A TYPOLOGY OF STATELESSNESS

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Although statelessness within the modern state system has many facets, there has not been any attempt to work out a formal typology. When conceptualising statelessness in singular terms, theorists miss something important: they fail to capture the full moral scope of statelessness. This article addresses this shortcoming. It is divided into four parts. First, I will show how statelessness is categorised under the UN's framework. Second, I will turn to legal and social theory to argue that statelessness can be best understood through the two concepts of responsibility and recognition. Third, I will identify three different subtypes of statelessness. They derive from the source of nationality deprivation and include voluntary statelessness, structural statelessness and denigrative statelessness. Finally, I will offer some concluding remarks.

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I INTRODUCTION

In 2014, marking the 60th anniversary of the *1954 Convention relating to the Status of Stateless Persons* ('*1954 Statelessness Convention*'),[1] the United Nations High Commissioner for Refugees ('UNHCR') launched the global *#IBelong Campaign to End Statelessness* within the modern state system.[2] In its press release, UNHCR described various characteristics that it associates with this condition. Some of these characteristics are the consequences that people suffer as a result of statelessness: having no legal identity, no passport, no vote and no opportunity to get an education. Other reasons why people are made stateless include: ethnic, religious or gender discrimination and regional instability. The press release also distinguishes between nationality and citizenship. One does not have to look any further to realise that statelessness is complex.

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1 The term 'stateless person' is a misnomer since 'in Roman law persona was somebody who possessed civil rights': Hannah Arendt, *Responsibility and Judgment* (Schocken Books 2003) 12.

2 'UNHCR Launches 10-year Global Campaign to End Statelessness', *UNHCR* (Blog Post, 24 November 2014) <https://www.unhcr.org/news/latest/2014/11/545797f06/unhcr-launches-10-year-global-campaign-end-statelessness.html>, archived at <https://perma.cc/FNM6-6NNB>.

Despite the complexity of statelessness, theorists have not yet worked out a formal typology.[3] When conceptualising statelessness in singular terms, they miss something important:[4] they fail to capture the full moral scope of statelessness. The article addresses this shortcoming. It is divided into four parts. In the first part, I will show how statelessness is categorised under the UN's current framework. In the second part, I will turn to legal and social theory to argue that statelessness can be best understood through the two concepts of responsibility and recognition. In the third part, I will identify three different subtypes of statelessness. They derive from the source of nationality deprivation and include voluntary statelessness, structural statelessness and denigrative statelessness. Finally, I will offer some concluding remarks.

Before identifying the three subtypes, I must make two points about the following arguments. First, the article is mostly concerned with individual statelessness. I define individual statelessness in contradistinction to collective statelessness. 'Collective statelessness' describes statelessness as experienced by entire collectives, such as Palestinians, Kurds or the Rohingya, with a shared history of denationalisation, whereas 'individual statelessness' describes statelessness as experienced by individuals, such as Garry Davis, Friedrich Nottebohm or Shamima Begum, who will be introduced in the third Part of the article. While a Palestinian person can be considered both individually as well as collectively stateless, not every stateless individual suffers from collective statelessness. Garry Davis, for instance, did not belong to any collective with a shared history of denationalisation.

Second, the force of my argument depends largely on the quality of the examples that I have chosen. Throughout the article, I have relied on few examples with a rich amount of qualitative data. Yet this has come with a limitation: the case studies of stateless individuals are mostly drawn from a small number of countries with relatively few cases of statelessness. For example, take the case of Shamima Begum. The *Statelessness Index* reported that there were 5,236 applications for the statelessness determination procedure in the United Kingdom between April 2013 and September 2019. Even under such conservative estimations, this is low when compared with countries like India or Myanmar, where a great number of Muslims have been deprived of their nationality. Although the situations of former British national Shamima Begum and Jamalida Begum, a stateless Rohingya woman, are in many ways similar, due to these differences in their countries of origin, I avoid identifying and relying on this parallel.[5] The formal typology that I have developed here should be seen as a hypothesis itself. Rather than offering a final answer to what statelessness is, I hope that my research will help others to ask the question more precisely in the future.

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3 Brad Blitz has developed a typology of the causes of statelessness but not of statelessness itself: see Brad Blitz, 'Statelessness, Protection and Equality' (Policy Brief, Refugee Studies Centre, 2009).

4 Jay Milbrandt, 'Stateless' (Legal Studies Research Paper No. 2012/6, Pepperdine University, 2012) 1. Scholars seem to generalise the stateless commonly as the 'most vulnerable [people] in our world': see also Indira Goris, Julia Harrington and Sebastian Köhn, 'Statelessness: What It Is and Why It Matters' [2009] 32 *Forced Migration Review* 4, 4.

5 See 'Jamalida Begum — Rohingya Survivor Escapes Horror', *Geneva International Centre for Justice* (Blog Post, 21 February 2017) <https://www.gicj.org/lest-we-forget/887-jamalida-begum-rohingya-survivor-escapes-horror>, archived at <https://perma.cc/5HTP-9JHU>.

A *De Jure Vis-à-Vis De Facto Statelessness*

Since its 1946 Memorandum, *Statelessness and Some of its Causes: An Outline*, the UN has distinguished between two general categories of stateless individuals: de jure and de facto.[6] In the 1954 *Convention relating to the Status of Stateless Persons* ('*1954 Statelessness Convention*'), a de jure stateless individual is defined as someone 'who is not considered as a national by any State under the operation of its law'.[7] The phrase 'under the operation of its law' is thereby interpreted as a requirement for states to determine nationality based on nationality law as well as state practice, such as civil registration.[8]

While the merits of the de jure statelessness definition are that it is concise, unambiguous and quantifiable — an individual either possesses a nationality or does not — it falls short as it fails to consider the attributes and quality of the nationality.[9] The de facto statelessness definition addresses this failure.[10] In *A Study on Statelessness*, the UN defines de facto stateless individuals as those

> who, having left the country of which they were nationals, no longer enjoy the protection and assistance of their national authorities, either because these authorities refuse to grant them assistance and protection, or because they themselves renounce the assistance and protection of the countries of which they are nationals.[11]

II STATELESSNESS AS RESPONSIBILITY AND RECOGNITION

A *Nationality as a Legal Concept*

As shown by its UN working definition, the concept of de facto statelessness concerns the scope of protection that comes with the possession of nationality. To understand what this means, one must turn to nationality as a legal concept.

There are two ways in which nationality is understood.[12] First, individuals who are in possession of a nationality are seen as citizens of a country.[13] This view is 'adopted by many international human rights law scholars' who focus on the close

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6 *A Study on Statelessness* also distinguishes between stateless individuals and refugees, pointing out that the latter is a subtype of the former: United Nations, *A Study on Statelessness*, UN Doc E/1112;E/1112/Add.1 (August 1949) 6–7 ('United Nations *Study on Statelessness*').

7 *Convention relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960) art 1(1).

8 See Betsy L Fisher, '"The Operation of Law" in Statelessness Determinations Under the 1954 Statelessness Convention' (2015) 33 *Wisconsin International Law Journal* 254.

9 See Carol A Batchelor, 'Stateless Persons: Some Gaps in International Protection' (1995) 7(2) *International Journal of Refugee Law* 232, 232.

10 ibid 232–33.

11 United Nations *Study on Statelessness* (n 6) 6.

12 The term 'nationality' is also used to describe belonging to a national group: see, eg, Katherine Tonkiss, 'Statelessness and the Performance of Citizenship-as-Nationality', in Tendayi Bloom, Katherine Tonkiss, and Phillip Cole (eds), *Understanding Statelessness* (Routledge, 1st edn, 2017) 241.

13 In this case, 'nationality' and 'citizenship' are often treated as synonymous: see Kelly Staples, 'The Ethics of Statelessness' in Birgit Schippers (ed), *The Routledge Handbook to Rethinking Ethics in International Relations* (Routledge 2020) 148, 149; David S Weissbrodt and Clay Collins, 'The Human Rights of Stateless Persons' (2006) 28(1) *Human Rights Quarterly* 245, 246.

relationship between nationality and citizenship.[14] For them, nationality as citizenship can, for the most part, be used interchangeably. In this article, I follow their approach.

However, it is not clear whether the concept of statelessness is meant to address this connection, as the denial of citizenship rights does not render someone stateless under the current legal framework. In law, nationality can function independently of citizenship and vice versa.[15] Georg Schwarzenberger, for instance, contends that '[f]or the purposes of his own municipal law, a [state] may deny to groups of inhabitants … all or most rights of citizenship, yet still consider himself entitled to protect them in relation to other subjects of international law'.[16] Referring to Sigismund Gargas' early enquiry, *The Stateless*, in 1928, Paul Weis makes the same point. He argues that '[c]onceptually and linguistically, the terms "nationality" and "citizenship" emphasize two different aspects of the same notion: State membership. "Nationality" stresses the international, "citizenship" the national, municipal, aspect'.[17]

Hence, the second understanding of nationality takes individuals to have a position in international law through their attachment to their country of nationality.[18] As seen in the previous paragraph, the concept of statelessness has historically described this lack of attachment. More precisely, the stateless are either de jure or de facto without such a position in international law. Yet, even if someone possesses a nationality and thereby, a position, it has not been clear what that entails. In the following Part, I examine the most recent research and argue that ordinary individuals must be seen as objects of international law.

1 *Object Versus Subject Theory*

Tracing back to the 18th century and Emer de Vattel's work, *The Law of Nations*,[19] the so-called object theory holds that individuals, unlike states, cannot be subjects of international law. The theory instead claims that they are mere objects, comparable to ships and territory,[20] ostensibly worthy of protection by the country of nationality against other countries.[21] The object theory is based on the following disjunctive syllogism:

Binary premise: Individuals must either be a subject or an object of international law.

Elimination premise: Individuals cannot be a subject of international law.

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14 Alice Edwards, 'The Meaning of Nationality in International Law in an Era of Human Rights: Procedural and Substantive Aspects' in Alice Edwards and Laura van Waas (eds), *Nationality and Statelessness under International Law* (Cambridge University Press 2014) 14.

15 Therefore, some states, such as Honduras, Bolivia, Mexico and Latvia, clearly distinguish between nationality and citizenship: Delia Rudan, 'Nationality and Political Rights', in Serena Forlati and Alessandra Annoni (eds), *The Changing Role of Nationality in International Law* (Routledge, 1st edn, 2013) 117, 117.

16 Georg Schwarzenberger, *A Manual of International Law* (Professional Books Ltd, 6th edn, 1976) 141–42.

17 Paul Weis, *Nationality and Statelessness in International Law* (Brill 1979) 4–5.

18 L Oppenheim, *International Law — A Treatise* (Longmans and Green, 2nd Edn, 1912) vol 1, 366.

19 Kate Parlett, *The Individual in the International Legal System: Continuity and Change in International Law* (Cambridge University Press 2011) 10.

20 George Manner, 'The Object Theory of the Individual in International Law' (1952) 46 *American Journal of International Law* 428, 429.

21 ibid 428–29.

Conclusion: Therefore, individuals must be an object of international law.

While the binary premise is just assumed, the elimination premise is supported by several arguments.[22] Proponents of the object theory argue that individuals cannot be a subject of international law for several reasons. First, they have neither rights nor duties therein. Second, they cannot invoke international law for protection. Third, they cannot commit violations of international law. Fourth, they are impaired or benefitted if, and only if, there 'is a right or duty on the State to protect their interests'.[23]

However, the object theory has increasingly been questioned. Its opponents contend that it is (1) based on a false binary, (2) immoral in treating individuals as objects, (3) detrimental to the democratic conception of the state and (4) not reconcilable with current practice.[24] Thus, they suggest that individuals must hold an in-between position.[25]

Given its appeal to facts rather than ideals, the last objection seems to pose the greatest challenge to a positivist defence of the object theory. It contends that the position of all individuals has, in fact, been improved with the emergence of the UN. This improvement manifests itself in international criminal law, international humanitarian law and international human rights law and with respect to international claims.

In terms of international criminal law, individuals arguably became subjects of international law in 1945, when it was decided that anyone can be assigned individual criminal responsibility.[26] The Nuremberg Trials are probably the most well-known example of individuals being put on trial for committing specified crimes, including crimes against peace and crimes against humanity.[27]

International humanitarian law conceivably uplifts the status of individuals to subjects of international law by creating several safeguards for those who find themselves in the middle of an armed conflict.[28] For instance, the *Geneva Convention relative to the Treatment of Prisoners of War*, which addresses the situation of prisoners of war, says in art 13 that 'prisoners of war must at all times be humanely treated'.[29] Moreover, in art 78, it more explicitly uses the language of rights by declaring that 'prisoners of war shall have the right to make known to the military authorities in whose power they are, their requests regarding the conditions of captivity to which they are subjected'.[30] It is the same case in art 48 of the *Geneva Convention relative to the Protection of Civilian Persons* which says 'protected persons who are not nationals of the Power whose territory is occupied, may avail themselves of the right to leave the territory'.[31]

There are several ways in which the position of individuals has been improved with respect to international claims. First, since 1945, individuals have been

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22 ibid 444; Rosalyn Higgins, 'Conceptual Thinking about the Individual in International Law' (1978) 4(1) *British Journal of International Studies* 1, 5.

23 Manner (n 20) 428.

24 ibid 430–31.

25 ibid 447; Higgins (n 22) 5.

26 Parlett (n 19) 229.

27 ibid 274.

28 ibid 224–25.

29 *Geneva Convention relative to the Treatment of Prisoners of War*, opened for signature 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950).

30 ibid; Parlett (n 19) 183.

31 *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) art 48.

granted the right to directly access diplomatic protection; they can, for instance, 'prosecute their own claims before international tribunals, and in their own right, provided that states consent'.[32] Second, since the establishment of the International Centre for Settlement of Investment Disputes ('ICSID'), individuals have also had the right to ask for arbitration in investment disputes if their country of nationality is a party to the ICSID.[33] Third, today, individuals whose country of nationality is a member of the World Intellectual Property Organization are also granted intellectual property rights to enjoy the full worth of their inventions.[34]

Since the mid-1960s, international human rights law seems to have improved the position of individuals in international law the most. For instance, the *International Covenant on Civil and Political Rights* ('*ICCPR*') declares in art 9 that 'everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law'.[35] Article 41, moreover, permits all countries that have ratified *ICCPR* to make complaints on behalf of anyone independent of nationality.[36] With the establishment of the *First Optional Protocol to the International Covenant on Civil and Political Rights* in 1976, individuals were also granted the ability to file violation complaints against contracting states themselves.[37]

Despite these improvements, legal positivists continue to defend the object theory. In regard to human rights law, they argue that the protection of individuals is constrained to the extent that countries must give their consent to the UN's international legal protection regime.[38] In other words, the process does 'not result in binding judgments'.[39] Whether individuals are successful in invoking art 41 and petitioning the United Nations Human Rights Council ('UNHRC') depends on states' commitment to UNHRC and *ICCPR*. For example, if a British national's human rights were violated by the French State, they could apply for redress at the European Court of Human Rights ('ECtHR') as France is a signatory to the *European Convention on Human Rights* and, therefore, subject to the ECtHR's jurisdiction.[40] However, British nationals are without such a possibility if the perpetrator is the United States since the country 'does not recognise the competence of international human rights bodies'.[41] In this case, the provision of protection is strictly limited to states on behalf of their own nationals.

The changes in humanitarian law and criminal law, by contrast, do not actually grant any rights to individuals. While humanitarian law 'establishes standards of treatment'[42] rather than rights, criminal law merely imposes obligations on individuals. Although this is not the case with respect to international claims,

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32 Parlett (n 19) 122.

33 Solomon E Salako, 'The Individual in International Law: "Object" versus "Subject"' (2019) 8(1) *International Law Research* 135.

34 ibid 136.

35 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered in force 23 March 1976) art 9.

36 Higgins (n 22) 11.

37 See Parlett (n 19) 316.

38 Alexander Orakhelashvili, 'The Position of the Individual in International Law' (2001) 31 *California Western International Law Journal* 241, 254.

39 Parlett (n 19) 320.

40 See Orakhelashvili (n 38) 255.

41 ibid.

42 Parlett (n 19) 224.

stateless people do not benefit from the improvements here either. Whether it is investment rights, property rights or diplomatic protection, individuals can only invoke the corresponding rights if their country of nationality allows them to do so. Despite all the improvements that have occurred since 1945, stateless people remain as less than objects in international law as they lack a country of nationality.

How does this ongoing discourse on individuals' positions in international law help us to understand what protection one receives from the possession of nationality? At first, it must be acknowledged that under international law nationality does not in itself guarantee any protection. Rather, it determines who is responsible for granting such protection.[43] Hence, statelessness can be best understood as the lack of responsibility. On the one hand, de jure stateless individuals have no country that is responsible for their protection from other countries. They are less than objects of international law. In fact, the de jure stateless have no position in international law at all. On the other hand, de facto stateless individuals have a country that is responsible for their protection from other countries but it is not willing or capable to provide this protection. They are objects of international law, yet not treated as such.

Through the concept of responsibility, it becomes much clearer that statelessness is a central issue in international politics. This is to say that the possession of nationality and thereby, a position in international law is, at best, a safeguard against violence inflicted by countries other than one's own. It does not guarantee this protection, nor does it offer any protection from violence inflicted by the country of nationality itself. Nationality, first and foremost, indicates who is responsible and blameworthy if no protection is provided.

B *Legal and Social Recognition*

The concept of responsibility helps us to understand what it means to be stateless. But how does it come about? In *A Study on Statelessness*, the UN identifies five causes of statelessness. They include: (1) gaps in and conflicts of national legislation, (2) state succession, (3) denationalisation, (4) persecution and (5) mass emigration caused by the transformation of the political and social system of the country of origin.[44] The first three causes result in de jure statelessness at birth or later in life, whereas the last two causes lead to de facto statelessness if the affected individual is not also denationalised. One may ask if there is any common ground between them. I think there is: they are arguably connected through the concept of recognition.

Recognition has at least two elements: one legal and the other social.[45] Legal recognition and social recognition are tightly connected as individuals' legal recognition often depends on whether they are socially recognised.[46] I define legal recognition as having a position in law and social recognition more broadly as being seen as a moral equal that deserves to be treated with dignity.

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43 See Matthew J Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge University Press 2004) 211.

44 United Nations *Study on Statelessness* (n 6) pt 2 s I ch 1.

45 Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (MIT Press 1995) 94.

46 ibid 110–11.

Immigration seems to be a good example of the tight connection between legal and social recognition. Most countries only grant immigrants the right to immigration if they see them as morally deserving in the first place. In many cases, this is determined by a points-based admission system that includes several discriminatory categories such as age, language proficiency, financial situation, skills and previous experiences.[47]

There are numerous historical examples of this. One is that of Czech Social Democrat, Bohumil Laušman, who intended to seek asylum in West Germany after the Communist takeover of Yugoslavia.[48] After an interview in which he suggested that there was no possibility of the Sudeten Germans returning to their homes in Czechoslovakia, Laušman's plan was foiled.[49] His statement made the Sudeten Germans so furious that they asked President Theodor Heuss to banish Laušman, although this was in stark contradiction with the refugee protection article in the *Grundgesetz* [*Constitution of the Federal Republic of Germany*].[50] The denial of social recognition led to Laušman remaining in Austria, where he was captured by the Czechoslovakian secret service in 1953.[51]

The tight connection between legal and social recognition could also be seen when thousands of people sought asylum in West Germany due to the Hungarian Revolution of 1956. The Hungarian refugees were met with a lot of sympathy.[52] Pro-refugee demonstrations took place in many cities. Even though the West German Ministry of the Interior tried to stick to its policy of not admitting non-German refugees at the time, the popular pressure was overwhelming.[53] Consequently, 10,000 Hungarian refugees were granted asylum in November 1956.[54]

At the same time, the Federal Government of West Germany did not feel any legal responsibility to admit non-European refugees who were fleeing the Nigerian Civil War.[55] In 1972, West Germany's practice of racist exclusion was broadened after a group of Palestinians killed several Israeli athletes at the Munich Olympics. In response, West Germany restricted asylum, not only to all individuals from Palestine, but also from Israel's Arab neighbours and the Maghreb states.[56]

Today, the same pattern is repeating itself with respect to the willingness of European countries to admit Ukrainian refugees rather than Syrian or North African refugees. Due to the different perceptions of the religious affiliations of both groups and strong anti-Muslim sentiment in Europe, the latter face much

47 For example, in the United Kingdom, Canada and New Zealand: see Uwe Hunger and Sascha Krannich, 'Advantages and Disadvantages of a Point Based Immigration System: Lessons from Classic Immigration Countries' (2018) 12 *Zeitschrift fur Vergleichende Politikwissenschaft* 229; CJ McKinney, Melanie Gower and Georgina Sturge, 'The UK's New Points-Based Immigration System' (Research Briefing, House of Commons Library, 27 September 2022).

48 Patrice Poutrus, *Umkämpftes Asyl: Vom Nachkriegsdeutschland Bis in Die Gegenwart* (Christoph Links Verlag 2019) 27.

49 ibid 27.

50 ibid 28.

51 ibid 28.

52 ibid 44.

53 ibid 45–46.

54 ibid 46.

55 ibid 59.

56 ibid 63–64.

stronger discrimination in the admission process.[57] In other words, Syrian and North African refugees are denied the social recognition that is granted to Ukrainians.

Besides immigration admission, naturalisation is another example that shows how closely legal recognition and social recognition are intertwined. Today, citizenship is mostly framed, not as a basic right, but a privilege that must be earned.[58] The United Kingdom's naturalisation process is paradigmatic for this wider praxis. It requires temporary residence for five years to be eligible for 'probationary citizenship', followed by 'evidence of continuing economic contribution and successful completion of the "Knowledge of Life in the UK" and English language tests' as well as another year of additional examinations.[59]

As with asylum, there seems to be a similar pattern of discrimination in terms of who is granted nationality and who is not. Switzerland is an illustrative case since, for many years, several of its municipalities have used referendums to decide on naturalisations. Drawing on a large data set of votes from 1970 to 2003, Jens Hainmueller and Dominik Hangarten show that the

> country of origin is by far the most important determinant of naturalization success. The average proportion voting 'no' in the naturalization referendums is about 13–15 percentage points higher for applicants from (the former) Yugoslavia and Turkey compared to observably similar applicants from richer northern and western European countries who apply in the same municipality at the same time.[60]

While economic status and length of residency also have a positive, yet much smaller, correlation, language skills and integration status do not seem to matter at all.[61] Hence, their findings also suggest that social recognition is less tied to merits than to an essentialist image of the 'Other'.

III THREE SUBTYPES OF STATELESSNESS

A theoretical framework that focuses on the tight connection between legal and social recognition as well as the sources of deprivation allows me to identify three different subtypes of statelessness. The first is voluntary statelessness where (a) the stateless individual is the source of legal non-recognition themselves and (b) legal non-recognition and social non-recognition by the country of origin do not necessarily coincide. The second subtype is structural statelessness where (a) international law is the source of legal non-recognition and (b) legal non-recognition and social non-recognition by the country of origin do not necessarily coincide. The third subtype is denigrative statelessness where (a) the country of

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57 See Kirk Bansak, Jens Hainmueller, and Dominik Hangartner, 'How Economic, Humanitarian, and Religious Concerns Shape European Attitudes toward Asylum Seekers' (2016) 354(6309) *Science* 217, 217–22; Melissa De Witte, 'Ukrainian Refugees Face a More Accommodating Europe, Says Stanford Scholar', *Stanford News* (online, 24 March 2022) <https://news.stanford.edu/2022/03/24/ukrainian-refugees-face-accommodating-europe-says-stanford-scholar/>, archived at <https://perma.cc/VK6H-ESB3>.

58 Nisha Kapoor, *Deport, Deprive, Extradite: 21st Century State Extremism* (Verso 2018) 104–11; see also Margaret Somers who calls this 'the contractualization of citizenship': Margaret R Somers, *Genealogies of Citizenship: Markets, Statelessness, and the Right to Have Rights* (Cambridge University Press 2008) 2–3.

59 Kapoor (n 58) 93.

60 Jens Hainmueller and Dominik Hangartner, 'Who Gets a Swiss Passport? A Natural Experiment in Immigrant Discrimination' (2013) 107(1) *American Political Science Review* 159, 160.

61 ibid 161.

origin is the source of legal non-recognition and (b) legal non-recognition and social non-recognition by the country of origin seem closely intertwined.

A *Voluntary Statelessness*

Voluntary statelessness describes cases where the source of statelessness is the individuals themselves.[62] If individuals or collectives renounce nationality voluntarily, they are de jure stateless. I understand 'voluntary' to simply mean not being forced.[63] Force can take at least two forms. First, it can be direct: individuals are forced to do something if not doing so is punished by someone else. Second, it can be structural: individuals are forced to do something if natural or social circumstances do not allow them to do otherwise. For instance, someone is forced to sell their beloved pet if they no longer have the financial means to pay for its well-being due to losing their job.

Another more topical example concerns Palestinians who are de jure stateless but have been offered a non-Palestinian nationality. When they refuse to naturalise, they cannot be said to do this voluntarily because they understand naturalisation as the erasure of their Palestinian identity;[64] their social circumstances prevent them from having a real choice. This also occurs when a colonised people rejects the coloniser's nationality.

Employing this definition of voluntary statelessness, former US national, Garry Davis, has arguably been the most visible and outspoken individual to voluntarily renounce their nationality. He is a paradigmatic example that legal non-recognition and social non-recognition by the country of origin do not necessarily coincide.

Despite renouncing his US nationality and thereby, legal recognition in Paris in 1948, Davis always retained some social recognition. Once a de jure stateless individual, he publicly advocated for world citizenship. His political activism received a lot of media attention.[65] In the press, Davis was often portrayed as an idealist.[66] The detailed coverage of his case brought him the support of many French intellectuals and thousands of ordinary people throughout Europe.[67]

Moreover, he was recognised by the UN. Herbert Evatt, President of the UN General Assembly at the time, invited him to make his case for world citizenship. In response, Davis spoke to a crowd of 2,000 admirers in Paris. The public address was followed by a mass rally of 12,000 people and a reception held by the President of France.[68] Given the overwhelming public support and the considerable amount of social recognition that Davis enjoyed, it was, therefore,

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62 For a more positive definition by its consequences, see Jocelyn Kane, 'Voluntary Statelessness: Reflections on Implications for International Relations and Political Theory' (Summer 2018) *Migration and Citizenship: Newsletter of the American Political Science Association's Organized Section on Migration and Citizenship*.

63 See Serena Olsaretti, 'Freedom, Force and Choice: Against the Rights-Based Definition of Voluntariness' (1998) 6(1) *Journal of Political Philosophy* 53, 54.

64 Hind Ghandour, 'Naturalised Palestinians in Lebanon: Experiences of Belonging, Identity and Citizenship' (PhD Thesis, Swinburne University of Technology, 2017) 103.

65 Joseph Preston Baratta, *The Politics of World Federation: From World Federalism to Global Governance* (Greenwood Publishing Group 2004) 401.

66 ibid 403.

67 ibid 399. They included public figures like the resistance hero, Robert Sarrazac, and the writer, Albert Camus.

68 Davis was also later received by the Prime Minister of India: see Garry Davis, *My Country Is the World* (World Government House 1984) 122–28.

not a surprise that the Government of France granted him a three-month residence permit, despite his statelessness.

In the following years, Davis travelled to many countries including the United States, the United Kingdom, the Netherlands, Germany, Italy, India, Pakistan, Iran and Japan. Entry into these countries was always difficult but never impossible. When leaving France for the United States, for example, Davis 'was classified as a "French non-quota immigrant" who was to become a resident alien'.[69]

Although the United States was no longer supposed to take responsibility for Davis' protection from other countries, it did so nevertheless.[70] When deported from the United Kingdom, a US immigration official welcomed him cheerfully, telling him that they were just 'trying to play ball with [him]'.[71] It was a clear indication that Davis had not lost the social recognition of his former country of origin.[72] In his case, social recognition was also granted by foreign countries. The governments of Ecuador, Laos, Yemen and Saudi Arabia even accepted his world citizen passport on a de facto basis.[73] When in custody in the Netherlands, the Government of the Netherlands argued that Davis was not a refugee, thereby indirectly suggesting that his attachment to the United States was not broken.[74]

All of this shows that his US nationality was never really disputed by anyone other than himself. While no country was supposed to take responsibility for his protection from other countries, he was always indirectly taken care of by the United States Government.[75] This is to say that Davis remained both a de facto US national and a de jure US national.

Born into extremely favourable conditions and always being treated well by his country of origin and other countries, Davis' case moreover suggests that voluntarily renouncing one's nationality may not lead to repercussions if one comes from a position of privilege.[76] Mike Gogulski, another former US national who renounced his nationality, made this point equally clear when he remarked in an interview that he had not faced any serious problems caused by being de jure stateless. When asked about de jure statelessness in general, he emphasised that 'everybody's situation is very different and what is relatively easy for me to do could cause huge disruption in somebody's life if they didn't really ponder it very carefully and understand all the implications before doing it'.[77]

In this Part, I have shown that someone can become legally statelessness by renouncing their nationality themselves. In this situation of voluntary statelessness, legal non-recognition does not necessarily coincide with social non-

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69 ibid 80.

70 ibid 115.

71 ibid 104.

72 ibid 106.

73 ibid 110, 113.

74 ibid 161.

75 ibid 161, 210–11.

76 Davis' father, a New York Orchestra leader, had great social and economic capital. Davis himself was an United States Army Air Force veteran and on the way to becoming a Broadway star. See Margalit Fox, 'Garry Davis, Man of No Nation Who Saw One World of No War, Dies at 91', *The New York Times*, (online, 28 July 2013) <https://www.nytimes.com/2013/07/29/us/garry-davis-man-of-no-nation-dies-at-91.html>, archived at <https://perma.cc/828N-6U56>.

77 Sophie McBain, 'Will the Wealthy Burn Their Passports? The Pros and Cons of Modern Statelessness', *Spears World* (Blog Post, 25 June 2013) <https://web.archive.org/web/20130630071737/http:/www.spearswms.com/spears-world/article-of-the-week/47957/will-the-wealthy-burn-their-passports-the-pros-and-cons-of-modern-statelessness.thtml>, archived at <https://perma.cc/8HNQ-YNAZ>.

recognition. Thus, statelessness does not always describe a condition where someone is at risk of violence inflicted by the country of origin. In a literal, but not legal, sense, the individual in question may not even be thought of as a 'stateless person' but rather an 'anarchist' or 'hermit', depending on their reasons for renunciation.

B *Structural Statelessness*

Unlike voluntary statelessness, structural statelessness describes situations where the source of the statelessness is international law.[78] Resulting from social circumstances, it stands in direct opposition to voluntary statelessness. Structural statelessness can be de facto or de jure.

The case of Friedrich Nottebohm sets a historical precedent of de facto structural statelessness. Nottebohm was born a German national but resided in Guatemala for over 35 years. In 1939, he acquired Liechtensteiner nationality to avoid any negative consequences that could arise from being associated with belligerent Germany at the outbreak of the Second World War. Although Nottebohm no longer had German nationality, the Government of Guatemala nevertheless expelled him to the United States where he was detained as an enemy alien for three years.

Not neglecting its legal obligation to protect Nottebohm, Liechtenstein responded with an appeal to the International Court of Justice. But the court did not accept the country's appeal. Instead, it argued that Liechtenstein had no right to provide protection to Nottebohm, despite his naturalisation. The judges justified this verdict by drawing on the concept of effective nationality, which takes nationality to be 'a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests, and sentiments, together with the existence of reciprocal rights and duties'.[79] Moreover, they argued:

> [n]aturalization was asked for not so much for the purpose of obtaining a legal recognition of Nottebohm's membership in fact in the population of Liechtenstein, as it was to enable him to substitute for his status as a national of a belligerent State that of a national of a neutral State, with the sole aim of thus coming within the protection of Liechtenstein but not of becoming wedded to its traditions, its interests, its way of life or of assuming the obligations — other than fiscal obligations — and exercising the rights pertaining to the status thus acquired.[80]

The verdict marked the first time in which 'under international law the objective legal status of nationality, *by itself*, no longer conferred sufficient title on which a State can exercise diplomatic protection regarding its nationals'.[81] In

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78 Philipp Cole uses the term 'structural statelessness' in a much wider sense. He argues that

> [t]he stateless can be understood … in relation to the global political order. We can see them as a leftover residue lying outside of the international system of sovereign states, either nothing to do with that system or because of some minor inefficiency of that system that can be tweaked. Or we see them as a structural failure, a product of that order, such that finding a solution to statelessness means asking radical questions about the international political order.

Phillip Cole, 'Insider Theory and the Construction of Statelessness' in Phillip Cole (ed), *Understanding Statelessness* (Routledge 2017) 258.

79 *Nottebohm Case* (*Liechtenstein v Guatemala) (Judgment)* [1995] ICJ Rep 4, 23.

80 ibid 26.

81 Jeffrey L Blackman, 'State Successions and Statelessness: The Emerging Right to an Effective Nationality Under International Law' (1998) 19(4) *Michigan Journal of International Law* 1141, 1155.

other words, Nottebohm was without legal recognition whenever abroad.[82] Yet, in Liechtenstein, he had a country of nationality that continued to grant him legal, as well as social, recognition at home and was willing to take responsibility for his protection. Given these circumstances, Nottebohm's case suggests, therefore, that legal non-recognition and social non-recognition do not necessarily coincide if someone is rendered structurally stateless.

Having considered the Nottebohm case as an example of structural statelessness, let us turn to a second example. The citizens of the so-called 'sinking' Pacific Islands states are likely to become a historical precedent of de jure structural statelessness. To understand why sinking island states may soon be incapable of guaranteeing the legal recognition of their nationals, one must keep in mind that the legal concept of nationality derives from the existence of statehood. A geographic area that is not a state cannot have nationals.

Despite this foundational link, there is no formal definition of statehood in international law. Yet, there seems to be a tacit agreement among the international community in favour of the *Montevideo Convention on Rights and Duties of States* ('*Montevideo Convention*').[83] Article 1 of the *Montevideo Convention* stipulates that a 'state as an international person should possess [as a matter of fact] the following qualifications: (a) a permanent population; (b) a defined territory; (c) a government; and (d) capacity to enter into relations with other states'.[84]

Moreover, art 3 defines the rights of states and their scope according to international law. It declares that:

> the political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts. The exercise of these rights has no other limitation than the exercise of the rights of other states according to international law.[85]

Additionally, the *Arbitration Commission of the European Conference on Yugoslavia: Opinion No 1 (Dissolution of SFRY)* confirms this legal definition of statehood. It recommends that 'the state is commonly defined as a community which consists of a territory and a population subject to an organised political authority'.[86]

In accordance with these definitions, a state loses statehood if it no longer has a (a) permanent population, (b) defined territory, (c) government or (d) capacity to enter into relations with other states. In the future, sinking island states may lack all these qualities due to climate change and rising sea levels.

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82 Only in 2006 did the International Law Commission greatly limit the implications of the *Nottebohm* verdict, thereby protecting all naturalised persons against such an application: United Nations, *Yearbook of the International Law Commission*, UN Doc A/CN.4/SER.A/2006/Add.1 (Part 2) (2006) vol II, 32–33.

83 See Thomas D Grant, 'Defining Statehood: The Montevideo Convention and its Discontents' (1999) 37(2) *Columbia Journal of Transnational Law* 403, 403.

84 *Montevideo Convention on the Rights and Duties of States*, opened for signature 26 December 1933, 165 LNTS 19 (entered into force 26 December 1934) art 1.

85 ibid art 3.

86 Malcolm N Shaw, 'Peoples, Territorialism and Boundaries' (1997) 8(3) *European Journal of International Law* 478, 492.

Studies on climate change predict that Tuvalu, Kiribati, the Marshall Islands, the Maldives and the Seychelles are likely to become uninhabitable.[87] Hence, their governments would be forced into exile, where they would depend on the resources and goodwill of foreign countries.[88] Since exile would mean a lack of sovereignty, it may result in the loss of statehood, even before the disappearance of territory.[89]

Although sinking island states may lose statehood in one way or the other,[90] they neither deprive their nationals of social recognition nor intend to shirk any responsibilities for protection. Kiribati is a good example. In 2014, the Government of Kiribati adapted the 'Migration with Dignity' policy to mitigate the effects of future statelessness. This policy had two main pillars: an 'Education for Migration' programme and the purchase of 6,000 acres of land on one of Fiji's islands.[91] When some nationals emigrated to that land, the then President of Kiribati Anote Tong remarked:

> [t]hese people now live in Fiji but have their own seat in the parliament of Kiribati …. The spirit of the people of Kiribati will not be extinguished. It will live on somewhere else because a nation isn't only a physical place. A nation — and the sense of belonging that comes with it — exists in the hearts and the minds of its citizens wherever they may be.[92]

Tong's successor, Taneti Maamau, has gone down a different route. Bolstering the economy through sustainable tourism and international aid, as well as raising parts of the island, he wants Kiribati's population to stay as long as possible.[93]

Apart from Kiribati, other sinking island states have made similar plans to protect their nationals. While the Marshall Islands have also purchased patches of

87 See Jon Barnett and W Neil Adger, 'Climate Dangers and Atoll Countries' (2003) 61 *Climatic Change* 321, 321.

88 Susin Park, 'Climate Change and the Risk of Statelessness: The Situation of Low-Lying Island States' (Legal and Protection Policy Research Series No PPLA/2011/04, UNHCR, May 2011) 13.

89 See ibid 14; UNHCR, 'Climate Change and Statelessness: An Overview', Submission to the 6th Session of the Ad-Hoc Working Group on Long-Term Cooperative Action, 15 May 2009, 2.

90 Derek Wong questions this conclusion. In his view, sinking islands states may continue to be granted statehood so that global order is maintained: Derek Wong, 'Sovereignty Sunk — The Position of Sinking States at International Law' (2013) 14(2) *Melbourne Journal of International Law* 362. Yet it is not clear how their continued de jure existence may contribute to the maintenance of global order when entire populations need to be resettled.

91 See UNHCR, *Universal Periodic Review: The Republic of Kiribati* (Report, June 2014); Republic of Kiribati, 'Fiji Supports Kiribati on Sea Level Rise' (Press Release, 11 February 2014) <http://www.climate.gov.ki/category/action/relocation/>, archived at <https://perma.cc/4YKL-K6T8>.

92 ibid.

93 See Ben Walker, 'An Island Nation Turns Away from Climate Migration, Despite Rising Seas', *Inside Climate News* (online, 20 November 2017) <https://insideclimatenews.org/news/20112017/kiribati-climate-change-refugees-migration-pacific-islands-sea-level-rise-coconuts-tourism/>, archived at <https://perma.cc/2LYB-S46H>; Ministry of Finance and Economic Development Kiribati, *Kiribati 20-Year Vision 2016–2036* (Report) <https://www.mfed.gov.ki/sites/default/files/KIRIBATI%2020-YEAR%20VISION%202016-2036%20.pdf>, archived at <https://perma.cc/5D8B-DL3Y>.

land elsewhere,[94] the Maldives have built an entirely new landmass for their populations to be resettled.[95]

In this Part, I have presented two examples of structural statelessness where the source of legal non-recognition is international law. They suggest that structurally stateless individuals are not necessarily deprived of legal non-recognition and social non-recognition. Thus, structural statelessness also indicates that the concept of statelessness does not always describe a situation where someone is at risk of violence enacted by the country of origin.

C *Denigrative Statelessness*

Unlike the other two subtypes, denigrative statelessness describes cases where the source of statelessness is the country of origin. It can be de facto as well as de jure. Like structural statelessness, denigrative statelessness also stands in direct opposition to voluntary statelessness, as it is forced.

There are different tools the country of origin might use to render someone de facto or de jure stateless. They all suggest that legal non-recognition and social non-recognition necessarily coincide in the case of denigrative statelessness. The first tool is discriminatory nationality laws. In countries that ground nationality exclusively on the *jus sanguinis* (by descent) principle, children may be de jure stateless if their parents are unknown or stateless themselves.[96] Another common type of discriminatory nationality law concerns the legal discrimination against women.[97] In 27 countries, women and men do not have an equal right to transmit nationality to their children. This means that children in these countries can end up de jure stateless if they are born to a single mother.[98] Moreover, there are many cases where nationality laws have had a racially or ethnically discriminatory basis.[99]

As Neha Jain contends, such discriminatory nationality laws are, however, a relatively rare tool to manufacture statelessness; states have instead found much more subtle ways to deprive nationals of legal recognition.[100] Jain identifies three such ways. The first way is time. It includes unreasonable application deadlines

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94 See Laurence Caramel, 'Besieged by the Rising Tides of Climate Change, Kiribati Buys Land in Fiji', *The Guardian* (online, 1 July 2014) https://www.theguardian.com/environment/2014/jul/01/kiribati-climate-change-fiji-vanua-levu, archived at <https://perma.cc/KK4L-42YV>; 'Bikini Atoll Govt Buys Climate Change Bolthole Land in Hawaii', *RNZ* (online, 17 May 2019) <https://www.rnz.co.nz/international/pacific-news/389416/bikini-atoll-govt-buys-climate-change-bolthole-land-in-hawaii>, archived at <https://perma.cc/28RM-FSTR>.

95 See Norman Miller, 'A New Island of Hope Rising from the Indian Ocean', *BBC News* (online, 11 September 2020) <https://www.bbc.com/travel/article/20200909-a-new-island-of-hope-rising-from-the-indian-ocean>, archived at <https://perma.cc/D399-L6T2>.

96 See Radha Govil and Alice Edwards, 'Women, Nationality and Statelessness: The Problem of Unequal Rights' in Alice Edwards and Laura van Waas (eds), *Nationality and Statelessness under International Law* (Cambridge University Press 2014) 176.

97 See Govil and Edwards (n 96).

98 Angelina Theodorou, '27 Countries Limit a Woman's Ability to Pass Citizenship to Her Child or Spouse', *Pew Research Center* (Blog Post, 5 August 2014) <https://www.pewresearch.org/fact-tank/2014/08/05/27-countries-limit-a-womans-ability-to-pass-citizenship-to-her-child-or-spouse/>, archived at <https://perma.cc/UP3T-PB35>.

99 See Michelle Foster and Timnah Rachel Baker, 'Racial Discrimination in Nationality Laws: A Doctrinal Blind Spot of International Law?' (2021) 11(1) *Columbia Journal of Race and Law* 83, 94–97; Shourideh C Molavi, 'Stateless Citizenship and the Palestinian-Arabs in Israel' (2011) 26(2) *Refuge: Canada's Journal on Refugees* 19, 23.

100 Neha Jain, 'Manufacturing Statelessness' (2022) 116(2) *American Journal of International Law* 237, 249.

and durational residency requirements.[101] While countries like Latvia, Estonia, the United Arab Emirates or Myanmar have, for instance, tied nationality to a certain date to which one must be able to trace ancestry,[102] Slovenia and the Dominican Republic have legally counted residential time in a way that renders some individuals stateless.[103]

According to Jain, the second subtle way in which states manufacture statelessness is spatial. For example, Kuwait and Malaysia have delineated their territorial borders so that some groups — the Bidoons in Kuwait and the Bajau Laut in Malaysia — are excluded from nationality.[104] Others, like India, Bangladesh and Thailand, have created stateless enclaves in their borderlands.[105]

The third way involves a number of administrative practices. One of them is archival erasure. After Slovenian independence from the former Yugoslavia, immigrants who forgot to apply for nationality within the given six month period or whose application was rejected were erased from all registries and thereby rendered permanently stateless.[106] India's amendment of the National Register of Citizens ('NRC') is arguably the most notorious case where documentation or the lack thereof has been used as a weapon.[107] To this day, the NRC has deprived about 1.9 million individuals who reside in the State of Assam of their nationality.[108]

Denationalisation is an even more explicit tool to render nationals de jure stateless. A good example here, and one that is worth exploring in more detail, is the case of Shamima Begum. The Government of the United Kingdom's need to give justification for her denationalisation strongly indicates that legal non-recognition and social non-recognition are closely intertwined in the case of denigrative statelessness.

Begum, who grew up in London, joined the so-called Islamic State of Iraq and the Levant ('ISIL') in February 2015. Four years later, she was encountered by a newspaper war correspondent in the Al-Hawl refugee camp in Northern Syria. In an interview with the correspondent, Begum expressed her intention to return home because she was afraid that her third and, at that time, unborn baby may become sick at the camp.[109]

A day later, the UK Minister of State for Security and Economic Crime ('UK Security Minister') responded to Begum's intentions on a radio show. He made clear that the Government of the United Kingdom would not facilitate Begum's return, despite her British nationality. He argued that he would not put 'at risk

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101 See ibid 250–52; 'Soy Dominicano—The Status of Haitian Descendants Born in the Dominican Republic and Measures to Protect Their Right to a Nationality Note' (2014) 47(4) *Vanderbilt Journal of Transnational Law* 1123, 1142–43.

102 See Jain (n 100) 251–53.

103 See ibid 255–58.

104 ibid 265.

105 ibid 262–63.

106 ibid 258.

107 ibid 271.

108 Talha Abdul Rahman, 'Identifying the "Outsider": An Assessment of Foreigner Tribunals in the Indian State of Assam' (2020) 2(1) *Statelessness & Citizenship Review* 112, 118.

109 Begum's worries were not unfounded as she had already lost two babies to illness and malnutrition: Aamna Mohdin and Martin Chulov, 'Shamima Begum Baby Death "A Stain on Conscience of UK Government"', *The Guardian* (online, 9 March 2019) <https://www.theguardian.com/uk-news/2019/mar/09/sajid-javid-denounced-shamima-begums-baby-dies-syria>, archived at <https://perma.cc/R757-RFF7>.

British people's lives to go looking for terrorists or former terrorists in a failed state'.[110] Additionally, the Prime Minister's Official Spokesperson added that

> [a]ny British citizen who does return from taking part in the conflict must be in no doubt they will be questioned investigated and potentially prosecuted. … Whatever the circumstances of an individual case we have to and we will protect the public.[111]

It should be noted the two statements convey contradictory messages. While the UK Security Minister indicated that Begum may no longer be granted legal recognition by the United Kingdom, the Prime Minister's Official Spokesman confirmed her domestic legal liability.

The Government's incoherent handling of the case changed four days later, however, when Begum was asked to give a second interview. The media confronted her with a line of argument similar to that used by the UK Security Minister. She was accused of having endorsed and helped an enemy of Britain by joining the ISIL. The media demanded that she condemn and apologise for the Manchester Arena, an action by an extremist suicide bomber that killed 23 people during a concert, which was later claimed by ISIL.[112] Begum replied that this attack was a justified act of retaliation for the murder of innocent women and children in Baghuz, although she also felt that it was generally wrong to kill innocent people.

In response, the UK Home Secretary publicly announced the Home Office intended to coercively denationalise Begum. He argued that, in accordance with the 1961 *Convention on the Reduction of Statelessness* ('*1961 Convention*'), the coercive denationalisation of Begum was permissible because, under Bangladeshi law, the 19-year-old would have a right to Bangladeshi nationality as she was born to a Bangladeshi parent. However, Bangladeshi officials have contested this argument. Despite this contestation, the Supreme Court of the United Kingdom ('Supreme Court') dismissed Begum's appeal in February 2021, thereby rendering her de jure stateless.

The Supreme Court offered four reasons for its dismissal. At least two of them strongly indicate that legal non-recognition and social non-recognition are closely intertwined. First, the judges argued that 'there was no evidence before the Court as to whether the national security concerns about Ms Begum could be addressed and managed by her being arrested and charged upon her arrival in the UK'.[113] Second, they confirmed that the Home Secretary was rightly 'not satisfied that depriving Ms Begum of British citizenship would expose her to a real risk of mistreatment within the meaning of his policy'.[114] Both justifications create a public image of Begum that makes her seem like a pathologically dangerous monster who cannot be prosecuted legally and is not worthy of any rights. Hence, they suggest that she is not only without legal, but also social, recognition.

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110 Amy Walker and Patrick Wintour, 'UK Will Not Put Officials at Risk to Rescue Isis Britons, Says Minister', *The Guardian* (online, 14 February 2019) <https://www.theguardian.com/uk-news/2019/feb/14/uk-isis-britons-officials-risk-syria-schoolgirl-shamima-begum>, archived at <https://perma.cc/9G6M-NKBK>.

111 ibid.

112 For a more general discussion of the media asking Muslims to condemn terrorism being a tool of dehumanisation, see Asim Qureshi, *I Refuse to Condemn: Resisting Racism in Times of National Security* (Manchester University Press 2020).

113 *R (Begum) v SIAC; R (Begum) v SSHD; Begum v SSHD* [2021] UKSC 7; [2021] AC 765.

114 ibid.

The media has arguably played a key role in constructing this image.[115] Begum was racialised by being portrayed as a remorseless Muslim terrorist all along.[116] For instance, '[t]he 'Bring me Home' Loyd/Begum interview occupied media reports for several weeks, where Begum was always represented across all media reports as extremely dangerous'.[117] During this time, Begum was also on the front page of *The Times*, with a cover story that aimed to dehumanise her by focusing on the following remark she had made: 'When I saw my first severed head it didn't faze me at all'.[118] Furthermore, on 7 February 2020, the media accused her, with little evidence, of stitching suicide bomber vests for ISIL.[119]

Besides denationalisation, persecution is another tool by which the country of origin may render someone stateless; that is, as indicative of the close connection between legal and social non-recognition. The case of the Rohingya is exemplary and also worth discussing in more detail. From 1948 to 1962, they were legally recognised as nationals of Burma Proper by the Union of Burma. Their legal status was reinforced in several public statements made by leading politicians. For example, Sao Shwe Thaik, the first President of Burma, and of Shan ethnicity, argued that the 'Muslims of Arakan certainly belong to the indigenous races of Burma. If they do not belong to the indigenous races, we also cannot be taken as indigenous races'.[120] In 1954, this multi-ethnic vision of Burma was also supported by U Nu, the first Prime Minister of Burma, who said that '[t]he people living in Buthidaung and Maungdaw Townships are Rohingya, ethnic of Burma',[121] and in 1958, the then Prime Minister of Burma, U Ba Swe, contended that '[t]he Rohingya has the equal status of nationality with Kachin, Kayah, Karen, Mon, Rakhine and Shan'.[122]

This understanding was challenged, however, by the military coup d'état in 1962. The military Government not only began to restrict the Rohingya's freedom of movement, but also to confiscate their identity cards. During Operation Dragon King in March and August 1978, which was euphemistically announced as an attempt to register nationals in northern Arakan and deport foreigners prior to the national consensus,[123] 250,000 Rohingya were forced to escape to Bangladesh.[124] In 1982, the Rohingya's situation drastically worsened when the *Union Citizenship Act* was repealed by the *Burma Citizenship Law*. In its aftermath, a

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115 For a discussion of the media's key role in vilifying and denying the social recognition of Muslim individuals, see Kapoor, *Deport, Deprive, Extradite* (n 58) 11; Susan S M Edwards, *The Political Appropriation of the Muslim Body: Islamophobia, Counter-Terrorism Law and Gender* (Springer International Publishing 2021) 50–53.

116 See also Joumanah El-Matrah and Kamalle Dabboussy, 'Guilty When Innocent: Australian Government's Resistance to Bringing Home Wives and Children of Islamic State Fighters' (2021) 10(6) *Social Sciences* 202.

117 Susan Edwards, 'Muslim Racialised Tropes' in Susan Edwards (ed), *The Political Appropriation of the Muslim Body* (Palgrave Macmillan 2021) 21, 51.

118 ibid 51.

119 ibid 52.

120 Nay San Lwin, 'Making Rohingya Statelessness', *New Mandala* (Blog Post, 29 October 2012) https://www.newmandala.org/making-rohingya-statelessness/, archived at <https://perma.cc/7PDW-BSHF>.

121 ibid.

122 ibid.

123 Syeda Naushin Parnini, Mohammad Redzuan Othman and Amer Saifude Ghazali, 'The Rohingya Refugee Crisis and Bangladesh–Myanmar Relations' (2013) 22(1) *Asian and Pacific Migration Journal* 133, 136.

124 Md Mahbubul Haque, 'Rohingya Ethnic Muslim Minority and the 1982 Citizenship Law in Burma' (2017) 37(4) *Journal of Muslim Minority Affairs* 454, 458.

large number of Rohingya were coercively denationalised and expelled from the territory by the military Government, which was thereby denying its legal obligation to take legal responsibility for their protection.

Although former Burma (today's Myanmar) was not a signatory to the *1961 Convention*, the military government justified the coercive denationalisation of the Rohingya in a way that resonates with art 8(3). In arguing that the rapid population growth of the Muslim population would be a threat to the vital interests of the country, Burmese and Rakhine leaders appealed to its central provision while denigrating the Rohingya.[125] Yet, as in the case of Shamima Begum, the coercive denationalisation of the Rohingya was based on their racialisation.

In this Part, I have presented several examples of denigrative statelessness where the source of legal deprivation is the country of origin. Moreover, I have suggested that denigrative statelessness is likely to involve the deprivation of legal, as well as social, recognition. This becomes especially evident in cases of denationalisation and persecution. Shamima Begum and the Rohingya have not only been rendered de jure stateless, but they have also been denied the status of moral equals who deserve to be treated with dignity. Thus, denigrative statelessness gives a name to the worst cases of statelessness, where someone is at a great risk of violence by the country of origin.

IV CONCLUSION

In this article, I have made three arguments. First, I have argued that legal statelessness can be best understood through the two concepts of responsibility and recognition. On the one hand, the stateless have no country that effectively takes responsibility for their protection. On the other, their statelessness is arguably caused by a combination of legal and social deprivation. Second, I have identified three different subtypes of statelessness. They derive from the source of legal deprivation and include voluntary statelessness, structural statelessness and denigrative statelessness. Third, I have suggested that legal and social non-recognition do not necessarily coincide in the case of voluntary and structural statelessness, whereas they seem closely intertwined in the case of denigrative statelessness. A comprehensive response to statelessness must address the latter problem. I hope that the formal typology of statelessness developed here can offer a helpful framework for such an endeavour.

125 ibid 456.