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Motimele, Moshibudi

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Statelessness: precarity or potentiality?

Name: Moshibudi Motimele

Student Number: 1033218

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Section 1: Purpose, Methodology, Literature Review and Structure

1.1. Introduction

Statelessness is a reality for between twelve to fourteen million people globally according to the United Nations (UN) (UN, 2014: internet). People who do not have the nationality of any state are considered stateless and this category is distinct from other 'non-citizen' groups such as illegal immigrants, asylum seekers, undocumented migrants and refugees (Manby, 2011: 6). In an international environment which recognises and prioritises the provision of fundamental rights to all individuals regardless of race, gender, religion or ethnicity, the increasing number of stateless people globally is an unacceptable predicament that requires immediate measures.

Citizenship is the main legal mechanism through which a bond between an individual and state exists (Walker, 1981: 107). Despite stateless individuals not having a state that they are legally bound to, these people often have many linkages to the states they find themselves in and consider to be their home. By denying the stateless recognised relations with a state, their dignity and existence is undermined as they officially do not exist. More importantly, nationality or citizenship is often a prerequisite for the enjoyment of rights and political participation, even in the realm of international human rights which are meant to apply to all people (Blitz & Lynch, 2009: 22). Important rights that stateless people are often denied include the right to vital services such as health and education as well as the ability to vote, find employment and own property (Wright, 2009: 22).

However, another characteristic of the stateless is that they exist, conceptually at least, outside of the current context of sovereign states. Their existence, or inclusion through exclusion, creates a space for contesting the dominance and legitimacy of the state system (Rancier, 2004: 300). The stateless create "a dispute about what they exactly entail and whom they concern in which cases (Rancier, 2004: 303). The precarity of stateless existence cannot be denied. That said, there is potentiality in precarity to challenge the status quo and possibly create the emergence of new types of membership, inclusion and recognition.

1.2. The Purpose of the Study

In light of the above, the purpose of this research report is to understand the emergence of statelessness and interrogate: it's consequences on the rights of stateless individuals, the role of the state as the primary conferrer of rights and the international legal framework regarding fundamental human rights. In particular the research report aims to investigate the nature and purpose of citizenship and the consequence thereof for stateless people who do not have citizenship and subsequently substantive enjoyment of socio-economic, political and civil rights. If stateless people are essentially rightless, as argued by Hannah Arendt (Tubb, 2006: 40), then it follows that their obligations or incentives to observe domestic and international norms and law differ from those who are legally acknowledged and protected by said law. This research essay will also explore questions of the revolutionary potential of statelessness as a means of acting outside of and against the state. This will be done by analysing the type of political subject that is created by the precarity of statelessness.

1.3. Research Questions

The main research question is to investigate the precarity and revolutionary potentiality of statelessness with regards to the relationship between statelessness and sovereignty. There are a number of sub-questions that have to be asked and analysed in order to adequately address the main research question. These include:

i. What is citizenship and what are the general requirements for its conferral?
ii. What rights and responsibilities do stateless people have?
iii. What are the main causes of statelessness?
iv. Why and how do states deny certain people citizenship?
v. Do stateless individuals have the substantive enjoyment of rights?
vi. Why has the international legal framework failed to protect the rights of stateless individuals?
vii. What alternatives exist for the provision of rights outside the state?

1.4. Methodology

This research report will utilise mainly secondary qualitative literature on citizenship, sovereignty and statelessness. In order to clarify and emphasise certain points, examples will

be used from numerous case-studies. As noted by Batcher (1995: 232), the nature of statelessness is different depending on its causes and the region in which stateless people find themselve, for example, Tamils in Sri Lanka, Crimean Tatars in Ukraine and the hundreds of thousands recently deemed stateless in the Dominican Republic. In order to illuminate as many of the different characteristics of statelessness as possible without being restricted to one or two particular case studies, many examples from all over the world will be used. This will also bolster the legitimacy of making generalisations as to the role of the state in the emergence of statelessness and the political agency of the stateless without having to restrict the findings to particular case studies.

There is a slight comparative element to the research report. As Mills *et al* (2006: 621) note, an underlying goal of comparative analysis is to shed light on similarities and differences. It is important then, when conducting a comparative study, to keep variables of interest constant across case studies in order to make efficient comparison possible. In particular the research report will be concerned with conditions under which people become stateless, their experience of their statelessness and the role of the state in acknowledging, addressing and perpetuating the problem.

1.5. Literature Review

There has been a large amount of research conducted into different aspects of citizenship such as the challenges of inclusive citizenship, citizenship and compulsory military service, women's experience of citizenship, citizenship and political participation, social citizenship and much more. The experience of non-citizens has also been explored in depth with a focus on refugees and legal and illegal migrants and their experiences in education, health, law enforcement and local politics. In particular, there have been efforts to describe the discrimination and exploitation these individuals face and suggestions made on how reform may take place. These studies overwhelmingly focus on refugees and migrants and largely ignore the stateless which, as mentioned earlier, are a distinct and separate group of non-citizens. The experiences of stateless people as a particular group of non-citizen has been largely under researched and investigated.

The dominant research that has been done regarding statelessness has been undertaken from a legal perspective by lawyers and human rights activists who are concerned with the growing number of individuals who lack fundamental entitlements and mechanism through which to

require assistance. In South Africa, Lawyers for Human Rights (LHR) conducted an extensive study (2013) aimed at understanding the way in which South Africa's and other African countries' legal frameworks have allowed for the emergence of statelessness and developing recommendations for legal reform. Similarly, the United Nations High Commission for Refugees (UNHCR) (2007, 2009), UN General Assembly (1948, 1954, 1961, 2007) and the Office of the High Commissioner for Human Rights (OHCHR) (2008, 2009) also focus almost exclusively on the legal loopholes or shortcomings that assist the proliferation of stateless individuals globally and the need for states to reform to ensure the protection of all individuals i.e. nationals and non-nationals. All these agencies are aware of the fundamental rights that stateless individuals are deprived of and seek to assist through the legal reformation of defaulting political systems regarding citizenship.

Thus activism towards understanding and reducing instances of statelessness has come from the international legal framework committed to enforcing the fundamental human rights of all. Therefore, a study of statelessness must seek to interrogate and understand international law. The international legal framework on statelessness includes the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the Universal Declaration of Human Rights. Related Conventions that are relevant to stateless individuals include the 1999 African Charter on the Rights and Welfare of the Child, the 1966 International Covenant on Civil and Political Rights, the 1989 Convention on the Rights of the Child, the 1957 Convention on the Nationality of Married Women, the 1965 Convention on the Elimination of all Forms of Racial Discrimination, the 1979 Convention on the Elimination of all Forms of Discrimination against Women. Statelessness has racial, ethnic and gender dimensions. As one can probably tell from the titles of the relevant conventions, women, children and ethnic minorities make up the largest component of all stateless people.

What is interesting about both the UN and African Union (AU) responses to statelessness is the lack of interrogation of the state-form as a cause of statelessness. They focus almost exclusively on discriminatory legal practices which allow for discrimination and exclusion to occur without interacting with the systemic. Both the UN and the AU are constituted of states and both institutions highlight sovereignty of states as their basis of engagement and co-operation. It is unlikely that a statist critique regarding statelessness would emerge from this type of analysis. Furthermore, it is no surprise that the revolutionary potential of the stateless individual to disrupt the status quo has not been a focus of analysis here as well. However,

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the acknowledgement of statelessness as a category and efforts to respond to statelessness, be they statist and/or inadequate reveal those regional and international institutions are aware of the fact that the stateless cannot be ignored.

Although it was mentioned earlier that statelessness is a distinct sub-group within the group of non-citizens, most of the research on statelessness has been conducted under the broad group of 'non-citizens' (Blitz & Lynch, 2009; Sokoloff, 2005; UNHCR, 2008; Weissbrodt, 2003). As a result, a substantial amount of the literature used may not pertain to stateless individuals directly. However this literature is still important as it represents the international framework in which statelessness is acknowledged, researched and analysed.

There is a further distinction made in the literature between *de facto* and *de jure* stateless individuals. The former refers to individuals who have no documentation or other proof of their relation to a state whereas the latter refers to those on which citizenship has never been bestowed (Weis, 1979: 184). Although the experience of these two dimensions of statelessness are likely to be similar, the distinction is still important as certain protective measures such as the UN 1954 Convention on Statelessness only apply to *de jure* stateless individuals.

In the analysis on whether or not statelessness individuals are essentially rightless, as argued by Arendt (1973), I will consider not whether stateless people legally have rights but rather whether they have substantive enjoyment of rights. A fundamental marker of whether or not one can derive substantive value from rights is whether or not one has access to recourse for being denied rights by institutions such as courts. This is an important aspect of the position that the research will take and this position will be further justified in the discussion on moral and legal entitlements as well as the critique of human rights.

There are three main aspects to the theoretical framework that the research report will employ. These are the theories of citizenship, theories of statelessness and theories pertaining to the sovereignty of the modern state. There are two main dimensions of citizenship theory. The first is the rights that citizens are entitled to as a result of their relationship to the state. The second is the consequent duties that are imposed on individuals as a result of their membership in the state and the rights that are conferred on them. Citizenship theory is relevant to this research essay because in most cases stateless people have been denied citizenship by states and exist in a state of limbo. Modern citizenship theory is going to form a core part of the essay's understanding of citizenship. This is inclusive of different

theoretical perspectives of citizenship such as the civic-republican model and liberal model which have areas of both agreement and disagreement regarding citizenship. Kymlicka and Norman (1994: 353) acknowledge that citizenship is crucial to understanding the link between individual's entitlements on the one hand and an attachment to a community on the other. Thus, the lack of attachment to a community for stateless individuals has an important impact on not only the entitlement of stateless individuals to particular socio-economic, political and civil rights but also their interconnection and assimilation into the communities in which they find themselves.

Theories of rights and human rights are critical to the discussion of i) what rights stateless individuals are entitled to, ii) who should provide those rights and their protection and iii) whether human rights are sufficient as the only rights granted to stateless individuals. In particular, this report is interested in natural rights, legal rights and human rights. Rights can be legal, social, institutional, negative or positive. This distinction is made clear by Coleman (1986), Eleftheriadis (2007) and Waldron (1989). I will use Locke's theory of natural rights which insists that the state must exist before rights are conferred as well as the legal positivist theory of rights that only acknowledges those rights codified in law.

Human rights which are said to be universal and inalienable are also central to the thesis of the precariousness and/or rightlessness of statelessness. The entrenchment of these rights in various UN agreements, conventions and provisions has led some to argue that human rights are an entrenched part of international society. Thus, if all people have the right to nationality i.e. citizenship, then statelessness is a violation of both domestic and international law. In respect of this literature, this research essay will contend that stateless individuals are indeed rightless as argued by Hannah Arendt (1973). The existence of inalienable and universal human rights might seem to contradict the assertion that rightless individuals exist within an international legal framework that ensures that all individuals have at minimum human rights. However, this research essay will argue that rights are enjoyed to the extent that they are protected by an institution that has the ability to defend their provision. The numerous human rights violations globally is proof that the UN has serious shortcomings as an agency tasked with the protection of rights of individuals especially in instances where states are purposefully withholding citizenship and thus the "right to have rights" from certain groups and individuals. The preeminent authority of human rights is challenged by the failure of international institutions to create a capacitated body such as the state to protect rights through the use of or threat of use of force.

Hence, the research report is concerned with 'real rights'. By real rights, I mean rights that are legally codified, defendable and protected by an institution with the capacity to ensure they are provided for, i.e. substantive rights. As Bentham (1987: 69) notes, only substantive rights guarantee protection; other forms of rights such as natural and universal human rights merely represent "imprescriptable natural rights" or "rhetorical nonsense."

With the increasing number of stateless individuals, there has been an increase in the literature particularly pertaining to stateless people. There are those who are concerned with the relationship between statelessness and international law (Batcher, 2006; van Waas, 2008; Walker, 1981; Weis, 1979). These studies generally aim to understand why the identification of statelessness as a global problem has failed to lead to the phenomenon's reduction specifically through international law.

There has been more general analysis of the relationship between citizenship and rights (Adejumobi, 2001; Ali, 2006; Bhabha, 1998; Blitz and Lynch, 2009; Elphick & George, 2013; Southwick and Lynch, 2009 and Weissbrodt & Collins, 2006). As Elphick and George (2013:v) aptly note, rights are often unenforceable without nationality. Therefore the relationship between citizenship and rights is crucial to understand the reality of those ostracised from that relationship.

Statelessness often occurs as a loss of citizenship. Alenikoff (1986), Bahar (2007) and Samore (1951) look specifically at the reasons why citizenship may be revoked, the resultant deprivation experienced by ex-citizens and the problems with conflicting domestic nationality laws. Manby (2011) and Tubb (2006) research the problem of lost citizenship in Southern Africa and Colombia respectively.

Hannah Arendt's (1973) thoughts on the rightlessness of the stateless are elaborated on by Bernstein (2005) and Wright (2009). Essentially what this literature seek to argue is that stateless individuals are invisible within current political systems which fail not only to bestow on the stateless substantive rights but also to recognise them as worthy individuals, contributing as an essential part of society. Arendt's assertion that the stateless are those who have the right to have no rights is extremely powerful in shedding light on the devastation and deprivation that usually characterise statelessness. It further has important consequences for understanding the agency of stateless individuals and the extent to which they can utilise their capabilities in a political system that excludes them. Agamben (1995, 1998 and 2005) provides a critique of human rights, reformulates Arendt with the inclusion of Foucault's

notion of biopolitics and concludes that not only is statelessness a position of deep precarity, it is a position of precarity that can never be escaped from. Although many have critiqued Agamben as being nilhist, De Boever (2006) and Schaap (2012) show how in fact his work can be reinterpreted in a way that does not end up at this conclusion.

Lastly, the essay is concerned with the potentiality of statelessness. Rancier (1998) and Balibar (1985, 2002, 2004 and 2004) provide us with a framework in which the stateless can be seen as a subject with revolutionary potential. Whereas Balibar wants to salvage the notion of citizenship by extending it past the state into a post-national order, Rancier is interested in the type of dissensus (disagreement) the stateless can stage against the state. The works of Balibar and Rancier have been engaged by many including Bauman (1997, 1999); Dal Lago and Mezzadra (2002) and Habermas (2004). In order to understand the concept of potentiality, the anthropological term of liminality will be reworked in order to show how the stateless individual can be seen to be standing at the threshold of current categorical boundaries with the potential to move into an alternate state of being. The term liminality was developed by van Gennep (1909) and extended by Turner (1995).

Section 2: Statelessness, Citizenship, Precarity and Potentiality – A Theoretical Framework

2.1. Citizenship

Citizenship has always been and remains a contested term. Furthermore, determining the confines of citizenship has been used as means to satisfy certain narrow political interests (Bader, 1995: 214). In terms of juridical conceptions of citizenship, Duhaime (2015: internet) defines citizenship as "the status of an individual as owing allegiance to, and enjoying the benefits of, a designated state." Justice Lavoie (1995: 2) provides a broader conception of citizenship as a "juristic and political status in which an individual enjoys full, legally sanctioned membership in a state and owes full allegiance to it...citizens enjoy certain exclusive rights and privileges...and preferential treatment in access to employment in the public service." Thus, the main legal characteristics of citizenship is that it is a formally designated position of privilege that allows one access to particular rights in return for loyalty to a particular political community namely the state.

Although the legal definition has remained standard, within political thought there is very little consensus as to the content of citizenship. Whereas in the era of monarchies debates were on issues such as the distinction between the 'citizen' and the 'subject', in contemporary politics tensions are concentrated on the issue of who is included and who is excluded (Baubock, 1994: 242). In particular, growing multiculturalism and diversity within states and territorial pressures of globalisation have sparked the re-examination of citizenship as a political concept (Kymlicka, 2009: 227).

Bodin (1945: 158) defines a citizen as "one who enjoys the common liberty and protection of authority." Thus citizenship is the mechanism through which common liberty is attained and protected through the authority of the state. Kymlicka and Norman (2000: 12) and Cohen (1999: 231) identify three main elements of citizenship. The first is the legal perspective discussed above that is characterised by civil, political and social rights. Secondly, citizenship is concerned with political activity and the ways in which citizens as political agents participate in political institutions. Thirdly, citizenship refers to an identity conferred on to citizens as members of a political community. This is an important account of what it means to be a citizen. Dominant rights discourse often masks the relevance of citizenship to political

participation and access to and engagement in institutions. Further, the link between identity and citizenship needs to be fore-grounded more. Citizenship is not only important for the rights it confers and the participation it allows, but also for the sense of belonging it gives people and the crucial impact it has on how one forms and understands identity.

Walzer (1989) and Pocock (1995) introduce a binary conception of citizenship, republican versus liberal. Republican citizenship is founded on notions of public virtue and political participation. This is a non-instrumental, performative conception of citizenship that foregrounds the necessity of political rights. On the other hand the liberal conception of citizenship places emphasis on the instrumental and political aspects of citizenship. The liberal conception of citizenship foregrounds civil rights and the protection from the state that is required to protect them. Importantly, under the liberal frame of analysis, citizenship is a 'means' towards achieving a particular democratic political community; citizenship is not a good in itself (Pocock, 1995: 34).

Walzer (1989:211) defines a citizen as one who is "a member of a political community." The membership within a particular community entitles one to both prerogatives and responsibilities that are attached to membership. He traces the origin of the concept of citizenship to the neoclassical interpretation of Greek and Roman republicanism as well as juridical origins in Roman law. For Walzer, the height of citizenship ideology emerges during the French Revolution. He argues that fundamental to the French Revolution was an attempt to establish citizenship as the dominant identity of every Frenchman above previous identifications such as religion, caste, estate and family (Walzer, 1989: 214). During this period in particular, the concept of a *citoyen* was closely linked to the concepts of virtue and public spirit. Hence, there was a predominantly positive conception of citizenship that entailed the political activity of citizens; every citizen had a duty to serve the community.

Rousseau (1762) and Kant (1795) are fundamental theorists in understanding the modern philosophical grounding of citizenship. In Rousseau's *The Social Contract* the citizen is one who is free and participates in making the laws that he will subsequently obey. The political community is characterised by those who actively participate in public assemblies and who derive happiness from their active participation. In fact, Rousseau doubts that the Republic can be successful if the majority of people do not find greater pleasure in the public sphere as opposed to the private sphere. Walzer (1989: 212) makes an important point about the tension between civil society and citizenship. Men and women were drawn to the sphere of

entrepreneurship, love and familial relations. However, the more invested individuals are in civil society, the less time they have to be active in political community. Activity within civil society draws individuals away from their citishenship obligations. Thus, to retain the virtue of citizenship, civil society had to be either repressed or limited greatly in scope and appeal (Walzer. 1989: 214).

In the Jacobin context, citizenship and virtue required the eradication of "bourgeoisie values" which include industry, competition and self-enjoyment (Miller, 2008: 374). Marx (1843: 254) then theorised that modern civil society produces "self-alienated, natural and spiritual individuality." Attempts to synonymise 'political life' with 'real life' fail during the onset of modernity. Walzer argues that the ancient regimes too had tensions between the civic and the familial even though active participation was at much greater percentages than now. He notes that the 'minimal range of social differentiation' within ancient regimes made it easier for men to devote their lives to public service. The limited distinction between private and public, with even the realm of religion being uplifted into a public sphere resulted in the primacy of citizenship within the self-conception of citizens (Walzer, 1989: 216). There was an expectation that all citizens would literally hold office at one point or another. Again, the scale of the ancient cities made such an expectation possible of the rotation of office-holders.

There are a number of changes that occur that require the changing conception of citizenship. The first is that the modern bourgeoisie state is characterised by 'imperial inclusiveness'. Citizenship is granted to a larger number of individuals, for example, Rome expands citizenship to its entire captured people which alters the political and legal realities of citizenship (Miller, 2008: 376). The focus of citizenship became the rights and entitlements that passive citizens had guaranteed and protected by states. The protection of law was more important that being an active participant in its derivation and execution. As a result of the decreased expectations of citizenship, Walzer argues that it was easy to extend citizenship to increased numbers of individuals who were of different ethnic, religious and political norms. Citizenship moved from being a central determiner of the good life to being "but occasional identity, a legal status rather than a fact of everyday life" (Walzer, 1989:215).

How does statelessness fit into this binary representation of citizenship? At the most basic level, statelessness represents the other of citizenship. Statelessness is a legal category that is in a relationship of opposition with citizenship. Although statelessness is often defined as the lack of nationality/citizenship, it would be more apt to describe statelessness as the lack of

what nationality and citizenship represent. Thus, statelessness is a lack of both the normative and instrumental elements of citizenship.

2.1.1. Citizenship and Class: Marxist Critique

The notion of citizenship is associated to a particular understanding of class relations. The qualification of inclusion and exclusion correlate with the divide between the wealthy and the poor with the former being included and the latter excluded. The problem of qualification is expounded on in Marxist discourses which breaks down the ways in which citizenship is implicated in maintaining the dominance of the privileged over the working class.

Marxism is often thought of associating citizenship and the notion of rights to the ideology of the bourgeoisie rule. As such, citizenship serves to give the illusion that exploited classes are free and equal. It also serves to individualise elements of the political community in an attempt to individuate and neuter the collective organisation of workers. Marx famously said of rights: "none of the so-called rights of man goes beyond egoistic man, man as a member of civil society, namely an individual withdrawn into himself, his private interest and his private desires...separated from the community. The practical application of the right of man is the right of man to private property" (Marx, 1843: 187). Thus, in Marx, under liberal conditions of the state "political emancipation was at the same time the emancipation of civil society from politics, from even the appearance of universal content" (Marx, 1843: 191).

A crucial aspect of the Marxist critique of rights and citizenship is the limited conception of emancipation that they represent. Marx argues that political emancipation is far from human emancipation. When one considers the type of social revolution required to restore the working class from the alienation of capitalism, the rights of man and citizen pale in significance (Buchanan, 1982: 102). If anything, the rights of man and citizen are implicated in the lack of true emancipation of man. Marx's social theory of rights essentially argues that the same social relations of production that allow the value form of human labour production to emerge, give rise to the idea of having rights (Buchanan,, 1982: 102). Although Marx's critique of rights and human rights has been described as negative and nilhist, there are those who argue that it is anything but that. Marx does not wish to critique law per se but the manner in which the law is used to perpetuate the interests of a particular class and concretise the alienation of the working class. Marx seeks to dismiss the illusion of equality and freedom achieved through citizenship and rights.

There is a strong corollary argument which posits the direct opposite. It argues that the notion of citizenship has a total lack of qualification and that wealth does not entitle people to political power. Thus, financial prowess has no effect on political participation. This argument is more convincing for the context of Ancient Greece in Antiquity than it is for contemporary experiences of citizenship. Despite being non-responsive to wealth at a theoretical level, at a practical level inequality and poverty directly affect the experiences of both inclusion and exclusion negatively.

2.1.2. Feminist Critique of Citizenship

The feminist critique of citizenship focuses on disagreement with both the liberal and republican rigid distinction between the private and public sphere (Deveaux, 2006: 52). Out of this critique have emerged alternate concepts of politics and citizenship. Historically the public sphere, in the republican formulation of citizenship, has been limited to free male citizens who engage in politics under conditions of freedom and equality (Dietz, 1998: 380). Notions of citizenship from antiquity and following through to the modern state have a strong understanding of masculinity. To be a citizen was equivalent to being a warrior or a soldier. There also appeared a sacrificial logic of citizenship that asserted that at the moment of war, one could prove themselves to be a true citizen by giving up one's life for one's empire or nation. Aristotle (1958: 1253) claimed that the private sphere was one of necessity and inequality which must not be allowed to enter into the political space. Hence, women who were associated with the private sphere of reproduction were denied citizenship and restricted to the private sphere.

Okin (1992: 60) argues that the unequal position given to the household was based on a mythical division that was decided upon in the public sphere from which women were excluded. Okin (1992: 64-65) famously challenged republicans by asking "which is likely to produce better citizens, capable of acting as each other's equals? Having to deal with things part of the time – even the mundane things of daily life? Or treating most people as things?" Equally, Mill (1869:212) asserted that an egalitarian family had greater chances of realising equal citizenship than one mirroring the image of a despot. The natural consequence of this is that the realm of the political cannot be insulated from the private sphere. Feminists also see no harm in this being true.

Although the liberal conceptions of citizenship recognise the centrality of the private spheres, feminists have fundamental problems with their conceptions of citizenship as well. Liberals have an instrumental conception of political liberty that prioritises formal rights that protect private lives from external interference. However, feminists argue that such neutral conceptions of egalitarian individualism mask the reality of women's subjection (Pateman, 1989: 120). Dietz (1998: 380-381) goes as far as to say that 'male property' includes in it the 'woman's sphere' as woman were subordinate to their husbands. The distinction between private and public barred women from accessing the public sphere and thus affecting the conditions that they lived under in the private sphere.

There are two main consequences for reforming citizenship in response to the feminist critique. The first is that women are recognised as individual not in relation to men and thus are included in the concept of citizenship and its benefits. Subsequently, this inclusion would draw attention to the manner in which "laws and policies structure personal circumstances...and how some 'personal problems' have wider significance and can only be solved collectively through political action" (Pateman, 1989: 131).

Feminists are opposed to the rigidity of the private/public distinction; they do not however believe that the categories are collapsible or irrelevant. It is important to acknowledge that the boundaries around these spheres emerge as a result of social construction which is continuously open to transformation and contestation. Further, hierarchical characterisations of the spheres should also be resisted as it inevitably results in the dismissal of crucial aspects of human life. At the core of the feminist aspiration is an acknowledgement of the social characteristics such as gender, class, culture and language which inform the manner in which the citizen appears at different phases in history. Politics cannot and should not be insulated from the private sphere or any sphere as all spheres have political consequences.

2.1.3. Citizenship and Unification/Equalisation

Despite the fact that there has never existed a completely homogenous and identical political community, citizenship has been used as a mechanism of unifying and homogenising disparate communities. In an egalitarian sense, citizenship is of utility, because it has an equalising force amongst citizens; "We are all citizens" (Eisenberg & Spinner, 2005: 45). Citizenship eliminates all particularities because as citizens we are given equal identity within the state.

The homogenising aspirations of citizenship have further consequences for the identities of citizens. Citizenship, particularly because it emanates from the state, represses other forms of identification. Thus, individuals no longer identify primarily by kinship, ethnicity, religion or tribe. Citizenship becomes the centre of one's identity that should inform why and how one acts. Essentially prominence of citizenship represents the priority of the public sphere over the private sphere. The elimination of particularity results in formalism and impersonal politics (Coleman & Harding, 1995: 28).

2.1.4. Citizenship and the State

Despite the many differences on the exact content and nature of citizenship, there has been general consensus that the sovereign, territorial state is the framework in which citizenship should be granted (Bader, 1995: 230). As discussed above, the notion of citizenship or being a citizen is tied to membership and belonging within a particular political community. This membership is recognised with the formal and legal conferral of citizenship which allows citizens to then participate in the activities of the state such as voting. Citizenship, thus, presupposes the existence of a bound and definable political community (Abizadeh, 2008: 39). Though the community may broaden or shrink over time, there is a constant attempt to represent a common identity.

State sovereignty to determine who gets citizenship and the legitimacy of borders as mechanisms to determine the boundaries of political communities have become increasingly contested and challenged (Abizadeh, 2008; Baubock, 1994; Carens, 1987 and Kymlicka, 2001). In the wake of what is generally termed 'globalisation', the physical and moral authority of the state has come in to question. Globalisation in this context is relevant to the extent that it includes as part of its phenomena increased transnational economic exchange, the mass expansion of communication networks and soaring levels of migration which have resulted in social and cultural exchanges and integration (Miller, 2008: 371). All these activities have resulted in state borders becoming increasingly porous. As borders lose their legitimacy as margins of difference, the legitimacy of state sovereignty also comes into question.

The authority of states to determine who may and may not have access to citizenship is contradictory to the right of free movement. At the centre of the contention between self determination and free movement is the obligation of states to those who come from conflict

or impoverished communities and the right of the state to "protect its integrity by excluding non-members" (Baubock, 2008: 6). On the issue of humanitarian assistance, there are two dominant views. The UN (1951) Convention Relating to the Status of Refugees insists on the principle of *"non refiulement"* which requires signatory states "not to deport refugees and asylum seekers to their countries of origin if this threatens their lives and freedom." So, any individual who can prove that they have left a life of extreme precarity in which their death was likely should be welcomed into foreign political communities. There are also individuals who argue for the assistance of 'outsiders' based on our common humanity.

However arguments grounded in humanity generally invoke weak responses from states especially as they counter that they have a greater obligation to the livelihoods of their citizens then they do the livelihood of strangers/foreigners/outsiders. Also, calls to common humanity do not change the fact that the political community sole authority on deciding who receives membership and who does not is the state. Thus, the livelihoods of asylum seekers, refugees and stateless people alike remain at the mercy of the state which more often than not chooses to exclude rather than to include outsiders; especially those of lower socio-economic circumstances. Walzer (1983: 47) argues that the redistribution of membership could be premised on the fact that some states have more than they reasonably need whilst others are clearly in lack. This argument however is also reliant on state decision-making regarding both national interests and the interests and needs of the other.

Critics have rightly argued that state obligations towards migrants, asylum seekers and the stateless extend much further than merely the recognition of a kind of common humanity. In general they argue that borders should be open and that decision-making regarding membership to specific territory should not be limited to states. If we live in an international community that recognises the equal moral value of all individuals, citizen and non-citizen, and if that individual moral value is prioritised over that of the community than there cannot be a rejection of the 'alien/migrant/stateless' claim to admission and citizenship (Carens, 1987: 256). Carens (1987: 257-259) further argues that contemporary liberal theory must acknowledge the arbitrariness of the citizen vs alien distinction which is not justified by nature or achievement. What is at stake is a re-evaluation of discriminatory border and migration policy under conditions of the equal consideration of both aliens and citizens (with neither raking primacy). So states are more than welcome to factor in self-interests issues such as the sustainability of welfare projects but these must be balanced with an

evaluation on the equal consideration of the right to life, employment, healthcare and other civil and political liberties of non-citizens.

In conclusion, there are a number of important characteristics of citizenship that must be highlighted. Firstly, despite the prominence of legal definitions, citizenship is a political concept, and according to Carl Schmitt a polemical concept that is always in an antagonistic relation to other concepts. Citizenship has also been central to the construction of Western politics and geopolitical space, and it was a European concept at inception. Most importantly, citizenship is always a contested field and its boundaries constantly change. There also seems to be an undeniable relationship between citizenship and capitalism with the mutual reliance of one on the other. Lastly and crucial for discussions in this research essay is the fact that there is an undeniable relationship between citizenship and exclusion. Although citizenship has been seen as an empowered position; vulnerability and exclusion seem linked to the very possibility of citizenship.

2.2. Statelessness

In the literature on statelessness specifically produced by the UN, AU and international NGO's, statelessness is defined primarily in its relationship to nationality and the terms 'citizenship' and 'citizen' are used synonymously with 'nationality' and 'national'. Nationality is understood as the legal bond between a person and a state that enables them to exercise a range of rights (UN, 1961: 1). The use of nationality rather than citizenship by these institutions is indicative of the close relationship between the bond between state and citizen and the emergence of the nation-state. In this research essay, I will use the term citizenship predominantly outside of contexts where nationality is used by texts. The concept of citizenship precedes the emergence of the modern nation-state and a true genealogy must take into consideration the types of citizenship that existed in antiquity. In pre-state political communities, citizenship was premised on legal authorship; participation in making the laws that one will have to follow (Pocock, 1995: 33).

As evidence of the above mentioned tendency of the UN to speak of nationality and nationals rather than citizenship and citizens, the UN (1954) 'Convention Relating to the Status of Stateless Persons' defines a stateless person as one "who is not considered as a national by any state under the operation of its law." Thus, formal recognition is the only way to alleviate statelessness. Those who are nationals of foreign states, such as certain migrants, do not

count as stateless when they leave their state of origin unless their citizenship is subsequently revoked.

Article 1 of the Convention provides three important provisions under which a person will not be considered stateless despite not having the nationality of any state. These are i) persons receiving protection or assistance from a UN agency outside of the UNHCR, ii) persons who are recognised by state authorities to have the same rights and obligations of nationals of the country and most controversially

iii) "persons with respect to whom there are serious reasons for believing that:

a) they have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
b) they have committed a serious non-political crime outside the country of their residence prior to their admission to that country;
c) They have been guilty of acts contrary to the purposes and principles of the UN." (UN, 1961: article 1).

These Article 1 iii general provisions that lay out the instances in which the UN deems it acceptable for one to be stateless dispel certain myths. The introductory note of the Convention states clearly that this Convention exists as the most comprehensive framework that has codified the rights of stateless people at an international level for "those who qualify as stateless." Stateless people, who often have antagonistic relationships with their states of origins because of conflict spaces, discriminatory domestic politics and their exclusions, are not considered stateless if they commit the ambiguous "crime against peace", "non-political crime "or "act contrary to the principles of the UN."

The first myth it dispels is the right in Article 15 of the Universal Declaration of Human Rights that "everyone has the right to nationality". Those provisions clearly define a group of people who do not have the right to nationality which makes the right not inalienable and universal as it is presented and understood. Furthermore, in conflict situations, states have the dominant authority in labelling those that challenge them as "terrorists", "war criminals", etc. It seems unfortunate that the UN would allow states – the first instance perpetrators of exclusion – the right to than label and condemn those that they have excluded.

The provision that one will not be considered stateless, even without the nationality of any state, if they enjoy the same rights and obligations as citizens is unsatisfactory. It is not stated whether a formal or substantive enjoyment of rights and obligations is being considered. If it is the former, and the stateless appear as right-bearing within national law, does this automatically cancel out the precarity of their situation? The answer is no, as even in states which recognise the stateless and confer on them some level of rights, stateless people have failed to substantively make use of those rights.

The Convention ends with a Model Travel Document that it suggests should be issued to stateless persons to allow them to travel and live legally in a country. The Travel Document highly resembles the Dompas that was used in apartheid South Africa to monitor the movement of black South African's in a highly dehumanising and discriminatory way. Although the document was created in the name of protecting the right of the stateless to freedom of movement, it's requirements and prescriptions result in the opposite; freedom of movement that is highly monitored, restricted and often denied.

Furthermore, the 1961 'Convention on the Reduction of Statelessness' states explicitly that the Convention seeks to "balance the rights of individuals with the interests of States". It does so by "setting out general rules for the prevention of statelessness, and simultaneously allowing some exceptions to those rules" (UN, 1961: i). In the section on Arendt, I will put forth her argument that states that it is exactly the provision for the exception by the UN that allows for the emergence of minorities and stateless people as a group.

Article 2 of the Convention which is unqualified states that "every stateless person has duties to the country in which he finds himself (UN, 1961: article 2). The UN insists that stateless people conform to the laws and regulations of the states they are in and maintain public order in a context where these individuals are highly marginalised, ill treated and often killed. Also, as with all UN Conventions, the obligations included only apply to contracting states. States contract to UN Conventions of their own free will and it has been no surprise that the states that have the largest numbers of stateless people are not signatories to these Conventions such as the Dominican Republic.

2.2.1. Causes of Statelessness

One of the primary causes of statelessness, globally, has been increased levels of migration across borders (Buitrago, 2011: 8). Migration has been motivated by social, economic and political reasons. Economic reasons include the transnational character of the global market, increasing levels of unemployment in certain areas and the promise of employment and prosperity in others as well as the possibility of a broader consumer market (Martin, 2013: 2). In specific areas in the Global South, internal conflict and fear for one's life remain pertinent reasons for the mass migration that has been seen in countries such as Malawi and North Korea. As a result of a boom in what Balibar calls transnational citizenship, migrant-receiving countries have become less and less willing to allow migrants and foreigners to become citizens.

Gender discrimination remains a leading cause of statelessness with women and children disproportionally making up most of the stateless people in the world (UNHCR, 2008: 11). In certain African countries, children must be given the nationality of the father. Single moms who are no longer in contact with their children's fathers struggle to register children as it is considered culturally and legally unacceptable. Many countries also have stipulations as to the marital status required to confer citizenship on to children and their [foreign] spouses (Manby, 2011: 4). Although an international legal framework has been developed to prevent discrimination on the bases of race, gender, ethnicity and so on this framework faces many challenges. One of them is the inclusion of traditional authority in national governance. Traditional stipulations on identity are extremely gender biased and patriarchal.

Manby (2011: 5) identifies the main causes of statelessness in Southern Africa as discriminatory laws on the basis of gender, race or ethnicity as well as a failure to integrate historical and contemporary migrants and their children. She contends that all these causes are related and must be understood within the context of the regions pre and postcolonial landscape. The colonial history of Africa is relevant because i) colonial powers arbitrarily created borders that often cut through and divided communities and they also forced migration of communities away from their homes and places of birth. Thus, colonialism represented a mass dislocation of people from territories that they considered as their places of belonging; ii) there was a legacy of multi-tiered legal systems of citizenship that were based on racial discrimination. In most colonies there was a distinction between racial and ethnic groups which correlated with preferential treatment of some at the expense of others

(Manby, 2011: 5-6). The legal systems of colonies were used as a mechanism to enshrine racial discrimination with European settlers being granted full citizenship and rights and native subjects being granted partial recognition and rights.

Post-independence, citizenship was also used as a political tool to punish those who did not participate in or participated on the wrong (colonial) side of Liberation struggles. Manby (2013: 6) gives the example of post-colonial Mozambique where those who fought with the colonial powers against FRELIMO were excluded and denied citizenship for having aligned with "colonial-fascist political organisations" whereas members of FRELIMO were automatically given Mozambican nationality. One of the most problematic features of post-colonial Africa was the tendency to link nationality to proved historical connections to a territory (Mandal & Gray, 2014: 16). As a result of the above stated arbitrary division of Africa and forced migrations during colonialism, most could not prove ties to the land and were denied citizenship on that basis.

In addition, almost fifty percent of African countries have citizenship laws based on some form of ethnic discrimination particularly concerning citizenship conferred at birth (Crush & Williams, 1998: 4). Citizenship by birth is only conferred on people of Negro descent in Sierra Leone and Liberia, both nations founded by freed slaves (Harris, 2001: 56). In Somalia, DRC and Uganda and parts of Nigeria, citizenship is premised on autochthony, being from the soil or indigenous to the land. Issues of descent and indigeneity are complicated not only by colonialism but on the emergence of new generations that have parents with different descent. A UN (2013: 12) study revealed that twenty six countries, including Kuwait and Qatar, deny mothers equal rights to pass their nationality down to their children. Further, some of these countries also denied children citizenship if they were born out of wedlock and women would lose their citizenship if they left their husbands. These states are guilty of arbitrarily depriving people of citizenship.

State succession, particularly in post-conflict eras, has also resulted in the preferential inclusion of some and exclusion of others. State succession refers to the process whereby i) a part of a state separates and forms a new state, ii) two or more states join to unite, iii) territory is transferred from one state to another or iv) a state is replaced by two or more new states. As new states emerge, international borders have to be continually redrawn. This is a central cause of statelessness as who is 'inside' the state and who is 'outside' is constantly changing. Since the end of World War II, a hundred new independent states have been formed. Most of

them, at the moment of their formation, used discriminatory criteria to determine who would make up the new citizenry. This discrimination resulted in many becoming stateless.

Lastly, it must be acknowledged that statelessness has also to a large extent been caused by technical issues and administrative limitations. In South Africa, for instance, Lawyers for Human Rights (LHR) (2013: 14) found that most 'stateless' children simply had not been registered at birth. These children grow to be stateless adult who cannot engage in the formal economy because they have no means for proving that they are South African. The lack of birth registration is largely a rural problem where children are not born in hospitals and parents do not have close access to a Department of Home Affairs. South Africa also has a huge orphan population of children who were abandoned at birth by their parents (LHR, 2013: 21). Legislation has been developed in South Africa to deal with these problems but the problem persists. Conflict between citizenship laws of different countries has also resulted in the increase of statelessness. Some states base citizenship laws on blood relations (jus sanguinis) and others on birth in the country (jus soli). As individuals migrate to different countries they encounter laws that are in conflict with the ones they had back home and as a result they become stateless (UNHCR, 2008: 16).

2.2.2. Ramifications of Statelessness

Despite being an overt violation of stateless people's right to nationality, statelessness has other serious ramifications. The first and most obvious is the lack of legal protection within the state of residence. Refugees International (2015: internet) claim that the stateless are denied the "right to participate in political processes, inadequate access to healthcare and education, poor employment prospects and poverty, little opportunity to own property, travel restrictions, social exclusion and vulnerability to trafficking, harassment and violence" (Southwick and Lynch, 2009: i).

Kingston and McBride (2013: 5) identify three main challenges for stateless individuals, particularly in Egypt, namely freedom of movement, equality before the law and access to economic and social rights. Stateless people find it either extremely difficult or impossible to move freely. They are denied all aspects of the right to leave, enter or remain in the state as this type of movement requires documentation such as passports which the stateless do not have. This restriction exists despite Article 13 of the UDHR (UN General Assembly, 1948)

which specifies that "everyone has the right to freedom of movement and residence within the borders of each state". Article 13 also stipulates that "everyone has the right to leave any country including his own, and return to his country." Notably, these rights within domestic law are usually translated as citizenship rights. Thus they are not applied to stateless people. The specification of one's "own" country excludes the stateless as their nature of existence is that they do not have their own country. Further, once legislation exists that prevents both entry and exit without documentation, the stateless are stuck. They cannot legitimately exist within the state and they cannot leave the state. Possibilities to escape depravation and exploitation are non-existent. In Egypt, an increasing number of stateless people are detained without trial and remain in Egyptian prisons with no hope of getting out.

Secondly, the empirical experience of statelessness has shown that stateless people suffer great inequality and discrimination before the law (UNHCR, 2008: 22). Another contradiction in International Law must be acknowledged here. The UDHR guarantees that "all are equal before the law and are entitled without any discrimination to equal protection of the law" (UN General Assembly, 1948: article 7). But to which law is the UDHR referring, international law or national laws? The principle of sovereignty in international relations protects the rights of states to self-determine the width and breadth of their laws. Most states clearly define laws in terms of the rights of their citizens. This places stateless individuals at a great disadvantage anytime they engage with law enforcement. Either laws are suspended and they face the worst kind of police brutality or they are unevenly applied and the stateless end up in worse positions than they would have been if they were citizens in the exact same circumstance.

There is no direct law that the stateless can call upon. Kingston and McBride (2013: 32) note from their research that the stateless are especially susceptible to arrest, police brutality and indefinite detention because they lack any form of identification. If a stateless person is harassed in the street by a policeman and illegally detained, if there is no national framework that legally empowers such a person, they have no avenue for recourse outside perhaps of human rights. How do they invoke their human rights when being beaten by a policeman in rural Egypt? The onus is generally left on states to ensure that the international human rights of individuals are protected but there are more incentives for states not to do so than there are for them to do so. Even in situations where national legal frameworks include provisions for the protection of the stateless, stateless individuals rarely see the inside of a courtroom and are dealt with in an extra-legal manner. Even in instances when the international community

is alerted to state maltreatment of the stateless, very little has been done. The UNHCR has on many occasions requested access to the many detained individuals in Egypt but the government has denied them and that is where the matter has to end because of state sovereignty.

Thirdly, stateless individuals suffer great socio-economic depravation. Socio-economic rights are those rights that require action from the state to be fulfilled. Intuitively, one can predict why the stateless are denied such rights. Amnesty International (2013: a) describe social and economic rights as those rights that are "conditions necessary to meet basic human need" and list access to healthcare, employment, food and shelter as amongst important socio-economic needs. The formal protection of these rights generally exists in constitutions (see South Africa) or legislation. Since stateless people lack formal documentation they cannot find employment in the formal sector which is protected by labour laws. Further stateless individuals are not permitted to buy property, open bank accounts and/or register their children for school. Stateless people are open to greater levels of exploitation and abuse within the informal sector which is their only hope of obtaining wages and maintaining livelihoods. They make up the majority of individuals who participate in dangerous occupations such as illegal mining.

The lack of the right of children to access to education is compounded by contradictory rules and regulations. Every child registering for school requires a birth certificate. In Africa particularly, many stateless children are de facto stateless not de jure stateless meaning that they have never had citizenship and/or have no documentation to prove their relationship to the state. States particularly in under-developed and developing states already have limited resources and struggle to meet healthcare and education for girls and for their own citizens let alone including refugees, migrants and the stateless. This has resulted in access only being given to the extent that it has been externally funded by International organisations such as Amnesty, the UN and the AU.

2.3. Rights

Rights are individual entitlements conferred to persons by virtue of either being human in the case of human rights or being a citizen in the case of state conferred rights. In the discourse of rights it is agreed that rights are coupled with a list of obligations that one must meet in order to keep in good standing. Louden (1983: 95) asserts that "rights are permission rather

than requirements. Rights tell us what the bearer is at liberty to do." Thus, rights are a tool of empowerment for those who have them, and disempowerment for those who are deprived of them. Categories of rights include moral rights, legal rights and customary rights. Moral rights are those premised on moral reasons, legal rights are derived from law and customary rights emerge from local conventions (Callan, 1997: 23). Conflict surrounding rights is generally based on which rights should have priority over which rights, tensions between rights and responsibilities as well as selective application of rights. In most countries, not all, stateless people are denied citizenship rights. This means that the only rights they can call upon are human rights. Human rights are the rights and freedoms that all people are entitled to as a result of their being human. Human Rights Watch (2014: internet) defines human rights as "a set of moral and legal guidelines that promote and protect a recognition of our values, our identity and ability to ensure an adequate standard of living."

Agamben, Arendt, Balibar and Rancier all make reference to the Declaration of the Rights of Man and Citizen in their analysis of statelessness and critiques of human rights. The Declaration is a fundamental document of the French Revolution that was introduced by General Lafayette (Cohen, 1999: 256). The rights that are espoused in the Declaration are meant to be universal and valid at all times; the preamble states that the rights are "natural, unalienable and sacred." Thus, even in the state of exception the Rights of Man are supposed to apply although this is rarely the case. Core rights included in the Declaration include liberty, security, property and resistance to oppression. Notably, popular sovereignty is highlighted as a central principle in the Declaration. The Declaration represents the premise of a free and equal society protected by law. Despite being inspired by the American Revolution and Thomas Jefferson, the Declaration is largely understood as representing the values of the French Revolution. Article 3 of the Declaration speaks to an issue central to this essay, the link between sovereignty and stateless. The Article says "the principle of all sovereignty resides essentially in the nation. Nobody nor individual may exercise any authority which does not proceed directly from the nation" (UN, 1948: article 3).

2.4. Precarity

Judith Butler in her book *Precarious Life: The Power of Mourning and Violence* provides a provocative account of what precarity or precariousness means in relation to human life. She invokes Levinas's notion of the 'face' which represents "the Other that makes an ethical demand on me" (Butler, 2006:131). Butler makes two crucial claims about the relationship between the insider, represented in this research essay as the citizen, and the other, represented by the stateless. The first is that in relation to the 'face'/the other, the included is exposed as the "usurper of the place of the other" (Butler, 2006:132). Secondly she claims that to acknowledge the vulnerability of the 'face' is to question one's own ontological right to existence. Thus, precarious life is life that is rarely acknowledged to be so by those who don't experience it because of the moral dilemma it poses for their own existence. There has been an alarming lack of activism for the inclusion of the stateless by grassroots organisations, NGOs and the state. Following from Butler's analysis, this could be because the nature of the stateless is that through their own vulnerability, they expose the vulnerability of others. Butler argues that the only description apt enough for the face is "that for which no words really work" (Butler, 2006: 134). The face exposes the limitations of the categories of the status quo.

For Butler, Levinas is relevant today for two other reasons. The first is that he provides a framework for thinking through the relationship between representation and humanisation (Butler, 2006:140). It is in the sphere of representation that humanisation and dehumanisation simultaneously constantly occur. The second is that he offers an account of the relationship between violence and ethics. For the purposes of this research essay, it is her first claim that is most relevant. It is easier to be considered human if one can be represented and history has shown that the unrepresented are often dehumanised and treated badly. However, Butler notes a paradox regarding the humanising effect of personifying or representing the 'face'. The other must be humanised in order to have their existence and precarity acknowledged. However, in modern media she notes that the other is personified for the purpose of dehumanisation. Thus there are possibilities for what now becomes an inhuman humanised 'face'. She invokes the examples of Yasser Arafat, Osama bin Laden and Saddam Hussein who were dehumanised through a particular type of representation of their otherness as evil, deception, tyranny and terror.

Butler notes that "the face is in every instance, defaced." There is never an attempt to present the other as comparable or the same or alike. Further she argues that Levinas showed that there can be no direct representation for the 'face' understood as human suffering or a cry of human suffering. More importantly, the face is not effaced in its lack of representation but is constituted in the possibility. Butler (2006: 145) ends off with this powerful statement which aptly presents the extreme precarity of the stateless that will be described by Giorgio Agamben and Hannah Arendt in the next section – "the 'I' who sees that face is not identified with it: the face represents that for which no identification is possible, an accomplishment of dehumanisation and a condition for violence." The stateless could very easily be substituted as the 'face' in Levinas. Their lack of identification or rather their identification as a form of lack (lacking nationality, citizenship, rights and so on) creates the conditions under which they are marginalised and dehumanised. The representation of the stateless by states, such as France, as a threat to national security and the dignity of the state has indeed resulted in conditions wherein the stateless experience extreme levels of sanctioned violence against them.

2.5. Potentiality

2.5.1. Political Liminality

Liminality is a term that emerges and is used in the main within the discipline of Anthropology. Developed in the 20th century by anthropologist Arnold van Gennep, the term was subsequently expanded and introduced in other fields by Victor Turner. Gennep uses the concept in the context of cultural rituals. Here, liminality is "the quality of ambiguity or disorientation that occurs in the middle stage of rituals, when participants no longer hold their pre-ritual status but have not yet began the transition to the status they will hold when the ritual is complete" (Gennep, 1909: 76). Importantly the liminal stage represents a threshold between a previous identity and a new way that will be established as a result of the ritual.

In his book, *Rites de Passage,* where the concept liminality emerges for the first time, Gennep employs it to discuss rituals in small-scale societies. He makes an important distinction between rituals that result in individual/group change and rituals that represent changes in the passage of time. Gennep purports a three-fold sequential structure of analysis. The first stage is preliminal rites also referred to as rites of separation (Gennep, 1909: 101).

Preliminal rites require a metaphorical 'death' through a process of breaking previous practices and routines; the initiate is forced to leave something behind.

In the next phase of liminal or transitional rites, a 'fabula rasa' is created. This means that forms and limits that were previously taken as given are removed. Gennep (1909: 123) insists that liminal rites follow a prescribed sequence of which everyone is aware. In addition, a master of ceremonies leads the process of transition. This process is inherently destructive in that it is in this stage of the ritual that considerable changes are made to the identity of the initiate. Transition "implies an actual passing through the threshold that makes the boundary between two phases" (Gennep, 1909: 130). It is this passage from what is to what will be that liminality characterizes.

Lastly, are postliminal rites or rites of incorporation. This is the phase I would like to associate with the potentiality of the stateless individual. During this stage the initiate is re-incorporated into society with a new identity, as a "new" being (Gennep, 1909: 132). Gennep uses the example of initiation rites where youngsters go through the process of separation and transition that culminates with them being re-introduced into society as adults. What liminality in essence describes is the passage from one culturally defined identity to another.

The term has broadened to include political changes as well. What remains is that liminality describes periods where social norms and hierarchies have the prospect of being reversed or dissolved. High levels of uncertainty begin to surround dominant traditions and future outcomes may be thrown into doubt. Liminality is characterised by the suspension of order, which results in a flexible, malleable state of affairs that enables new institutions and customs to become established. Liminality represents the potentiality of dissolving the past and recreating the future.

Victor Turner in his extension of the concept of liminality argued that all liminality must dissolve "for it is a state of great intensity that cannot exist very long…either the individuals return to the surrounding social structure…or else liminal communities develop their own internal social structure" (Turner, 2005: 134). The point about the limit to the extent that liminality can exist is also pertinent to the suggestion that the stateless cannot remain stateless forever and that they will inevitably stage a dissensus that results in the emergence of a new alternative contrary to the state and citizenship.

How can we read statelessness and its possible potentiality through the lens of liminality? The first stateless people became stateless through losing their nationality after World War 1 (WW1). They transitioned from a secure position of being citizen subjects to the precarious position of being first minorities and refugees and then stateless. This would be the preliminal phase of statelessness, what Gennep referred to as the rite of separation. The metaphoric death and breakaway from an old position for the stateless person is the loss of citizenship and a sense of belonging within the state. In the liminal phase of transition, forms and limits taken for granted are no longer seen as the norm. Citizens do not question the basis on which they are given rights and freedoms. They do however take steps to ensure that the state lives up to its responsibility to protect specific entitlements and protections. However, when one transitions from citizen to stateless individual and is put in a position where there are little or no freedoms, rights and protections, one begins to question the very basis on which these are conferred.

The destructive element of this phase which fundamentally changes the identity of the initiate is mirrored in the way in which domestic and global institutions fundamentally engage differently with a stateless person as compared to a national or citizen. The changes from citizen to stateless are stark as read from the descriptions of both above. This is not to deny the fact that citizenship can be precarious as well but rather to note that both the position and experience of statelessness are fundamentally worse off and different to those of a citizen. The threshold that a stateless person transitions through is essentially from recognition to non-recognition.

It is the potential of the stateless person to be reincorporated with a new identity that is at stake in the discussion of section four of this essay. Perhaps to extend Gennep's analysis, what is at stake with the reincorporation of the stateless person is not only a new identity for them but a new identity for the context in which they will be reincorporated as well. Section four of this essay contends that the stateless individual has the potential to be a revolutionary subject that destabilizes the status quo. The stateless person by making demands on the state that are thought to be limited to citizens, calls into question the relevance of the categories of 'citizen', 'subject', 'state', 'sovereignty' and so on. Remembering also that Marx asserted that in order for one to become a revolutionary subject one has to reach the threshold of vulnerability, subordination and exploitation

2.6. Non-citizens

The term non-citizens is used as an umbrella category into which all individuals who are not citizens in the state they currently reside in form part of. Non-citizens include refugees, asylum seekers, migrant workers as well as the stateless. The use of the term non-citizens in the international law and analyses of statelessness is an acknowledgement that the plight of non-citizens is characteristically different from that of citizens and thus must be addressed as such.

Although the focus of this research report is stateless individuals, in both domestic and international law they are generally dealt with as non-citizens. The category of stateless individuals is hardly ever dealt with as a unique and distinct category. Furthermore, of the categories of non-citizens which includes migrants and refugees, the stateless have received the least attention. This too highlights the extreme precarity of the position of statelessness.

However, as will be shown in what follows, the position of statelessness is seen as one of potentiality as well. The potential of statelessness lies in it's ability to challenge the status quo of a global politics still centred on statehood and sovereignty. The stateless is the one who doesn't fit in, exists in an alternate realm in which politics can be recreated and pursued. The potentiality of the stateless is the potential to disturb, destabilise and perhaps breakdown politics as we know it.

2.6.1. Refugees as Stateless?

Agamben (1995: 114) addresses the issue of distinction between 'refugees' and 'stateless' people in a paper he presented at a symposium on Hannah Arendt's 'We Refugees'. In section two we defined stateless individuals as those who did not have citizenship of any state whereas refugees were not citizens of their current state of living but did have citizenship of another state; a state which they are generally forced to flee for reasons of conflicts, famine, genocide and so on. However, Agamben asserts that the distinction is not as clear. He points back to the end of World War I where many refugees such as Polish and Romanian Jews preferred rather to be stateless than to return to their 'homes' and notes that refugees in current times who face persecution or unliveable conditions were they to return home. These individuals would be considered refugees and not stateless. On the other hand, in the period after World War I, thousands of Armenian, Russian and Hungarian refugees were

denationalised (their citizenship was revoked) by new Turkish and Soviet governments and thus were truly stateless in the international law definition of the term.

Agamben wants to equate the precarity of these situations and locate both subjects, the refugee and the stateless in a similar paradigm of analysis. An element of this, important to this essay, is how both conditions of subjectivity are born out of mechanisms utilised by the modern state. In this significant moment of post-WW1 restructuring, states in Europe introduced law that allowed them to revoke the citizenship of their own nationals through either denaturalisation or denationalisation. The revoking of citizenship was done under the auspices of rooting out i) naturalised citizens of enemy origins (France, 1915), ii) naturalised citizens who had committed anti-national acts during war (Belgium, 1922), iii) Citizens unworthy of citizenship (fascist Italy, 1926), iv) full citizens distinct from citizens without political rights (Germany, 1935) (Agamben, 1995: 114). As a result of the continued use of law by the modern state to exclude significant numbers of its populations, mass statelessness resulted. It is at this point, Agamben wants to argue, that the modern-state is emancipated from "naive notions of 'people' and 'citizen'".

The different theorists that are employed in this essay use different terms when referring to the subject that exists in a precarious position outside of citizenship. For Arendt and Agamben, the 'refugee' signifies the other of citizenship. Arendt acknowledges the transformation of the refugee into the stateless whereas Agamben equates the positionality of the two as discussed above. In Balibar and Rancier there is a more direct engagement with the stateless as stateless people. Although citizenship and statelessness are positioned in relational opposites, the former as empowerment and the latter as lack, precarity and potentially are not. Precarity and potentiality are not mutually exclusive. I'm going to argue that the stateless occupy Butler's position of precarity, stand on the threshold of political liminality and become revolutionary subjects at the moment they become aware of the potential they have to challenge the status quo.

Section 3: Statelessness as Precarity

3.1. Arendt and Statelessness as Rightlessness

There are three main texts that provide us with the depth of Hannah Arendt's argument regarding statelessness. These are *The Origins of Totalitarianism, The Minority Question* and the paper *We Refugees.* Pertinent stylistic differences between the three pieces is that the latter two were written from an 'I' participant perspective whereas the former text was written from the perspective of the observer. Arendt herself experienced statelessness for thirteen years between 1937 and 1950 (Hayden, 2008: 249). Her texts written from the perspective of a stateless person are based primarily on her experience of statelessness as a Jew during the reign of Hitler. This is an important point to remember when analysing both Arendt's arguments and criticisms to her argument.

A unique attribute of Arendt's analysis of statelessness is the link that she makes between statelessness and totalitarianism through both of their relation to the nation-state. For Arendt, both statelessness and totalitarianism are produced by the emergence of the nation state. In particular she states that "denationalisation became a powerful weapon of totalitarian politics" (Arendt, 2004: 269). Furthermore, both stateless and totalitarianism explode the state form as well.

Arendt traces the emergence of statelessness to the end of World War 1 (WW1) and the subsequent appearance of minorities as well as the increasing number of refugees as a result of revolutions (Arendt, 2004: 270). The end of the war resulted in the end of the empires and the emergence of new states (nation-states). Nation-states were an incompatible form of government for Eastern and Southern Europe because the geopolitical context "lacked the very conditions for the rise of nation-states: homogeneity of population and rootedness in the soil" (Arendt, 2004: 270). The Peace Treaties informed the way in which Post-war Europe would be shaped. For Arendt, the Treaties are the initial instigators of exclusion that will become institutionalised, "the Treaties lumped together many peoples in single states, called some of them 'state people' and entrusted them with the government, silently assumed that others...were equal partners, which they were not, and with equal arbitrariness created out of the remnant a third group of nationalities called "minorities" (Arendt, 2004: 270). The power

to rule or the curse of servitude was randomly imposed on different groups through the Peace Treaties.

Thus, the collapse of multinational and multiethnic empires resulted in a multiplicity of states that contained minorities within their borders. Smaller groups (minorities) were denied recognition and statehood. Arendt argues that minorities were a direct result of international law of sovereignty that empowered states to decide who was a citizen and who was not. She states that 30% of 100 million European inhabitants were considered minorities. International law went as far as to create Treaties on minorities that essentially gave nation-states two options, protect minorities or deport them. It is crucial for Arendt's argument that the beginning of statelessness be located in the emergence of minorities. Minorities were given, under international law, certain linguistic, religious and other rights. This gave them an exceptional status in the nation-states in which they found themselves. This had two main consequences. The first was resentment amongst citizens and the state that minorities received extra rights and protections outside of the state which would lead to further marginalisation and exclusion from the state. Secondly, the position of being a minority was no longer a temporary one but a permanent one. Prior to the Treaties it was imagined that all minorities would be integrated into nation-states as citizens or be given their own nation-states and sovereignty. However, with the creation of international minority treaties, their position was no longer one of temporariness before assimilation but of being a permanent outsider, or non-citizen. The need for external protection speaks to the expected precarity of the position of minorities. It was pre-expected that they would not be treated as citizens would be under the nation-state, hence the need to protect them under international law. As states refused to include minorities as citizens, the Treaties were conceived as "a painless and humane method of assimilation" (Arendt, 2004:272). Hence minorities and refugees, because of the refusal of the state to confer citizenship on them, become stateless.

The response of nation-states to stateless people within their borders and outside of their borders was the same. Overwhelmingly, states refused to offer refuge and inclusion to stateless exiles who were a group that was increasing exponentially (Staples, 2012: 12). Rubinstein (1936: 724) argues that states were reluctant to become "a dumping ground for the expelled refugees of the entire world." He purports an instrumental justification for the exclusion of the stateless not based on identity or the purity of the state but rather on the manageability of the size of the citizenry. Staples (2012: 13) makes the interesting assertion that, had a supra-state authority existed that could coerce the nation-state to include the

stateless as citizens, self-determination and sovereignty would not have been inextricably linked to exclusion. However, were a supra-state to exist, sovereignty and self-determination would not be sovereignty and self-determination as both concepts are premised on the lack of external interference on the making and governing of the nation-state.

One of Arendt's central claims is that the foreigner is the difference that threatens the homogeneity of the state. In 'The Decline of the Nation State', Arendt argues that exclusion is directly linked to self-determination. Self-determination is implicated in the exclusion of individuals and groups through its conflation of nation and law which resulted in the unequal protection of law between citizens and aliens, majorities and minorities and so on. The exclusion faced by the stateless and refugees is premised on their difference from the nation (Staples, 2012: 12). Arendt terms this the paradox of the sovereignty and self-determination; the fact that they inherently include discrimination and exclusion. The denationalisation and expulsion of stateless people creates a new stratum of humanity that is substandard to the included, citizens.

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It is through the exceptional status and rights granted to minorities that they are further marginalised and excluded. Arendt argues that had International Institutions such as the UN not created an exceptional status for minorities and rather granted them sovereignty to form their own state, we would have a multiplicity of states without minorities. An exception made in the name of the protection of minorities enshrined the precarity of their existence. Check Israel ref - Arendt guilty of idealisation.

3.1.1. The Emergence of the Stateless and the Camp

It is through the exceptionalisation of minorities that stateless people emerge as a group. States react to the changed international status of minorities by either i) forced assimilation or ii) forced marginalization. The latter option of forced marginalization was employed to a greater extent than forced assimilation. Minorities, because of their 'special' status are seen as a threat and gradually their rights are removed and they are repressed. In instances where it is possible to do so, minorities are deported. The state frames the 'problem' of minorities as being one of national security with minorities being represented as a threat to national security and identity.

It is as a result of the prevailing 'humanitarian sensibility' of states that results in the creation of the Detention Camp for Refugees. Refugees cannot be assimilated into society as they pose a threat to the security and identity of the state. They cannot be deported as they do not have a nation-state that represents them or will accept them. Thus, the Detention Camp that Arendt perceives as the first concentration camp was created for the stateless. It is in the camp of the stateless that the totalitarian temptation emerges; that the idea of total control of the lives of others takes shape.

Descriptively, the camp is a space of lawlessness and then extermination. The stateless person in the camp survives under terrible living conditions. They are deprived of all necessary social goods that are required to live an acceptable life. They are deprived of the structure and order that prevents lawlessness and chaos in society as large. They are deprived of the protection of the state and can make no claims for recourse in the instance that they are a victim of crime or injustice. The stateless individual exists through lack and absence. The context of the camp for Arendt represents the extreme condition of emergency, the state of exception. The state of exception is characterized by the suspension of rights and protection for individuals. More importantly, a state of exception allows executive power to act without constraint towards an enemy. The consequence for the stateless in the camp is clear; they can be deprived essentially of life without any consequence on those who deprive them.

3.1.2. The Implication of Human Rights in the Deprivation of the Stateless

Stateless individuals, as a result of not being citizens, are deprived of civil rights. The only rights that they can appeal to are human rights, which are universal to human beings. Arendt likens the appeal to human rights to an appeal to an abstract, naked conception of existence. Human rights are conferred on an individual by virtue of their existence, the fact that they live and breathe as a human being. Herein Arendt identifies the perplexity or enigma of the rights of man. The paradox of human rights is that at the moment when one's humanity is threatened the most, the moment when one's humanity is fore-grounded is the same moment in which one is most threatened. The more human one becomes, the more vulnerable they are to death and deprivation. If an individual is a citizen, they can appeal to their political, civil and socio-economic rights. However, the stateless as rightless non-citizens can only appeal to their humanness.

Arendt wants to highlight that there is no space for the particularity of individual identities in the discourses on human rights. Human rights are founded on universality and the lack of particularity of subjects outside of being human. However, the invocation of one's humanity represents extreme precarity rather than empowerment. The stateless appeals to human rights because of "the total destruction of the individual's status in organized society" (Staples, 2012: 13). Human rights are a non-national form of protection that are meant to check the power of the state so that it does not deprive both citizens and non-citizens of fundamental protections. However, the organization of the international community into a plurality of sovereign states undermines or makes useless forms of protection that exist outside of the sovereign nation-state. Arendt (1973:292) pronounces on the UN, as she does on non-governmental authorities: their "failure was apparent even before its measures were fully realized; not only were the governments more or less opposed to this encroachment on their sovereignty, but the concerned nationalities themselves did not recognize a non-national guarantee." This is a central element of Arendt's analysis of statelessness. As a stateless individual, Arendt's primary desire was for citizenship. Similarly, she assumes that most stateless individuals are not interested in receiving extra-state recognition and protection. The stateless want to be included within the state. Arendt has an extremely statist framework of analysis in both her diagnosis of the problem and her imagination of the solution.

Arendt is not unique in her choice of this type of analysis. The UN's 1946 Article 6 recognises the universal right of individuals to "recognition everywhere as a person before

the law." This highlights the international community's juridical conception of rights, citizenship, inclusion and recognition. The stateless individual's only hope of inclusion was at the mercy of the state to recognize them legally. A subsequent consequence of giving prominence to the juridical is that all those who exist outside of the law automatically exist as extra-legal, illegitimate and informally.

What is the constitutive character of statelessness for Arendt? Statelessness consists of primarily the loss of nationality and citizenship. Subsequently, as a non-citizen, the stateless endures loss of legal protection. Through her critique of human rights, Arendt is adamant the stateless individual is a rightless individual. Furthermore, socially, the stateless experience a loss of community. They live a superfluous livelihood grounded on being unwanted and unauthorized. Importantly, and contested by other theorists that will be engaged in the next section of this essay, Arendt asserts that the stateless cannot participate in political action. In order to act politically for her, one must be a recognized part of a political community, which the stateless are not. Thus, the stateless individual (who is the bearer of human rights) is the most dehumanised and vulnerable subject.

Controversially, Arendt likens the position of the stateless person to that of the "savage" in Africa. She goes as far as to say, the emergence of statelessness represents the explosion of Africa into Europe, the Africanisation of Europe. Arendt constructs this racist assertion in the context of colonialism. Africans were perceived by Europeans, during this period, as are pre-political or naturally stateless persons. The entire continent consisted of individuals without a political community who were included into the colonized territory through limited recognition from the colonizer. Colonialism developed dual legal systems – one for citizen and one for colonial subjects. (Mamdani, 1996: 68).

With the colonial experience, mechanisms of coercion, power and violence of exploitation and manipulation become used in the colonial metropolis. There occurs an internationalization of the racist politics from colonies to the colonial states. The totalitarian state, which emerges from the temptation of the camp, is the internalized colonial state for Arendt. Migrants are the new barbarians, the new inferior other that is a national threat. They represent a regression from civilization to barbarism.

3.1.3. Arendt's Solution to the Problem of Statelessness

Arendt would have it that all individuals and groups be given the right to have rights. This right to rights should exist as a fundamental right that must allow all to belong to an organized political community. Essentially, what Arendt is arguing for then, is the right of all to be a citizen. The right to citizenship is the fundamental right. Immediately, one intuitively identifies a paradox in Arendt's analysis. Citizenship is both the problem that causes statelessness and the way out of statelessness. Furthermore, Arendt fails to acknowledge that the ground of this fundamental right to have rights is humanity. The grounding of rights in humanity is the basis for her critique of human rights.

Also, who will enforce this fundamental right? Will it not be the very same state and international institutions that Arendt believes are incapable of protecting the fundamental rights of all. Specifically, Arendt argues for federalism, the right of every nation (or minority) to have their own state. A European federation, as she envisaged it, is not a state form. In fact, federalism counters and offers a way out of the impasse of the state formation. She genuinely sees her solution as a way to counter the modern state.

Unfortunately, Arendt cannot think of politics outside of the juridical in the three texts mentioned at the beginning of this section. This does alter slightly in her later work on *The Human Condition.* For her, the extra-legal is the space of totalitarianism. The stateless individual has no juridical identity; they are vulnerable subjects who live passive existence. She depoliticizes the stateless person. Thus, in her alternate, political action can only be reduced to juridical and formal institutions, granting the right to citizenship. Here she can be located in the Hobbesian tradition of thinking. Her imaginary is still a statist imaginary; she analyses and understands statelessness from the perspective of the state.

3.2. Agamben and the Statelessness as Homo Sacer

Agamben wants to bring together Foucault's notion of biopolitics and Arendt's analysis of the origins of totalitarianism to argue that what is at stake in modern politics is always one's bare life. Therefore, the category of citizen and stateless are both precarious in that one's life is always vulnerable to external control and manipulation. He begins his analysis by invoking the ancient distinction between 'zoe' and 'bios' with the former representing bare life and the

latter qualified life. Bare life is ones biological life, the realm in which wives and slaves existed in antiquity whereas 'bios' refers to a political and meaningful life which was accessible only to citizens.

The category of citizen in Agamben is part of the biopolitical power. In modernity, biological life becomes politicised and sheer biological life informs who is a citizen. The rights of the citizen stand in contrast to the Rights of Man. He argues that modern understandings of citizenship are grounded on nationality. Thus, citizenship is based on the sheer fact of one's birth into a national community Nationality for Agamben is an extremely racist biological concept. Who an individual is, is defined by soil and blood; where you are born and who you are born to. These are things that one cannot control pre-birth. Discrimination on the basis of nationality or lack of nationality is racist in so far as it discriminates on the basis of the nature of one's identity. Thus, not only is citizenship an expression of biopolitical power but the exclusion of the foreigner/the stateless is a biopolitical exclusion.

The central figure of Agamben's analysis and the title of his book is *Homo Sacer*. Homo Sacer is "one who can be killed but not sacrificed" (Agamben, 1998: 32). The reason that homo sacer cannot be sacrificed is because sacrifices must have value and represent a loss to the one who is making the sacrifice in order to be accepted by the gods. Thus, because of his lack of value, homo sacer is only worthy of being killed and not sacrificed. Not only can homo sacer be killed at any time but he can be killed with impunity meaning that there is no punishment for his death. There is neither legal nor divine protection for homo sacer which then places him in a peculiar position both within and outside the law. He exists within the law in that he is a subject of the sovereign and must obey its laws but he exists outside the law as well as his death will have no legal recourse or punishment. Therefore the figure of homo sacer represents bare life that was at stake in classical times.

In modernity, there is a "growing inclusion of man's natural life in the mechanisms and calculations of power". This is what Foucault calls biopolitics (Agamben, 1998: 119). The emergence of biopolitics represents an emergence of a new type of subjectivisation. Three things happen, i) individuals objectify themselves, ii) they constitute themselves as a subject that iii) is bound to a power of external control. Agamben notes that although Karl Lowith described the central aspect of totalitarianism as being the politicisation of life, the same could be said of democracy and thus there is a contiguity between the two (Agamben, 1998: 120).

Another crucial claim made by Agamben is that the zone of distinction between the sovereign state and the state of exception is no longer clear. Within a state of exception e.g. war, laws are suspended and the sovereign is permitted to act outside of the law in terms of making the decision to kill, thanatopolitics. During the normal state of affairs, sovereign states make decisions based on life, biopolitics. In modern democracies nation states move malleably between zones and so the border between the two has become almost unrecognisable according to Agamben. The paradox of modern democracy is that "he who will later appear as the bearer of rights and according to a curious oxymoron, as the new sovereign subject can only be constituted as such through the repetition of the sovereign exception and the isolation of corpus, bare life, in himself" (Agamben, 1998: 124). Essentially what Agamben is saying that, the more one desires to become a citizen or inscribed as part of the state, the more one opens up ones bare life to harm. Thus, for Agamben, the solution for the stateless would not be to pursue the right to have rights or a type of federal system as suggested by Arendt, as this would only further increase their precarity as their lives would be formally tied to the mercy of the modern-nation state. The increase of liberties and rights happens at the same time as the tacit inscription of individuals lives with the state order. Once the fundamental referent becomes bare life than all traditional political distinctions lose clarity. Thus, the jump from stateless person to citizen does not represent an increase in freedom and liberties as most stateless people would think (Agamben, 1998: 168).

3.2.1. Agamben's Critique of Human Rights

In his essay *Beyond Human Rights*, Agamben (1993: 41) argues that "in the system of the nation state, so called sacred and inalienable human rights are revealed to be without any protection precisely when it is no longer possible to conceive of them as rights of the citizens of a state." Though Agamben speaks of the 'refugee' and not the stateless, his definition of refugee includes the stateless as he conceives of refugees as all those without citizenship. He rightly identifies that the position of refugee/stateless has always been considered a temporary condition that would ultimately result in the naturalization or repatriation of individuals into a state. This is because the law of any state cannot fully include an individual if they exist merely as a human being and not as a citizen. Pocock (1995: 33) aptly notes that the status of citizenship bestows on individuals full membership in a community. One has to be a citizen to fully enjoy freedoms and rights within the modern nation-state.

Thus, Agamben argues that the refugee is a "limit concept" in terms of the crisis it poses to the principles of the nation-state and the necessity it creates for the emergence of new categories for the understanding of belonging and the conferral and protection of rights. The modern-state faces a predicament of large numbers of non-citizens including both those who have nationalities of origin and those who have never had citizenship of any state. Boever (2006: 142-143) notes that not all non-citizens wish to be naturalized or repatriated. Some seek merely the protection of the state from harm and the freedom to pursue personal goals. However, as noted earlier by Agamben, such protection can only exist for the citizen and thus all de facto and de jure stateless people find themselves in extremely precarious situations in which not only their livelihoods but often their lives are at stake.

Most of the attention and activism surrounding statelessness has emerged from the League of Nations and the United Nations. Efforts from these institutions include the 1921 Nansen Bureau for Russian and Armenian Refugees, 1936 High Commission for Refugees from Germany, 1938 Intergovernmental Committee for Refugees, 1946 International Refugee Organisation of the UN and the 1951 High Commission for Refugees (Agamben, 1995: 115). However, these institutional mechanisms all highlight that their efforts have only humanitarian and social and not political character. Naturally, in an international system of states premised on sovereignty, it is important for organisations such as the UN to foreground that they do not have a political agenda and respect as supreme the sovereignty of individual states. Agamben notes that, although there have been individual success stories of stateless persons who have been given assistance by the UN, international law has failed to deal with statelessness as a mass phenomenon. He goes as far as to say that international institutions do not have the capability to deal with the phenomenon of statelessness. Statelessness is engaged primarily by the police and humanitarian organisations because multi-state and state politics cannot overcome the hurdle of sovereignty.

Agamben (1993: 47) ends his critique of human rights by envisioning a political community guided by the *refugium* (refuge) of the singular and not the *ius* (right) of the citizen. In 'The Decline of the Nation State', Arendt argues that exclusion is directly linked to self-determination. Self-determination is implicated in the exclusion of individuals and groups through its conflation of nation and law which resulted in the unequal protection of law between citizens and aliens, majorities and minorities and so on. The exclusion faced by the stateless and refugees is premised on their difference from the nation (Staples, 2012: 12). Arendt terms this the paradox of the sovereignty and self-determination; the fact that they

inherently include discrimination and exclusion. The denationalisation and expulsion of stateless people creates a new stratum of humanity that is substandard to the included citizens.

3.2.2. Consequences of Agamben

Primarily, Agamben has been criticized as being a nilhist. Thus, academics have argued that at the end of Agamben's thought, one is left only with the option of inoperativity; the choice to do nothing. De Boever (2006: 144) states that Agamben's thought aims not to destroy the law but rather lead to its deactivation and inactivity. De Boever sees this as being another potential use of the law, its non-use and discusses further the alternate reading of Agamben that emerges from this. Kalyvas (2005: 109) notes two dominant arguments concerning rights in the work of Agamben that "uneasily coexist". The first is that citizens must be divested of their rights by the state in order to become 'bare life' that can be killed sans legal consequences. Secondly, he argues that the conferral of rights on citizens is a constitutive operation through which the state exercises biopolitical power over the bare life of citizens. Herein lies the slight inconsistency that Kalyvas (2005: 117) wishes to reveal. The nation state divests its citizens of rights (in order to kill them) and gives its citizens rights (in order to kill them). Thus for Agamben, it is irrelevant whether one has citizenship or not, as the state's biopolitical power over the life of individuals is applicable to both citizens and non-citizens. Formulated differently, it does not matter whether or not one has rights; one is always vulnerable to the biopolitics and thanatopolitics of the state.

In addition, Agamben concludes that a new "nonstatal and nonjuridical" politics will emerge. De Boever and Kalyvas both rightly note that the consequence of permanent extralegal inclusion is a permanent state of exception, even if it exists in a context without a state or sovereign. This is problematic as the state of exception is the very thing that Agamben has been criticising in Homo Sacer and other works. How then would it be helpful to escape the precarity of the state of exception by normalising and instituting a permanent position of exceptionalism for all. Unlike Rancier, who will be discussed in the next section, Agamben does not provide enough information as to how the removal of the state will create better conditions of inclusion and belonging. Also, unlike Rancier, in Agamben, citizens and stateless people have no agency as subjects; there is no form of resistance or revolutionary project that can change their position. For as long as an individual lives under a nation-state they are doomed. This is the weakness of Agamben's weakness.

The consequences of such an analysis, for the project of addressing statelessness, are bleak. The international strategy for combating citizenship has always been to encourage states to legally include migrants, refugees and stateless people. What is the utility of such a strategy if citizenship is the mechanism through which states have control over our bare life? In 'The Time That Remains', Agamben (2005:51) states that challenging the division of categories is important in that it "it forces us to think about the question of the universal and the particular in a completely new way, not only in logic, but also in ontology and politics." However, he does not do enough to extend this argument to provide us with a suggestion of what this 'new way' might look like.

De Boever argues that in actual fact what Agamben is arguing for is the inoperativity of the law. The law is a problem primarily because the sovereign is both part of the law and outside the law, as put by De Boever (2006:154) "the law is legitimised by and can be ignored by the sovereign." Agamben realises in later works that we cannot do without law either and therefore our only choice is to have the law in place but have it be inoperative. De Boever (2006:155) claims that "inoperativity cannot be articulated within the limits of political science" as a political force. Esposito (1988: 23) proposed the term "impolitico" to describe a condition of impossibility within politics for particular political institution and practice. Thus when Agamben refers to 'those not without rights' as opposed to 'those with rights 'or 'those without rights, it does not result in an inarticulate condition as it does in political science. De Boever (2006: 155) asserts that 'those without rights' constitute Agamben's coming community; an essential element of what he calls Agamben's literary-political imagination.

The state is heavily implicated in the manner that we are all treated as being 'not without rights' or 'non-non-Jews', non-non-Migrants and so on. Butler argues that the state only sees binaries. Thus, you are a citizen or a non-citizen, a terrorist or non-terrorist. However, in the moment of action when one is a non-non-terrorist, the state acts in a way as to determine on which side of the binary you belong. Thus, Muslims are targeted as being terrorists because, well, they might be terrorists and they may not be but in the name of 'protection' the state makes the executive decision to execute and target those whose identities they are not quite sure of. The aspiration for Agamben is to solve the problem of the division of division. How can the state respond to those who fall on neither side of the line, not terrorist and not not terrorist i.e. the non-non-terrorist? Thus, at the moment that we are all neither citizen nor non-citizen we are all potential victims of state violence under the guise of protection, we are all potential inmates of detention centres and camps.

Section 4: Statelessness as Potentiality

Despite claims by Agamben and Arendt that statelessness is a position of complete precarity wherein no instrumental political action can take place, there are those who argue the opposite. It has already been noted as a limitation of Agamben's and Arendt's work that they rob the stateless of agency. In Balibar and Rancier we find an attempt to reposition the stateless as not precarious subjects but subjects of potentiality.

4.1. Jacques Rancier and the Stateless as a Revolutionary Subject

Is it possible to imagine citizenship without a state and would this type of citizenship necessarily be more inclusive? The manner in which the modern state and the notion of sovereignty have contributed to the exclusion of certain individuals has been discussed. States by definition are territorially bound and thus have physical limits to the number of people they can include with their political community. The question has thus arisen as to whether or not citizenship can be more effectively thought of and experienced outside of the system of modern states. Balibar takes up this question and asserts a post-national conception of citizenship.

In the period after the Cold War, Rancier notes that there was optimism for a "post-historical world" rooted in global democracy and the liberal economy. However, this optimism was quelled by persistent conflicts that were of a religious, racial or xenophobic nature. The subsequent rising prominence of The Rights of Man revealed themselves to be paradoxical, as argued by Arendt and essentially represented the 'inhuman' rather than the 'man' or 'citizen'. Following Arendt, Rancier agrees that "the Rights of Man turned out to be the rights of the rightless…the rights of victims, the rights of those unable to exercise their rights or even claim to have any in their own name, so that eventually their rights had to be upheld by others (Rancier, 1999: 62). There is no fundamental disagreement between Rancier and Arendt on the delegitimisation of international law and human rights or what Rancier terms the "shattering edifice of international rights."

The subject of the Rights of Man becomes the subject of Human Rights. This is an important claim for Rancier's argument. The subject of human rights appears merely as an abstraction whereas the 'citizen' attached to a national community is entitled to real rights. Thus, as has

been argued thus far, human rights are the rights of those without rights, "a mockery of rights".

4.1.1. On Arendt's depoliticisation of the stateless

At the centre of Rancier's critique of Arendt is his disagreement with her distinction between public and private and her assertion that politics can only take place in the public sphere. Arendt identifies political life as existing outside of one's private life and thus contrasts the deprived private life of the stateless with the political activities of public action, speech and appearance. Based on an Arendtian understanding of the state off exception, which is the state of suspended law in which the stateless permanently reside, the Rights of Man were paradoxically the rights of the "private, poor, depoliticized individual life" (Rancier, 1999: 63). Arendt claims of the stateless "their plight is not that they are not equal before the law, but that no law exists for them; not that they are oppressed, but that nobody wants to oppress them." This is how the stateless land up in the state of exception, the state of war. There is no legal framework in which they exist as subjects of a community, the stateless exist outside the law as an exception which can then be dealt with by extra-legal measures. However, for Arendt, oppression can only take place through acknowledgement in the public sphere. Thus, the stateless are excluded but not oppressed.

Rancier disagrees fundamentally with the claim of a people "beyond oppression". Empirically, he argues, that there have been many people who have wanted to oppress the stateless and more importantly, laws that have allowed them to do so. In Arendt's own analysis on the emergence of stateless people, she discusses the ways in which states, through law, marginalized and exploited minorities. However, Arendt arrives at the unfortunate conclusion of the stateless being "beyond oppression" as a result of her rigid distinction between the realm of the political and the realm of one's private life. If the deprivation that one suffers is constrained to my private life than it cannot be as a result of political mechanisms of the state. This analysis by Arendt depoliticizes power and repression and puts them in a sphere of "anthropological sacredness" wherein a political dissensus cannot occur.

Dissensus is the title of Rancier's main text and a central concept towards understanding the revolutionary potential of the stateless. By dissensus Rancier means disagreement, destabilizing, the rattling of the status quo. In Agamben, zoe (bare life) enters bios (qualified life) through Foucault's concept of biopolitics and as a result we enter into a Schmittian state

of exception. Rancier accuses Arendt of reducing bios to bare life (zoe). Thus, biopolitics becomes democracy's accomplice.

4.1.2. Rancier on Agamben's homo sacer

Agamben wants to agree with Foucault that in modernity there are 'positive' biopolitical mechanisms at work aimed at controlling the biological lives of individuals. This modern biopolitical power is distinguishable from sovereign power, which generally was a case of life and death. Thus, even the law, which in Arendt's account is complicit in the exclusion of individuals, is a form of power in modern politics. Agamben presents biopolitics as democracy's accomplice in employing technologies of control that directly impact the lives of the masses. However, for Agamben the distinction between sovereign and modern power is not as clear as Foucault would have it be and he uses Carl Schmitt's state of exception to evidence this claim. Political authority is purported in the state of exception according to Carl Schmitt. The sovereign power is the power that has the authority to decide when legality will be suspended; the sovereign is the power that determines the state of exception. Rancier asserts "this boils down to saying that the law hinges on a power of decision that is outside the law" (Rancier, 1999: 65). The state of exception for Agamben is directly linked to the authority of making decisions over life. In modernity, for Agamben, bare life is captured in this zone of indistinction between zoe and bios. Sovereign power and biopower converge with the emergence of the modern state.

Subsequently there is a disintegration of the opposition between absolute state power on the one hand and the Rights of Man on the other. Rights of Man discourse gave the impression that natural life was the source and bearer of rights and birth the principle of sovereignty. This logic prevailed when birth was synonymous with nationality and citizenship. However the rise of refugees and stateless individuals exposed the identity for what it was truly concerned with, mediating bare life. Agamben agrees with Arendt that the life that comes to be taken over by state power is one in a state of exception that is "beyond oppression". The Camp according to Agamben is the space of "absolute impossibility of deciding between fact and law, rule and application, exception and rule." For Agamben we are all, citizens and stateless alike, the refugee in the camp and the call to enact rights is useless as both the sovereign and victims are part of the same biopolitical body. For Agamben the differences between totalitarianism and democracy are faint as both political systems are caught in a

biopolitical trap, concerned with controlling bare life. State power is always concerned with bare life.

Agamben's conclusion of the camp being the *nomos* of modernity has the same consequences as Arendt's conception of political action. The radical suspension of politics in the state of exception (of bare life) is ultimately the consequence of Arendt's inability to see place for the private in the political. Rancier concludes that Arendt takes an archi-political position that aims to "preserve the political from contamination by the private, the social or a-political life" (Rancier, 1999: 66). Agamben and Arendt are guilty of "depopulating the political stage" by disregarding actors that do not fit into the current framework. "The will to preserve the realm of pure politics ultimately has politics vanish in the pure relationship between state power and individual life" (Rancier, 1999: 67). "Politics gets equated with power and power…gets increasingly construed as an…historic-ontological destiny from which only God can save us" (Rancier, 1999: 68).

4.1.3. Rethinking the subject of the Rights of Man

As a result of his dissensus with Arendt's and Agamben's conception of the refugee and stateless as non-political subjects, Rancier wants to rethink or rework through the subject of the Rights of Man and place politics on "an entirely different footing" (Rancier, 1999: 67). He is unsatisfied with the manner in which the subject of rights and more crucially politics is represented in the analysis of Agamben and Arendt. There is a tension between the rights of man and the rights of the citizen. At first, the rights of the citizen are the rights of man, but the rights of man are the rights of those who have no rights, the non-politicised subject which means that the rights of man amount to nothing. On the other hand, the rights of man are the rights of the citizen, the rights attached to being part of a political community. Thus the rights of man are the rights of those who have rights.

Rancier sees this as solveable tautology by defining the Rights of Man as "the rights of those who have not the rights that they have and have the rights they have not" (Rancier, 1999: 67). To make sense of this requires some analysis. There is no one single subject of the Rights of Man who is at once the source and bearer of rights. There is a double negation that mediates the relationship between the subject and rights. Rights are inscriptions that do not predicate communities; they emerge from the writings of communities. Rights are not merely abstractions, far removed from a given situation. They are, as Rancier argues "part of the configuration of the given, which does not only consist in a situation of inequality, but also

contains an inscription that gives equality a form of visibility" (Rancier, 1999:68). Rancier stresses that his concern is not limited to an analysis of whether or not rights confirmed or denied in reality. Of more importance to him is to analyse and understand what this confirmation or denial means. It cannot be that 'man' and 'citizen' represent fixed groups of individuals. They represent, rather, political subjects that constantly question and dispute who is included in their categories and who is not included. It must follow then that freedom and equality cannot belong to a defined group of subjects either. The point Rancier wants to make is that all "political predicates…open up a dispute about what they entail,, whom they concern and in which cases"(Rancier, 1999:68). Arendt sees citizenship as the only sphere for the freedom and equality of man. Agamben sees no sphere in which man can be truly free and equal. Politics, Rancier asserts, is the practice of continuously questioning borders of concepts such as citizenship, bare life, rights and so on.

4.1.4. Statelessness as a mechanism of Dissensus

The potentiality of the political subject lies in their ability to stage a dissensus. A dissensus, Rancier insists, is not concerned with moral judgments, personal/group interests and or principles. A dissensus is "a division inserted in 'common sense': a dispute over what is given and about the frame within which we see something as given" (Rancier, 1999:69). Rancier uses the example of woman in the French Revolution to illustrate his formulation of political subjects. Although women were not allowed to participate politically, they were still able to be sent to death like men were for political crimes. Thus, for Rancier, woman were deprived the rights that they had in the Declaration of the Rights of Man, but through public action, they enacted the rights that they did not have, "they acted as subjects that did not have the rights that they had and that had the rights that they had not" (Rancier, 1999: 69). A political subject is merely one who has the capacity to stage a dissensus.

Following this, Rancier argues that the political subject that has the capacity to stage a disagreement is the central figure of democracy. He is unsatisfied by all attempts to define "the people" within a democracy. For him, democracy is the "power of those who have no qualification for exercising power." The demos has to be defined taking into consideration those who cannot be qualified. Rancier refers to these political subjects as the "uncounted" "the part of those who have no part" "surplus subjects that inscribe the count of the uncounted as a supplement". Politics "is not a specific sphere of political life, separate from other spheres, since it acts to separate the whole of community *from itself."*

Herein lays the potentiality of the stateless for Rancier. The stateless are the piece that does not fit. If one receives a piece that does not fit in a puzzle, one begins to question the very picture of the puzzle. The piece that doesn't fit challenges the status quo and forces us to think beyond what we know to be possible. Hardt & Negri (2009: 84) assert "how pathetic it is when politics can be conducted only in the name of the nation." Through staging a disagreement, the piece that does not fit has the revolutionary potential to introduce new possibilities and alternates that do not resemble those that have normative and legal dominance now.

The relationship between state, territory, citizenship and the international system cannot be complete if there are elements that exist outside of it; even if this existence is highly precarious at times. The goal of the stateless, for Rancier, should not be to seek inclusion within the current system. Rancier wants the stateless to use their position to antagonize our assumptions and principles that have led to the creation of the categories of 'subject' 'citizen' 'sovereign' and so on. The biggest challenge to Rancier's conception of the stateless is the stateless themselves. Stateless groups have called on international law and international NGOs to facilitate their inclusion to the status quo. They do not want to be revolutionary subjects or vanguards of a new era; they want the safety and security of rights and citizenship.

4.2. Etienne Balibar and Citizenship Beyond Sovereignty

French Philosopher Etienne Balibar provides the argument for the stateless to be seen as introducing political possibilities that extend pass the state and sovereignty. Balibar may not disagree with Judith Butler that precarity and suffering are unavoidable. However, in Balibar, we find an argument that tries to prove the revolutionary potential of stateless subjectivity. Balibar is working towards rethinking citizenship outside of its mainstream conceptions. He is a post-Althusserian thinker who argues that citizenship is in crisis because it has been associated with the nation-state (Balibar, 2003: . He does not think that citizenship itself is the problem and wants to find ways in which citizenship can be salvaged and re-enacted. To do so, Balibar turns to colonial and postcolonial thinkers. Balibar and Rancier are both interested in existing and alternate possibilities within the modern.

Balibar argues that, because no nation-state has an ethnic base, every nation-state must create fictional ethnicities in order to project stability on the populace:

> the idea of nations without a state, or nations 'before' the state, is thus a contradiction in terms, because a state always is implied in the historic framework of a national formation (even if not necessarily within the limits of its territory). But this contradiction is masked by the fact that national states, whose integrity suffers from internal conflicts that threaten its survival (regional conflicts, and especially class conflicts), project beneath their political existence to a preexisting 'ethnic' or 'popular' unity (Balibar, 2003: 331).

In order to minimize this regional, class, and race conflicts, nation-states fabricate myths of origin that produce the illusion of shared ethnicity among all their inhabitants. In order to create these myths of origins, nation-states scour the historical period during which they were "formed" to find justification for their existence. They also create the illusion of shared ethnicity through linguistic communities. That is, when everyone has access to the same language, they feel as if they share an ethnicity. Balibar argues that "schooling is the principal institution which produces ethnicity as linguistic community" (Balibar, 2003: 351). In addition, this ethnicity is created through the "nationalization of the family," meaning that the state comes to perform certain functions that might traditionally be performed by the family, such as the regulation of marriages and administration of social security.

In his article 'Subject or Citizens', Balibar (1984: 1726) argues that it is not important for strangers to become citizens. He thinks that the goal of the excluded is to attain increasing amounts of "equal civic right within a given community" (Balibar, 1984: 1726). He introduces the term co-citizen, which he suggests is the original premise on which citizenship was based. What was important, historically, was not the unity of citizens as a homogenous unit but rather their relational status was one of equality and equal enjoyment of rights. Essentially Balibar wants to extend the notion of citizenship beyond the nation-state. He stresses that he is not arguing for cosmopolitanism or universal citizenship but rather a type of transnational citizenship. (Balibar, 2006:14) wants to think of citizenship "within new territories not in terms of sovereignty" or membership to a particular state or body politic. He reworks citizenship to represent a right of residing with rights. However, unlike Arendt's rights to have rights, Balibar's notion of active citizenship does not require the stateless to have the juridical protection of a particular nation-state. In Balibar's formulation, every individual despite where you come from and the statues they had when they were there, is entitled to reside with rights everywhere.

Balibar's notion of active citizenship contains a strong tension between the right to have a nationality and the right to change one's nationality. In the manner in which these rights are formulated with the Charter of the UN and the Universal Declaration of Human Rights they appear to be highly individualistic (although they must apply to groups as well) and the right to change nationality is linked essentially to the hospitality of the state one wants to reside in. Balibar wants to generalize these principles in his new articulation of citizenship. If we consider the two rights mentioned above as a double freedom of circulation than the right to a nationality could easily exist with the right to residency or settlement with rights. Balibar is acutely aware of the processes that would be required to institutionalise the type of active citizenship he is purporting. He is also sensitive to the fact that through institutionalization the right may be reduced to nothing. At the centre of possible challenges to the notion of post-national though not cosmopolitan citizenship is the question of "collective authorities which could regulate the application of such principles" (Balibar, 2006: 14).

Unlike Arendt and Agamben, Balibar is also not adverse to the use of violence in sculpting an alternative. In fact, he speaks quite extensively of a global civil war in which a 'virtual community' or 'community without a community' would assert its rights to reside with rights without restriction. By a 'community without community', Balibar means a collective that has no common tradition or historical substance (Balibar, 2006: 14). It's clear that amongst the characteristics of the state that Balibar is adverse to is its attempt to unify through homogenization its citizenry and those who wish to reside within its borders. Balibar notes that classically, it was the institutions of the nation-state that created the citizen and the possibility for a civic space.

However, Balibar believes that the parallel patterns of increased transnational migration and increased state exclusion of individuals has created the conditions for the possibility of the reversal of the process. The stateless and other excluded individuals and groups reside within states albeit with very little to no rights and precarious livelihoods. They exist as a community without a community who through their extra-legal dominance of civic and civil space claim their rights and from this claim will emerge a post-national alternative to citizenship. Balibar considers this a theory of active citizenship in that it is through the stranger's unauthorized political participation that his citizenship exists. The time is ripe, for Balibar, for us to think about dialectical transformations that would deal with the problem of expanding notions of citizenship.

Section 5: Conclusion

In conclusion, the number of stateless people is increasing yearly. The nature of statelessness, being undocumented, means that even the increasing numbers of recorded stateless individuals are highly underestimated. Although there has been activism geared towards decreasing the levels of statelessness and countering the negative effects of being stateless within the international legal framework, the problem persists and is getting worse. Thus, statelessness is a serious problem for contemporary politics that is not going away.

The fact that citizenship within sovereign states is the main mechanism of rights conferral has complicated attempts to counter statelessness. Within a legal framework, recognition and assimilation into states is the only way to transform the precarity of the stateless into a position of protect. Hence the UN has focused on drafting conventions that insist upon the assistance of the state with regard to the problem of statelessness. However, we've seen with the on-going marginalisation and exploitation of the stateless that states are reluctant to be part of a solution that they feel threatens their sovereignty. Thus, legally speaking the statelessness issue is at a standoff between international legal stipulations and state sovereignty. As a result of the international legal framework being built on the principle of state sovereignty as supreme, it is no surprise that international organizations have failed to coerce states into action.

Outside of the legal framework, statelessness can be understood differently. The critiques of human rights are given resonance by the lived experience of stateless individuals. Although formally the stateless are not completely rightless in that they have human rights, substantively very few stateless people enjoy any rights at all. Thus Arendt's argument that the stateless are rightless has resonance. However, Arendt is incorrect in denying the agency of the stateless to act politically both at a theoretical and empirical level. The stateless organize and engage within the political communities that they find themselves constantly; be it the hunger strikes of undocumented migrants in France or mass strikes by stateless individuals in the Dominican Republic. The reasons that the stateless engage in protest is because their position within states is extremely precarious but precarity does not mean lack of political agency and lack of revolutionary potential.

In Agamben we find support in the idea that citizenship is not the means that guarantees empowerment. For Agamben, any position of subjectivity within the state is a precarious one

in which an individual's bare life is always at stake and thus the stateless should not waste their time trying to be citizens as they would be exchanging one precarious position for another. However, in this research essay quite a stark distinction has been drawn between the lives of the stateless and the lives of citizens. Although it is true that citizenship in itself can at times be precarious, citizens can call on rights and institutions that the stateless have no access to. In addition, citizens are recognised, included subjects of a political community whereas the stateless always both formally and informally exist on the outside.

However, if one considers Balibar and Rancier, exclusion is not inherently a negative thing. It is important to acknowledge that neither of these thinkers wants to deny the precarity of statelessness. What Rancier and Balibar do want to do is avoid nilhist and negative conclusions that close of the possibility of a politics being practiced by stateless people. Whereas Balibar is not against the notion of citizenship and would like to see it extended to a post-national space, Rancier is more concerned with the extent to which the stateless can destabilize all categories that we take for granted.

The notion of the revolutionary potential of statelessness is convincing for a number of reasons. The first is that the stateless have indeed called into question the legitimacy of categories such as "citizen' 'borders' 'sovereignty' and so. This is evidenced by the explosive amount of literature that has emerged on the exclusive nature of the state and the illegitimacy of both borders and sovereignty. Secondly, if the principle of sovereignty is what is preventing the international legal framework from being successful in combating statelessness that a revolutionary politics that challenges the very notion of sovereignty is exactly what we need.

Thus this paper concludes that indeed the position of statelessness is extremely precarious and that the only way the stateless are ever going to escape their precarity is through acknowledging their revolutionary potential and staging a Dissensus.

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ABSTRACT

The number of people without the nationality of any state, stateless people, is growing annually. Globalisation characterised as increased transnational economic exchange, the mass expansion of communication networks and soaring levels of migration has resulted in the challenge of the legitimacy borders and state sovereignty. Stateless people have limited if no access to rights and freedoms and generally live under conditions of marginalisation, exploitation and disregard. The purpose of this research essay is to investigate the nature of the precarity of statelessness. Is the precarity of statelessness an inescapable consequence of state sovereignty that dooms the stateless to lives of suffering and lack? Or does the precarity of statelessness place the stateless in a unique position to develop a new and revolutionary type of politics that acts against or outside of the state? Specifically, the contributions of Arendt, Agamben, Rancier and Balibar on this question will be considered. In essence, this research essay will argue that statelessness is indeed precarity but within that precarity lies revolutionary potentiality to conscribe a new and exciting type of politics that acts against the status quo.

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