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THE ARRIVAL OF ‘STATELESSNESS STUDIES’?

DAVID BALUARTE*

In my symposium contribution, I provide my view that the study of statelessness has emerged as a multi-disciplinary field and urge that we institutionalise it as such. Statelessness is fundamentally a legal concept. The definition of ‘stateless person’ specifically refers to the operation of law, and the protections envisioned by both the 1954 and 1961 *Conventions* afforded to stateless persons are legal in nature.¹ At the same time, formal legal reasoning has proven inadequate to fully understand statelessness and protect stateless persons. Moreover, factual statelessness enjoys few legal protections, but is essential to a more robust understanding of nationality and what its absence really means. Accordingly, the study of this legal concept should happen across disciplines to ensure that we take appropriate steps to integrate effectively stateless persons legally, politically, and socially, in the communities where they live.

The most important indicator that the field of statelessness studies has emerged is the abundance of scholarly work on this topic that both fascinates and vexes the global community. Once conceived as a technical problem of harmonising state nationality laws,² statelessness gained a humanitarian dimension after World War II.³ Large-scale statelessness, which occurred after the fall of the Soviet Union and the Former Yugoslavia, brought its relationship to geo-politics into focus. Due to the hardening of both national borders and rhetoric about national identity in response to a recent increase in global forced migration, people who fall outside of the world order of nation states face risks as pressing as they have at any point in contemporary history. In 2014, Mark Manly and Laura Van Waas observed that ‘there is enough [scholarly] activity to conclude that statelessness has “arrived” as a recognized focus of both academic and policy-oriented study’.⁴ The precipitous rise in scholarly work with practical and theoretical applications even since that 2014 declaration clearly marks the emergence of statelessness studies as a field.

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¹ *Convention Relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960); *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975).

² Peter J Spiro, ‘Citizenship, Nationality, and Statelessness’ in Vincent Chetail and Celine Bauloz (eds), *Research Handbook on International Law and Migration* (Edward Elgar 2014) 283.

³ Guy S Goodwin-Gill, ‘Introductory Note to the Convention Relating to the Status of Stateless Persons’ (2010) *United Nations Audiovisual Library* 1.

⁴ Mark Manly and Laura Van Waas, ‘The State of Statelessness Research: A Human Rights Imperative’ (2014) 19(1–2) *Tilburg Law Review* 3, 4.

While it is evident to many observers that the field has emerged, it is also true that this area of study is not yet fully defined, and the questions of which discipline should claim it, and which methodologies we should use to interrogate it, are appropriate ones for this symposium. My review of the literature suggests that a substantial portion of statelessness scholarship has been produced by the legal academy.⁵ At the same time, some of the most influential thinking on statelessness can be traced back to Hannah Arendt, a philosopher, and significant contributions have been made to this field of study by political scientists, sociologists, and historians, to name a few. I will pause here to say that the question of where statelessness studies 'belongs' feels a bit ironic, and it is partially my discomfort with that question that has led me to propose that our community commits itself to the continued multi-disciplinary study of statelessness. My hope is that as statelessness scholars we will adopt an ethos of multi-disciplinary study explicitly, and I will explain why and then discuss some practical considerations in this regard.

I suggest that there is a value to adopting an ethos of multi-disciplinarity as a community. Statelessness is a question of belonging. As a legal matter, a stateless person is not a national under the laws of any country, and the lived experience of many stateless persons is one of outsider or 'alien.'⁶ While the community of scholars working on statelessness would prefer that everyone have a nationality, there is some recognition that statelessness is an inevitable feature of the current global order of nation states.⁷ Our community holds as an ideal that stateless persons, who do not belong anywhere in a formal sense, enjoy human rights and dignity wherever they are.⁸ Because the subject of our scholarly inquiry does not formally 'belong', I propose that we resist the desire to formally locate statelessness studies in any particular discipline. An ethos of openness and access, ideally accompanied by an ideal of egalitarianism, resonates with our collective project. Of course, it has practical benefits as well.

A multi-disciplinary approach to statelessness studies necessarily involves the examination of a common problem from a variety of perspectives, through different methodologies. There is a clear benefit to eliciting all perspectives, challenging them or accepting them, observing as new ideas morph and evolve together, without excluding any of them as an outsider. As a field, I think statelessness studies would produce the greatest insights if scholars from all fields continued to work in parallel, and gather regularly to share our findings. For example, my field is law, and I have found it tremendously useful to hear from

⁵ I acknowledge that my literature review is likely influenced by my own discipline — the law, and as this piece will suggest, I would welcome a contrary view.

⁶ For profiles of stateless persons, see Shaminder Dulai, 'Stateless Voices' (Web Page, 7 February 2015) <<https://vimeo.com/statelessvoices>>.

⁷ Katja Swider, 'Why End Statelessness?' in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds), *Understanding Statelessness* (Routledge 2017) 195.

⁸ Indeed, human rights advocates have long argued that the conception of nationality as 'the right to have rights' is flawed, because it is our human condition that brings with an entitlement to fundamental rights. See David Weissbrodt, *The Human Rights of Non-Citizens* (Oxford University Press 2008).

political theorists and historians in developing my own understanding of nationality and statelessness, in theory and in practice. The decision to establish the field of statelessness studies as explicitly multi-disciplinary would cement this kind of collaborative exchange as a defining characteristic of the area of study.

It is true that prominent legal scholars have long observed ‘the decline of law as an autonomous discipline’,⁹ and my proposal may coincidentally reflect an approach that many in the legal academy have embraced as the optimal way to engage in legal studies. Nevertheless, it is not my intention to make a contribution to the scholarship on the nature of law as a discipline. Indeed, whether statelessness studies should be a multi-disciplinary field is a separate question than whether the study of law should be an autonomous discipline. That said, my proposal that statelessness scholars embrace a multi-disciplinary approach to our field is a reflection of my discontent with a formalistic legal understanding of statelessness.

I will take a brief moment to elaborate on my discontent because it is an important part of the conversation about the field of study in general. I have observed that the focus on the eradication of legal statelessness has in some instances dulled critiques against states that propose resolving their statelessness problem by insisting that another state extend its nationality. The example I am most familiar with is that of the Dominican Republic, where Dominican authorities have created a pink birth certificate for the children of irregular migrants, who are overwhelmingly of Haitian descent,¹⁰ and compelled them under law to register in the consulate of their parents.¹¹ To the extent that the Haitian government has been able to extend nationality documents to children born to its citizens in the Dominican Republic, that process is incomplete, and tens of thousands of people face a risk of statelessness.¹² The Dominican government has responded to charges that such actions have left Dominicans of Haitian descent stateless, or at severe risk of statelessness, with forceful statements that all such individuals are Haitian.¹³ Under pressure in this regard, the UNHCR has reduced its estimate of the number of stateless persons in the Dominican Republic from 133,770 in 2015 to zero in 2016, suggesting that the Dominican strategy of reclassifying its citizens of Haitian descent has gained traction.¹⁴ Here, the focus

⁹ Richard A Posner, ‘The Decline of Law as an Autonomous Discipline: 1962–1987’ (1987) 100 *Harvard Law Review* 761, 761.

¹⁰ Chelsea Muir, ‘“Foreigner” Birth Certificates and Statelessness in the Dominican Republic’, (2017) (December) *Berkeley Public Policy Journal* <<https://bppj.berkeley.edu/2017/12/01/foreigner-birth-certificates-and-statelessness-in-the-dominican-republic/>>.

¹¹ *Ley General de Migración No 285-04* [General Migration Law No 285-04] (Dominican Republic) GO No 10291, 15 August 2004, art 36.

¹² Catherine A Tobin, ‘No Child is an Island: The Predicament of Statelessness for Children in the Caribbean’ (2015) 1(1) *International Human Rights Law Journal* 1, 6.

¹³ David Baluarte, ‘The Risk of Statelessness: Reasserting a Rule for the Protection of the Right to Nationality’ (2017) 19(1–2) *Yale Human Rights and Development Law Journal* 47.

¹⁴ United Nations High Commissioner for Refugees Statistical Yearbooks are available at: United Nations High Commissioner for Refugees, ‘Statistical Yearbooks’ <<https://www.unhcr.org/en-us/statistical-yearbooks.html>>.

on the potential curative effects of the operation of Haitian law has erased statelessness from the official statistics, and while this does nothing to undermine claims about the systematic discrimination perpetrated by the Dominican Republic, it does have the effect of dulling the critique of those abusive actions.

I have felt this tension in my own legal scholarship, through which I have interrogated the statelessness definition, and argued for a progressive understanding of this definition in a manner that stays true to its legal rationale.¹⁵ My scholarship to date does little to inquire, in a systematic way, into the socio-political forces that create statelessness, nor does it interrogate the psycho-social impacts of statelessness on people's lives. Indeed, I depend on the work of my colleagues in the social sciences for an ever-deepening understanding of the causes and effects of statelessness, and to inform a critique of the legal rationale to which I am faithful. It is not evident to me that legal scholarship, in this case my own, is the most effective venue to develop these necessary critiques. However, if I embrace the multi-disciplinary approach to the study of statelessness, I can readily use such critiques from other disciplines to refine my own inquiry.

My hope is that this very personal example will help to make my case for a multi-disciplinary approach. The field of stateless studies is in its infancy, and we have yet to take full advantage of its multi-disciplinary character, but we have the opportunity at this juncture to recognise the strength that we draw from a diversity of perspectives and commit to it. I have little doubt that this is the only way to begin to address a problem as confounding as statelessness.

If one agrees statelessness studies should be an explicitly multi-disciplinary field, the question becomes how to institutionalise this approach? Of course, this question must be answered differently for each academic institution, which will have a unique set of considerations in terms of internal politics and resources. Where there is both political will and the capacity to commit institutional resources to the study of statelessness, a statelessness course is the first step.

I have never taught a course on statelessness, but would like to suggest that such a course could include:

- (1) the history of statelessness;
- (2) theories of the nation state and statelessness;
- (3) the legal framework for the protection of stateless persons;
- (4) statelessness determination mechanisms and jurisprudence;
- (5) forced migration and statelessness;
- (6) minority rights and *in situ* statelessness; and
- (7) stateless ethnographies.

This proposal is admittedly law heavy, which reflects my own disciplinary lean. Presumably any instructor could develop the course to offer more from their own

¹⁵ See, eg, David Baluarte, 'The Risk of Statelessness: Reasserting a Rule for the Protection of the Right to Nationality' (2017) 19(1–2) *Yale Human Rights and Development Law Journal* 47. See also David Baluarte, 'Life after Limbo: Stateless Persons in the United States and the Role of International Protection in Achieving a Legal Solution' (2015) 29 *Georgetown Immigration Law Journal* 351.

perspective, while still conveying the essential message that statelessness should be understood through a broad lens. I would recommend a collaborative effort to develop such a curriculum, and I know that the Institute on Statelessness and Inclusion has already taken concrete steps in this regard. We should encourage and actively participate in this work.

In my own law teaching, I have incorporated a module on statelessness into my instruction on refugee and asylum law; I have created a complex human rights advocacy simulation on behalf of a simulated stateless client, and live-client work on behalf of stateless clients in my clinical instruction. Of course, all of these scenarios are very law-focused, and while I do believe I have successfully introduced the legal problem of statelessness to students through such instruction, I have become increasingly aware of the limits of the legal understanding of statelessness.

Ideally, a statelessness course, followed by a certificate program in statelessness studies, might lead to the establishment of multi-disciplinary centres for statelessness studies within a handful of select universities. Such centres could promote the affiliation of faculty from various disciplines with research awards for interdisciplinary work. I do not think more than a few centres in each continent would be feasible, or even desirable, but believe that university centres could become hubs for research and conferences on statelessness and bring the field to its next stage of development.