

growth in the course of the French Revolution of regulatory provisions specifying which *man* was a *citizen* and which one not, and articulating and gradually restricting the area of the *ius soli* and the *ius sanguinis*. Until this time, the questions "What is French? What is German?" had constituted not a political problem but only one theme among others discussed in philosophical anthropologies. Caught in a constant work of redefinition, these questions now begin to become essentially political, to the point that, with National Socialism, the answer to the question "Who and what is German?" (and also, therefore, "Who and what is not German?") coincides immediately with the highest political task. Fascism and Nazism are, above all, redefinitions of the relations between man and citizen, and become fully intelligible only when situated—no matter how paradoxical it may seem—in the biopolitical context inaugurated by national sovereignty and declarations of rights.

Only this tie between the rights of man and the new biopolitical determination of sovereignty makes it possible to understand the striking fact, which has often been noted by historians of the French Revolution, that at the very moment in which native rights were declared to be inalienable and indefeasible, the rights of man in general were divided into active rights and passive rights. In his *Préliminaires de la constitution*, Sieyès already clearly stated:

Natural and civil rights are those rights *for* whose preservation society is formed, and political rights are those rights *by* which society is formed. For the sake of clarity, it would be best to call the first ones passive rights, and the second ones active rights. . . . All inhabitants of a country must enjoy the rights of passive citizens . . . all are not active citizens. Women, at least in the present state, children, foreigners, and also those who would not at all contribute to the public establishment must have no active influence on public matters. (*Écrits politiques*, pp. 189–206)

And after defining the *membres du souverain*, the passage of Lanjuinais cited above continues with these words: "Thus children, the insane, minors, women, those condemned to a punishment either restricting personal freedom or bringing disgrace [*punition afflic-*

tive ou inflammante] . . . will not be citizens" (quoted in Sewall, "Le citoyen," p. 105).

Instead of viewing these distinctions as a simple restriction of the democratic and egalitarian principle, in flagrant contradiction to the spirit and letter of the declarations, we ought first to grasp their coherent biopolitical meaning. One of the essential characteristics of modern biopolitics (which will continue to increase in our century) is its constant need to redefine the threshold in life that distinguishes and separates what is inside from what is outside. Once it crosses over the walls of the *oikos* and penetrates more and more deeply into the city, the foundation of sovereignty—nonpolitical life—is immediately transformed into a line that must be constantly redrawn. Once *zoē* is politicized by declarations of rights, the distinctions and thresholds that make it possible to isolate a sacred life must be newly defined. And when natural life is wholly included in the *polis*—and this much has, by now, already happened—these thresholds pass, as we will see, beyond the dark boundaries separating life from death in order to identify a new living dead man, a new sacred man.

2.3. If refugees (whose number has continued to grow in our century, to the point of including a significant part of humanity today) represent such a disquieting element in the order of the modern nation-state, this is above all because by breaking the continuity between man and citizen, *nativity* and *nationality*, they put the originary fiction of modern sovereignty in crisis. Bringing to light the difference between birth and nation, the refugee causes the secret presupposition of the political domain—bare life—to appear for an instant within that domain. In this sense, the refugee is truly "the man of rights," as Arendt suggests, the first and only real appearance of rights outside the fiction of the citizen that always covers them over. Yet this is precisely what makes the figure of the refugee so hard to define politically.

Since the First World War, the birth-nation link has no longer been capable of performing its legitimating function inside the nation-state, and the two terms have begun to show themselves to