Statelessness: A Modern History

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Mira Siegelberg’s important monograph retrieves and explores the debates in a range of different forums on a subject of fundamental significance: how, in the author’s words, ‘the problem of statelessness informed theories of rights, sovereignty, international legal order, and cosmopolitan justice, theories developed when the conceptual and political contours of the modern interstate order were being worked out, against the background of some of the most violent and catastrophic events in modern history’. With this bold opening statement, Siegelberg promises to cast fresh light on the history of the 20th century. The result is a scintillating display of erudition and an abundance of original insight on a subject that demands close scrutiny.

One way of telling the history of statelessness is to trace the origin of international agreements, notably the adoption by the United Nations General Assembly in 1954 of the Convention Relating to the Status of Stateless Persons in 1954, according to which a stateless person is anyone ‘who is not considered as a national by any State under the operation of its law’. Siegelberg does not dispute the importance of such a foundational moment—it forms part of her final chapter—but she insists upon the need for a non-teleological and more nuanced perspective, based upon a close reading of texts that emanated from multiple actors, including but not confined to a relatively small cast of international lawyers. These texts had consequences for the prospects of countless men and women. Statelessness thus becomes a touchstone for thinking about the relationship between the state, the international legal order, and the individual, and how that relationship was constantly reimagined.

Key textual sources include legal cases that exposed the reality of statelessness. Whereas the pre-1914 era enabled a degree of unfettered mobility, such that international business could be conducted as a private affair without reference to national status, these extra-territorial arrangements came to an abrupt end with the outbreak of war. In examining their implications, Siegelberg traces the circumstances of German-born businessman Max Stoeck, whom the British deemed to be an enemy alien and interned. After being returned to Germany at the end of the war, Stoeck asked a British court to declare that he was not a German national (the Prussian government having released him from his nationality twenty years before the outbreak of the war), but instead had the status of a stateless person. The court’s decision introduced into common law the idea of a recognised category of statelessness, thus setting the cat among the pigeons by entertaining the
possibility that statelessness might be advantageous in some circumstances.

Siegelberg then steps back in time to examine how the person ‘without a country’ figured in pre-1914 imagination and practice, with the emphasis on ‘imagination’, since it was deemed inconceivable and immoral that a ‘civilised’ state would deliberately deprive an individual or an entire group of nationality. Thus, when Romania deprived its Jewish subjects of citizenship, the European powers meeting at the Congress of Berlin resolved that a civilised state need not accept that decision. European states were nevertheless free to act as they chose where colonial subjects were concerned, who could be regarded as ‘nationals’ but not as full citizens; the same distinction applied to ‘American Indians’. Meanwhile, as migration from Russia and Eastern Europe mushroomed in the later 19th century, international lawyers insisted that the maintenance of an international order entailed the absence of statelessness. Where certain individuals and groups opted not to claim a nationality, this was a legal anomaly; it also threatened to create a situation in which the stateless person was a potential loose cannon, able to acquire, as one author put it, ‘uninhabited islands in his own right of sovereignty’ (p. 40).

What did international order mean in the wake of the First World War, the formation of new nation-states, and the appearance on the international agenda of minorities and refugees? In a neat turn of phrase, Siegelberg points out that ‘the heaven of legal theory thus met the reality of humanitarian disaster in the capital cities of Vienna, Prague and Budapest’ (p. 108). The questions now arose: did minorities, refugees, and stateless persons have a ‘legal personality’; did they have to rely upon the well-intentioned but uncertain protection of the offices created by the League of Nations? While Fridtjof Nansen, the League’s newly-appointed High Commissioner for Refugees, regarded the presence of Russian refugees as a humanitarian problem amenable to technical solutions—whether repatriation or resettlement—international lawyers, including Russian refugees, argued that the League should address their statelessness, in the wake of the Soviet decision to de-nationalise them. As any prospect of recapturing the state receded, the question of their status morphed into fundamental questions about the international order and about the nature of the state itself.

Many more people were caught up in the exclusionary policies of the successor states and petitioned the League to resolve the complex and multiple arrangements over nationality that followed the dissolution of empires. In this febrile atmosphere, it might seem that Russian and Armenian refugees formed (as Hannah Arendt would later put it) a kind of ‘aristocracy’, compared to the beleaguered former imperial subjects, many of them Jewish, who had not left their homes but who had been deprived of their citizenship rights by the successor state: they were former imperial subjects without national citizenship. Even the famous Nansen Passport only reminded the holder that Nansen’s team could not override the sovereignty of the state in relation to asylum and immigration. Nevertheless, an emerging body of opinion among internationalist-minded Russian émigré jurists such as Mark Vishniak, Aleksandr Golovtsev and André Mandelstam held that it was no longer a matter of providing material support or enabling specified refugees to travel from one country to another in search of employment, but rather a question of insisting upon, facilitating, and guaranteeing their human and political rights beyond the confines of the sovereign state.

Inter-war commentators now began to ask fresh questions about the state as the central organising unit of human life, about alternative forms of political organisation, and about the potential to enlarge the scope of the international legal order beyond the realm of inter-state diplomacy. More specifically, where did the stateless ‘belong’ in the post-war order: did their presence simply underline the need for sovereign states to resolve statelessness between themselves, or did they embody the prospect of a fundamentally new order, in which other forms of political association (‘nonstate entities’) could be recognised and in which the individual might be the ‘subject’ rather than the ‘object’ of international law? In an extended passage, Siegelberg explores and elucidates pre-1914 and post-1914 discussions around the concept of legal personality, giving a prominent place to the Vienna School of Law, notably Hans Kelsen and Josef Kunz. For some legal scholars, she points out, a stateless person was not a legal anomaly, but first and foremost a person.
In a separate chapter discussing the 1930s, Siegelberg exposes the tension between the League of Nations—which established an office designed to provide protection for refugees coming from Germany—and international lawyers who wanted to keep the general issue of statelessness on the agenda, perhaps by including it in the 1933 Refugee Convention or, better still, by making separate provision through a distinct international body, on the grounds that specific groups of refugees could be said to ‘enjoy asylum’, whereas stateless persons had lost all diplomatic protection.(1) The reality was even more disturbing. The statist approach favoured by League officials offered protection to refugees but left undisputed the right of the Nazi state to deprive German Jews of citizenship.

During the 1940s, international lawyers ceded further ground as the reaffirmation of state sovereignty gained traction as the route to solving the problem of statelessness. This transition was embodied in the changing perspective adopted by major figures such as Hersch Lauterpacht, as well as his doctoral student Paul Weis, and institutionalised in the Atlantic Charter. In short, Siegelberg argues, there was an emerging view that membership of a state provided a practical foundation for securing human rights. Although this was not the only show in town—imaginative proposals circulated for alternative political arrangements, including European union and the possibility of European citizenship, and some authors advocated a dedicated state for the world’s stateless—the post-war order brought into being new inter-governmental organisations, such as the United Nations Relief and Rehabilitation Administration, followed by the International Refugee Organisation and the Office of the United Nations High Commissioner for Refugees, all of which fell into line over national sovereignty. As Siegelberg suggests in an illuminating discussion of Hannah Arendt, an organised global order of nation states provided the necessary foundation for what she famously described as the ‘right to have rights’.

In her final chapter, Siegelberg demonstrates that UN member states linked ‘the overall problem of statelessness’ to the proliferation of refugee crises in the post-war world.(2) The attention they devoted to the former enabled them to minimise their obligations to the latter, at least where refugee resettlement was concerned. Few officials agreed with Weis that it was necessary to combine refugees and stateless persons under a single category of persons in need of protection, because doing so risked undermining the prerogative of the state to choose whom to admit. With the loss of this initiative, attention shifted elsewhere. Siegelberg examines the increasingly dominant idea that nationality entailed ‘socially concrete substance’ rather than being a matter of purely legal form and status. One important aspect of this was a growing preoccupation with the practical and personal consequences of statelessness, in the sense that it was understood as a social-psychological and not just a legal condition. This emerged in the response to a petition submitted by Hélène Batresco to UN Secretary-General Dag Hammarskjöld in 1960 (p. 193). The authors of A Study of Statelessness likewise spoke of the dangers of an ‘abnormal and inferior position which reduces his social value and destroys his own self-confidence’, although it is unclear whether and how these anxieties were explicitly linked to the global Cold War.(3) There were also proposals (not mentioned here) to turn anxiety into opportunity, as when General Dwight D. Eisenhower suggested mobilising a quarter of a million ‘stateless, single, anti-Communist young men, coming from countries behind the Iron Curtain’. (4) One can only imagine what international lawyers would have made of this fantasy.

Much of the discussion in Statelessness on individual predicament resonates with content I have found in the confidential case files of the office of the United Nations High Commissioner for Refugees, an institution that satisfied the consensus among member states that separate provision should be made for refugees who were recognised as individuals with a well-founded fear of persecution. The 1951 Refugee Convention included temporal and geographical limitations and did not write a ‘blank cheque’ to refugees beyond Europe. These files include extensive descriptions of the difficult odysseys of refugees who were buffeted by the two world wars, revolution, genocide, and state formation. Individuals appealed to Geneva to resolve their status by providing them with nationality certificates or passports, only to be told that UNHCR had not the power to issue such documents, let alone to determine their nationality. A not untypical case on file concerns Leon H. who approached the UNHCR in Geneva in 1955. He provided a short life history. He was born in Germany to a German father and a French mother. The family moved to France before the First
World War but at the outbreak of war his brother joined the French army. Leon was about to be interned as an enemy alien and decided to flee to Switzerland rather than Germany, where he risked being conscripted and forced to fight against his brother. He describes himself as a ‘war refugee from the 1914-1918 war’. He cannot claim German nationality because there was no trace of his birth certificate and he was considered to have lost his nationality after 16 years had elapsed. He has made a home in Switzerland, but the only document in his possession is a Swiss aliens’ travel document which describes him as ‘stateless’. He insists, ‘I pay my taxes like everyone else’. His letter ends, ‘it is difficult for me to understand the difference between refugees from this or that war as well as the discrimination that apatrides are faced with, treated like pariahs, the refuse of society’. Many other letters in the same vein testified to the human consequences of war and displacement and to the inability of UNHCR to resolve their situation, since it had no mandate to address the lack of security and formal political status of those who were deemed ineligible under the Refugee Convention. The international community had given up on the stateless by dint of regarding statelessness as an unfortunate reality.

There remained the world of the imagination. These petitioners sometimes did as their counterparts in the inter-war years had, and appealed to the ideal of world citizenship or to a variant of Austro-Marxist theory on the scope for national autonomy within a single political entity. These ideas were not to be discounted: as Siegelberg points out, critical thinkers such as Gandhi and (at times) Hannah Arendt seized upon the condition of statelessness to contemplate other forms of political community than the state. Less prominent individuals sometimes declared themselves or expressed a wish to be citizens of the world. But they got short shrift.

One intriguing element in Siegelberg’s book is the way in which the ‘lawless’ sea served as both metaphor and manifestation of statelessness. In the realm of international law, in 1905 Lassa Oppenheim argued that a stateless person was like a ‘ship flying without a flag’, legally unconnected to any state: an individual possessed rights and a legal personality that derived from possession of nationality. In a short story from 1863 by Edward Everett Hale, the sailor Philip Nolan renounces his American citizenship and is condemned to spend the rest of his life at sea, shunned by his compatriots. In B. Traven’s better-known novel, The Death Ship (1926) the protagonist, an American sailor by the name of Gerald Gales, loses his papers and leads a precarious existence on land and sea, eventually finding work on a vessel that is destined to be shipwrecked deliberately in order that the owners can claim on the insurance. He works among men whose ‘native countries had denied all of them citizenship’. Whereas Nolan exercised a choice, Gales is the victim of a world in which the person without papers is completely cast adrift: ‘every age has its Inquisition, our age has the passport’. Even at the gates of heaven or hell, he says, they will be asked for ‘the papers that make a modern citizen’.

In less capable hands, there is a risk that an intellectual history of statelessness would make for a dry read. To be sure, the narrative occasionally loses momentum as Siegelberg dissects a succession of legal arguments. But the reader should persevere, because the debates retain their importance and because Siegelberg is a sure-footed guide, always attentive to nuanced contemporary opinion, which can be followed through the endnotes that make up one-fifth of the book. In addition, she reminds us that many of the authors whose work she discusses were themselves displaced, so there is often a leavening human dimension. Finally, she suggests that current developments—notably the global pandemic and the potential for climate change to drive mass migration—make it imperative to rethink the capacity, responsibility, and indeed the very meaning of the modern state in relation to the human condition. It is a sobering conclusion to an admirable work of scholarship.

Notes

5. UNHCR Records and Archives, Geneva, Confidential case files, IC1826. There is nothing further on file. Back to (5)
6. Warren H. wrote to UNHCR from Mexico City in November 1967: ‘For ideological reasons I feel that I should like to become a citizen of the world, but thus far I have hesitated to do so, for I have no idea what rights and/or obligations (if any) such a person might have under national and international laws’. UNHCR told him that because he enjoyed the protection of the US government his enquiry fell outside its remit. As above, IC1828. Back to (6)

The author is happy to accept this review and does not wish to comment further.


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