

EDITORIAL

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In their 2019 introduction to the first volume of *Statelessness & Citizenship Review*, Michelle Foster and Laura Van Waas celebrated the coming into being of a new, vibrant and interdisciplinary field of statelessness studies. Reflecting on the scholarship gathered in that volume, they stated:

Over the past decade, there has been an exponential increase in scholarly attention and diversity of research projects focused on statelessness. ... As more academic work is done and as more scholars are drawn into this issue, it is becoming evident in ever wider circles that we must ‘take statelessness seriously’.¹

Two years on, as I draft the introduction to this special volume on statelessness and childhood, I am experiencing a similar excitement and a comparable sense of purpose. This volume builds on the important, recent work that was conducted to mark the 60th anniversary of the 1961 *Convention on the Reduction of Statelessness* (‘1961 Convention’). It takes stock of the recent dynamism related to reducing global statelessness and incremental progress in advancing relevant rights in the intervening decades, including, in particular, jurisdictions such as Australia and Iran.² But it also does something else. It shows how a growing constituency is taking one aspect of statelessness increasingly seriously — its impact on children.

The volume assembles an impressive body of emerging scholarship, including research articles, case commentaries, symposium speeches and a book review, which are centred on the intersection between issues of statelessness and children’s rights. It ranges over a broad set of child-specific topics, from the nationality of foundlings to the challenges facing children born to so-called ‘foreign terrorist fighters’.³ Just over 10 years ago, in 2011, I embarked on a similar venture when I edited a volume entitled *Children Without a State: A Global*

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¹ Michelle Foster and Laura van Waas, ‘Editorial’ (2019) 1(1) *Statelessness & Citizenship Review* 1, 1–2. An excellent example of the vibrant expansion of quality research on statelessness is Mira Siegelberg’s *Statelessness: A Modern History* (Harvard University Press 2020), essential reading for anyone working in this field.

² The growing impact of UNHCR’s #IBelong campaign to reduce statelessness is a case in point. See William Thomas Worster, ‘Customary International Law Requiring States to Grant Nationality to Stateless Children Born in their Territory’ (2022) 4(1) *Statelessness & Citizenship Review* 113; Melanie Khanna and Marcella Rouweler, ‘Taking Stock of the Relevance and Impact of the 1961 *Convention on the Reduction of Statelessness*’ (2022) 4(1) *Statelessness & Citizenship Review* 194; Michelle Foster, ‘The 1961 *Convention on the Reduction of Statelessness*: History, Evolution, Relevance’ (2022) 4(1) *Statelessness & Citizenship Review* 188. For the relevance of the 1961 *Convention on the Reduction of Statelessness* to Australia, see Katie Robertson, ‘Practical Measures to Meaningfully Implement Article 1(1) of the 1961 *Convention on the Reduction of Statelessness* in Australian Law and Practice’ (2022) 4(1) *Statelessness & Citizenship Review* 204; Zahra Abtahi Keyvan Zamani and Miriam Potocky, ‘Undocumented Children in Iran: A Review of Recent Legal Progress’ (2022) 4(1) *Statelessness & Citizenship Review* 140.

³ Betsy L Fisher, ‘Nationality of Foundlings: Avoiding Statelessness Among Children of Unknown Parents Under International Nationality Law By Mai Kaneko-Iwase’ (2022) 4(1) *Statelessness & Citizenship Review* 183; Lavinia Spieß and Louise Pyne-Jones, ‘Children at Risk of Statelessness in the Fight Against Terrorism’ (2022) 4(1) *Statelessness & Citizenship Review* 33.

Human Rights Challenge.⁴ As far as I know, it was the first full length inquiry into the global impact of statelessness on children. It included chapters spanning a wide range of issues, from birth registration to data deficiencies, from the intersection of nationality and immigration issues to the impact of child statelessness on access to services. It covered jurisdictions on all continents, from problems facing Palestinian children to those afflicting undocumented children in the US, from the hardships experienced by Chinese children without a hukou to the impact of statelessness on children in the Democratic Republic of the Congo, Spain and Ireland. In the introduction to the book, I suggested that two critical impacts of statelessness on children had been neglected and demanded attention: first, the pervasive effect of a lack of demonstrable legal identity on a child's ability to flourish; and second, the fact that 'statelessness is not just a problem facing children without a nationality', but affecting a much wider group encompassing children with a de jure nationality but without the ability to turn to their state for protection (de facto statelessness), as well as children without the ability to prove their nationality (*effective statelessness*).⁵

Ten years on, all the issues raised in *Children Without a State* are still relevant. De jure, de facto and effective statelessness continue to affect the ability of children to flourish, data issues continue to bedevil policy making in this field and the country specific problems discussed then remain relevant. It is, thus, entirely appropriate and welcome that the present volume sets itself the task of showing, from multiple perspectives, how statelessness specifically impacts children and why the question is an important one. The articles, commentaries and speeches assembled in this volume strongly evidence a burgeoning and compelling new field of Statelessness and Childhood studies, enriched by the syncretic and creative scholarship of each of those fields. It is axiomatic, in the context of work on children's rights, to stress the foundational importance of family and community. Indeed, the Preamble to the UN's 1989 *Convention on the Rights of the Child* ('CRC') emphasises the 'special safeguards and care, including appropriate legal protections' owed to the child by reason of his or her physical and mental immaturity.⁶ Above all other humans, arguably, children are dependent on the nurture and protection of their surrounding environment to survive and thrive. This environment consists, critically, not just of individual carers but of social, cultural and political structures that anchor the child's sense of belonging and wellbeing. Among the relevant building blocks of these structures is nationality, the inclusion in a recognised legal polity that affords its members legal identity, international protection and civic status. As one of the commentaries included in this volume puts it:

Th[e] lack of a national identity stands in the way of assuring fundamental rights to protection, health and education, which can have a profound impact on the developing child. Moreover, the inaccessibility of essential services such as prenatal care, nutrition and housing — which may be denied to parents based on their nationality — can impact the care that young children need to thrive.⁷

⁴ Jacqueline Bhabha (ed), *Children Without a State: A Global Human Rights Challenge* (MIT University Press 2011).

⁵ *ibid* xiii.

⁶ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) preamble ('CRC').

⁷ Aisha K Yousafzai et al, 'Statelessness and Young Children' (2022) 4(1) *Statelessness & Citizenship Review* 154.

Longstanding official recognition of the cardinal importance of nationality to children is evidenced by the fact that not one but two out of a mere 40 substantive articles in the concise *CRC* deal with the child's right to acquisition and preservation of a nationality.⁸

One of the exciting aspects of this special volume is its theoretical originality. Far from exploring child statelessness as simply a version of the absence of nationality for a particular demographic group, as one might consider this in relation to a regionally or culturally defined constituency, authors in this volume develop powerful arguments about the ways in which a robust child-centred lens alters the conceptual apparatus for addressing statelessness. In particular, two arguments are compelling.

One of these arguments stresses the different temporality that must be brought to bear on the analysis of child statelessness by comparison with its adult counterpart. This different temporality has two aspects: a forward-looking obligation and an expeditious decision-making requirement. The first focuses on the directionality of the temporal focus, while the second focuses on the relevant metric for considering what may amount to unreasonable delay. Both aspects start from a consideration of child-specific factors that are considered fundamental to the advancement of a cogent legal analysis — factors that barely feature in traditional discussions of statelessness.

With regards to the issue of the directionality of the temporal focus that is relevant in child rights cases, several contributors to this special volume stress the importance of moving from a solely backward-facing lens, which privileges past history and long-standing existing connections to place or community, to a forward-looking perspective. The argument is that for children, particularly young children, the future, more than the past, must be the target temporal frame of analysis: future well-being, future opportunities, future risks and future challenges. Because of the adult-centric bias of international law, the past has inevitably loomed larger than the future as a correlate for connection, for the socio-political ties that drive belonging. But, as several of the authors in this volume rightly point out, there is nothing inevitable or unalterable about that perspective. Sharelle Anne Aitchison argues, in her compelling analysis of how the notion of 'habitual residence', the placeholder for country of nationality for stateless persons, should be construed in the case of children, in favour of a 'forward-looking assessment'. This assessment, she suggests, permits a parent's former habitual residence to be considered that of his or her child too, even if that child has 'never before resided in th[e] territory' as 'a child's habituality and ties to a country territory are distinct to that of an adult'.⁹

A similar argument about the importance of a future-oriented temporal perspective for the protection of stateless children's rights can be inferred from the arguments advanced by Lavinia Spieß and Louise Pyne-Jones in their thought-provoking article about the searing plight of the children of foreign terrorist fighters. Describing the plight of the thousands of such children, many hundreds of whom are the offspring of European ISIS recruits who are trapped in squalid camps in northeast Syria, they argue that the *CRC*'s insistence on states'

⁸ *CRC* (n 6) arts 7–8.

⁹ Sharelle Anne Aitchison, 'A Teleological and Child-Sensitive Interpretation of a Country of Former Habitual Residence for Stateless Children Born Outside Their Parents' Country of Nationality or Former Habitual Residence' (2022) 4(1) *Statelessness & Citizenship Review* 7, 11.

obligations to protect children from statelessness implies an imperative of flexibility in assessing the claims of these children to their parents' European citizenship:

[T]he obligation to avoid statelessness among children [of foreign terrorist fighters threatened with citizenship stripping] should not necessarily start with the country where the children were born but with the countries depriving their parents of citizenship and creating a legal vacuum for their children. ... [T]he obligation of states to ensure that 'nationality is not denied to persons with relevant links to that State who would otherwise be stateless' ... clarifies that not only children born on the territory of a state or children born to a national but also children with other relevant links [eg to grandparents] can qualify for citizenship.¹⁰

In other words, states have an obligation to include forward-looking assessments of connection and belonging in their evaluation of responsibilities to avoid child statelessness.

One can also argue that the very notion of *jus soli*, predicated as it is on conferring nationality not on the basis of a history of past familial connection but on the urgency of political membership, future inclusion and social belonging for all those born on the territory, as Michael Sullivan points out in his article on birthright citizenship in the US, seems to illustrate the common law's long standing validation of the importance of forward-looking connection.¹¹ A precedent established years ago confirms the temporal argument being advanced by all these contributors. Ruling on the meaning of European Union citizenship in the context of the rights of two Belgian children who sought to keep their non-citizen Colombian parents, who were facing deportation, within the children's country of birth, the European Court of Justice held that citizenship looks to the future rather than merely to the past to define the rights and obligations it confers.¹² In transposing this reasoning from the family unity/deportation context to the statelessness discussion, one can make the case that protective rights and opportunities tied to community connection need to encompass forward-looking perspectives as much as they have backward looking ones.¹³

With regards to the second element of child-specific temporality, several contributions to this special volume highlight the particular importance of timely decision-making in children's cases — the fact that time is of the essence. Starting from Benyam Dawit Mezmur's pertinent observation that a delay of one year would affect 6% of a person's childhood, a compelling case is advanced for attending to the distinctive urgency of intervention and irreversibility of harm in children's cases as the 'one thing that children do not have is time'.¹⁴ Aisha K Yousoufzai et al highlight the critical issue of temporality in their analysis of early child development. As they note:

¹⁰ Spieß and Pyne-Jones (n 3) 61.

¹¹ Michael Sullivan, 'Protecting Minorities from De Facto Statelessness: Birthright Citizenship in the United States' (2022) 4(1) *Statelessness & Citizenship Review* 66, 68.

¹² *Zambrano v Office National de l'emploi* (C-34/09) [2011] ECR I-1177. For discussion of this case and other relevant case law see Jacqueline Bhabha, *Child Migration and Human Rights in a Global Age* (Princeton University Press 2014) 82–86.

¹³ Rudolfo Ribeiro Coutinho Marques, 'Views Adopted by the UN Human Rights Committee under Article 5(4) of the Optional Protocol, Concerning Communication No 2918/2016' (2022) 4(1) *Statelessness & Citizenship Review* 163, 166–67.

¹⁴ Benyam Dawit Mezmur, 'Making Their Days Count: The 1961 Convention on the Reduction of Statelessness and the Convention on the Rights of the Child' (2022) 4(1) *Statelessness & Citizenship Review* 198, 200.

The building blocks for healthy brain development, influenced by our biology and environment, are established in a child's early years, from the period of conception through to the first five year of life. ... This period of development is rapid and the plasticity of the brain is at its most modifiable by risk.¹⁵

Comments on court decisions on child statelessness included in this volume also highlight the unacceptability of long delays from the perspective of child-specific temporality. While the 'unchilding' of Palestinian children in East Jerusalem continues, a successful legal challenge advanced under the *International Covenant on Civil and Political Rights* ('ICCPR') brings hope for the situation of DZ, a stateless child born in the Netherlands, with the Human Rights Committee holding that registering a child born within the jurisdiction as of 'unknown nationality' violated the child's right to acquire a nationality that is protected by the ICCPR.¹⁶ As Yoana Kuzmova and Thomas McGee note, the case provides a welcome acknowledgement of the importance of timely decision making and 'the formative nature of childhood'.¹⁷ Another contribution that stresses the critical impact of timing issues on children's fundamental rights is Eric Fripp's illuminating discussion of *Begum v Secretary of State for the Home Department*, where the timing of citizenship stripping of a parent could have affected the child's eligibility for citizenship by descent.¹⁸ States' failures to deliver timely decisions in children's cases can amount to a form of impermissible administrative violence.

A second original and powerful conceptual argument advanced in this volume is the notion of 'unchilding'. Drawing on the work of Nadera Shalhoub-Kevorkian, which was developed in the context of the settler-colonial society in Palestine, Osama Tanous, Bram Wispelwey and Raina Muhareb argue that the combination of statelessness, entrapment and the notion of 'potential terrorists' in the making that is deployed by the Israeli occupiers results in a blanket withdrawal of the notion of 'childhood' from Palestinians under age 18 who live in East Jerusalem.¹⁹ The notion of 'unchilding' is compelling and consequential. The colonial regime in East Jerusalem initiates or acquiesces in the infliction of cumulative and enduring rights violations, from constant exposure to conflict and violence, to endless precarity with respect to residency status, to interference with access to fundamental rights to education, housing, health care and family unity. In doing so, it denies Palestinian children the basic status of child and the critical access to family and community, which are universally acknowledged as constitutive anchors for childhood itself. Tanous and his colleagues present a masterly account of the intricate and multifaceted elements of 'unchilding' in the Palestinian context, including house demolition, family separation, exposure to constant violence and economic stress. But they also make clear that statelessness

¹⁵ Yousafzai et al (n 7).

¹⁶ Coutinho Marques (n 13).

¹⁷ Yoana Kuzmova and Thomas McGee, 'Comment on the *Zhao* Case: Can A "Victory for Human Rights" in the Netherlands Benefit Children at Risk of Statelessness in the Middle East and North Africa?' (2022) 4(1) *Statelessness & Citizenship Review* 145.

¹⁸ Eric Fripp, '*R(Begum) v Special Immigration Appeals Commission; R(Begum) v Secretary of State for the Home Department; Begum v Secretary of State for the Home Department* [2021] UKSC 7, [2021] AC 765' (2022) 4(1) *Statelessness & Citizenship Review* 169; Spieß and Pyne-Jones (n 3).

¹⁹ Osama Tanous, Bram Wispelwey and Raina Muhareb, 'Beyond Statelessness: "Unchilding" and the Health of Palestinian Children in Jerusalem' (2022) 4(1) *Statelessness & Citizenship Review* 88.

is the overarching civic status that binds these different elements of ‘unchildling’ together, underwriting the radical denial of state protection. Their point, and the generative application of the notion of ‘unchildling’ they deploy, echoes through many of the other contributions in this volume. For, as Mezmur concisely puts it in his commentary on the *1961 Convention*, ‘statelessness is the antithesis to childhood’. Conversely, a child’s right to acquire a nationality is an enabling right, one that — like the right to education — opens the door to a panoply of other rights.²⁰ Ironically, as Foster notes, the Israeli representative to the drafting committee on the *1961 Convention*, Mr Sivan, registered his awareness of exactly this point, stating that he ‘believed that practical, moral and psychological importance attached to nationality not only in the case of adults but also in that of children and young people’.²¹

Though developed in the context of Israeli settler colonialism, the concept of ‘unchildling’ has much broader applicability. It can usefully be applied to a range of other extremely disadvantageous child living situations described in the special volume. One such situation is the circumstances of the children of foreign terrorist fighters who are indefinitely entrapped in northeast Syria, outside the reach of international justice or effective national protection mechanisms. The highly publicised and tragic case of Shamima Begum, stripped of her British citizenship with devastating implications for her infant son too, is a case in point, as are other such cases described in this volume.²² Like the Palestinian children in East Jerusalem, these children are victims of state-initiated citizenship stripping and the myriad of interconnected rights violations that stem from it. Taken cumulatively, these circumstances certainly amount to ‘unchildling’, a radical denial of basic international rights to an innocent and defenceless young constituency. Another, quite different situation of ‘unchildling’ is that created by state actions that prolong a child’s lack of nationality status. As already noted, this situation is powerfully described in the case note and commentary on DZ, the child born in the Netherlands to a trafficked Chinese mother. Confronted by insurmountable legal and administrative problems asserting DZ’s statelessness (because of the unknown nationality of the father and the Chinese authorities’ refusal to issue proof of Chinese nationality), the failed asylum seeker mother and infant DZ spent over three years in a centre for failed asylum seekers. There, they were separated from mainstream Dutch society and threatened with deportation, with DZ denied the (relatively) enabling status of ‘stateless’ that would have opened the door to qualifying for Dutch nationality. A clearer example of ‘unchildling’ by the Dutch state is hard to imagine. While the ‘unchildling’ of Palestinian children continues, a decision by the Human Rights Committee reviewing a legal challenge advanced under the *ICCPR* brings hope for improvement.

Taken together, the contributions included in this special volume of the *Statelessness & Citizenship Review* provide an invaluable resource for anyone — scholar, advocate or policymaker — interested in advancing the basic right to a nationality for every child. For those not yet interested in the topic, the volume provides a powerful incentive to reconsider.

²⁰ Mezmur (n 14) 199.

²¹ Foster (n 2) 190 citing UN Conference on the Elimination or Reduction of Future Statelessness, *Summary Record of the Fourth Plenary Meeting*, UN Doc A/CONF.9/SR.4 (24 April 1961) 2.

²² Fripp (n 18); Spieß and Pyne-Jones (n 3).