

Citizenship and Statelessness

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Intellectual and social context

The concept of citizenship has deep roots in legal, political and social thought. By contrast, the notion of statelessness has only recently received wider attention. Statelessness is often described in opposition to citizenship, however, this pairing is not always helpful since these terms developed separately, and their association cannot be understood without reference to the related concepts of the state, and nationality.

Citizenship features in both formal and substantive discussions on the meaning and exercise of political and economic rights. The term is frequently used to denote membership of a political community, which grants status and in turn also provides a source of identity. Citizenship is commonly used as shorthand for nationality, but the terms are not synonymous and citizenship has taken on a wider meaning in Sociology and Political Science, where it invokes membership and is often discussed alongside democracy. Statelessness, by contrast, is a category of exclusion that describes the condition of those outside the political community. Hence, the term 'stateless person' is often equated with 'non-citizen'.

The term 'statelessness' was popularised on the back of the post-war refugee regime, though the problem of managing large numbers of stateless people featured in international treaties in the 19th Century (Siegelberg 2020). The abolition of statelessness as a matter of international concern was raised by the League of Nations, in response to the collapse of the Russian, Habsburg and Ottoman empires which saw so many dislocated and denationalised. Discussions within the League gave rise to two parallel approaches: the recognition of stateless people as international legal persons, and, the regulation of states' nationality laws through international law.

Mira Siegelberg points to the introduction of the Nansen passport, an international travel document provided to displaced former Russian and Armenian nationals by the League of Nations, as evidence that the idea of individual legal personhood -- a neutral humanitarian concept -- was an option to address stateless. Yet, while non-state institutions like the International Committee of the Red Cross (ICRC) still provide travel documents to individuals, the management of statelessness ultimately became a political matter that reaffirmed the supremacy of states over matters of nationality. The League chose to regulate states' nationality laws by means of the 1930 Hague *Convention on Certain Questions Relating to the Conflict of Nationality Law* and special protocol. The problem of stateless was formally separated from refugee governance and given greater prominence in 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".

In both international law and scholarly works we find a fundamental distinction between those who are *de jure* stateless, and those who may be *de facto* or *effectively stateless*, such as asylum-seekers and refugees. These terms are, however, not unproblematic and the UN Human Rights Commissioner for Refugees (UNHCR) has rejected the suggestion that certain categories of person, including those facing discrimination, and others of 'undetermined nationality', may be *de facto* stateless (UNHCR 2010). In all cases, it is through their lack of status that stateless people may be disadvantaged and unable to enjoy both the protective rights of nationality and the political, economic, and social benefits that derive from citizenship.

Some of the earliest accounts of citizenship are found in writings on Athenian democracy. Aristotle, the progenitor of republicanism, expands on the idea of citizenship as a requirement of governance that is virtue-based and participatory: for him, citizens may hold political office, which is a great honour. Yet, even in Aristotle's writings there are glimpses of how individuals may be excluded from citizenship and have the appearance of being stateless, for example, by living outside the *polis*. Since political action is an expression of humanity for Aristotle, those who have been ostracised, or exiled, may be described as 'natural slaves'. In his system, such individuals would be seen as inhuman, or even 'anti-human' (Brown 2022).

Other models of republicanism further elaborate on the substance of citizenship, which is informed by concrete historical experiences, for example in the Italian city states for Machiavelli, and in the Swiss cantons for Rousseau. The emphasis on civic self-rule is found in Rousseau's *The Social Contract* where citizens are required to engage in political deliberation and debate. Participation indicates consent and acceptance of the city's rules. Citizenship in the Republican version therefore defines belonging through participation, in contrast to monarchic systems, where the public was a collection of subjects.

The Republican tradition also examines the content of citizenship, drawing on the Aristotelian notion of civic virtue, which is not simply transactional. For example, while Cicero writes of friendship as a prerequisite for being a 'good citizen', Machiavelli, describes the qualities expected of a citizen, including 'manliness', 'boldness', 'ingenuity', 'excellence', 'self-esteem', as well as 'stoic resignation'. More recent expressions of citizenship, as found in national legislation, frequently attach the quality of 'good character' to the granting of citizenship through naturalisation.

According to Tony C. Brown (2022) early encounters by colonialists with 'savages' in the New World prompted Rousseau and other thinkers including Montaigne, Hobbes and Kant to reassess the notion of being human in relation to the emerging state. This in turn introduced discussion about those who did not exhibit the above qualities, who lived an anarchic existence outside the political community, and might thus be considered as stateless. Siegelberg notes that at the height of British colonialism, political theorists such as Edmund Burke also raised the question of stateless people, who must be able to rely on 'common humanity' or the law of nations for protection (2020).

In contrast to the above Republican model, the Liberal tradition emphasises citizenship as a legal status. Drawing inspiration from Roman law, which codified scores of different peoples and provided a means for integrating them into an expansive imperial system, modern notions of citizenship enumerate the duties, responsibilities, and entitlements afforded to citizens in return for state protection. Several thinkers following Weber stress the relationship between citizenship of the modern state and military service, though other obligations including taxation, and formal education, are also a requirement of citizenship. In this model, citizenship is a bargain. The nationalisation of protection through the introduction of surveillance mechanisms, above all the passport, eventually delineated entitlements on the basis of one's civic status and gave meaning to

the concept of state-sovereignty. As John Torpey argues, the line between citizen and non-citizen hardened with the development of the state (2000).

The liberal tradition emphasises nationality, an exclusive category of *legal* identification that describes the link between an individual and a state. It is therefore a narrower concept than citizenship which, as noted above, may go beyond sovereignty-based definitions and include normative criteria. The fact that many authors and political authorities use the terms nationality and citizenship interchangeably may result in further confusion over the rights and entitlements afforded to 'citizens'. We note that nationals are not necessarily citizens. For example, children born on the territory of Mexico are automatically granted nationality but do not acquire citizenship until they are 18, and have 'an honest way of living'. In several states, those convicted of serious crimes may retain their nationality but lose their citizenship and associated rights, such as the right to vote. The United Kingdom provides for several types of nationality, including forms of citizenship which confer very different political entitlements. Some categories of British national are subject to immigration controls which prohibit them from settling and working in the United Kingdom. Citizenship may also be used to describe membership of non-state institutions, including collective organisations like the European Union (EU) and the Commonwealth that do not grant nationality rights but confer political rights, including voting in elections as well as certain protections and privileges, notably employment in non-reserved Civil Service posts, and the right to enlist in the British Armed Forces.

Major dimensions of the topic

Citizenship is a multi-varied concept which features extensively in major bodies of philosophical, social, and political thought, and therefore only needs a brief mention here. We note that the two main traditions of citizenship described above evolved principally from treaties on government and are therefore associated with discussions of political organisation, above all the state, even if their roots are located in earlier accounts. In this context, statelessness appears as an anomaly, a failure of the state system.

The liberal tradition, which expanded following the revolutionary experiments in England, France, and the United States in the 17th and 18th Centuries, emphasises rights and duties and brings the concept of citizenship within our understanding of constitutional guarantees and the limitations on state power. More than any other, this tradition has influenced the enumeration of individualised human rights.

In parallel, we find republican traditions have inspired new forms of citizenship, where belonging and participation are described in relation to specific examples of governance, for example, municipal organisations such as local councils, corporate bodies, as well as post-national, and supranational citizenship in the context of the European Union. Even though the EU cannot issue passports, it performs some state-like functions, including hearing petitions, providing representation in the European parliament, and offering diplomatic support to EU nationals. Although local councils may fall short of the state, they too deliver many critical services in partnership with, or as agreed by, the central state. Recently activism in defence of the environment has also been described as an expression of citizenship.

One point of intersection between liberal and participatory models concerns the substantive meaning of citizenship, given structural injustice. Marx famously argued that civil and political rights were undermined by the capitalist system, which rendered them meaningless. Other scholars have similarly grappled with the mitigation of economic injustice, for example, the British sociologist TH

Marshall who argued that the state has social responsibilities to its citizens including reducing inequality (1950).

The obligations on states have since expanded, and now include far reaching agendas aimed at addressing inequalities that interfere with the exercise of citizenship, and the pursuit of a good life. These provide an entry point for further discussion on the rights of stateless people, and the regulation of nationality under international law. We note that social and economic rights, and their relationship to political rights, feature prominently in the United Nations' 2030 Agenda for Sustainable Development which set in place 17 Sustainable Development Goals and 169 targets, including one on the provision of legal identity to stateless people (SDG target 16.9).

In the context of statelessness, most writers recognise that economic injustice is but one illustration of the failures of the state system and instead emphasise political exclusion. For them, nationality is a gateway right, and the absence of nationality generates other inequalities. Hannah Arendt's oft-quoted phrase 'the right to have rights' expresses the conditionality of human rights: before individuals can enjoy any civil, political, or social rights, they must first possess the right to citizenship of a state. In *The Origins of Totalitarianism*, Arendt argues that the Nazi's passage of legislation in 1935 revoked Jews' rights to citizenship in Germany, and precipitated their expulsion from the political system, and eventually the state itself. While critical of the state, the presence of stateless people leads Arendt to acknowledge the importance of states. Rights have no meaning unless they can be anchored to an effective source of protection, and in her opinion the only option is the state (1976). Recent accounts of stateless people seeking access to state services, such as medical care, only to find themselves at risk of removal, reinforce Arendt's claim.

Since Arendt the matter of statelessness has been addressed by legal scholars following Paul Weiss (1979), who sought to clarify the right to nationality, as elaborated in the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*. One feature of these studies is the accent placed on formal belonging, over phenomenological accounts of citizenship. Here, the liberal state is perceived as the guarantor of rights and statelessness is therefore seen as an aberration in the human rights framework to be corrected. This approach to the management of statelessness introduces four central limitations.

First, legal scholarship tends to aggregate the experience of stateless people and present them as rightless, when in practice the situation is more arbitrary. Stateless people may enjoy a range of entitlements, even if these fall short of those enjoyed by nationals, including potential levers that may improve conditions and create pathways towards the restoration of nationality, for example through courts.

Second, these studies have encouraged a positivist and state-centric bias which protects exclusionary legal definitions and fails to recognise differences between states that may offer varying degrees of protection. In weak states, ethnic and social identities and political affiliation may have a greater influence on access to the labour market, social services, and overall quality of life, than nationality status. Recognising differences in state capacity is therefore essential for the targeting of resources, including human rights advocacy efforts.

Third, there is a risk that such thinking may encourage a perfunctory approach towards humanitarian protection, where states are pressed to correct discriminatory laws, but fail to address structural problems that undermine the quality of citizenship enjoyed by individuals. The revision of nationality laws does not necessarily undo longstanding patterns of discrimination and exclusion that may require investment and specific interventions on behalf of formerly stateless groups.

Fourth, the dominant approach discussed above risks crowding out innovative responses to contemporary modes of political dislocation, and new phenomena of statelessness, for example as a result of environmental displacement, and the physical destruction of territories from climate change. While the lack of protection may be due to the lack of international instruments designed to address environmental threats, in the absence of such legislation, the protection of people at risk from territorial loss raises practical questions around admission and political membership which demand consideration in the framework of the existing statelessness regime.

Changes over time in the topic and its treatment

Recent interest in the topics of statelessness and citizenship has largely grown out of forced migration studies. Although statelessness is not necessarily the product of forced migration, in practice, stateless people feature alongside refugees and asylum-seekers in discussions of humanitarian protection, and the operation of the UN High Commissioner for Refugees (UNHCR) which has been mandated to assist stateless persons since 1975.

Legal studies dominate the field and tend to examine the causes of statelessness, and seek to clarify the rights of stateless people under international law. Political and social theorists, have also made a contributed to this topic, where their works complement other writings on the politics of exclusion, as found in immigration and contemporary citizenship studies. Related to these are sociologically informed case studies and comparative historical analyses. We also acknowledge important regional studies which unite historical, social, and political accounts and inform specific situations of exclusion, often in developing and transitional contexts. Finally, statelessness has also made its entry in more artistic forms, including visual representations and documentary films which depict the everyday lives of stateless people.

While the legal and social scientific literature differs in their approach, both share a common concern to identify how the effects of political exclusion can be mitigated, either through the reform of nationality laws, or more creatively, by expanding our understanding of citizenship and the limitations of nationality. Lindsey Kingston (2019), for example, highlights the deficiencies of international law to address the problems facing stateless people, and brings together forced migrants, nomadic peoples, indigenous nations, and racial minorities in the United States to press for a more comprehensive understanding of citizenship based on inalienable human rights, not simply nationality.

Thus, over time academic scholarship on statelessness has diverged from Arendt's Europe focused assimilation of stateless people and refugees, to create a global body of writing which combines contemporary historical analysis of the state, and provides rich empirical information about the daily experiences of stateless people.

In addition to academic writings, over the past 10 years there has been a surge in grey literature on statelessness from NGOs and the UNHCR itself.

Current emphases in work on the topic in research and theory

Academic writing on statelessness is increasingly comparative in nature. While some scholars have used international law, liberal political theory, and empirical observations to examine how statelessness operates today, much work remains descriptive and under theorised. There is also limited engagement with gender, and disability.

One common challenge is that statelessness is examined through the lens of international law, and the agenda of the UNHCR, which tends to reinforce state-centric biases, and provides little room for

critique. Such accounts privilege the place of nationality over citizenship, which as recorded above is both a broader concept and offers greater scope for theoretical development. We also note that many reports have been authored by consultants hired by the UNHCR, or produced by close associates, and therefore may reproduce institutional assumptions. There is also a significant problem with UNHCR's data, with charges of reclassification and under counting the scale of statelessness. Until 2019, it was unclear if UNHCR's data only referred to de jure stateless people, those described as falling under their mandate, or if they also captured de facto stateless individuals and persons with indeterminate nationality (Blitz 2021).

Future directions in research theory and methodology

The future of statelessness research should address both theoretical and methodological gaps outlined above. One of the main challenges for the development of theoretical understanding of statelessness is to disaggregate the concepts of citizenship and nationality from sovereignty-based definitions of the state. Doing so may open the door to more bottom-up illustrations of the ways in which statelessness is experienced, and thereby deepen our appreciation of the many faces of discrimination, and windows for agency.

Gender features in typologies of statelessness, where women may be prevented from passing on their nationality to their children, however, in almost all other aspects, statelessness tends to be presented as an ungendered phenomenon. Yet, opportunities for political participation affect access to social and economic rights, which remain differentiated on the basis of sex and gender. These inequalities should be recognised in studies of statelessness, which might arguably take a longer view of history, and bridge the conceptual terrain between nationality and substantive citizenship rights.

There is also the challenge of addressing methodological biases in both theoretical and empirical studies. As Philip Cole argues, liberal political theory privileges the voice of the insider, the one who possesses statehood, the citizen, which prevents the development of an inclusive and egalitarian theory (Cole 2017). Similar criticisms can be raised about republican and neo-republican theories of the state, which are exclusionist. In order to develop our theoretical understanding of the ways in which power is delineated, and discrimination experienced, we need to hear from the marginalised and identify opportunities to create inclusive theories of the state. Any solution to the problem of statelessness should therefore be structured around the interests of those stateless people. This applies to the inclusion of women's voices too. The examples of the Bihari in Bangladesh, many of whom recovered nationality rights, and the reform of gender-discriminatory laws in some Gulf states which had prevented women from passing on their nationality, is testament to the possibility for action.

In terms of data, we should recognise that the way in which stateless people are defined and represented in UNHCR's datasets is relevant to the quality of international protection they may enjoy – though this does not tell us about how they live, and the range of opportunities and barriers they face in their daily lives. In addition to using better methodologies to gather and present demographic data, it is imperative to capture information from the ground up. This means resisting positivist traditions that rely on legally proscribed categories, at the expense of all others.

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