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## A New Narrative of Statelessness

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## A new narrative of statelessness

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As we approach the eight-year mark in UNHCR's decade-long commitment to advance the rights of stateless persons, known as the #Ibelong campaign,<sup>1</sup> there is much to celebrate. Statelessness is firmly on the agenda in conversations about forced migration, national security, human development, and the fight to end systemic discrimination. Significant challenges remain, as millions of people are still forced to endure statelessness and some governments continue to persecute stateless populations while denying the fundamental human right to a nationality. But awareness of the problem of statelessness has arguably never been so widespread, while civil society organisations that directly incorporate the voices and experiences of stateless persons surge,<sup>2</sup> and think tanks and academic programs flourish.<sup>3</sup> High quality scholarship on statelessness has increased exponentially,<sup>4</sup> and Dr. Mira Siegelberg has made a tremendously important contribution to this growing body of work with *Statelessness: A Modern History*.

Like many scholars and advocates for the rights of stateless persons, I often tell a story of global statelessness that begins with the atrocities of World War II that triggered mass statelessness in the post-war period that culminated in the 1954 Statelessness Convention.<sup>5</sup> After reading Dr. Siegelberg's book, I will never tell the story the same way again. *Statelessness: A Modern History* offers a meticulous reconstruction of the varied contributions of artists, scholars, and policy makers to the understanding of statelessness in the years between the First and Second World Wars. She situates statelessness in some of the most prominent debates about international law and relations in modern history, most notably whether the individual is an appropriate subject of international law and whether a political order beyond the confines of the nation-state is desirable. Dr. Siegelberg succeeds in showing that statelessness played a significant role in the development of international legal thought throughout the interwar period. In uncovering the contributions of statelessness to legal

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<sup>1</sup> See campaign website at <https://www.unhcr.org/ibelong/>.

<sup>2</sup> For example, United Stateless at <https://www.unitedstateless.org/organization>.

<sup>3</sup> Most notably the Peter McMullin Centre on Statelessness at the University of Melbourne and the Statelessness Programme at Tilburg University.

<sup>4</sup> See Baluarte (2019).

<sup>5</sup> See e.g. Baluarte (2017).

thought during these years, she offers a new narrative of statelessness protection that begins in earnest in the interwar period.

Dr. Siegelberg observes that the interwar years were characterised both by successive events that left large groups of stateless persons as well as a transition from empire to the nation-state as the organising structure for global political power (4). The rapid increase in the size of stateless populations at a time when political power was being reorganised among sovereign states with hard borders led many to theorise about the significance of populations excluded from the new world order. The author illustrates how statelessness provided an example of the individual as a subject of international law and represented the possibility of political community that transcends borders (7; 11).

In addition to learning a tremendous amount about the statelessness debate in the interwar years, what struck me about this book were the many parallels between the interwar statelessness debates and the current conversation. For example, the way geopolitics influenced who was considered stateless and whether protection was afforded in the interwar period resonates with the experiences of the global community today. Similarly, debates in the 1920s and 1930s about whether nationality should be regulated at the international level foreshadow the responses of states today that invoke sovereignty in response to critiques of their denials and deprivations of nationality. Also, early musings on realities of unprotected persons and the scope of statelessness protection may be understood as a prelude to the contemporary debate about *de facto* statelessness. Relatedly, efforts to analogise and distinguish stateless persons and refugees continue today as an important dimension of our understanding of statelessness. These parallels provide a means to better understand the forces at play in the contemporary statelessness debate and are one more reason to consider *Statelessness: A Modern History* for inclusion the growing canon of must-read statelessness scholarship.

*Statelessness* can be read as two interrelated projects. In the first four chapters of the book, Dr. Siegelberg establishes how the category of statelessness entered international society and international law. Each of those chapters begins with key events in the development of statelessness discourse directly after the First World War and explores the relationship of those events to major questions of international law and relations. In these chapters, Dr. Siegelberg provides her most novel and exciting contribution to our understanding of statelessness and its impact on international legal thought. In the last two chapters, she examines some of the better-known contributions of historical figures, such as Hannah Arendt, and seminal historical events in statelessness, such as the 1955 Nottebohm case. She provides a fresh take on these key historical figures and events, using her novel research and insights from the interwar period to compare, contrast, and thereby gain a deeper understanding of these crucial moments in the statelessness narrative.

The first chapter, titled 'From a Subject of Fiction to a Legal Reality,' examines the significance of the *Stoeck v. Public Trustee* case. In 1921, the High Court in England recognised Max Stoeck as stateless and therefore not properly designated an 'enemy alien' (13–14). Mr. Stoeck was a businessman in the UK who formerly held German nationality, but who had failed to naturalise as a British subject. He faced years of internment and confiscation of his property

on account of his German nationality but was able to reverse his fortune with a declaration that he was not a German national, but a stateless person.

It is notable that Dr. Siegelberg begins her exploration of the statelessness debate in the interwar years with this account of a person who pursued statelessness voluntarily for his own personal benefit. Stateless persons are most commonly described in contemporary discourse as marginalised people in need of humanitarian intervention and international protection. Siegelberg's decision to begin *Statelessness* with the example of a cosmopolitan businessman who pursued statelessness as a form of protection reflects her strong desire to surface underappreciated nuance in the statelessness debate of that era.

The author uses the Stoeck case to illustrate the debate during the interwar years about whether authorities should recognise statelessness as a category under the law (21–23). On the one hand, observers insisted that everyone must hold a nationality in a world organised into nation-states and urged the Court to conclude that Mr. Stoeck was a German national. Under this view, statelessness would not exist if the global community made a moral commitment not to permit its existence legally. On the other hand, Mr. Stoeck's lawyers adeptly advanced the argument that he had renounced his German nationality under German law, and to refuse to give effect to that renunciation would be an incursion into German sovereignty. This was the view that ultimately prevailed at the British High Court, which found that Mr. Stoeck was indeed stateless.

Dr. Siegelberg observes that Mr. Stoeck was the first person in the history of the British empire deemed stateless and convincingly argues that there were profound theoretical and practical implications for this decision (23). In theoretical terms, the Stoeck case had implications for the longstanding debate about whether individuals could be subject to international law. In practical terms, the case suggested that large groups of marginalised persons unprotected by nationality required a solution from the international legal order.

Dr. Siegelberg begins the next chapter, titled 'Postimperial States of Statelessness,' with a 1921 letter from Jakob Sinnwell to the League of Nations describing his expulsion at the hands of French police. This incident arose in the context of a dispute over authority in Saarland, a river basin between France and Germany, where the League of Nations had established the first supranational governing commission. The author highlights the Sinnwell letter – written the same year that the British High Court decided the Stoeck case – as it brings into sharp relief the pressing question whether the League of Nations could exercise international authority to address situations of statelessness (49–50).

Dr. Siegelberg then proceeds to examine the contours of this question with a comparison of treatment of two different stateless populations: the Russian émigrés who obtained international protection and the *heimatlosen* of central European successor states who did not (52). 1921 also marked the end of the Russian Civil War, which resulted in a surge of displaced persons from Central European successor states followed by a decision by the Bolshevik government to revoke the citizenship of expatriates. Whether to define the expatriates as stateless was a highly politicised decision, as it would require recognition of the new Bolshevik government to credit its decision to denationalise that group.

Dr. Siegelberg notes that the desire not to recognise statelessness as a broad category also related to the concern that it blurred a line many wanted to maintain between matters of international and national concern, where nationality was traditionally the latter (68). So, while the famed Nansen Passport emerged in 1922 and was used to extend international protection to Russian and Armenian refugees, the Red Cross and the League of Nations considered the *heimatlosen* generally to be beyond their remit and matters of national concern. While the Nansen Passport represented protection for stateless refugees under international law, the disinclination of those organisations to engage the stateless population more broadly reveals fault lines in the debate about global governance in the interwar years.

In the third chapter, titled 'Postimperial Foundations of Political Order,' Dr. Siegelberg describes how international law theorists continued to wrestle with the 'question of questions,' whether non-state entities and individuals were the subject of international law. She further describes how theorists began to struggle with a 'deeper question' about how public power and political communities establish boundaries for nationality and citizenship (85). She ties together these observations with other theoretical work from this period that critiqued the nation state as the basic building block of global society, and effectively demonstrates how statelessness inspired insights from a range of schools of thought on these matters.

In her detailed review of the various theoretical debates of the time, Dr. Siegelberg references a 1929 collection of international caselaw and remarks that this was a decisive moment in the process of establishing international law as a technical field (93). Scholars and policy makers alike were gripped with the question of whether nationalisation and denationalisation were appropriate topics for international regulation. In these debates, statelessness was central. Indeed, the author highlights influential debates from the interwar period specifically about whether international law could address statelessness in a similar manner to efforts to protect refugees, either by compelling nationalisation or rejecting denationalisation.

Dr. Siegelberg begins the fourth chapter, titled 'The Real Boundaries of Membership,' with a 1934 letter from Oskar Brandstaedter to the 'Department of Stateless People,' an imagined department within the League of Nations. A year later, Mr. Brandstaedter sent another letter from Vienna expressing fear of impending expulsion and describing the desperate situation of persons like himself without passports. Siegelberg effectively contextualises this first-person account in the forced displacement of people throughout Europe in the interwar period and the troubling scope of the statelessness problem that was taking shape (127–128). She also highlights literary works to demonstrate how statelessness had penetrated the popular consciousness.

Dr. Siegelberg reminds her audience that the 1930s brought the German withdrawal from the League of Nations, the evident failure of minority protection, and the loss of faith generally in international solutions. In this context, there was a reluctance to push for international regulation of nationality. Indeed, the League confronted statelessness as a conflict of nationality laws and reserved its resolution for the states, as opposed to viewing it as a broader humanitarian crisis characterised by mass denationalisation. This approach was reinforced at the League of Nations Codification Conference, when

international actors agreed that nationality matters, including naturalisation and denaturalisation, should be left to states. Dr. Siegelberg observes that once it became evident that international regulation of nationality matters would not be condoned, an effort emerged to disentangle the definition of refugee from statelessness, which she describes as a new phase of the crisis (144). She then describes with keen insight how these developments informed theoretical reflections of that period.

These first four chapters represent an incredibly rich contribution in that they provide a deep exploration into the many ways that the statelessness debate unfolded in the interwar period as well as the broad theoretical and practical impact of that debate. The last two chapters move this examination into the Second World War and post-war period, and they effectively integrate the novel understandings from the first part of the book into events that statelessness scholarship has engaged in some detail.

For example, Dr. Siegelberg argues in her fifth chapter, titled 'A Condition of World Order,' that during and after the war, statelessness no longer occupied the central theoretical role it had played in the interwar years. Human rights became central to considerations about the future world order. In this regard, she provides a detailed discussion of the contributions of Hannah Arendt, often considered one of the most influential thinkers on statelessness. Arendt's most significant contribution, in the eyes of the author, was to use the phenomenon of statelessness to legitimate the state as the fundamental unit of governance against other alternatives (185). The author notes that Arendt highlighted the shortcoming of the Universal Declaration in a 1949 essay 'The Rights of Man: What are They?' because it articulated the rights of man but did not provide any means for their realisation beyond the state. In so doing, she points out that Arendt polemically offered nationality as the 'right to have rights' and a precondition for any other rights guarantee.

Dr. Siegelberg also traces how the argument that nationality was the threshold for the enjoyment of rights became discredited in the post-war era in her sixth and final chapter, titled 'Nationalising International Society.' She presents the 1955 case *Liechtenstein v. Guatemala*, the *Nottebohm* case, as a key moment in the shifting discourse to consider nationality a deep social fact rather than merely a legal bond (210–211). In that case, the International Court of Justice (ICJ) found that Mr. *Nottebohm* did not have a 'genuine' link with *Liechtenstein* and upheld *Guatemala's* claim to his enemy alien property, thereby focusing on the substantive right over the bureaucratic procedure. Siegelberg argues that by asserting the principle of a 'genuine' or 'effective' nationality link, the ICJ simultaneously raised the standard of proof for citizenship and provided international criteria for evaluating the citizenship procedures of states. Moreover, the author highlights the critique that the ICJ decision perpetrated an injustice by leaving *Nottebohm* stateless. Notably, this was also the beginning of a period characterised by a decreased focus on the issue of statelessness.

Delivering on her promise in the book's introduction, Dr. Siegelberg demonstrates numerous ways in which statelessness influenced the development of international legal thought through the interwar period. One of the many contributions of *Statelessness* is how this masterful account of the phenomenon of global statelessness and the evolution of the international legal response can

further our understanding of current challenges to statelessness protection. *Statelessness* will help the international community engaged in the campaign to eradicate statelessness to understand both the vast rhetorical power of statelessness discourse as well as the pitfalls that stifled efforts in the past. The author has received well-deserved accolades for this contribution to international relations literature, and the impact of this book will be broad.

### Notes on contributor

**David Baluarte** is a Clinical Professor of Law at Washington and Lee University School of Law. Baluarte has acted as the lead researcher and project director for the UN High Commissioner for Refugees (UNHCR) on a variety of initiatives to identify and protect stateless persons in the Americas. He served as co-counsel on seminal cases before the inter-American human rights system against the Dominican Republic to protect the right to nationality and helped launch legal clinics in the US and the Bahamas to protect stateless persons. Email: [baluartered@wlu.edu](mailto:baluartered@wlu.edu)

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