal? As we shall see below, her genealogy of the conquest of the state by the nation does not actually question whether the state should be the supreme community of citizens. Thus, Arendt can be read as providing a genealogy that Weber did not but yet as ending up where Weber actually did, perhaps a republican Pauline. To see how this happens, we need a close reading.

Arendt starts with the assumption that "[b]efore totalitarian politics consciously attacked and partially destroyed the very structure of European civilization, the explosion of 1914 and its severe consequences of instability had sufficiently shattered the façade of Europe's political system to lay bare its hidden frame" (1951, page 267). "Those whom the persecutor had singled out as scum of the earth—Jews, Trotskyites, etc—actually were received as scum of the earth everywhere; those whom persecution had called undesirable became the *indésirables* of Europe" (page 269). Thus, "[i]t was indeed true that the role of the Western and Central European proletariat, the oppressed history-suffering group whose emancipation was a matter of life and death for the whole European social system, was played in the East by 'peoples without a history'" (page 271). Yet for Arendt

"The worst factor in this situation was not even that it became a matter of course for the nationalities to be disloyal to their imposed government and for the governments to oppress their nationalities as efficiently as possible, but that the nationally frustrated population was firmly convinced—as was everybody else—that true freedom, true emancipation, and true popular sovereignty could be attained only with full national emancipation, that people without their own national government were deprived of human rights" (1951, page 272).

According to Arendt, "In this conviction, which could base itself on the fact that the French Revolution had combined the declaration of the Rights of Man with national sovereignty, they were supported by the Minority Treaties themselves, which did not entrust the governments with the protection of different nationalities but charged the League of Nations with the safeguarding of the rights of those who, for reasons of territorial settlement, had been left without national states of their own" (page 272). On the basis of this Arendt claims that "[t]he representatives of the great nations knew only too well that minorities within nation-states must sooner or later be either assimilated or liquidated" (page 273). For Arendt this was all too obvious, since various minority treaties already assumed the role of the nation as the quintessential community:

"The Minority Treaties said in plain language what until then had been only implied in the working system of nation-states, namely, that only nationals could be citizens, only people of the same national origin could enjoy the full protection of legal institutions, that persons of different nationality needed some law of exception until or unless they were completely assimilated and divorced from their origin. The interpretative speeches on the League treaties by statesmen of countries without minority obligations spoke an even plainer language: they took it for granted that the law of a country could not be responsible for persons insisting on a different nationality. They thereby admitted—and were quickly given the opportunity to prove it practically with the rise of stateless people—that the transformation of the state from an instrument of the law into an instrument of the nation had been completed; the nation had conquered the state, national interest had priority over law long before Hitler could pronounce 'right is what is good for the German people'" (1951, page 275).

Arendt rightly emphasizes that "the danger of this development had been inherent in the structure of the nation-state since the beginning" (1951, page 275). Yet "[t]he framers of the Minority Treaties did not foresee the possibility of wholesale population transfers or the problem of people who had become 'undeportable' because there was no country on earth in which they enjoyed the right to residence" (page 276).

For Arendt, then,

"[n]o paradox of contemporary politics is filled with a more poignant irony than the discrepancy between the efforts of well-meaning idealists who stubbornly insist on

regarding as 'inalienable' those human rights, which are enjoyed only by citizens of the most prosperous and civilized countries, and the situation of the rightless themselves" (1951, page 279).

Arendt says that the situation became even worse with the emergence of the term 'displaced persons' to replace 'statelessness'. For her

"[t]he term 'stateless' at least acknowledged the fact that these persons had lost the protection of their government and required international agreements for safe-guarding their legal status. The postwar term 'displaced persons' was invented during the war for the express purpose of liquidating statelessness once and for all by ignoring its existence" (page 279).

As a result, "now we have reached the point where even free democracies, as, for instance, the United States, were seriously considering depriving native Americans who are Communists of their citizenship. The sinister aspect of these measures is that they are being considered in all innocence" (page 280). With poignancy, Arendt then notes,

"Yet, one need only remember the extreme care of the Nazis, who insisted that all Jews of non-German nationality 'should be deprived of their citizenship either prior to, or, at the latest, on the day of deportation' (for German Jews such a decree was not needed, because in the Third Reich there existed a law according to which all Jews who had left the territory—including, of course, those deported to a Polish camp—automatically lost their citizenship) in order to realize the true implications of statelessness" (page 280).

The result of these developments and the identification between the state and the nation was that the right to asylum was being abolished. This was particularly problematic, since the right to asylum was "the only right that had ever figured as a symbol of the Rights of Man in the sphere of international relationships" (page 280). Arendt thought that the

"long and sacred history [of asylum] dates back to the very beginnings of regulated political life. Since ancient times it has protected both the refugee and the land of refuge from situations in which people were forced to become outlaws through circumstances beyond their control. It was the only modern remnant of the medieval principle that ... the modern state tended to protect its citizens beyond its own borders and to make sure, by means of reciprocal treaties, that they remained subject to the laws of their country" (1951, page 280).

Yet it was distressing that "the right to asylum could ... not be found in written law, in no constitution or international agreement, and the Covenant of the League of Nations never even so much as mentioned it" (page 280).

Now what matters most here is that this development led to the transformation of the question of protecting the rights of citizens into a question of the police. For Arendt

"[t]he nation-state, incapable of providing a law for those who had lost the protection of a national government, transferred the whole matter to the police. This was the first time the police in Western Europe had received authority to act on its own, to rule directly over people; in one sphere of public life it was no longer an instrument to carry out and enforce the law, but had become a ruling authority independent of government and ministries. Its strength and its emancipation from law and government grew in direct proportion to the influx of refugees" (1951, page 287).

The identification of the state with the nation then transformed the very idea of sovereignty. Sovereignty used to be the God-given authority of the prince, but now it was located in the fictitious entity 'people'. But the consequence of this was that

"man had hardly appeared as a completely emancipated, completely isolated being who carried his dignity within himself without reference to some larger encompassing order, when he disappeared again into a member of a people" (Arendt, 1951, page 291). We now begin to see how Arendt's genealogy, with its different starting point of rights, is actually converging with Weber's genealogy. The figure of the citizen is one who stands over and above an encompassing order, and the citizen associates with a political community in his dignity presumably with consent and fraternity. It is, indeed, the Pauline ideal, albeit a secular if not republican version. We need to see where she locates this development and the consequences she draws from this genealogy.

The problem with the declaration of inalienable human rights for Arendt is that it envisages an 'abstract' human being rather than a concrete being as a member of a political community (1951, page 291). For Arendt

"[t]he full implication of this identification of the rights of man with the rights of peoples in the European nation-state system came to light only when a growing number of people and peoples suddenly appeared whose elementary rights were as little safeguarded by the ordinary functioning of nation-states in the middle of Europe as they would have been in the heart of Africa" (page 291).

The upshot of this is that "[t]he Rights of Man, supposedly inalienable, proved to be unenforceable—even in countries whose constitutions were based upon them—whenever people appeared who were no longer citizens of any sovereign state" (page 293). Yet "[t]o this fact, disturbing enough in itself, one must add the confusion created by the many recent attempts to frame a new bill of human rights, which have demonstrated that no one seems able to define with any assurance what these general human rights, as distinguished from the rights of citizens, really are" (page 293). According to Arendt, "Although everyone seems to agree that the plight of these people consists precisely in their loss of the Rights of Man, no one seems to know which rights they lost when they lost these human rights" (page 293).

For Arendt these problems were not problems of administration of justice or police or government. The paradox was inherent in the concept of human rights:

"No matter how they have once been defined (life, liberty, and the pursuit of happiness, according to the American formula, or as equality before the law, liberty, protection of property, and national sovereignty, according to the French); no matter how one may attempt to improve an ambiguous formulation like the pursuit of happiness, or an antiquated one like unqualified right to property; the real situation of those whom the twentieth century has driven outside the pale of the law shows that these are rights of citizens whose loss does not entail absolute rightlessness" (Arendt, 1951, page 295).

The crux of the matter for Arendt is that "[w]e became aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation" (pages 296–297).

The celebrated formulation of citizenship by Arendt as "the right to have rights" then is nothing other than Weber's "pure and simply citizen" with consent and fraternity, the Pauline ideal—to live in an organized community with one's actions. If for Arendt "[t]he world found nothing sacred in the abstract nakedness of being human" (1951, page 298), it was because the world forgot that citizenship meant membership in a community. It was obvious to Arendt that "[i]f a human being loses his political status, he should, according to the implications of the inborn and inalienable rights of man, come under exactly the situation for which the declarations of such general

rights provided. Actually the opposite is the case. It seems that a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man" (page 300).

It, too, was obvious to Arendt "why highly developed political communities, such as the ancient city-states or modern nation-states, so often insist on ethnic homogeneity" (1951, page 301). It was because organized political communities "hope to eliminate as far as possible those natural and always present differences and differentiations which by themselves arouse dumb hatred, mistrust, and discrimination because they indicate all too clearly those spheres where men cannot act and change at will, ie, the limitations of the human artifice" (page 302). According to Arendt, "If a Negro in a white community is considered a Negro and nothing else, he loses along with his right to equality that freedom of action which is specifically human; all his deeds are now explained as 'necessary' consequences of some 'Negro' qualities; he has become some specimen of an animal species, called man" (page 302).

Foucault: racism, birthright, and biopolitics
Weber and Arendt start from different positions—Weber with commensalism and Arendt with rights—yet actually produce an identical narrative of the Pauline ideal about citizenship and community. In this narrative the citizen belongs to a political community with oath (consent) and fraternity but as a pure and simple subject. The relationship of the citizen to the community is not one of kinship, gens, tribe, caste, family, or race but as simple and pure citizen above and beyond these affiliations. What both genealogies overlook is how the pure and simple citizen is anything but that: a citizen is a concrete subject whose right to the community is determined by birth. The state, rather than enabling man to transcend his familial, tribal, ethnic, and racial identities or affiliations, forces him to transfer them to the nation. This transference raises fundamental issues that are connected to the rise of racism or race-thinking in the late-18th century and 19th century (Weinbaum, 2004).

Balibar insists that "[t]he great equation instituted by modern states between *citizenship* and *nationality* (which is what gives the idea of 'popular sovereignty' its content) then begins to function against the grain of its democratic signification: nationality no longer appears as the historical form in which collective liberty and equality are constructed but is made into the very essence of citizenship, the absolute community that all others must reflect" (2001, page 37). Black (1984) illustrates that the modern idea of nation as civitas was developed in its purest form in France after 1791. As he says, "Thereafter, the idea of the nation as the new polis surged around Europe" (1984, page 147). If the nation as polis was the new political community, then what constituted its essence, as Arendt noted, was an ethnically if not racially homogenized unity (Xenos, 1996). Balibar notes, "The oscillation of vocabulary itself suggests to us then that, at least in already constituted national states, the organization of nationalism into individual political movements inevitably has racism underlying it" (1991b, page 37). But Balibar argues that, contra constructionist arguments, racism is not merely inert elements of nationalism and "that without the existence of an overt or latent racism, nationalism would itself be historically impossible" (page 38). "It is not 'race' which is a biological or psychological human 'memory,' but it is racism which represents one of the most insistent forms of the historical memory of modern societies" (pages 44–45). Balibar says that we cannot ignore the resemblance between nationalisms of the dominant and the dominated (page 46). So there may not be a good reason to participate in sorting good nationalisms from bad nationalisms. "In the last analysis, the overlapping of [nationalism and racism] goes back to the circumstances in which the nation states, established upon historically contested *territories*,

have striven to control *population* movements, and to the very production of the 'people' as a political community taking precedence over class divisions" (page 48).

We need to see race and racism in the intertwined trajectories of the state and the nation rather than imagine them as opposed institutions as Arendt sees. I suggest that this is what Foucault (2003) attempts in his Collège de France lectures in 1975–76. There have been several readings of these lectures recently (see Valverde, 2008). Curiously, as Macey recently notes, "[a]lthough Foucault's analyses of power, subjectivity, governmentality and biopolitics have been applied in groundbreaking studies of race and racism, there are many who do not associate his work with the problem of race. Yet in [these lectures] ... he addresses the question of race in some detail; this is where he deals with race as an explicit category in the analysis of power and in the emergence of biopolitics" (Macey, 2009, page 186). In *Society Must Be Defended* Macey suggests that Foucault "can be seen as offering an archaeology, or perhaps what might be termed a pre-archaeology, of the idea of 'race'" (2009, page 190). Yet, Valverde (2008, page 138) argues that the focus of these lectures is not race but sovereignty, or rather racism insofar as it relates to sovereignty. The distinction that Valverde makes is an important one, but I will focus on these lectures as genealogies of neither race nor sovereignty (as such) but of the conquest of the state by the nation to highlight the divergences between Foucault and Arendt. It is in this process that race becomes a *dispositif* to constitute various forms of the abnormal as objects of government and leads to purification rather than homogenization. As McWhorter (2009, page 45) argued, when Foucault traces the transformations of the term race, he illustrates its instability and demonstrates how it becomes a *dispositif* constituting the abnormal as the object of government.

Throughout these lectures Foucault (2003) insists that by the second half of the 18th century a new technology of power emerges, which he eventually calls 'regulatory'. He does not think that 'regulatory' and 'disciplinary' mechanisms of power—that he identified in the 17th century—are to be juxtaposed against each other. Rather, these two mechanisms of power take different objects as their targets. "Unlike discipline, which is addressed to bodies, the new non-disciplinary power is applied not to man-as-body but to the living man, to man-as-living-being; ultimately, if you like, to man-as-species" (Foucault, 2003, page 242). If disciplinary power is concerned with the function, movement, and fitness of the body, regulatory power is concerned with the birth, death, and health of the species-body. Foucault calls the politics of this emerging regime of regulatory mechanisms of power that concern themselves with the species-body as biopolitics—so-called because of its concern with natality, mortality, and fertility (2003, page 243). If then the body is the problem of disciplines, population becomes the problem of regulation (page 245). Major political questions such as habitation and sexuality become objects of power precisely because they are sites where body and species-body (population) are coproduced. What circulates between disciplines and regulations are norms that calibrate the relationship between the body and the species-body.

Yet, Foucault says, this raises a question. If, indeed, a new form power had become dominant at the end of the 18th and the beginning of 19th centuries that concerned itself with the living body, enhancing its health and thereby increasing the strength of the species-body, how could there have been be so many wars where millions of young men were sent to their death? "Given that this power's objective is essentially to make live, how can it let die?" (Foucault, 2003, page 254). So far this should be familiar to students of Foucault, albeit with a slightly different terminology than he used in his late-1970s publications (Foucault, 1978). Unlike his publications, however, in these lectures Foucault identifies 'race' as the thing that answers the question that I just

quoted above. For Foucault it is because biopolitics was inscribed in the state and its government at this time that explains why race became its underlying force. His argument is complex yet patchy, but it goes something like this.

The idea that the species-body (ie, population) was made up of various races compelled biopolitical practices to divide it into constituent groups (Foucault, 2003, page 255). Foucault says that "[t]his will allow power to treat that population as a mixture of races, or to be more accurate, to treat the species, to subdivide the species it controls, into the subspecies known, precisely, as races" (2003, page 255). Once population is seen in racist terms, it opens the way for understanding other races as threats to its existence. That is why this is not a warlike relationship but a political and biological, or more precisely, biopolitical, relationship. Throughout the 19th century expulsions, rejections, and deportations become increasingly routine mechanisms of regulating population (Foucault, 2003, page 256). Yet, although this relationship is not warlike, it does end up fundamentally altering the nature, or at least aims, of war. "From this point onward, war is about two things: it is not simply a matter of destroying a political adversary, but of destroying the enemy race, of destroying that sort of biological threat that these people over there represent to our race" (Foucault, 2003, page 257).

Foucault insists that this 'racism' should not be understood in moral terms as 'hatred' or 'prejudice'. On the contrary, racism as hostility becomes logical within the biopolitical operation of power as it emerged in the 19th century. "So racism is bound up with the workings of the state that is obliged to use race, the elimination of races and the purification of race, to exercise its sovereign power" (Foucault, 2003, page 258). So then Foucault not only begins very differently but also ends very differently from Arendt on giving an account of the drive of states toward what Arendt calls 'homogenization' or what Foucault calls 'purification'. For Arendt 'highly developed' political communities homogenize because at their centre is the pure and simple citizen—to use Weber's description—or the Pauline ideal. Yet for Foucault the highly developed political communities in the late-18th and 19th centuries are driven toward eliminating threats to their existence.

The most interesting aspect of Foucault's genealogies in these lectures is how race codifies nation. In a nutshell, if race is bound up with the existence of the state that it divides and separates, the race as species-being becomes identified with the 'nation'. Those subspecies that divide a population or species into various categories become designated as nations. In the late-18th century with the emergence of the articulation of two mechanisms of power—disciplinary and regulatory—race and nation become intertwined. Foucault recognizes that both 'race' and 'nation' existed before. He gives examples of how before the 18th century various groups or classes of people were called nations or races. Both nobility and bourgeoisie, for example, were called nations (Foucault, 2003, page 142). But now they were articulated with each other and with mechanisms of power embodying different rationalities. Most significantly, Foucault describes this new articulation of the nation as the emergence of a new subject of history (Foucault, 2003, pages 142–143). For Foucault nation as a new subject of history reworked political discourse toward racism (2003, page 217). Once the nation was reworked as an independent entity, an autonomous body whose existence was neither associated with nor created by the king's body, the question then became what constituted a nation. The existence of a multitude of people, laws, customs, habits, languages, and institutions was necessary but not sufficient for there to be a nation (page 220). Just because France has laws, customs, and language does not make it a nation. What constitutes *the* nation is that *a* nation in a given territory has the capacity to ensure the substantive and historical existence of *that* nation (page 221). What Foucault identifies here as

a meticulous genealogist is the composition of social forces behind the emergence of an articulation: the emergence of the bourgeoisie as a social class was possible only if it articulated itself as the new subject of history. It did this by writing its own history as *the* nation capable of sustaining and enhancing the life of the species-being among other nations within the state. While the aristocracy was dependent on a discourse that allowed the existence of multiple nations within species-being, the bourgeoisie as a social class articulated itself as *the* subject of history (page 221). In Foucault's words, the bourgeoisie is obliged to think like this: "We are more than one nation among other individuals. But the nation [bourgeoisie] that we constitute is the only one that can effectively constitute the nation [France]" (page 222). Is this not akin to the Pauline ideal that says there is neither Jew nor Greek because you are all Christians now? Thus the dominant nation becomes the universal signifier of the state. Accordingly, "the essential function and the historical role of the nation is not defined by its ability to exercise a relationship of domination over other nations" (page 223). Rather, it is "its ability to administer itself, to manage, govern, and guarantee the constitution and workings of the figure of the state and of state power" (page 223).

Foucault provides, in my view, much more nuanced and potentially radical genealogies that illustrate intertwined trajectories of the state and the nation, but also of nation, race, and class. He does answer the question of how the affiliations of man were transferred from family to the nation (fraternization): that bourgeoisie as a social class constitutes itself as the new subject of history by assuming itself as a nation-race and that citizenship as nationality has profound implications for understanding how regulating modern states becomes a biopolitical project.

Yet, by shifting the focus to race, Foucault, like Arendt, overemphasizes the transformations of the 18th and 19th centuries and gives primacy to the modern experience. Although I suggested that they were extraordinary claims, the advantage of Weber's genealogies is that he insists on taking the European or Western experience since the Greeks and even before as the appropriate scope of investigation with his important focus on the question of fraternity. In other words, what Foucault does not ask is how the bourgeoisie constituted its lineage, its own genealogy as the subject of history. This is where Derrida's (1997) *Politics of Friendship* becomes the most crucial intervention on the question of community, fraternity, and citizenship. I shall conclude with a brief discussion of what I see as Derrida's essential contribution to this question.

Conclusion

> "Community without community, friendship without the community of the friends of solitude. No appurtenance. Nor resemblance nor proximity."
>
> Derrida (1997, page 42)

In a dialog with Judith Butler, Gayatri Spivak mentions that the essential contribution of Derrida's (1997) *Politics of Friendship* is perhaps the questioning of the relationship between birth and citizenship, or more precisely, birthright citizenship. Spivak says that "Derrida will later call this undoing of the connection between birth and citizenship the deconstruction of its genealogy in *Politics of Friendship*" (Butler and Spivak, 2007, page 91). This is an insightful observation. It is important to note that Derrida traces the figure of the brother as the subject of politics in biblical and Greek traditions. When discussing Schmitt's friend–enemy distinction as the foundation of the political, Derrida discovers that the absolute hostility of the enemy is directed against none other than the brother. Then he asks, "How could a brother be the *subject* of absolute hostility?" (Derrida, 1997, page 148). He inverts Schmitt's hypothesis and asserts that

"there can be absolute hostility only *for* a brother. And the history of friendship is but the experience of what in this respect resembles an unavowable synonymy, a murderous tautology. The absolute war Schmitt talks about, the revolutionary war that drives the theory of the partisan to its extremity, the war that violates all laws of war, can be a *fratricidal* war. And thereby have the fraternal figure of the friend return. As a brother enemy. This is an immense tradition, biblical and Greek" (Derrida, 1997, page 148).

To put it in another way, recognizing the figure of the brother as the subject of politics requires a genealogy of fraternity of this immense tradition.

Derrida recognizes that in both Greek and biblical traditions brother means brother: the subject of fraternity is a male figure. No wonder then Schmitt, says Derrida, never speaks of the sister. Derrida returns to this figure of the sister and asks repeatedly why it is absent in political thought. "Not a woman in sight. An inhabited desert, to be sure, an absolutely full absolute desert, some might even say a desert teeming with people" (1997, pages 155–156). Derrida notes, "Yes, but men, men and more men, over centuries of war, and costumes, hats, uniforms, soutanes, warriors, colonels, theologians. In vain, would you look for a figure of woman, a feminine silhouette, and the slightest allusion of sexual difference" (pages 155–156). The question then becomes the question of brother: "Have you encountered brothers in nature? In nature and in so-called animal births? Fraternity requires a law and names, symbols, a language, engagements, oaths, speech, family and nation" (page 149). If we are to understand fraternity and community, it is this "immense tradition" of birthright citizenship as a question of brother whose genealogy becomes necessary. Butler's (2000, page 12) reading of *Antigone* points to this paradox when she concludes that "citizenship demands a partial repudiation of the kinship relations that bring the male citizen into being, and yet kinship remains that which alone can produce male citizens".

If politics of citizenship has always implied fraternity and kinship via birthright, can we imagine politics without this figure of brother? For Derrida there are two choices. First, we can

"admit that the political is in fact this phallogocentrism in act. Schmitt would record the fact; and we could not fail to recognize that indeed, so many indications attest to it in all European cultures, in the Bible and in the Koran, in the Greek world and in Western modernity: political virtue (the warrior's courage, the stakes of death and the putting to death, etc) has always been *virile virtue* in its androcentric manifestation. *Virtue* is *virile*. Woman's slow and painful access to citizenship would go hand in hand with the symptoms of depoliticizing neutralization noted by Schmitt. This structure can be combated only by carrying oneself beyond the political, beyond the name 'politics'; and by forging other concepts, concepts with an altogether different mobilizing force" (Derrida, 1997, page 158).

Yet, Derrida asks, "Who would swear that this is not in progress?" (page 158).

Second, as the first critique is well under way, we can also "keep the 'old name,' and analyze the logic and topic of the concept differently, and engage other forms of struggle, other 'partisan' operations, and so forth" (Derrida, 1997, page 158). That's the other decision we might think we will have to make.

But Derrida concludes emphatically that "[i]f there were a single thesis to this essay, it would posit that there could be no choice: the decision would once again consist in deciding without excluding, in the invention of other names and other concepts, in moving out *beyond this* politics without ceasing to intervene therein to transform it" (1997, pages 158–159). "This double gesture would consist in not renouncing the logic of fraternization, *one* fraternization rather than *such and such another*,

therefore one politics rather than some other, all the while working to denaturalize the figure of the brother, his authority, his credit, his phantasm" (Derrida, 1997, page 159, original emphasis).

While Derrida admits that fraternity appears alien to politics and the political, "*the great philosophical and canonical discourse on friendship* will have explicitly tied to the friend-brother to virtue and justice, to moral reason and political reason" (1997, page 277, original emphasis). It is this project toward a genealogy of fraternity that he articulates. Yet Derrida does not provide that genealogy. In fact, I would like to read the conclusion of *Politics of Friendship* as a plea for such a genealogy, as it ends it with three significant questions: the question of community, the Greek question, and the question of fraternity. If we insist on community, we would be inviting the risks associated with naturalization, genre, race, gens, family, and the nation. To avoid these dangers is to imagine a friendship of "neither of the common nor of its opposite, neither appurtenance nor non-appurtenance, sharing or non-sharing, proximity or distance, the outside or inside, etc. Nor therefore, in a word, that of the community" (Derrida, 1997, page 298). He then insists that "[i]f there were a politics of this lovence, it would no longer imply the motifs of community, appurtenance or sharing, whatever the sign assigned to them. Affirmed, negated or neutralized, these 'communitarian' or 'communal' values always risk bringing a brother back" (page 298). When he reflects on his inability to use the term 'community' without reticence, he admits that it is this reticence that inspires the book (page 305). It is not that Derrida will stake out a position against the brother or against fraternity, but he will demand that we ask what is meant by 'brother'? To put it in another way, "what is the political impact and range of this chosen word, among other possible words, even—and especially—if the choice is not deliberate?" (page 305). Derrida's plea is to investigate what fraternity demands: the reinscribing of the brother back in the foundation of the community. He repeats this when he shows dismay at Jean-Luc Nancy's insistence on community (Derrida, 2005, pages 58–61).

Focusing on three critical genealogies of community, nation, and race provided by Weber, Arendt, and Foucault, I hope to have illustrated that the question of birthright and citizenship involves a much broader historical investigation than a focus on modernity. This question led us to the need for a genealogy of fraternity or a deconstruction of, the Pauline ideal. Derrida points out the need to consider the historical consequences of how the brother appears as citizen, and citizen as brother. Genealogies provided by Weber and Arendt would have us believe in a citizen whose fraternity is simply an abstract affiliation with the state. Genealogies provided by Arendt and Foucault would have us believe in a citizen whose fraternity was racialized only in the 18th and 19th centuries. By contrast, Derrida provides us with a glimpse of a genealogy whose trajectory is both biblical and Greco-Roman—what he calls "this immense tradition". It may well be that the question about political community is a question about fraternity, and its genealogy indicates that its roots in the state lay deeper than race-thinking or racism that emerged in the 18th and 19th centuries. To imagine citizens without nations requires a genealogy of fraternity and the deconstruction of the Pauline ideal.

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