

BOOK REVIEW

STATELESSNESS: A MODERN HISTORY BY MIRA L
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NATALIE BRINHAM*

Amartya Sen once said of the world's largest stateless population, 'the Rohingya did not come to Burma, Burma first came to the Rohingya'.¹ This is a poignant reminder that for some peoples who pre-exist today's state borders, the violence of statelessness was produced in the state boundaries of membership and territory. In a similar vein, Mira Siegelberg's book, *Statelessness: A Modern History* is a powerful reminder that statelessness was not simply a human rights issue that landed on the doorstep of international law requiring legal remedy. Rather, statelessness was produced in the collisions between empire, sovereignty, self-determination and internationalism. Statelessness is, itself, also a product of the state system and international order.

Statelessness: A Modern History is not only a history of statelessness. In meticulously researching the ever-changing paradigms of statelessness, Siegelberg has also crafted a story about the evolution of international law and political philosophy. She invites the reader to look back beyond the 1954 *Convention Relating to the Status of Stateless Persons*, the 1961 *Convention on the Reduction of Statelessness*² and the *Universal Declaration of Human Rights* ('UDHR'),³ to the early 20th Century to understand how the national territorial state emerged as the 'sole legitimate organizing unit of global politics'.⁴ She considers the implications for those people who have been placed beyond the boundaries of the state system as a result of these transformations. The reader is taken on a journey from the breakup of the hierarchical international political order of empires and imperialisms during and after the First World War, through to the reconstruction of the international state system after 1945 based on formal equality between states. By contextualising statelessness within these historic processes, Siegelberg captures how ideas were shaken and forged by the moral and political imperatives of the day. She reveals how constructions of modern-day statelessness took shape within shifting tides of international legal and political thought; and,

* The author is a programme officer at the Institute on Statelessness and Inclusion and a PhD student at Queen Mary University of London.

¹ *The Slow-Burning Genocide of the Rohingyas* (Harvard Global Equality Initiative Conference, Harvard University 4 November 2014) (Conference attended by author).

² *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 185 (entered into force 13 December 1975).

³ *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948).

⁴ Mira L Siegelberg, *Statelessness: A Modern History* (Harvard University Press 2020) 6.

simultaneously, how the production of statelessness itself shaped international law and the structures of international political organisation.

Statelessness is often understood to have been an afterthought to the 1951 *Convention Relating to the Status of Refugees*,⁵ and largely neglected by the post-Second World War (WWII) human rights framework. It has been conceptualised as an anomaly or a legal void; a state of being outside of law and politics; a term that is defined only by what it lacks — citizenship and rights.⁶ This book fills up those empty spaces and, in doing so, challenges some of the assumptions that underlie these notions. Siegelberg shows how statelessness, as a concept, has always inhabited international legal thought — and has both threatened and shaped international power structures. She fills the international sphere with the agency of key thinkers and lawyers who were themselves affected by statelessness. Further, by grounding the conceptualisations of statelessness in historical events, Siegelberg shows how the international trajectory has not always been from a starting point of neglect towards ‘solving’ statelessness. Over the years, the issue has been wilfully ignored and consigned to the realms of legal fiction, sometimes conceptualised as freedom from the fetters of state laws, and latterly pragmatically displaced by political imperatives relating to statehood and self-determination.

Siegelberg seamlessly weaves her story from a rich variety of sources including popular fiction, case law, works of political philosophy and correspondence between stateless persons and international organisations. She illustrates how the scope and limits of international law and political organisation that impact stateless persons today were constructed from theory, idealism, pragmatism and organisational interests. She populates her book with personalities of the past including Fridtjof Nansen, Hersch Lauterpacht, Paul Weis, Manly Hudson, Hannah Arendt and many lesser known but influential figures. She grounds the ever-shifting concepts of statelessness in their personal experiences, moral convictions and legal reasonings. As such, her narrative is cohesive and accessible to scholars from all academic fields. ‘Statelessness studies’ as a field growing from an off-shoot of refugee law, has grappled with how to grow into a more interdisciplinary space.⁷ Siegelberg’s work effortlessly navigates between different academic disciplines. As such, this is a book that should become a key introductory text for statelessness scholars, and will likely serve to introduce researchers from broader disciplines to the key debates within statelessness.

Chapter 1 traces how, in the aftermath of the First World War, the significance of statelessness was transformed in international politics from a ‘[s]ubject of [f]iction to a [l]egal [r]eality’.⁸ The years of the First World War and the immediate aftermath saw the breakup of the Russian (Romanov), Austro-Hungarian (Habsburg), Prussian and Ottoman empires, shifting imperialist ideologies and thinking on subjecthood and citizenship. The fragmentation of these empires brought a new impetus to notions of statehood, statelessness and the protection of minorities and collectives. Siegelberg captures what statelessness

⁵ *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954).

⁶ For further discussion, see, eg, William Conklin, *Statelessness: The Enigma of the International Community* (Hart Publishing 2014); Amal de Chickera, *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons* (Equal Right Trust 2010).

⁷ Maria Jose Recalde-Vela, Sangita Jaghai-Bajulaiye and Caia Vliks, ‘The State of Statelessness Research: 5 Years Later’ (2019) 24(2) *Tilburg Law Review* 139.

⁸ Siegelberg (n 4) 12.

came to signify in the midst of fears in international circles of impending chaos and anarchy within the international order. In a situation where securing the legitimacy of states was viewed as a moral imperative, statelessness became a threat to the fragile order. As such, it was wilfully consigned to the realms of legal fiction. Whilst popular fiction depicted the threats of statelessness as international outlawry and piracy, legal and policy circles turned a blind eye. In a world where identity documents and passports were increasingly becoming mandatory,⁹ the reality of stateless individuals and large stateless populations came knocking on the door of the League of Nations, eventually forcing international responses. These realities propagated intellectual reflection on the governing norms of international order and how statelessness fitted into these norms.¹⁰

Chapters 2 and 3 focus on the decade that followed the First World War as post-imperial states came into being seeking legitimacy, and group demands for political representation accelerated. Notions of the stateless person as a threat to international security gave way to constructions of the stateless as victims of circumstance. The two chapters consider the different ideological contexts to statelessness, and the foundations of today's political order that grew out of the postimperial context. International debates around how to counteract statelessness infused with discussions on how to protect minority groups within the boundaries of new states and resulted in the minority treaties. Statelessness symbolised a changed paradigm in which legal status was no longer dependent on national belonging. It was, for the first time, perceived as a product of the gaps and conflicts between different nationality laws, requiring state-level responses. Meanwhile approaches that provided international protection to the stateless, that were driven by internationalist ideals, were partially subdued. Group statelessness was dealt with on piecemeal basis based on political expediency, such as providing 'the Nansen passport' to Russian emigres to contain the ideological threat of Bolshevism. Siegelberg highlights these tensions between statist approaches and internationalism that characterised the era.

Chapter 2 is populated with the world leaders and international jurists of the past, providing an overview of the significance of statelessness within the context of differing ideologies, including the approaches of key figures such as Vladimir Lenin, Woodrow Wilson and Mahatma Gandhi. Chapter 3 follows the developing analyses of jurists and legal theorists including Mark Vishniak, Heinrich Oppenheim, Hans Kelsen and Carl Schmitt to explore the tensions between legal theory and the political realities of the day. In this context, the stateless person provided a conceptual point of reference in a world begotten by war. Statelessness generated debates around legal personality, the norms of the world order and the nature of international law. Central theoretical discussions during this period, related to the status of individuals, collectives/groups and states within the international legal order. Fierce debates ensued as to whether rights were conferred through individual personhood or through membership of a state.

Chapter 4, 'The Real Boundaries of Membership',¹¹ covers the 1930s — a period that saw the rise of fascism and large refugee movements in Europe and China. During this period, securing visas and passports became a life and death

⁹ John Torpey, 'The Great War and the Birth of the Modern Passport System' in Jane Caplan and John Torpey (eds), *Documenting Individual Identity* (Princeton University Press 2001) 256.

¹⁰ Siegelberg (n 4) 47.

¹¹ *ibid* 127.

issue to many. Siegelberg contextualises the lack of international solutions to exclusion and expulsions not simply as an issue of restrictive immigration and asylum policies, but of the unsettled boundaries between statehood and international legal order. She plots how visions of internationalism and global society were sidelined to address migration management concerns. In the process, the boundaries of state membership were cemented. Debates ensued over the state's legal authority in matters of nationality. Failed attempts to globally systematise nationality laws influenced theoretic and public thinking. Meanwhile legal abstraction and formalism, which had dominated questions of personhood and statelessness, came under assault from a new wave of legal realism influenced by global events. Legal realism sought to expose the power relations inherent in law. Legal abstractions relating to personhood, they argued, when faced with the social realities of the time, were both 'pointless' and 'dangerous'. Siegelberg argues that even as Jews in Nazi Germany retained a formal legal status that enabled other states to turn a blind eye, they were effectively stripped of any semblance of political protection.¹²

Chapter 5 takes the reader through to the post-war decades that saw the birth of the *UDHR* and the conventions that defined what was to be a refugee and a stateless person. This period is usually conceived of as the time when individuals became the subjects of international legal order, and when international law began to influence the sovereign domain of states. The author argues that the status of individuals in international law can only be fully understood by examining the space occupied by statelessness.¹³ Statelessness during this period was central to debates about rights and the post-war order. Whilst in previous decades, its significance was for those advocating for the supremacy of international law, in the 1940s and beyond the problem was used to advocate for the validity of the sovereign state as the primary source of rights and law. Siegelberg examines the analysis, correspondence, notes from meetings and scholarship on statelessness to plot the development of a new world order that was premised on the formal equality between sovereign states. In doing so, she explores the debates around the inclusion of the right to nationality in the *UDHR*,¹⁴ including the arguments of key historical figures including Eleanor Roosevelt and Hannah Arendt. Siegelberg argues that the right to nationality was articulated in the context of entrenching the 'doctrine of sovereign equality' and the current international order in which the human rights framework largely deferred to state power and state interests.¹⁵

Chapter 6, 'Nationalizing International Society',¹⁶ traces how in the post war era understandings of citizenship as a formal legal status were transformed into more substantive definitions that emphasised social experience and social bonds — a process Siegelberg calls 'the socialization of citizenship'.¹⁷ She takes the reader through key debates on the boundaries between de jure and de facto citizenship as well as the content and quality of different citizenships. The chapter also explores how, as European empires disintegrated and newly independent states were born, concerns arose about resultant forms of statelessness. Siegelberg shows how these concerns were largely swallowed as the principle of self-

¹² *ibid* 151.

¹³ *ibid* 155.

¹⁴ Now found in *UDHR* (n 3) art 15.

¹⁵ *ibid* 156.

¹⁶ *ibid* 193.

¹⁷ *ibid* 195.

determination, which empowered independent states to determine their own membership without international interference. This, she argues, contributed to the ‘stabilization of the boundaries of international politics’.¹⁸

Siegelberg’s conclusion takes us through to the modern day. It invites the reader to connect the big questions of today to the broader transformations of the political and legal order that have characterised our times. The reader is left reflecting on how key debates from within this historic analysis of statelessness remain unsettled and still have pertinence. The global push for ‘legal identit[ies] for all’,¹⁹ for example, leaves us wondering whether the right to nationality has been overwritten by the right to IDs and birth certificates, echoing the old debates of citizenship as an abstract legal status versus the substantive content of citizenship.²⁰ Increasing incidents of citizenship stripping leave us once again contemplating moral obligations to limit the power of states to define their own membership.²¹ Also, the role of multi-national corporations in providing digital technologies for state IDs concerns us, as we again reassess the role of non-state entities that are unregulated by international norms.²²

To reflect back on Amartya Sen’s statement that state borders came to the Rohingya, these borders have significant ramifications today. State borders were drawn around the Rohingya homelands during and after some of the most intense fighting of the Second World War as imperial Britain declined. Boundaries were also drawn between states and the international legal sphere as a result of the processes meticulously documented by Siegelberg. The impacts of these bordering processes are not only felt today by Rohingyas, but also by the international sphere. States and international organisations are confronting the constraints and limitations of an international system that has provided legitimacy to the military state in Myanmar on the one hand, and on the other has failed to protect Rohingyas over decades from state crimes, including genocide and crimes against humanity.²³ At the centre of all the violence is the figure of the stateless and persecuted Rohingya knocking at the door of the United Nations asking for protection and justice, just as her forbearers in the interwar years knocked at the League of Nation’s door, as described in Siegelberg’s book. Siegelberg shows in her book that concepts and ideas about statelessness were central to discussions on the nature of international law and the international order. They remain so today. Contemporary statelessness still arouses concerns about destabilisation and chaos. They still inform debates about reshaping international political structures

¹⁸ *ibid* 226.

¹⁹ *Transforming Our World: The 2030 Agenda for Sustainable Development*, GA Res 70/1, UN Doc A/Res/70/1 (21 October 2015, adopted 25 September 2015) para 16.9.

²⁰ See Bronwen Manby, “‘Legal Identity for All’ and Statelessness’ (2020) 2(2) *Statelessness & Citizenship Review* 271; Laura van Waas, ‘The Right to Legal Identity or the Right to Legal ID?’, *European Network on Statelessness* (Blog Post, 1 May 2015) <<https://www.statelessness.eu/updates/blog/right-legal-identity-or-right-legal-id>>.

²¹ See, eg, Amanda Western, ‘Lecture 2: A Fair and Effective Remedy? Shamima Begum, botched legislation and the UK courts’ (Lecture, Global Seminar Series on Citizenship 23 March 2021) <<https://www.institutesi.org/resources/global-seminar-series-on-citizenship-stripping-lecture>>.

²² See Natalie Brinham et al, *Locked in and Locked Out: The Impact of Digital Identity Systems on Rohingya Populations* (Briefing Paper, Institute on Statelessness and Inclusion and UN Special Rapporteur on Racism November 2020).

²³ United Nations Human Rights Council, *Detailed findings of the Independent International Fact-Finding Mission on Myanmar: Report to the 42nd session of the Human Rights Council*, UN Doc A/HRC/42/CRP.5 (16 September 2019).

in ways that can prioritise the needs of human beings over states, none more so than for the Rohingya.²⁴

Ultimately, Siegelberg's book reveals how the international order and the nation-state system first took shape in the imaginations of jurists and theorists — how the ideas of key personalities from the past have shaped our present. As such, Siegelberg challenges us to believe in the power of ideas and imagination to transform the structures that govern us. She leaves all of us with the challenge to re-imagine a new world order — an order in which, when the stateless and persecuted come knocking, they are not left on the doorstep, and their quest for restitution is no longer wilfully consigned to fiction as the stateless characters were at the beginning of Siegelberg's book.

²⁴ See, eg, Gert Rosenthal, *A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018* (Report, United Nations May 29 2019) <<https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/Myanmar%20Report%20-%20May%202019.pdf>>.