

# EDITORIAL

MICHELLE FOSTER\* AND LAURA VAN WAAS\*\*

A feature of a maturing field of study is its propensity and capacity to generate a critical approach to its scope, methodology, approaches and standpoint. Just two years ago, in the first volume of the *Statelessness & Citizenship Review*, contributors discussed the emergence of statelessness studies as a relatively new field. It is impressive to observe how rapidly a level of sophistication is emerging, with scholars increasingly willing to reflect on, evaluate and critique the status quo, and introduce critical methods and perspectives that can open up new avenues for scholarship. This is particularly evident in the work of emerging statelessness scholars — the new generation of researchers — whose work is promising to reshape and push the field to greater depth and insight. This is in many cases achieved through introducing theoretical insights from other disciplines and questioning the dominance of established traditions within the field. As Deirdre Brennan and Thomas McGee observe in the introduction to their Critical Statelessness Studies Project, while early approaches to statelessness studies have been dominated by legal approaches:

the time has come to interrogate many of the assumptions that have become embedded within statelessness studies through lack of prior questioning. Critical reflections and readings against the grain must also not be divorced from the reality of lived statelessness.<sup>1</sup>

Such interrogation includes reflecting on the space for, and importance of, the contributions and perspectives of those who have experienced statelessness. Increasingly, stateless persons are rejecting the label of ‘invisibility’, as evidenced most strikingly in the establishment of organisations such as United Stateless,<sup>2</sup> and State Free,<sup>3</sup> formed and led by those with lived experience to build community, empower, educate and advocate for the rights of stateless persons. As Christiana Bukalo, founder of State Free observes, her inspiration for establishing this new initiative was the ‘gap between those affected by statelessness and those working to fight statelessness’.<sup>4</sup> She argues that a pressing priority is to produce

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\* Michelle Foster is Professor and Director of the Peter McMullin Centre on Statelessness at Melbourne Law School.

\*\* Dr Laura van Waas is a founder and Co-Director of the Institute on Statelessness and Inclusion, as well as an Assistant Professor at Tilburg Law School in The Netherlands.

<sup>1</sup> Deidre Brennan and Thomas McGee, ‘Introductory Blog: Taking a Critical Approach to Statelessness Studies’, *Critical Statelessness Studies Blog* (Blog Post, July 2020) <<https://law.unimelb.edu.au/centres/statelessness/critical-statelessness-studies-blog/css-blog/articles/introductory-blog-taking-a-critical-approach-to-statelessness>>.

<sup>2</sup> ‘United Stateless’, *United Stateless* (Web Page) <<https://www.unitedstateless.org/>>.

<sup>3</sup> ‘Welcome’, *State Free* (Web Page) <<https://statefree.world/>>.

<sup>4</sup> Christiana Bukalo, ‘Knowledge to Empower: Closing the Gap between Stateless People and Statelessness Research’, *Critical Statelessness Studies Blog* (Blog Post, December 2020) <<https://law.unimelb.edu.au/centres/statelessness/critical-statelessness-studies-blog/knowledge-to-empower-closing-the-gap-between-stateless-people-and-statelessness-research>>.

‘an authentic reflection of what it means to be stateless in today’s world in order to create a realistic understanding of what is needed to improve stateless people’s situations’.<sup>5</sup>

In his thought-provoking piece in this issue, Haqqi Bahram’s ‘Towards a Stateless Standpoint Epistemology’ seeks to ‘introduce and propose the concept of *stateless standpoint epistemology* as an approach in statelessness research for realigning knowledge with stateless persons’ experiences’.<sup>6</sup> This, he explains, ‘[b]asically ... means starting knowledge about statelessness from the standpoints of stateless persons’.<sup>7</sup> This contribution pushes us as statelessness scholars to ‘address the existing gap of methodological discussions about how and what knowledge of statelessness is produced, something that is much needed but is often marginally stated or left out from the body of research’.<sup>8</sup>

The Critique and Commentary part of this volume offers a set of timely, diverse and insightful perspectives on COVID-19 and statelessness that are strongly grounded in the experiences of the stateless, undocumented and those at risk of statelessness. This section is now in the very capable hands of Associate Professor Jamie Liew, taking over from Dr Kristy Belton who did a truly outstanding job in shaping this section of the *Review*, introducing dedicated thematic foci such as the ‘Reflection on Statelessness Studies’ (Volume 1(1)), and the symposium on ‘Statelessness and Slavery’ (Volume 2(1)). As Jamie explains, in bringing together this volume’s COVID-19 focused pieces, it is important to recognise that ‘[e]ach writer is either from that community, or has work and/or research embedded in the community they are writing about’.<sup>9</sup> As she further notes, in taking this approach, these commentaries expose ‘how the lack of status is not only the fundamental reason why stateless and undocumented persons face abuse, exploitation, poverty and other challenges but how their status is politically constructed’, and also that ‘each piece also provides some hope that the pandemic offers a moment of change’.<sup>10</sup>

Other new approaches and critiques are evident in some of the other excellent contributions to this bumper issue of the *Statelessness & Citizenship Review*, which, in addition to articles, case notes and book reviews on a diverse range of issues, and the thematic focus on COVID-19 and statelessness, also features a forthcoming symposium on ‘Citizenship and Statelessness in India’, edited by guest editor Dr Adil Hasan Khan.

Malak Benslama-Dabdoub’s article, ‘Colonial Legacies in Syrian Nationality Law and the Risk of Statelessness’ is a highly original and ground-breaking tour de force of the long and complex history of Syria as a nation-state, tracing the colonial roots of Syrian legislation governing nationality from the fall of the Ottoman Empire, through to colonial mandates, and post-independence developments. Her aim is to offer a ‘critical legal and historical analysis’ to reveal ‘the hidden colonial legacies of Syrian citizenship, by highlighting the responsibility of European colonial powers in introducing gender-based

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<sup>5</sup> *ibid.*

<sup>6</sup> Haqqi Bahram, ‘Towards a Stateless Standpoint Epistemology’ (2021) 3(1) *Statelessness & Citizenship Review* 113, 114 (emphasis added).

<sup>7</sup> *ibid.*

<sup>8</sup> *ibid.*

<sup>9</sup> Jamie Liew, ‘Statelessness and COVID-19: An Introduction’, 2021) 3(1) *Statelessness & Citizenship Review* 120.

<sup>10</sup> *ibid.* 121.

discrimination in domestic legislation, rendering Kurds and Palestinians stateless'.<sup>11</sup> The article is not just relevant to those interested in Syria; she seeks to question and challenge 'mainstream narratives' that she argues 'presuppose that statelessness is the result of current discriminatory practices adopted by modern states, largely neglecting the impact of colonialism'.<sup>12</sup> In particular, she posits that 'international law on statelessness and citizenship utterly overlooks the importance of (de)colonial legacies',<sup>13</sup> challenging those who address statelessness from a legal perspective also to critically reflect on the limitations and blind spots of existing instruments. This contribution thus sets the agenda for a more critical approach to statelessness studies by paying attention to the role and contribution of postcolonial approaches to scholarship.

This methodological innovation is also displayed in other contributions, including in the forthcoming symposium on 'Citizenship and Statelessness in India', which further develop new approaches to the field. For example, Padmini Baruah and Trisha Sabhapandit's piece entitled, 'Untrustworthy and Unbelievable: Women and the Quest for Citizenship in Assam', applies a feminist lens to Assam, offering an original insight into this troubling context. Drawing on Deirdre Brennan's argument that a feminist methodology in statelessness studies 'is yet to emerge',<sup>14</sup> the authors take up the challenge of undertaking a feminist analysis of developments in Assam, a situation that the United Nations Special Rapporteur on Minority Issues has described as the 'biggest exercise in statelessness since the second world war'.<sup>15</sup> As the authors observe, while there is important scholarship on this issue,<sup>16</sup> 'there is little scholarly work on the impact this issue has on the lives of women'.<sup>17</sup> This article therefore 'contributes to the burgeoning scholarly research that is emerging on the gendered impact of statelessness', by centring 'the experiences of women as they navigate the precarious liminal zone between citizenship and statelessness'.<sup>18</sup>

The contributions to the general articles section of this issue offer much-needed knowledge and insight into core issues in the protection of stateless persons, namely, the right to nationality and the nature and content of statelessness determination procedures ('SDP'). In Darren Ekema Ewumbue Monono's article on 'Peoples' Right to a Nationality and the Eradication of Statelessness in Africa', he critiques the current efforts of both international and African institutions to promote the right to nationality, with a view to eradicating statelessness in the continent, concluding that such efforts 'have, however, focused on the right to

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<sup>11</sup> Malak Benslama-Dabdoub, 'Colonial Legacies in Syrian Nationality Law and the Risk of Statelessness' (2021) 3(1) *Statelessness & Citizenship Review* 6.

<sup>12</sup> *ibid* 32–33.

<sup>13</sup> *ibid* 11.

<sup>14</sup> Deirdre Brennan, 'Feminist Foresight in Statelessness' (2020) 2(1) *The Statelessness & Citizenship Review* 43.

<sup>15</sup> Hannah Gordon and Elif Sekercioglu, 'Citizenship Denied: Two Million in India Face an Uncertain Future', *Right Now* (online, 13 June 2020) <<https://rightnow.org.au/analysis/citizenship-denied/>>.

<sup>16</sup> See for example Talha Rahman's excellent contribution in Volume 2(1): Talha Abdul Rahman, 'Identifying the Outsider: An Assessment of Foreigner Tribunals in the Indian State of Assam' (2020) 2(1) *Statelessness & Citizenship Review* 112; Trisha Sabhapandit and Padmini Baruah, "'Untrustworthy and Unbelievable': Women and the Quest for Citizenship in Assam' (2021) 3(1) *Statelessness & Citizenship Review* (forthcoming).

<sup>17</sup> Baruah and Sabhapandit (n 16) (forthcoming).

<sup>18</sup> *ibid*.

nationality as an individual right'.<sup>19</sup> In his view, this has 'undermined the spirit of the *Banjul Charter*, which consecrates peoples' rights as an African specificity'.<sup>20</sup> This article reflects on the nature of the Banjul-led African human rights system, particularly with regard to collective community and peoples' rights, and reflects on what this means for the right to nationality. He concludes with the provocative perspective that:

statelessness has gone beyond its limited legalistic perspectives of 'stateless persons' to embrace the broader socio-political perspectives of 'stateless people' and 'stateless nations', where the right to nationality could best be enjoyed collectively as a people and community.<sup>21</sup>

This lays fertile ground for further debate and exploration of these foundational issues.

Paola Pelletier Quiñones' article, 'Breaking the Presumption that the Applicant for Statelessness Determination is Foreign' offers an original and important contribution on a vital issue for the protection of stateless persons, namely the scope and ambit of SDPs. As she notes 'there is no international jurisprudence ordering and recognising the obligation of states to adopt SDPs or modify an SDP norm according to international standards', and while there is emerging high quality scholarship, this has largely focused on Europe.<sup>22</sup> Her contribution considers all 23 existing SDPs specifically inquiring into whether 'a formally adopted SDP [could] be used by states to perpetuate a policy of exclusion or denationalisation.'<sup>23</sup> As she observes, these issues have not been thoroughly considered to date. Her detailed empirical analysis reveals that of the 23 states that have enacted SDPs, 'eight countries have included safeguards in their SDP norms for identification, investigation and referral mechanisms where the applicant could be identified as a national of the state in which they have applied to be recognised as stateless'.<sup>24</sup> These safeguards in the SDP normative framework 'constitute good practice and guidance that must be considered by current and future SDP norms and their corresponding rules of application'.<sup>25</sup>

This issue of the *Review* also includes three engaging case notes on significant jurisprudential developments edited by our ever-capable Case Note Editor, Dr Katia Bianchini, and two insightful book reviews on significant new additions to scholarship, commissioned by our excellent Book Review Editor, Dr Barbara von Rütte.

Finally, we are thrilled also to publish an important symposium on 'Citizenship and Statelessness in India'. The contributions to this forthcoming symposium emerged from a collaboration between Melbourne Law School (Asian Law Centre and Peter McMullin Centre on Statelessness), Oxford's Bonavero Institute of

<sup>19</sup> Darren Ekema Ewumbue Monono, 'Peoples' Right to a Nationality and the Eradication of Statelessness in Africa' (2021) 3(1) *Statelessness & Citizenship Review* 33.

<sup>20</sup> *ibid.*

<sup>21</sup> *ibid.* 58.

<sup>22</sup> See Katia Bianchini, *Protecting Stateless Persons* (Martinus Nijhoff, 2018). See also Katia Bianchini, 'A Comparative Analysis of Statelessness Determination Procedures in 10 EU States' (2017) 29(1) *International Journal of Refugee Law* 42; Paola Pelletier Quiñones, 'Breaking the Presumption That Applicants of Statelessness Determination Procedure Are Foreign' (2021) 3(1) *Statelessness & Citizenship Review* 61.

<sup>23</sup> Pelletier Quiñones (n 22) 62.

<sup>24</sup> *ibid.*

<sup>25</sup> *ibid.* 62–6

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*Editorial*

Human Rights and Jindal Law School, which facilitated a series of eight virtual workshops throughout 2020 to offer scholars an opportunity to develop research on this emerging but vitally important site of statelessness study.

We are delighted to offer such a broad range of high-quality scholarship in this volume and look forward to continuing to support the development of this exciting and extremely important field of study.