

STATELESSNESS IN A WORLD OF NATION-STATES¹

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The Universal Declaration of Human Rights states that “Everyone has the right to a nationality.” (Article 15)², yet despite this, the global community still includes an estimated eleven million stateless people.³ Without citizenship, stateless people usually lead lives of uncertainty, unable to claim protection of their rights from any state, and unable to participate meaningfully in any nation’s politics. Statelessness is widely agreed to be an undesirable, precarious and even dangerous condition. Despite the magnitude of this ‘problem’, statelessness is rarely addressed in public discourse or theory. This paper attempts to draw into question our understanding of statelessness, and its corollary: citizenship. The paper begins by outlining the popular conception of statelessness. It goes on to suggest that our capacity to understand the condition is limited by our belief that citizenship in a nation-state is natural and normal. The paper concludes with some variations of citizenship which do not fit neatly into conventional understandings of statelessness, but which nonetheless warrant our attention.

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² United Nations General Assembly. "Universal Declaration of Human Rights." 1948.

³ UNHCR. "The World's Stateless People: Questions and Answers." Geneva: United Nations High Commissioner for Refugees, 2006. p.6

The Condition of Statelessness

The popular image of statelessness is one of dire human and political circumstance. Non-Government Organisations (NGOs) who work closely with stateless people note the political and humanitarian facets of the condition. Maureen Lynch of Refugees International explains:

Statelessness is a highly complex legal and often political issue ... It has serious humanitarian implications for those it affects, including no legal protection or the right to participate in political process, poor employment prospects and poverty, little opportunity to own property, travel restrictions, social exclusion, sexual and physical violence, and inadequate access to healthcare and education.⁴

The picture painted by this description is one of unmet humanitarian needs, and political (and sometimes social) exclusion and discrimination. These factors are key elements in the discourse about statelessness promulgated by the United Nations High Commission for Refugees (UNHCR) and NGOs. In reports and other documents issued on statelessness, the condition is always seen as attracting immense challenges over the course of one's life, or at least until one acquires citizenship.⁵ Some challenges in particular can be highlighted as central to the plight of stateless people.

The first of these challenges is human rights fulfilment. Although there exists a discourse of universal human rights, Hannah Arendt highlights that in fact there remains a very strong link between belonging to a state and rights fulfilment. NGOs take up this point in empirical studies which see a lack of formal rights protection from the state (in the form of citizenship) as rendering people in this condition extremely vulnerable to rights violations. It seems clear that stateless people do not have access to most civil and

⁴ Lynch, Maureen "Lives on Hold: The Human Cost of Statelessness." Washington D.C.: Refugees International, 2005 p.1

⁵ For a sample of documents that contribute to this discourse, please see the bibliography.

political rights.⁶ These include recognition as a person before the law; equality before the law; liberty of movement and residence; birth registration and nationality; and importantly, the right and opportunity to “take part in the conduct of public affairs, directly or through freely chosen representatives... To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage... [and] to have access, on general terms of equality, to public service in his [or her] country.”⁷ The ways in which these rights remain unfulfilled for stateless people have been well documented.⁸

Moreover, it is not only civil and political rights, but also social, economic and cultural rights that often remain unfulfilled for stateless people. These include the right to self-determination; the right to work, and to gain adequate skills training; the right to social security; the right to an adequate standard of living; the right to a high standard of physical and mental health; the right to an education; and the right to take part in cultural life.⁹ Although not universal, it is common for stateless people to be denied these rights by the state in which they reside, particularly the rights to obtain an education and to work.¹⁰ The consequences of these rights violations for the obtainment of any version of ‘the good life’ are clear.

⁶ I acknowledge that the categorization of human rights as ‘civil and political’ or ‘social, economic and cultural’ can be problematic, however this categorization is used in the UNHCR / NGO discourse being described here, which draws heavily on the Twin Covenants.

⁷ United Nations General Assembly. *International Covenant on Civil and Political Rights*. Articles 16, 26, 12, 24 and 25 respectively.

⁸ For examples see Barbieri, Patrick. "About Being Without: Stories of Stateless in Kuwait." Washington D.C.: Refugees International, 2007.; Lynch, Maureen. "Kenya: National Registration Process Leaves Minorities on the Edge of Statelessness." In *Bulletin*. Washington D.C.: Refugees International, 2008.; ———. "Lives on Hold: The Human Cost of Statelessness." Washington D.C.: Refugees International, 2005.; Lynch, Maureen, and Perveen Ali. "Buried Alive: Stateless Kurds in Syria." Washington D.C.: Refugees International, 2006.; Lynch, Maureen, and Thatcher Cook. "Citizens of Nowhere: The Stateless Biharis of Bangladesh." Washington D.C.: Refugees International, 2006.

⁹ United Nations General Assembly. *International Covenant on Economic, Social and Cultural Rights*. , Articles 1, 6, 9, 11, 12, 13 and 15 respectively. Some may suggest that the right to take part in cultural life is not one of the rights threatened by statelessness, however many stateless people report a reluctance to live public lives that might draw attention to their lack of legal status, for example the sans-papiers in France (See Krause, Monika. "Undocumented Migrants: An Arendtian Perspective." *European Journal of Political Theory* 7 (2008): 331-48.).

¹⁰ Lynch, Maureen (2005) Op. cit. p.6

Alongside rights violations, the second major challenge faced by stateless people according to the NGO discourse is that of identity formation and recognition.¹¹ Stateless people completely lack any legal identity.¹² The UNHCR (who are the only quasi-governmental organisation to take any responsibility for stateless people) adhere to a narrow, legal definition of the condition which rests on the importance of a national, legal identity. The UNHCR define a stateless person as “a person who is not considered as a national by any State under the operation of its law” (1954 Convention, Article 1.1). This definition carries the implication, reflected in UNHCR practice regarding stateless people, that stateless people are individuals who slip through legal safety nets.¹³ Through this definition, the UNCHR perpetuate the intimate connections between national (documented) identity and human rights protection. However when we examine more specifically some of the rights denied stateless people as a result of their lack of citizenship, we can begin to see how statelessness could be more than simply a human rights issue. For example without citizenship, it is difficult to travel outside the territory of one’s birth, get married, register the birth of a child to its parents, obtain work or open a business, or ensure an identified burial. These restrictions suggest that identity itself could be under threat. This is perhaps the most disturbing of the conclusions drawn about stateless people: that the absence of a legal identity is tantamount to the absence of any identity at all.

To have ones identity completely dependent on a piece of paper seems absurd on the surface, however various investigations and reports suggest that documented legal

¹¹ It is unclear in the published literature on statelessness whether the identity issue that most affects the stateless is the existence or the recognition of their personal or political (individual or collective) identity. This is an area that would benefit from more conceptually clear field research.

¹² There are some exceptions to this that are worth mentioning. The first is UNHCR refugee identification. The second is the Nansen Passport that was used in the interwar period to give stateless people (often refugees) a means of travel. Neither of these forms of identification are equivalent to citizenship.

¹³ Legal anomalies leading to statelessness include renunciation of one citizenship without first acquiring another; being born to stateless parents; changes to citizenship upon marriage or divorce between two people of different nationalities; conflicts of law, for example a child is born in a country that grants nationality by descent only, but the law of the state of which the parents are nationals grants citizenship only to people born on its territory; changes in citizenship laws which are then made retrospective; loss (or change) in citizenship as the result of a transfer of territory. This definition fails to acknowledge the political nature of statelessness in many instances, that is, that it is used to discriminate against large groups of people based on ethnicity, race or religion. The UNHCR tend to avoid confronting these kinds of issues, while NGOs are more prepared to confront them.

identity in the form of citizenship could, in fact, be more central to personhood than we would anticipate. The very word used in Kuwait to describe statelessness, Bidun, speaks volumes about the importance of legal identity. Bidun translates in Arabic to ‘without’¹⁴. The way in which the Bidun and their surrounding community speak about their status suggests that they feel they are not only without citizenship, but without any kind of ‘being’, described by one woman in the words “We are people who don’t exist.”¹⁵ In a different context, a stateless Nubian in Kenya says “National ID is a matter of survival. Without it you are a non-entity. You don’t exist.”¹⁶ This kind of language reflects the profundity with which citizenship has been equated on a psychological level with personal identity. Viewed from this perspective, statelessness is potentially not only a matter of not *belonging*, but also of not even *being*.

A World of Nation-States

Despite this disturbing picture of the plight of stateless people, the world’s response to the issue of statelessness has been meagre, in terms of acknowledgement, understanding and action. This paper contends that our response to the issue of statelessness is severely limited by our political imagination, specifically our overwhelming tendency to conceive of human actors as citizens belonging to nation-states.

Barry Hindess challenges our uncritical celebration of citizenship. He sees it as part and parcel of the expansion of the international system of states.¹⁷ In a postcolonial context, for Hindess, the globalisation of the nation-state system constitutes “dismantling the first aspect of imperial rule while leaving the second firmly in place.”¹⁸, that is, retreating from direct rule but leaving the nation-state as the form of governance. The fact that there has been so little academic or popular reflection on this idea indicates the

¹⁴ Short for ‘bidun jinsiya’ which translates to ‘without citizenship’, however ‘bidun’ is the more common term. **Barbieri, Patrick. Op. cit.**

¹⁵ Ibid. p.6

¹⁶ Lynch, Maureen (2008) Op. cit. p.2

¹⁷ Hindess, Barry. "Citizenship for All." *Citizenship Studies* 8, no. 3 (2004): 305-15. p.309-310.

¹⁸ Hindess, Barry. "Responsibility for Others in the Modern System of States." *Journal of Sociology* 39, no. 1 (2003): 23-30. p.25.

profundity of our belief that the sovereign nation-state is “part of a natural or necessary order of things.”¹⁹

In understanding how our pre-conceived ideas of politics limit our understanding of statelessness, it is helpful to draw upon what Liisa Malkki calls the ‘National Order of Things’. Malkki uses this term to describe the way in which the nation-state is taken for granted as the organising principle of global society. This order of things is reinforced by a wide range of legal instruments and apparatuses that maintain a constant surveillance (at least in theory) over the people and objects within its territory, and particularly those which cross its borders. These legal instruments are reinforced by disciplinary mechanisms to correct any deviations in what is perceived to be the normal operation of a nation-state. To refer to perhaps one of the most poignant examples, passports and border security function to (again, at least in theory) maintain observation of who is moving in and out of a country, and if necessary, restrict movement of persons.²⁰

Without these legal and disciplinary mechanisms keeping the world in national order, we would have difficulty making sense of things.²¹

This is precisely why we find it difficult to make sense of statelessness. Citizenship is seen as the ‘normal’ human and political condition because it is the individual manifestation of what is seen as the normal collective human and political condition: nation-statehood. Nationality can be understood as an informal, subjective relationship between an individual and a nation (conceived of as an ‘imagined community’ to borrow Benedict Anderson’s phrase); whereas citizenship can be understood as a formal, documented relationship between an individual and a state. We need this formal relationship to a state to maintain the legal and disciplinary mechanisms that keep the world in order. To return to the previous example, without this formal relationship movement across borders could not be properly observed or controlled.

¹⁹ Malkki, Liisa. "Refugees and Exile: From "Refugee Studies" To the National Order of Things." *Annual Review of Anthropology* 24 (1995): 495-523. p.511

²⁰ Torpey, John. "Coming and Goniing: On the State Monopolization of the Legitimate "Means of Movement"." *Sociological Theory* 16, no. 93 (1998): 239-59.

²¹ Malkki, Liisa Op. cit. especially p.516

With this popular belief underlined, it is clear why statelessness appears so anomalous: it simply does not fit into the way we do things. The absence of citizenship excludes a person from political life, and a place in our nationally-ordered world.²² This approach to statelessness – as an anomaly in an otherwise natural national order of things – impedes our ability to appreciate what statelessness actually means. Furthermore, it clouds our understanding of citizenship in different contexts. In fact, there are a variety of conditions other than statelessness which give cause for reflection on the ‘National Order of Things’ and the normalcy of citizenship.

Other challenging conditions

We can begin to question the prevailing understanding of statelessness and its corollary, citizenship, by reviewing other situations in which individuals do not have the conventionally prescribed benefits of citizenship, including the right to hold the state to account, or to make claims on the state.

The first of these relates to the issue of documentation. There are many parts of the world where documentation of births, marriages, deaths and citizenship are not widespread. If we consider citizenship to be a formal relationship to the state, then it is not unreasonable to suggest that this relationship needs to be documented to be valid. This raises the question of whether or not an individual who resides in the territory of his or her birth for their whole life, but without documents proving his or her national identity, can count as a citizen. In many cases a lack of documentation becomes an issue when it comes to claiming rights, such as welfare payments or health care, and importantly the right to political participation in the form of voting.

A lack of documented citizenship can become a major obstacle to fulfilling a range of human needs if a person leaves the territory of their birth. Refugees fit into this category. When a citizen flees their own country, often in extenuating circumstances which

²² A view of statelessness that renders it somewhat pathological, such as that outlined above in the discussion of the UNHCR / NGO discourse, through its implicit normalisation of citizenship, upholds a certain political culture as normal (Malkki, Liisa Op. cit.) or more progressive than others (Hindess, Barry (2004) Op. cit.). This is the point of Hindess’ examination of the ‘progressive’ nature of citizenship, however it is beyond the scope and purpose of this paper to enter this debate here.

prohibit keeping hold of their identification, can they then be considered stateless? It is worth noting that many refugees are not deemed stateless on the grounds that there is good reason to believe their claimed nationality is valid, even if they do not have identifying documentation. These claims suffice in many circumstances as citizenship.²³ It is therefore in the context of refugee-ness that the lines between nationality and citizenship become the most blurred. This blurring obscures the distinctly different quality of citizenship belonging to a refugee compared with that we are accustomed to in liberal democratic states, or even perhaps to that the refugee was accustomed to in their country of origin.

A further challenge to the norm of citizenship which is not accounted for by the narrow legalistic, or even the broader political understanding of statelessness, is those who reside in an 'ungoverned' territory, popularly known as the territory of failed states, or an 'ungoverned territory' within a state, commonly referred to as 'black-spots'.²⁴ Somalia is perhaps the most well known example, though Iraq and Afghanistan follow closely behind.²⁵ In this context, it must be questioned how meaningful citizenship could really be, particularly in rural areas. If a territory lacks a state for such a prolonged period of time, the persistence of a national consciousness notwithstanding, it is not only the practicalities of citizenship documentation that come under threat, but also their significance in peoples daily operations. Many of the citizenship rights denied stateless people are also denied the residents of these countries.

Similarly, there are some groups of people deemed 'ungovernable'. Examples include the nomadic Tuareg of the Sahara, and formerly the Bidun of Kuwait. These communities have existed outside the nation-state framework for some time as nomadic or semi-nomadic peoples, and are today challenged by the process of incorporation into

²³ This is particularly relevant to countries which do not have the capacity to take in large numbers of refugees and so are keen to send them back where they came from as soon as possible. Most African and Asian nations, who house the majority of the world's refugees, are in this situation.

²⁴ Stanislawski, Bartosz H, et al. "Para-States, Quasi-States, and Black Spots: Perhaps Not States, but Not "Ungoverned Territories," Either." *International Studies Review* 10 (2008): 366-96.

²⁵ Brookings Institute. "Weak States Index." Washington D.C.: Brookings Institute, 2008.

the state system. For the Tuareg, this is a process many resist²⁶, whereas for the Bidun, it is a process that they seek but which is being denied them.²⁷ Both of these types of ‘ungovernability’ raise question of the salience of citizenship for the personal and political identity, and welfare of these people.

The final category of ‘stateless’ people who challenge the mainstream understanding of statelessness is those who have citizenship in *a* state, but not ‘their own’ state. These groups are often secessionist or irredentist, and often constitute occupied territories. Western Sahara and Palestine are good examples. Both these communities are stateless not in the sense of lacking citizenship, but in the sense of lacking *their own* state. This category challenges the nation component of the nation-state paradigm, and draws into stark relief the tension between citizenship and nationality that is manifest, even if in less extreme cases, in other regions of the world such as Catalonia, Basque Country or Scotland.

Conclusion

This paper has attempted to demonstrate the weaknesses of the prevailing understandings of statelessness. While the UNHCR and NGOs have done some valuable work in putting statelessness on the humanitarian agenda, and attempting to rectify the legal and humanitarian inequalities faced by stateless people, questions remain about our understanding of statelessness. Through an examination of the centrality of the nation-state and citizenship to our understanding of identity, this paper has illuminated the inherent biases in our thinking about political belonging, and specifically the way in which we link belonging and formal citizenship. By addressing a range of conditions other than statelessness in which citizenship is drawn into question, conditions that can be understood as limit cases, it becomes evident that our thinking about political belonging, community, identity and citizenship, and consequently statelessness, needs to be challenged.

²⁶ Many Tuareg resist incorporation into the state system, while other groups seek recognition in the state in which they reside. These states include Niger, Mali, Algeria, Libya, Burkina Faso and Nigeria. Oxy, Clare ‘Tuareg Identity Crisis’ *Anthropology Today* 12, No.5 (1996): 21-21

²⁷ Barbieri, Patrick. Op. cit.

List of References

- Barbieri, Patrick. "About Being Without: Stories of Stateless in Kuwait." Washington D.C.: Refugees International, 2007.
- Brookings Institute. "Weak States Index." Washington D.C.: Brookings Institute, 2008.
- Hindess, Barry. "Citizenship for All." *Citizenship Studies* 8, no. 3 (2004): 305-15.
- Hindess, Barry. "Responsibility for Others in the Modern System of States." *Journal of Sociology* 39, no. 1 (2003): 23-30.
- Krause, Monika. "Undocumented Migrants: An Arendtian Perspective." *European Journal of Political Theory* 7 (2008): 331-48.
- Lynch, Maureen. "Kenya: National Registration Process Leaves Minorities on the Edge of Statelessness." In *Bulletin*. Washington D.C.: Refugees International, 2008.
- . "Lives on Hold: The Human Cost of Statelessness." Washington D.C.: Refugees International, 2005.
- Lynch, Maureen, and Perveen Ali. "Buried Alive: Stateless Kurds in Syria." Washington D.C.: Refugees International, 2006.
- Lynch, Maureen, and Thatcher Cook. "Citizens of Nowhere: The Stateless Biharis of Bangladesh." Washington D.C.: Refugees International, 2006.
- Malkki, Liisa. "Refugees and Exile: From "Refugee Studies" To the National Order of Things." *Annual Review of Anthropology* 24 (1995): 495-523.
- Oxby, Clare 'Tuareg Identity Crisis' *Anthropology Today* 12, No.5 (1996): 21-21
- Stanislowski, Bartosz H, et al. "Para-States, Quasi-States, and Black Spots: Perhaps Not States, but Not "Ungoverned Territories," Either." *International Studies Review* 10 (2008): 366-96.
- Torpey, John. "Coming and Going: On the State Monopolization of the Legitimate "Means of Movement"." *Sociological Theory* 16, no. 93 (1998): 239-59.
- United Nations General Assembly. "Universal Declaration of Human Rights." 1948.
- United Nations General Assembly. *International Covenant on Civil and Political Rights*.

United Nations General Assembly. *International Covenant on Economic, Social and Cultural Rights*.

UNHCR. "The World's Stateless People: Questions and Answers'." Geneva: United Nations High Commissioner for Refugees, 2006.