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## BOOK REVIEW

### Mira Siegelberg, *Statelessness: A Modern History*

Harvard University Press, 2020, 336 pp., ISBN: 978-0674976313

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**Reviewer:** Brad K. Blitz is Professor of International Politics and Policy at University College London. He is the author of a number of books including *Statelessness in the European Union: Displaced, Undocumented and Unwanted* (2011) and, more recently, has co-edited with Selma Porobić *Forced Migration, Gender and Wellbeing: The Long-Term Effects of Displacement on Women* (2023).

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## Recovering Ideas of Rights

It is difficult [AQ1](#) to avoid the fashionable preoccupation with counterfactuals, where alternative universes drive plot lines. Yet, even though the question “what if” may expose the all-too-common trap of determinism, most historians rightly stick to the facts as they are known. Their challenge is in identifying relevant facts and weighing up their significance. For Mira Siegelberg, the facts behind her study of statelessness include the ideas presented by a coterie of scholastic heroes who came to define the international legal system we inherited.

In *Statelessness: A Modern History* based on her Harvard doctoral thesis, Siegelberg documents how ideas about the place of stateless people informed theories of rights, sovereignty, international legal order, and notions of cosmopolitanism and justice. Her ambition is to record the untold story of how statelessness was problematized during the first two decades of the twentieth century, opening us up to a world uncertain of its future, where crashing empires saw millions dislocated both geographically and politically. How it would be reassembled, and how the rights of the inhabitants of these lands would be protected, generated much thought from jurists, civil servants, and politicians who came to lay the foundations for the contemporary study of international law and international relations and who are at the center of Siegelberg’s story.

This is first and foremost a history of ideas. Siegelberg delves into the annals of international law to chronicle the writings of thinkers who established the field, as well as scholars who fixated on the plight of the stateless, above all Hannah Arendt. However, beyond Arendt and Fridtjof Nansen, the Norwegian explorer and diplomat who introduced a passport for stateless persons, many readers will not be familiar with the cast list. Siegelberg includes Russian jurists Mark Vishniak and Boris Mirkin-Getzevich, the former/latter? also known by his pen name, Boris Mirsky, who had witnessed the October Revolution and were subsequently arrested for their opposition and sentenced to exile. André Mandelstam, the Russian diplomat who documented the Armenian genocide and came to draft the first-ever international human rights declaration, also features. Siegelberg reserves most attention for the German-speaking jurists who circulated between intellectual centers in Austria, Germany, and Czechoslovakia as well as in Czernowitz, generating debates between positivists, Hans Kelsen and Josef Kunz, and Kelsen’s students who crafted the liberal frameworks in use today, Maximillian Koessler, and especially Hersh Lauterpact and Paul Weiss.

While Lauterpact and Weiss feature prominently in academic textbooks on the development of human rights, the theme of statelessness has generally been a minority interest among students of international law. Yet, this leaves students of the field with an incomplete education. As Siegelberg argues, the meaning of statelessness tells a story that offers “a new way of comprehending how a world based on hierarchical forms of political order was transformed into one based on the formal equality of states and peoples” (p. 4). Debates about international categories defining non-citizenship contributed to the formation and legitimation of the boundaries of the contemporary interstate order. To fill this historical gap, Siegelberg reconstructs the arguments of the abovementioned scholars and recovers their competing visions of a world order that has since been indelibly marked by the state. In so doing, she offers less an alternative history and more a testament to an alternative belief system which challenges the prevailing statist orthodoxy we know today.

## Contests Within International Law

The main arguments in Siegelberg's study unfold chronologically, but it is helpful to set out the intellectual contests at the heart of this account. The contours of the debate between natural law theorists and positivists occupy a large part of the book, which is divided into chapters that explore how statelessness gave rise to contests over legal standing in international law and the development of a consensus that ultimately put the state in charge.

Siegelberg opens her study by problematizing the plight of Max Stoeck, a native of Prussia, who relocated to London where he was the managing director of a German-based corporation. His biography is relevant because following World War I, Stoeck presented himself as stateless to recover property seized by the British government which had described him as an "enemy alien." The 1921 decision by the High Court in *Stoek v Public Trustee*, which was favorable to Stoeck, was significant because not only did it mean the return of some of his property, but it also recognized the status of the stateless person in law and thus begged the question about how rights are anchored in international law.

There is much discussion of the debates over positivist and natural law approaches, and how these played out within the League of Nations (founded in 1920). Siegelberg describes how Russian jurists Mark Vishniak and Boris Mirsky advanced a vision of an interdependent world where international human rights are derived from global solidarity and how this vision competed with positivist ideas where law derives its authority from social facts as opposed to moral claims, as maintained by Hans Kelsen.

For students interested in the condition of statelessness, the notion of legal personality is especially important, and not just because the idea of statelessness as enshrined in the 1954 and 1961 Conventions relating to the status of stateless persons is now inseparable from the concept of nationality. Modern international law emphasizes the primacy of the state, yet, as Siegelberg notes, thinkers since Grotius (1583–1645) embraced other types of social organization. As she records [AQ2](#), "theoretical and legal debate about nationality in the context of the late eighteenth century revolutionary Atlantic world affirmed the deep connection between freedom from national status and ideas about cosmopolitanism and humanity that had been circulating in Enlightenment thought in previous decades" (pp. 26-27). She argues that even at the height of British colonialism, theorists such as Edmund Burke raised the question of stateless people, who must be able to rely on "common humanity" or the law of nations for protection. Elsewhere we find Rousseau, Montaigne, Hobbes, and Kant reassessing what it means to be human and hence a rights-bearer, in relation to the emerging state.

The idea that stateless persons could exist as a distinct, in-between category under the protection of the League of Nations was far from minor. Throughout this book, Siegelberg records active debates during the inter-war years over the possibility that international law should not only just concern itself with the rights and obligations of states but should also encompass the rights of individuals as independent subjects of the law. Such debates were further evidenced by the development of international policies of protection. We note that from 1922 to 1945, approximately 450,000 Nansen passports were issued to stateless individuals and refugees. It should be remembered, however, that the category of stateless person was principally reserved for Russian exiles, who had been denaturalized in 1921, and who were treated more favorably than those dislocated from the former Habsburg Empire.

## Statism: a Modern Bias that Produced an Inferior Regime

A recurring theme in this book is that we are beholden to a distinctly modern and unwelcome bias: the prevailing tenet that individuals only become part of the international legal order through states is a recent phenomenon which was repeatedly challenged. Siegelberg goes further to argue that not only did Enlightenment ideas influence debates over the nineteenth and twentieth centuries, but it was not until the 1960s that alternative forms of political organisation including city-states, federations, and dominions gave way to a more homogenized political map. Even if the state won out eventually in the design of the international legal system, it was not without several conditions, including how nationality and statelessness should be understood and managed. For example, Siegelberg points to the 1955 *Nottebohm* decision, where the International Court of Justice set out the principle that the determination of nationality rested on a genuine connection between an individual and a state. The introduction of the *1954 Convention on the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness* further attempted to regulate state behavior: the 1954 Convention establishes safeguards against the expulsion or deportation of stateless persons, and the 1961 Convention calls for states to undertake specific measures to reduce statelessness. Thus, there were still attempts to reign in the power of the state over matters of nationality, even if the system created from the 1948 Declaration of Human Rights and subsequent conventions fell short of Lauterpacht's and other framers' ambitions.

In Siegelberg's account, we also see how the stateless emerge as ontologically distinct from refugees. This is evidenced in the [Minorities Treaties](#) which concerned themselves with unresolved nationalities questions, notably, the Treaty of St Germain-en-Laye which conferred basic rights on the inhabitants of Austria, Czechoslovakia, and Yugoslavia and the Treaties of Paris, Trianon, and Neuilly-sur-Seine, which applied to inhabitants of Romania, Hungary, and Bulgaria respectively. Although statelessness was eventually brought into discourses on refugee protection, statelessness had a parallel history with a less than satisfactory outcome. Despite the efforts of jurists at the center of Siegelberg's study, discourses on the protection of refugees and stateless people diverged, as a consensus over the supremacy of the state within international law was cemented. Refugee protection was affirmed in international law, with the Refugee Convention widely ratified, while statelessness was relegated to a separate and inferior regime based on the 1954 Convention Relating to the Status of Stateless Persons, which defined a stateless person as someone who is "not recognized as a national by any state under the operation of its law." Contrary to the efforts of Nansen, the preference was not to treat stateless people as a category of internationally protected persons, but rather to facilitate their naturalization in other states.

The problem of anchoring a system of rights to the state, which exposes individuals to war and mass disenfranchisement, is a central dilemma for students of international law and international relations. Siegelberg gives Arendt much airtime on this subject and also introduces several important conclusions. She argues that the significance of Arendt's work is not simply in her critique of the state system. Reading Arendt's intellectual diary, Siegelberg claims, "an account of how one suffered by not having a nationality missed the point: the post-World War II organization of the world into defined, bordered communities rendered nationality a baseline requirement, regardless of whether one could establish its social or experiential consequences in any given case" (p. 206). Rather, Arendt recognizes that statelessness

exposes a moral question at the heart of the world system, that demands that rights are protected, which entails making nationality meaningful.

## A European History

Statelessness is presented as a European history. Those at the core of her story are the refugees from the former Russian Empire as well as those who fell between the cracks of the post-Habsburg mosaic in Central Europe. Some commentators have criticized Siegelberg's study as Eurocentric. They have charged that she fails to consider how statelessness arose and was addressed in other colonial systems and sites, above all British rule in Africa. Yet that is an unfair accusation since Siegelberg is above all motivated by the study of how ideas permeated from individuals to inform debates over the design of international law. The timeframe mirrors the rise of the modern state system and in this context Britain's earlier colonial history is arguably more relevant, as Siegelberg discusses with respect to Burke and the American Revolution. While the dissolution of the British Empire gave rise to multiple nationality disputes in Asia and Africa, the ideas presented to solve them were already well established, as was the primacy of the state. It is true that British courts and jurists figured in these debates, many of which were conducted from UK universities, notably Cambridge and the London School of Economics, but the British government applied its own logic to nationality struggles, ruling inconsistently across its empire and later commonwealth as UK government protection was given for political rather than nationality reasons.

In many respects, *Statelessness* also tells a Jewish story. Siegelberg records that the most influential thinkers who set the foundations for the canon of international law were Jews or of Jewish origin, many of whom had experienced displacement and dislocation from Russia and East/Central Europe. Siegelberg's inclusion of these biographic elements represents an original twist, because, while historians have remarked on the heritage of individuals in passing, whether as a point of curiosity or to mention their status as refugees, taken as a whole, her account suggests that the thinkers featured here created a grounded theory of international protection. These were theorists who, however privileged to attend the leading universities in Germany and Austria, and eventually to reach the USA or Britain, understood the pains of exile, deportation, and displacement from habitual political and social spaces which in turn influenced their writings. Further, as Siegelberg notes, the Jewish question aligned with the problem of statelessness in the diplomatic history of the nineteenth and early twentieth centuries. Even before the Nazis created the anomalous category of non-citizen subjects, the ambiguous place of Jews in Romania was illustrated by the country's discriminatory treatment of Jews under its control, a matter condemned by British, American, and European diplomats. While Jews from the lands annexed from Habsburg Austria acquired citizenship rights, Jews in the Old Kingdom were excluded until 1924.

## Concluding Observations

*Statelessness* is a remarkable work of scholarship and Siegelberg has rightly earned her place as one of the foremost experts on this topic. This is an extraordinarily erudite historical study, a seminal work which fills critical gaps in the existing literature. Siegelberg does not just tell us what might have been but for the ravages of war and refugee flows that brought about the demise of the League of Nations. Rather, she documents how the founding ideas of international law help to explain why some groups were prioritized over others, and why in the diplomatic melee of early twentieth century Europe, concepts like nationality emerged as they did. This is essential background for the twenty-first century reader, since the imprimatur of nationality so dominates how we even think about conceiving and accessing our rights and crowds out consideration of cosmopolitan alternatives. Moreover, the overriding importance attached to nationality in discussions of statelessness has generated, at least in the author's view, a perfunctory and inadequate approach to humanitarian protection for those who fall between the cracks.

Learning from Siegelberg about non-statist alternatives encourages creative thinking about how to advance humanitarian protection today. We are also in a global crisis, where states are demonstrably failing to provide effective solutions to the more than 103 million displaced, while new challenges such as climate change threaten our existing world order. It is interesting to note that a century after Nansen, non-state institutions like the International Committee of the Red Cross (ICRC) still provide travel documents to individuals, and that refugees may now compete under the Olympic flag. The application of the European Union's Temporary Protection Directive has also enabled hundreds of thousands of Ukrainians to reach safety. These developments suggest that the substantive meaning of statelessness will generate additional demands for investigation and press **for** further evolution of our system of international law.

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