

# STRETCHING NATIONAL CITIZENSHIP: DACA AND THE STRUGGLES OF UNDOCUMENTED MIGRANTS IN THE UNITED STATES

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By positioning the subjects of the political action at the center of DACA, we intend to define a scenario wherein undocumented migrants engage in a discourse that challenges the meanings of national citizenship and the definition of *who can appear* and demand rights in the United States. To achieve this, we divide this article into three movements: first, we delve into Hannah Arendt's terms to define the perplexities of human rights; then, using an Arendtian lens, we define the experience of "rightlessness" as related to "undocumentedness" in the DACA scene; finally, we define the categorical impacts of the immigrant rights movement

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for this policy in terms of reframing citizenship. We conclude by looking at the multiple and paradoxical effects of this policy, as it benefits *some* while reinforcing nation-state categories.

**Keywords:** *DACA; right to have rights; citizenship; human rights; undocumented immigrants.*

## ESTIRANDO LA CIUDADANÍA NACIONAL: DACA Y LAS LUCHAS POR DERECHOS DE LAS MIGRANTES INDOCUMENTADAS EN ESTADOS UNIDOS

Al posicionar a los sujetos de la acción política en el centro de DACA, pretendemos definir un escenario en el que los inmigrantes indocumentados se involucran en un discurso que cuestiona los significados de ciudadanía y la definición de *quién puede comparecer* y exigir derechos en los Estados Unidos. Para lograrlo, dividimos este artículo en tres movimientos: primero, ahondamos en los términos de Hannah Arendt para definir las perplejidades de los derechos humanos; luego, el foco recae en el desarrollo de nuestra escena, explorando la falta de derechos en relación con la indocumentación; Finalmente, definimos los impactos categóricos del movimiento por los derechos de los inmigrantes a favor de DACA en términos de replanteamiento de la ciudadanía. Concluimos sobre los múltiples y paradójicos efectos de esta política, ya que beneficia a *algunos* y al mismo tiempo refuerza las categorías de Estado-nación.

**Palabras claves:** *DACA; derecho a tener derechos; beneficiarios; ciudadanía; inmigrantes indocumentados.*

## Introduction

In the classic *The Origins of Totalitarianism*, we learn from Hannah Arendt that one of the fundamental experiences of the 20th century was experienced by those pushed to the condition of *total solitude*. Without being able to draw on anything or anyone, not even what should be guaranteed to all human beings - which is *the right to have rights*, i.e., *the right to be part of a community and be protected by it* - the totalitarian experience consolidated a new political and human status, namely, the *rightless person*. Borrowing from Arendt, we can state that one of the fundamental experiences of the century that harbors the totalitarian phenomenon - and all of its consequences - is that people were pushed to the condition of *rightless* precisely because they were expelled from the legal and political protection of the old Western trinity state-people-territory. This means, in turn, that the totalitarian phenomenon was thoroughly experienced by those living in a situation of "rightlessness." Those who lived as rightless persons were deprived of their political community and suspended from their human status; that is the experience of total solitude.

It is relevant to pause on the concept of rightlessness. With this concept, Arendt referred primarily to the experience of the stateless, that is, the people who had formally lost their nationality, but also to those without access to their rights of citizenship (refugees, asylum seekers, economic migrants, and even naturalized citizens at risk of denaturalization). A person who no longer belongs to a political community is a person who lives in a condition of fundamental deprivation of human rights. A kind of dispossession that is manifested "first and above all in the deprivation of a place in the world which makes opinions significant and actions effective" (Arendt, 1962:296).

Even under different circumstances and as part of an age defined by the expansion of human rights, the experiences of rightlessness continue to compose more than one event of our present. This statement is remarkably accurate when we listen to the "plight of the people who can no longer exercise their citizenship rights as they move across borders and find it increasingly difficult to exercise human rights" (Gündoğdu, 2010:n/p). The experience of having rights seems to still be rooted in the vocabulary and grammar of nation-states as if the opposition between "man" and citizen still

informs the gears of states and the definition of their borders in the present day.

With this plight as our guide, we return to Arendt's text as a starting point - even if not necessarily one of arrival - to reflect on a non-resolved conflict that continues to contour the nation-states between the grammar and institutional arrangements of human rights and those of citizenship that define who can appear, demand and act as if they were a person who has the *right to have rights* in a certain polity. In other words, what seems to be repositioned as a fundamental question in the context of contemporary international migration is: *In which ways is the demand for the right to have rights performed by those who do not have the right to appear guaranteed a challenge to the limits and meanings of national citizenship?*

We root such a question in a specific *scene*<sup>3</sup>, the Deferred Action for Childhood Arrivals (DACA). This program, a deferred action implemented during Barack Obama's administration (Democratic Party) in the United States after the mobilization of young undocumented people in the 2010s, benefits some of these subjects - those who entered American territory without authorization when minors. Portrayed as individuals who did not have control over the decision to migrate and, since they had arrived in the United States at a young age, were culturally assimilated, the so-called *Dreamers* had the support of the population and part of Congress. In addition, since 2001, Congress members have proposed and failed to pass different versions of the Development, Relief, and Education for Alien Minors Act (DREAM Act). This law would bring relief to the undocumented youth. DACA is thus presented as a temporary fix due to the lack of legislative action to answer the absence of rights of part of the undocumented population in the country.

Much has been written about DACA as a successful public policy and as a direct result of the immigrant rights movement, especially its youth, on its timeline and its relation to previous migratory policies (Alulema, 2019; Bono,

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<sup>3</sup> *Scene* refers to the definition of time, space, and the political actors in the analysis, without the complete mediation of a canonical text. In other words, when we refer to a *scene*, we are bringing the political actors to the center of the processes of naming and reframing the categories under challenge (Ventura & Cardoso, 2023).

2014; Castañeda et al., 2020; Cebulko; Silver, 2016). The proposal in this article is to direct critical and analytical efforts in another direction. By formulating the question of *in which ways is the demand for the right to have rights performed by those who do not have the right to appear guaranteed a challenge to the limits and meanings of national citizenship*, we intend to reframe the analysis of the Dreamer movements through an Arendtian-inspired lens. When we translate this framework to our scene, the question that guides us becomes: *When the legal framework proposed by DACA answered the claims of a specific group of undocumented migrants, what were the resignifications of meanings and arrangements of citizenship promoted by the fight for rights of the people that migrate to the country?*

Guided by this question, we argue that the distinction between the citizen and non-citizen, between those who can appear and make demands as if they were subjects of rights and those who cannot, is not eliminated by the decision and policy aimed at guaranteeing *benefits* to some undocumented migrants in the context of DACA. The definition of those who are the subjects of rights is stipulated in this context, considering, on the one hand, that rights are not limited by the letter of the law. Instead, they result from struggles in which claims are presented, elaborated, resignified, and defended in the course of political action (Tilly, 2017). Struggles, in turn, are framed by normative and regulatory schemes that define only certain subjects as eligible to exercise the right to appear. Consequently, both rights and subjects are contestable and situated in a constant fight for inclusion, redefinition, and resignification. On the other hand, it also presupposes the difficulty of those considered ineligible, undocumented, and non-citizens to have the right to appear and to reclaim *the right to have rights*. In that sense, with Judith Butler, we punctuate that these struggles are also a fight to find alliances that involve "a plural and performative positioning of eligibility where it did not exist before" (Butler, 2015: 50).

To continue this argumentative path, we propose the following movement. In the first section, the focus is on establishing the Arendtian lens which we use as the theoretical framework for this paper. Our primary objective is to establish the Arendtian perspectives that serve as the theoretical foundation for this paper. Specifically, we aim to delineate Hannah Arendt's analytical and conceptual formulations concerning the paradoxes of human rights and,

in doing so, draw approximations and distances between her historical context and the contemporary setting that underpins our analysis.

Moving forward, our focus will rest on an examination of what it means to exist as a person without proper documentation in the United States. This investigation will allow us to define the influence of DACA within this specific context. Our central argument here revolves around the idea that the space of "rightlessness," inhabited by individuals who do not hold full membership or inclusion, significantly shapes the experiences of undocumented immigrants in the realms of public and social life. However, it's important to note that DACA, by maintaining the concept of national citizenship as the basis for determining who qualifies as a legitimate rights-holder within the country's political community, does not comprehensively address this experience.

In the fourth section, guided by these arguments, we will employ the four citizenship frameworks put forth by Walter Nicholls (2019). This will enable us to elucidate how DACA is structured within a context where the definition (and redefinition) of national citizenship is a subject of contention and debate. We highlight how, paradoxically, while the program defined the individuals worthy of legal and political recognition as rights-bearing subjects, it inadvertently institutionalized distinctions regarding who is entitled to rights analogous to those of citizenship and who continues to be excluded.

## **1. The Arendtian lens - framing the paradoxes of human rights**

Writing amid the events after the Second World War, Arendt called special attention to the challenges posed by the emergence of stateless people on a scale never seen before. In this context, she used the category "stateless" not only to refer to those people who had formally lost their nationality, but also to refer to those who could no longer enjoy their rights of citizenship. In other words, by using the term "stateless," Arendt named refugees, asylum seekers, economic migrants, and even those subjects already naturalized as citizens but who were constantly threatened with denaturalization. What united people with different legal categories under the same status - *stateless* - was precisely the fact that they had been expelled from the holy trinity of state-people-territory (Arendt, 1962:282) and from the type of system of rights-

guarantees-duties that such constellations sustained. In other words, for Arendt, the expulsion of such subjects from the constellations of their respective national states had left millions of people in a situation of *rightlessness* (Gündoğdu, 2015:2-3).

A person who is considered rightless, according to Arendt, can no longer access the right to appear, to act politically, or to speak in public space, which determined the possibilities of each individual to construct themselves as equal. That is because equality, in an Arendtian sense, is a political construction that takes place in the interaction among people in what happens in the public space, and which depends on speech, on exchange. The public space, in turn, is shaped by a public and political kind of relation that relies on the existence of a specific type of community, which is a political community. At that historical moment, nation-states were that community. In that context, what Arendt teaches us is that the expulsion of specific individuals from their political community also represented a simultaneous expulsion from humanity. The stateless not only lost their citizenship but also their human rights. A stateless person is in a situation of rightlessness due to the deprivation from their political community and the suspension of one's human status. Hence, the statement:

No paradox of contemporary politics is filled with more poignant irony than the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as “inalienable” those human rights, which are enjoyed only by citizens of the most prosperous and civilized countries, and the situation of the rightless themselves (Arendt, 1962:279).

One of the surprising arguments in this analysis is how Arendt refuses to address the experience of those who were rightless as part of a temporary anomaly that had marked a specific historical moment of the 20th century. For Arendt, the phenomenon was part of the gears of a world carved by nation-states and organized by the principles of sovereignty and territoriality which gave rise to an international system that could only affirm the universality of human rights in terms of a paradox. In a bordered world, formulated Arendt, “it seems that a man who is nothing but a man,” precisely because they are expelled from what guaranteed them a series of political and



social attributes - citizenship - "has lost the very qualities which make it possible for other people to treat him as a fellow-man" (Arendt, 1962:300).

The loss of the guarantee of human rights, in the totalitarian context, coincides with the moment when the person becomes a human being in general and different in general, "representing nothing but his own unique individuality which, deprived of expression within and action upon a common world, loses all significance" (Arendt, 1962:302). On the other hand, from the beginning the abstract human being seemed to exist nowhere. The paradox involved in the declaration of inalienable human rights rests on this point: since the French Revolution, argues Arendt, humankind had been conceived in the image of a family of nations; as a result, it became gradually evident that *the people*, and not abstract individuals, were the image of man. Therefore, the rights of "man" affirmed by the *Déclaration des Droits de l'Homme et du Citoyen* (1789) were so entangled with the rights of the citizen since it was no longer conceived of the existence of people outside of a political community that civil rights were understood as the rights that protect people. The implications of this identification of the rights of man with the rights of people in the European nation-state system began to appear at the "moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them" (Arendt, 1962:291).

The calamity experienced by those who had lost their political community, explains Arendt, is due not to the loss of a specific right. The calamity of those who lived as rightless is due to the loss of a community willing and able to protect and guarantee any rights. Furthermore, that conclusion leads Arendt to affirm the existence of a right that corresponds to this loss, which is, precisely, the *right to have rights*. A right that means to live "in a framework where one is judged by one's actions and opinions and a right to belong to some kind of organized community" (Arendt, 1962: 296-297). There is more. Arendt affirms the existence of a right that responds to one of the legacies of the totalitarian experience, which is that only the loss of a polity itself expels a person from humanity. In that sense, the right to have rights is the right of "every individual to belong to humanity" that "should be guaranteed by humanity itself." Nevertheless, no means were specific on whether this was possible (Arendt, 1962:298).

It is because Arendt seems to have correctly predicted the impossibility of guaranteeing to all humanity the right to belong to a political community and be protected by it (Benhabib, 2005) that the perplexity of human rights that accompanies the movement of people across nation-states continues to conform our social and political horizon. However, as emphasized by Seyla Benhabib (2005, 2018) and Stephanie DeGooyer et al. (2018), that is only true with some specificities. After all, Arendt could not predict the development of an international system for the protection and promotion of human rights and that one of the central guarantees would be the protection of nationality. Therefore, rightlessness is no longer immediately linked to statelessness, and there are contemporary situations in which one is pushed to the margins of legality and still is a national. Alternatively, as in our scene, they can be pushed to the margins of legality in one territory while being a citizen of another.

Therefore, even though the terms of the current paradoxes of human rights may not follow the exact terms of Arendt's critique, one version of this paradox can still be found in the experience of people who have their rights to appearance, speech, and political demands denied because they are not recognized as a citizen. The opposition between "man" and citizen still informs the struggle for rights, even if not in a context of *statelessness*. One of the scenes of this perplexity is precisely related to DACA and the struggle of undocumented persons in the United States to have their status as the subjects of rights recognized. It still relates to the gears of the system of nation-states, as much of the political vocabulary used to deprive them of rights comes from such a framework, despite the complexities the international human rights system has gained in the 21st century.

To detach rightlessness from the condition of statelessness, which is too specific in juridical and political terms, we turn to different framings to answer *in which ways the demand for the right to have rights performed by those who do not have the right to appear guaranteed is a challenge to the limits and meanings of national citizenship*. Undocumented immigrants demanding rights in the DACA scenes are not necessarily stateless persons. Nevertheless, those forced to live on the border of political belonging live on the verge, if not in reality, of being rightless.

One of the main concepts disputed in understanding rightlessness in our scene, as we will argue in the following sections, is *national citizenship*. Unlike Arendt's critique of statelessness, our scene has political actors not deprived of their nationality or state of origin. However, their condition of *rightlessness* relates to the lack of recognition of belonging to the polity - "a place in the world which makes opinions significant and actions effective" - in which they reside in the present, which has durable consequences. *Undocumentedness*, thus, is what relates to rightlessness in our scene. This difference motivates us to search for reading our scene through an Arendtian-inspired lens, recognizing the specificities of DACA and the political actors that understand and reimagine the limits of *national citizenship* in the United States.

## **2. DACA and the scenes of undocumented immigrants claiming rights**

As argued previously, there are some specificities to our scene that differentiates it from Arendt's diagnosis, namely that it deals with the condition of *undocumentedness* and not *statelessness*, as well as the existence of a policy that promoted cleavages in the undocumented community, namely DACA. DACA can be framed in the category of *prosecutorial discretion*, that is, in the discretionary possibility that the Executive power has in enforcing laws, justified by the balance between available resources and law enforcement. Prosecutorial discretion has been part of the vocabulary of American migratory policy since the 18th century, playing a specific role in selecting authorized and excluded migrants. The reasons may vary from the necessities (primarily economic) of the country and, more recently, in the protection of a specific group that has the sympathy of the majority of the American population but which the lack of Congress action has left without documents (Zatz and Rodriguez, 2015). Those who benefited from DACA can be framed in the latter, and being a beneficiary has more than one meaning here.

By establishing who the benefitted subjects are, DACA defines the undocumented migrant qualified to receive the benefit as a beneficiary and a non-priority for deportation. It also opens a space for the beneficiaries to define themselves as the subject of rights. This definition is elaborated in the space of public objection, as argued in the previous section. However, to

understand the terms of the benefits brought by DACA, it is necessary to establish beforehand what it means to be an undocumented person residing in the United States from the point of view of those who live on the border of belonging: the fear, insecurity, instability, and anxiety caused by the situation of *irregularity*.

It is not uncommon to describe the migrant as a "displaced person," in the sense of being, in more than one case, deprived of an appropriate place in the social and political space. Neither a citizen, nor completely a foreigner, the migrant is situated in the place of the "bastard" of which Plato spoke, defined by Pierre Bourdieu (1998) in the Introduction to the classic *L'immigration* written by Abdelmalek Sayad. In other words, the migrant, especially the undocumented one, is positioned on the border between social and political being and social and political non-being. The stories raised by Eileen Truax (2015) reinforce such a description. The lack of migratory status in the United States means, in the life of the migrant called illegal, the inability to access essential services, the formal labor market, and, often, to accomplish daily activities such as driving and moving inside the national territory, without the fear of being detained and deported. Their undocumentedness, in this sense, is rooted in a removal from completely belonging to the political community. It can be stated that the undocumented migrant lives a life marked by the fear and the stigma that exist in the definition of their status as so-called *illegal* migrants. Nevertheless, this does not mean that we are facing a monolithic experience (Abrego, 2011) without edges and possibilities of reinvention, resignification, and resistance.

Despite the image of the undocumented migrant being produced by the laws of the country and the media,<sup>4</sup> there is a different perception of being at the borders of legality between those who migrated as adults and those who made the crossing as minors. Borrowing from Leslie Abrego (2011), we understand the importance of separating the experiences of these two groups. The author

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<sup>4</sup>The image of the *other* in migration is reinforced by some of the migratory laws of the country, such as the Immigration and Naturalization Act (1952) and the reference to *aliens* (foreigners, outsiders), a category also present in the Immigration Reform and Control Act (1986) and the Illegal Immigration and Immigrant Responsibility Act (1996). A more recent example can be found in Judge Andrew Hanen's Memorandum and Opinion of September 2023 at *Texas v. United States* (2021), in which he justifies the use of "illegal alien" to refer to undocumented migrants.

identifies them in terms of generations. The first generation comprises those who decided to migrate and enter the United States as adults and, consequently, deal with precarious and undocumented labor and the life lived in the borders of legality. The fear of having their migratory status discovered, especially the consequential detention and deportation, keeps them in a situation of affectability and vulnerability, in addition to being constantly pushed to social and political spaces of silence and disappearance.

On the other hand, their non-American children, called the 1.5 generation by Abrego, usually have some social inclusion, such as at school and in spaces where documents are not determining factors of differentiation and exclusion.<sup>5</sup> However, as they become adults, many note the limitations of their status as undocumented in experiences marked by a kind of stigma associated with the lack of papers. *Not being part of, not belonging as a member*, informs how those framed as undocumented build themselves in public and associative life. Abrego also emphasizes in a relevant sense how this difference in the experience of undocumentedness informed by *fear* and *stigma* also influences the organization and claims-making regarding rights. This marks, once again, the difference between generations.

(...) there is reason to believe that not all immigrants with tenuous legal status fare equally. For example, while many undocumented adult immigrants are silenced about their work and living conditions (Camayd-Freixas 2008; Holmes 2007; Walter et al. 2004), some undocumented college students organize around and access educational opportunities (Abrego 2008; Seif 2004). These types of highly visible collective actions to demand full and legal inclusion in the United States suggest that members of the 1.5 undocumented immigrant generation are informed by a legal consciousness that is driven by less fear than that of their adult counterparts in the first generation. (Abrego, 2011:341-342)

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<sup>5</sup>Due to *Plyler v. Doe* (1981), migratory status cannot, at least by principle, be a factor of differentiation in relation to access to school. However, Gonzales (2016) affirms that identifying the potential academic success of migrants is significant in terms of the level of access that documented and undocumented migrants have to the educational system. There is a selection between good and bad students in which structural factors are little considered.

These are the terms in which we frame the *Dreamers* movement as it came to be known.<sup>6</sup> The movement gained momentum at the beginning of the 2010s, initially pressing for the passing of the DREAM Act, which has been proposed and re-proposed in different legislatures since 2001 (Castaneda *et al.*, 2020). In 2012, due to the pressure exercised by immigrants' rights movements and electoral interests, *Dreamers* organizations were able to get DACA enacted by the Obama administration.

The program aimed to benefit those who entered the United States before the age of sixteen, and who were up to 31 years of age on June 15, 2012 (the date of enactment of the program), had been continuously present in the country since and lacked any migratory status, were enrolled in an education institution (High School or Higher Education), had concluded High School or served in the American army, and did not have any criminal records (DACA Memorandum 2012). Valid for two years and renewable, DACA guaranteed that its beneficiaries would not be targets of deportation by the Immigrations and Customs Enforcement (ICE), could work, and have identity documents. In exchange, the beneficiaries provided their family data and paid a processing fee. The policy expressly indicated that it would not concede rights nor a pathway to citizenship.<sup>7</sup> It is estimated that DACA benefitted around 800,000 undocumented migrants during its peak (Gonzales, 2016).

Despite being a significant win for the immigrants' rights movement - DACA allowed access to benefits and to a life similar to those people recognized as citizens -, the policy is a temporary one that proposes a fix in the absence of appropriate legislative action. In other words, a law approved by Congress addressing this population directly. Its character of prosecutorial discretion allowed that a change in administration could rescind it and forced its beneficiaries to live in the social space of pause, fear, and helplessness, which

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<sup>6</sup> This name, *Dreamers*, was strategically used by the movement of immigrants' rights in the United States for some time; however, it was later abandoned when they noticed the exclusionary character and the criminalizing of parents of these migrants, as well as the insistence in a dichotomy between the "good" and the "bad" migrant (Gonzales, 2016; Castaneda *et al.*, 2020). The origin of the name is attributed to the DREAM Act.

<sup>7</sup> The last paragraph of the 2012 DACA Memorandum indicates: "This memorandum confers no substantive right, immigration status or pathway to citizenship. Only the Congress, acting through its legislative authority, can confer these rights."

is proper for those who have undocumented status. This indicates that the program does not seem to solve one of the central tensions underlying the fight for the rights of migrants in the United States: the tension of who can occupy the social and political space that allows someone to be recognized as one who can legitimately claim (and be heard) *the right to have rights* - to formulate once again, the right to live "in a framework where one is judged by one's actions and opinions and a right to belong to some kind of organized community" (Arendt, 1962: 296-297). In other words, what we can conclude is that to be a beneficiary of a policy whose stability over time depends on the political electoral moods is not the same as having recognized the status of the subject and claimant of rights.

In addition to not addressing the problem of defining and recognizing the person who migrates as a subject and claimant of rights in a polity different from their origin, a more careful analysis of the program makes us affirm that the policy maintains the idea of national citizenship in the definition of who is the legitimate subject and claimant of rights in the political community of the United States. Despite their undocumentedness, and the experience of rightlessness derived from it, resulting from how citizenship has been framed institutionally in the country, *how far could those public demonstrations that brought about DACA effectively challenge the national citizenship framework? How was citizenship imagined during these struggles?* We will address these questions in the next section.

### **3. National citizenship under dispute**

To analyze DACA as a policy that impacted on how the subject of rights is constructed in the public scene, we need to delve into how the immigrant rights movement understands (and resignifies) the meaning of *national citizenship*. This means we are reframing the policy through an Arendtian lens in another chapter of what she called the non-resolved paradox between popular sovereignty and human rights in the constellation of national states. However, one of the specificities of our analysis is detaching rightlessness from statelessness, and highlighting the condition of *undocumentedness* as one that pushes people to become rightless, as argued in section two. To define the terms of these clashes, we follow Walter J. Nicholls (2019) to differentiate four frameworks in which the disputes around the concept of

citizenship appear in the discourse of the movement for the rights of the people who migrate to the United States and bring them to our scene.

The first framework, called “ethnonational citizenship,” or “ethnonationalism,” is used by the immigrant rights movement as a framework of opposition, as it substantiates the use of the categories of *alien* (the other, the foreigner) and *illegal* to identify the undocumented migrant.

A classic example of this use goes back to the 1980s and 1990s. With the emergence of day laborers in the American cities and suburbs, there was a backlash from the white residents of these areas, who considered themselves “rightful” citizens, those who truly belonged to that community of membership. Mobilizing a grammar of dispute, they claimed their *Americanness* in opposition to the presence of the group in search of work, occupying the spaces of a city that would not be *rightfully* “theirs” (Nicholls, 2019:45).

From the ethnonationalist perspective, as defined by Walker Connor (1994), there is a postulate of a necessary relationship between the legitimacy of a specific political community and its ethnic identity. This guaranteed the legitimate right of political communities to self-determine according to ethnic criteria. In addition, the borders of a polity - defined in ethnic and ethical terms - which separate “the national” from “the other” are well-defined, immutable, and necessary. In regard to citizenship, its origins are traced back to the bonds created by blood ties and/or common and specific cultural traits of a particular political community determined territorially (Nicholls, 2019:23). When citizenship is defined by ethnonational foundations, those people that are not part of *us*, in other words, those that do not share the common traits of that ethnic and political community could be legitimately excluded, both in terms of who are the subject of policies and rights as well as from the territory itself.

While, on the one hand, the movement for the rights of people who migrate is recognized as a target of the ethnonationalist citizenship framework, on the other, there are three other framings identified by the movements as potentially inclusive if appropriately expanded. To rephrase the argument, the question is, thus, not the disposability of citizenship as an ideal. The disputes,



as described by Nicholls (2019), seem to accept the concept's centrality in the nuts and bolts of the nation-states that also affirm themselves as democratic, following the rule of law and in accordance with the principles of human rights. In that sense, the framings of citizenship that are part of the dispute in the sense that the immigrant movements can appropriate and resignify are (i) national liberalism, (ii) a definition of territorial personality, and (iii) a post-national ideal.

The starting point of the national liberal position (i), the most bordered of the framings, is that the United States is a “nation of immigrants.” Emphasizing the historical character of the national formation, the composition of national identity is an inescapable point to the formation of the political community (Nicholls, 2019:24). This is because only between those that shared traits and socially valuable goods between themselves that solidarity, trust, and a disposition to live in society could emerge and blossom. Hence, the role and the relevance that migration had in the history of the formation of the United States is not denied; however, it justifies the legitimacy of defining criteria of inclusion and exclusion according to what is defined as relevant to maintaining an *us* that shares common traits that would be, consequently, fundamental to the stability of the national political institutions. Subjects identified as foreigners, outsiders, and incapable of fulfilling these criteria could be excluded, deported, or barred (Miller, 1995; Zatz; Rodriguez, 2015).

The liberal nationalist perspective is close to the ideal of *cultural citizenship*, which is based on a defense of the identification criterion with the values of a particular political community fundamental to belonging:

Cultural citizenship refers to the right to be different and to belong in a participatory democratic sense. It claims that, in a democracy, social justice calls for equity among all citizens, even when such differences as race, religion, class, gender, or sexual orientation potentially could be used to make certain people less equal or inferior to others. The notion of belonging means full membership in a group and the ability to influence one's destiny by having a significant voice in basic decisions. (Rosaldo, 1994:402)

In this passage, Renato Rosaldo highlights how expanding the borders of citizenship beyond an ethnonational group founded in a homogenous state would allow better proximity to the claims for social justice and equality among those who share common values as part of the same polity. According to him, there is a deliberate oxymoron in formulating the category of cultural citizenship because they are two words that hardly juxtapose themselves comfortably. Citizenship is a political and legal category marked by binaries - the citizen and his opposite, the non-citizen. The adjective cultural, on the other hand, implies the vernacularity of the category, that is, what those involved perceive as belonging and membership in the polity. This thesis gained traction in the first moments of the *Dreamers* movement when many non-American daughters of migrants claimed to be *de facto* Americans. Their arguments concentrated on the affirmation of shared *American* values, seeking to remove from the discursive field narratives that would label them as *others*, *foreigners*, and stating the terms of the *minority model*.

It is in this sense that we interpret the cases of public dispute over the construction of the image of who migrates and is marked as undesirable. On the one hand, there is the construction of the criminal, dangerous migrant, representing those who should be fought against, and, on the other, the image of the hardworking migrant who crosses the border in search of the American dream (Nicholls, 2019:198). Present since the narratives that mobilize the campaign for the DREAM Act,<sup>8</sup> the denomination of *Dreamers* reinforces the idea of young dreamers who entered the country through no fault of their own. The narratives chosen to mobilize public opinion reinforce the idea that, since their arrival, they have followed the paths towards the American dream: the search for education and academic success, for better financial conditions, and – often - not knowing their migratory status until they try to enroll in higher education (Truax, 2015). It does not consider, nevertheless, the narratives of those who took different paths or who were involved in legal issues (Gonzales, 2016), as these may seem less *American* than the ones who seek the dream.

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<sup>8</sup> Senator Dick Durbin (Democratic Party, Illinois), as part of his efforts in defending the approval of the DREAM Act, keeps a record of Dreamers' narrative. Available at: <<https://www.durbin.senate.gov/issues/immigration-and-the-dream-act/dreamers-stories>>. Accessed September 2023.

On the side of those who claim the rights of the undocumented migrant is the message that those who dream the American dream also share the values that make the nation what it is: an American nation. The undocumented youth also have the advantage of receiving formal education in American institutions, where they learned how to talk as Americans and how to look American<sup>9</sup> - in addition to not being held responsible for the decision to migrate. It is in this direction that we can understand statements such as the one by Martin O'Malley, a well-known Democratic politician: "I have always called immigrants New Americans because that is what they are." According to this framework, the subject of rights, who can legitimately enjoy the right to have rights, is the subject that shares the values of the national culture.

Another possibility stems from the defense of citizenship in terms of a territorial personality (ii). According to this conception, territorial borders define who is (or is not) considered as a subject of rights of a determined polity. In other words, it recognizes a group of norms defined for all the *people* who reside inside the same borders because residency in a determined territory is the criterion to define the legitimacy of the claims of those who assert themselves as the subject of rights. It is in this sense that we can affirm that, for this conception of citizenship, affiliation in cultural or ethnic terms would be less effective than the presence in the territory of a certain political community.

In the mobilization for migrants' rights in the United States, Nicholls (2019) indicates the articulation of such an argument when there is a focus on the legal framework that could be applied to migrants, such as the clause of equal protection (14th Amendment),<sup>10</sup> and the clause of the due process (5th

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<sup>9</sup>In an anonymous interview with one of the authors in April 22, 2023 (32'28"), one of the migrants affirmed that their social circle did not know that they were not an American citizen, since "my friends actually always told me that they thought I was an American citizen because my English was so good, because of the way I look, I guess, and the way I acted, I became very Americanized. And no, they never really noticed anything different about me, until I told them of course."

<sup>10</sup>According to the second part of the section I of this Amendment: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The argument notes the change from the privileges and immunities of the citizen to the *person*, and, thus, a protection that would go beyond legal citizenship.

Amendment).<sup>11</sup> The applicability of such dispositions, hence, refers to the people inside the American territory in such a way that undocumented migrants could have their legal personality recognized because they reside in that territory. It is in these terms, for example, that the right of day laborers to seek work in the public space of American cities and suburbs is founded. It was also argued in defense of DACA when it was rescinded in September 2017. Their presence in the American territory and their participation in the community that occupies this territory indicate that, at least in terms of a “person” protected by the legal dispositions, there could be protection for this group of migrants. In addition, this framework reverberates, in a way, when such a territory is called *home* (“Home is Here”)<sup>12</sup>.

Differently from liberal citizenship, the value at which the justification of the concept of territorial citizenship falls on is the presence in a specific territory. In this sense, borders are seen as necessary conditions for solidarity and the recognition of a claim for rights as legitimate. This means that actions to reinforce them to avoid the entrance of undesirable people are justified (Nicholls, 2019:25).

Finally, we arrive at more radical demands framed by an ideal of post-national citizenship (iii). This framework rejects the nation-state as the institution capable of allying force and law, activity, and validity - to use Habermasian terms. In other words, the gear of nation-states, which unites law-territory-sovereignty-nation-border, is interpreted as unable to guarantee and protect the system of fundamental rights and guarantees according to the ideal of fundamental human equality. It is in this sense that the normative set capable of addressing the demand for respect for the value of equality -

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<sup>11</sup>According to this Amendment: “No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense [*sic*] to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” Once again, we highlight the use of “person,” in the same sense of the previous footnote.

<sup>12</sup>This phrase was employed in many marches in defense of DACA at the time of its tentative rescission in 2017, as can be verified in the following website: <https://www.homeisheremarch.org/>.

interpreted in cosmopolitan terms – functions as the rules of universal human rights. These depend on international and supranational institutions to be realized (Nicholls, 2019:25).

It is important to highlight that, in the mobilization for migrants' rights in the United States, this framework appears diffusely. When, for example, day laborers mobilize demanding that the right to work should be recognized as a human right, independent of migratory status, they are recurring to an idea of the subject of rights and rights that do not pass through the recognition from the political, legal, and moral authority of the states (Nicholls, 2019:51). Another example is the phrase “No Human is Illegal,”<sup>13</sup> articulated in different moments of the fight for immigrants' rights in the United States, including our scene.

However, these arguments, since they resound little to the American audience, lost space to other framings that insisted on the role of the state as an institution that safeguards a more adequate political and social order. Recurring to a notion of unrooted humanity, of “man,” seems to be a less effective strategy when the common public culture values the principle of sovereign self-determination - which is questioned by the cosmopolitan thesis. In our scene, the argument of cultural citizenship, of Americanness, of the *Dreamers* and their presence in the American territory since their childhood or adolescence, in a way that they recognize the country as their home - sometimes, the only home they know -, is predominant. With an Arendtian lens, we emphasize the difficulties of founding rights only on an ideal of humanity in a world where the constellations of nation-states are still a reality.

From what has been argued to this point, it is possible to conclude that not only does the nation-state continue to be recognized as the institution capable of determining who can be the subject of right and, in this sense, belong to the political community that is the target of their claim, but also the meanings

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<sup>13</sup>The phrase “No Human is Illegal,” according to an anonymous interview for one of the authors on June 14, 2023 (63'55”), was first employed by the human rights activist Elie Wiesel, and later on employed in different campaigns for immigrants' rights promoted by the Central American Resource Center in Washington, DC (CARECEN-DC). Since then, it has been a constant in mobilization by different actors in this struggle.

in which citizenship is defined are in the center of the disputes of movements of undocumented migrants. A probably unexpected result of these different framings in the highlighted scene is the reinforcement of the centrality of the state, which is what Nicholls concludes of the wider immigrants' rights movement:

Pro-immigrant forces pushed the boundaries of citizenship but not under conditions of their own choosing. The nation is an essential part of the habitus and "moral ontology" of its citizenry, and the state continues to exercise inordinate power - symbolic, political, and legal - over its boundaries. (Nicholls, 2019:22)

#### **4. Conclusion**

On one hand, DACA is a policy that not only conceded benefits for migrants who entered the United States as minors, but it also opened space for the fight to redefine the terms of those who are subjects of rights and, thus, who can legitimately claim the right to have rights in the United States. Furthermore, it did so by recognizing, even if provisionally, the status of a specific group that met very detailed criteria to be considered as part of an *us*, especially articulated by the framework of liberal citizenship.

On the other hand, as a temporary fix, DACA authorized undocumented immigrants to leave the shadows, the imposed silence, which is the mark of those who live on the borders of political recognition. The right to appear was an essential fuel for the subsequent mobilization of such a group, as deportation was no longer an immediate risk. Without disregarding the program's gains, however, it is relevant to highlight that DACA was not meant to be a solution for the undocumented population, much less a fix for all in need of legal recognition of their migratory status. To some extent, the program, by defining the subject that deserves the recognition of their legal and political status as bearers of rights, ended up instituting distinctions that claim to be legitimate about who can have access to benefits similar to rights of citizenship and who can continue to be excluded.

To phrase the argument in other words, we can affirm that the undocumented population in the country is estimated to be around 11 million people, of whom 1.7 million were eligible for DACA (Gonzales, 2016). It is also estimated that DACA benefitted around 800,000 undocumented migrants during its peak. That is, among the 11 million people, only 800,000 migrants deserved DACA's benefits, while the rest of the population were still considered "illegal."

In addition to this, the criteria for DACA seems to build upon the narrative of the "good immigrant," emphasizing the merit of some of the most publicized cases of *Dreamers* but hardly representative of the life choices and experiences of all the people who took part in the movement (Benuto et al., 2018; Castañeda et al., 2020). In the *Dreamer* discourse, the successful undocumented migrant is the main character. This narrative, however, does not consider the institutional and social limitations of living as an adult without documents for the lives of millions of people (Gonzales, 2016). In this sense, what DACA reinforced was precisely the thesis that to be considered *equal* to a citizen's potential, it would be necessary to share some characteristics which qualify the undocumented migrant as deserving of the right to have rights.

We also emphasize that, since 2021, no new applications for DACA have been processed due to a liminal injunction, confirmed in a September 2023 memorandum from the District Court for the Southern District of Texas at *Texas v. United States* (2021), with nationwide effects.<sup>14</sup> Since the policy was designed as a fix, a temporary patch that address at the same time the lack of legislative action and the claims of a part of the migrant population identified by the American society as deserving of the status of a beneficiary of a policy that guaranteed them benefits, the result is that its continuity depends on the political and electoral context of the country. DACA, therefore, is a temporary political-legal fix that, because of its nature, keeps alive the

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<sup>14</sup> This lawsuit can be seen in conjunction with the opposition from the State of Texas and others to the expansion of DACA in 2014 and the implementation of the *Deferred Action for Parents of Americans* (DAPA), that would benefit migrant parents. This lawsuit is *Texas v. United States* (2014). One of the main arguments of the states is the rise in public spending on the undocumented population, such as the emission of documents (driver's license), healthcare and education.

memory that the migrant, even when the subject of rights is considered, is only so due to the benevolence of those who recognized such status. Benevolence, nevertheless, is not stable, and it is among those virtues that, in the political world, do not guarantee stability over time and space. Nor does it create the space to build a relation between equals - one of the foundations of a democratic society, it should be emphasized (Benhabib, 2005).

Finally, we highlight another effect of the design of this policy, which seems to reinforce the paradox described by Arendt, albeit in other terms. Even if our scene is not of the stateless, the framings of citizenship used in defense of the rights of migrants, especially for the DACA beneficiaries, seem to insist on the elements of what constitutes peoplehood, of the common shared culture, and the value of cohabitating the same territory. They argue for the presence of “men” that can live in the polity of “citizens” because they are similar to them. These ideals appear by the insistence in the public debate and political justification of the argument of sharing American cultural values (as is the case of identifying as *de facto* Americanness) of the beneficiaries. Allied to the argument that these individuals are already residents and, thus, should be recognized as beneficiaries of policies, qualifying as the “person” inscribed in the law. By this, we mean that claiming the right to have rights still seems to depend on an earlier recognition, that of the legal and political status of citizenship. Thus, the question becomes which kind of citizenship can guarantee the right to have rights in such a way as to avoid the arbitrary and unjustifiable exclusions that led to the catastrophes of the last century and those that continue today in the paths of international migration. In any case, one thing seems correct: the ideal of citizenship proposed as a benefit for select ones - whether because they are minorities, unique, or deserving – does not seem to offer the most appropriate alternative. This is another limit of DACA.



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