

### **(How) Can Statelessness Be Understood and Solved?**

**Bloom, Tendayi/Tonkiss, Katherine/Cole Phillip (Eds.) (2017): Understanding Statelessness. Routledge Studies in Human Rights (276 pages). London: Taylor and Francis**

**Waas, Laura van/Khanna, Melanie (Eds.) (2017): Solving Statelessness (466 pages). Oisterwijk: Wolf Legal Publishers.**

Statelessness, being a noncitizen worldwide, means exclusion from the formal apparatus and international system of States – a complex, multi-faceted phenomenon leaving the persons concerned with high levels of vulnerability. Rarely mentioned in the media and public discourse, the phenomenon of statelessness has only recently begun to receive scholarly attention. From a politico-legal perspective, scholars often criticize the international State system and existing legal framework (Blitz & Lynch, 2011; Staples, 2012), while contributions from the social sciences focus more on the nexus of statelessness with irregularity and belonging (e. g. Allerton, 2017; Belton, 2015).

The two anthologies under review here follow a common thread of research into legal and political theory. Both published in 2017, they aim to “understand” and “solve” statelessness. While “Understanding Statelessness” offers a re-examination of theoretical approaches and locates itself within the wider theoretical discourse on statelessness and citizenship, “Solving Statelessness” focuses on the legal problem and tries to find appropriate legal responses to it. Both books include a wide array of multi-disciplinary contributions from scholars and practitioners illustrating various manifestations, different causes and consequences of the phenomenon of statelessness, as well as regional peculiarities. The volume titles evoke the impression that the issue of statelessness is not yet properly understood and that there are as yet no well-proven avenues to solving it. However, in the introduction to “Solving Statelessness”, Volker Türk argues that it is fruitful to dedicate this volume to “solutions” to statelessness, as its causes and consequences have been explained numerous times; now, he believes, it is time

for action to find durable solutions (p. 9). This runs contrary to the premise of the other volume's introduction, in which the editors Bloom, Tonkiss and Cole stress that the variety and complexity of the contexts of statelessness are still insufficiently understood (in the literature), hence their aim to re-examine the theoretical approaches to statelessness (p. 3). In this regard, "Understanding Statelessness" could be preparatory reading for "Solving Statelessness". In the following sections, each of the books will be briefly summarised, then they will be discussed together in order to find common and diverging themes.

## **"Understanding Statelessness"**

To begin with, the editors of "Understanding Statelessness", Bloom, Tonkiss and Cole, give a brief historical overview in which they define three periods of thinking about statelessness, in order to contextualize their own approach. The first period is described as a time of surprise that members of certain groups could not be accommodated within the modern State system after the World Wars, resulting in the drafting of the Statelessness Conventions in 1954 and 1961. From an exception, statelessness grew into a phenomenon. In the second period, after the dissolution of the Soviet Union and after 9/11; in what was suddenly no longer "a unique moment in history" (p. 4), a new discourse emerged around statelessness which paralleled that on the rights of irregular migrants. The third period, 2013 to 2016, mirrors developments in citizenship studies and migration research, and statelessness starts to be seen as endemic (p. 5). It is this last period in which the editors locate their book.

The book is structured into three parts. The first part reformulates in four chapters the definition of statelessness as a concept borne of a theoretical perspective (Kingston; Blitz) and a legal stance (Vlieks; Van Waas and De Chickera). In the first contribution, Kingston argues that marginalisation does not begin and end with statelessness and therefore has to be assessed as a symptom in addition to being a cause. Denying legal status is often used as a rationale for minorities being granted unequal rights, and the resulting structural barriers are often similar across the globe. Kingston's conclusion addresses two key problems. First, there is the decoupling of rights and nationality, which resulted from the prevalent idea in Arendt's times (see also Blitz) that the universality of rights is based on personhood and that basic rights belong to all human beings. However, today, looking at statelessness and hierarchies based on legal status and specific passports, we see that personhood alone is not enough to access basic rights (p. 26). Sec-

ond, there is the implicit liberal tradition among legal scholars of a thin notion of citizenship operationalised through legal status (see also Vlieks; Van Waas and De Chickera). While international actions to eradicate statelessness centre on the legal acquisition of citizenship and perpetuate such thin notions of citizenship, Kingston argues, attention should rather be focused on the widespread issues of structural inequality (p. 29). She shows that citizenship does not guarantee rights, but is a gradient category covering a whole spectrum between full rights and a total lack of rights. Full membership in a community involves politics and society and requires more than the acquisition of a legal status.

The second part of the book consists of six contributions offering an in-depth analysis of specific situations of contemporary statelessness across the globe, featuring issues of race, ethnicity and indigeneity (Blake), governance, space and security (Mwangi), recognition (Staples), gender (Mulmi and Shneiderman), indigeneity and colonisation (Bloom) and conflict (Al Barazi and Tucker). These empirical chapters attest to Kingston's argument that statelessness is both a cause and symptom of marginalisation and a structural problem. They demonstrate that discriminatory nationality laws already cement existing disenfranchisement and it is precisely the most vulnerable members of society who are denied citizenship.

The five chapters in the third and final part of the book offer a response to, and contemplation on, the concept and phenomenon of statelessness within political theory. Some contributions have a stronger focus on "solutions", promoting the protection, not the eradication, of statelessness (Swider), for example, or facilitating the regularisation of children's statuses (Lenard). Others challenge the conventional understanding of and reasoning about statelessness (Tonkiss, Pasarelli). Of particular value in this part are the reflections on the possible benefit of applying post-national theories and thus thinking beyond state boundaries when approaching statelessness. While Tonkiss takes the perspective of constitutional patriotism with its commitment to abstract, universal principles to theorise statelessness (p. 242), Cole questions liberal political theory itself and shows how the latter constructs an *inside* and *outside*, only including statelessness as a problem and theorising it from *within* the nation-state (p. 259; see also Belton, 2011). Pasarelli, in turn, shifts his focus towards the issue of sub-state actors, in this case municipalities, being responsible for responding to the needs of stateless persons (p. 210). He thus joins a prominent discourse on multi-level governance in recent years (Scholten & Penninx, 2016; Spencer, 2018).

Taken together, several contributors to the volume point to the contemporary understanding of citizenship of a world divided up into neatly organised entities, as the only official system, and the concomitant utopian and even dangerous idea that every person ultimately belongs to one such unit (Staples, Bloom, Cole). Many chapters succeed in challenging the common perception of the stateless person being the opposite of the citizen and instead highlight the whole spectrum between full membership and marginalisation. Although it can enhance protection, merely enabling access to citizenship is not adequate to address the multiple vulnerabilities of stateless persons and thus cannot be a sole remedy. By radically questioning existing theories, the editors have demonstrated that the liberal State system can both theoretically and practically exclude stateless persons (p. 6). They embed the volume in a research stream on membership, access to basic rights, and marginalisation in contemporary citizenship regimes. In doing so, they join the growing discourse which has arisen in migration studies in recent years about limiting access to social benefits as a tool of migration control (Ataç & Rosenberger, 2018).

The relationship between statelessness and marginalisation, discussed by Kingston, is one of the central recurring themes throughout the book. With millions of the world's population disenfranchised, statelessness must be seen as a structural problem, with the included and the excluded produced by theory and the system themselves (Cole, Kingston, Staples, Blitz, Mwangi). Furthermore, if citizenship and statelessness are both (necessary) products of the same institutional structure, those structures have to be re-examined and re-thought, which challenges political theory itself (Cole). While the book is written from the latter perspective, the authors also want to engage with the social sciences and humanities. The contributions are presented as a coherent volume, as the authors refer to the title "Understanding Statelessness" wherever possible. But the question is: through which lens does the volume examine the issue, and how comprehensive is it? While the contributions are claimed to be multi-disciplinary (ranging from political science to law and sociology) and of an applied and theoretical nature, the main approach is still legal and political theory. In order for us to reach a truly comprehensive "understanding", it would certainly be fruitful and enriching to include more methodologically qualitative and ethnographic contributions.

## “Solving Statelessness”

In contrast to “Understanding Statelessness”, the editors of “Solving Statelessness”, Van Waas and Khanna, take a more solution-orientated perspective. The volume consists of an introduction and fourteen contributions by scholars and legal practitioners trying to find appropriate avenues for addressing the issue. While the volume has a predominantly legal focus, 5 of the 26 authors are not legal scholars and thus take diverse perspectives. The first part, consisting of eight chapters, has a thematic focus on tools and techniques for solving statelessness; the contributions assess the human rights mechanisms employed by the UN (Khanna and Brett) as well as possibilities for an emerging new human rights norm based on a genuine connection with the State (Molnár). Whether they are studying equality and non-discrimination in the context of human rights (De Chickera and Whiteman), benchmarking legal protection levels (Vonk, Dumbrava, Vink and De Groot), examining the use of strategic litigation (Binham and Gamboa) or child statelessness (Achmad) or investigating statelessness as a development issue (Govil), the authors all strive to find durable solutions for statelessness from a legal perspective. Govil, however, investigates the nexus between forced displacement and statelessness, placing the latter within its broader socio-political context.

The six chapters of the second part are regionally focused and as such address the respective region-specific challenges in e. g. the Middle East and North Africa (Sen and Albarazi), Central Asia (Tucker) and Southeast Asia (Oakeshott). With regard to harmonising efforts within the European Union (EU), Swider, Bittoni and Van Waas point to the EU’s competence in ensuring protection through a legal residence permit or EU citizenship. The Brazil Plan of Action for Caribbean Countries and Latin American States (Mondelli) and a draft protocol by two committees of African experts (Manby, Assefa and Sloth-Nielsen) are discussed as innovative initiatives around the world and promising starting points in establishing norms on the right to a nationality for all.

In “Solving Statelessness”, as the title suggests, the focus is on finding durable solutions to contemporary forms of statelessness. The articles range from resolving existing statelessness to preventing new cases of statelessness, articulating policy recommendations and finding possible avenues for specific cases. Although the emphasis is on “solving”, the reader also gains a better understanding of the most common causes of statelessness. One point of particular importance is that discrimination of women and ethnic minorities (Khanna and Brett) leads to protracted statelessness when com-

bined with impeded civil registration and conflict-induced displacement (Sen and Al Barazi). The root causes of conflict-induced displacement are failures to belong, and if this displacement is not resolved, it can easily drift into statelessness (Hovil). State succession (Tucker) or complex historical root causes such as colonialism and the drawing of artificial national borders across political, social and cultural boundaries (Oakeshott; Manby, Assefa and Sloth-Nielsen) can also be significant causes of statelessness. One newly emerging form of statelessness arises through the use of reproductive technologies such as International Commercial Surrogacy (Achmad). The six case-study chapters convincingly demonstrate that region-specific causes of statelessness require context-specific approaches.

The contributors also agree on one point that might further explain the hitherto limited attention paid to statelessness and the flagging motivation to find durable solutions, connected to older discourses pertaining to fears about the States' sovereignty and how best to respond (see e. g. Soysal, 1994). As the issue of statelessness touches upon this highly sensitive theme, a straightforward solution is unlikely to be found (Khanna and Brett; Swider, Bittoni and Van Waas) as this matter is governed by the domestic legislation of a State (Molnár). Strategic litigation could play a part in constraining State sovereignty (Binham and Gamboa), while the EU, as a powerful supra-national regional organisation, might be in a position to address the issue within and beyond its borders (Swider, Bittoni and Van Waas).

Overall, the book solidly presents the wide spectrum and complex manifestations of statelessness and its regional specificities. In addition, at the end of the book, the reader finds a recommended reading list providing a comprehensive summary of the most important treaties and declarations, cases and advisory opinions, and documents from international and regional mechanisms and bodies (most legal publications). Nonetheless, there are a few shortcomings of the book: the reader might easily get lost in the many complicated situations that can emerge through statelessness, hence it could have been helpful to provide an overview of overlapping avenues to addressing statelessness, or to identify the most prominent contemporary obstacles or even differences and commonalities between regions. These aspects could have been addressed, for example, in an introduction. In addition, readers may wish to consider the issue of statelessness from a more multi-disciplinary view, especially in a recent publication, going beyond the legal focus which has largely shaped the study of statelessness.

## Understanding and Solving

One significant difference between these two books is that of perspective. Van Waas and De Chickera argue in favour of a theoretical approach that affirms the need to find legal solutions to legal problems (p. 65, in “Understanding Statelessness”). Indeed, from a legal perspective, there are two responses to statelessness: the recognition of nationality, or the granting of a protection status (Vlieks, p. 36, *ibid.*). Others argue that nationality and proof of nationality are important to quality of life (Khanna and Brett, p. 16, in “Solving Statelessness”) and for the enjoyment of human rights (Molnár, p. 225, *ibid.*), and that the lack thereof increases the vulnerability of those concerned (Vonk, Dumbrava, Vink and De Groot, p. 164, *ibid.*). The reader is thus left wondering whether, if the goal is to solve statelessness as a legal problem, it might be necessary to focus on an exclusively legal analysis, especially considering that “Solving Statelessness” offers legal solutions first and foremost. However, as numerous contributions show in both volumes, statelessness is embedded in the broader socio-political and cultural context of the everyday world. Bloom, Tonkiss and Cole stress that the legal, political and social realities “speak” to each other and show how important it is for inter- and transdisciplinary research to look at the phenomenon from as many perspectives as possible in order to develop the most appropriate response (p. 8, in “Understanding Statelessness”).

Contributions by social scientists highlight the fact that legal principles are often in tension with social realities, while statelessness can have complicated histories of discrimination, violence, conflict and misguided State power (Hovil, p. 79, in “Solving Statelessness”). Focusing on eased access to citizenship would mean employing a “legalistic focus” (Kingston, p. 17, in “Understanding Statelessness”). But legal contributions also point to the need to find comprehensive solutions (Binham and Gamboa, p. 129, in “Solving Statelessness”) and tackle societal attitudes of unequal inclusion (De Chickera and Whiteman, p. 100, *ibid.*) as “[f]ragmentation and division occurred before and after the granting of citizenship” (Blitz, p. 78, in “Understanding Statelessness”).

Another crucial difference between the two edited volumes is their optimism with regard to the potential to solve statelessness. Türk ends his introduction in “Solving Statelessness” with an optimistic assessment that eradicating statelessness lies within our reach. In contrast, the editors of “Understanding Statelessness” take a less optimistic stance. They point to the complexity of the phenomenon which, accompanied by a dearth of basic knowledge, further reduces any motivation to engage with

statelessness or take action to solve it (p. 4). They even take the theorisation about statelessness one step further and look beyond the limits of conventional frameworks: instead of trying to solve statelessness within the system, it is seen as a product arising from the very structure of the international State system. While the aim of “Solving Statelessness” is to offer appropriate technical and legal responses to statelessness, the aim of “Understanding Statelessness” is to review the usefulness of liberal political theory in order to address statelessness. In pursuing those goals, they are both successful – yet, in the latter case, the authors admit that taking this perspective is not enough to engage with the rights of stateless persons. While I agree that our conceptual framework should not be limited by the functioning of current systems, I tend to share the perspective of liberal political theory when it comes to understanding the issue of statelessness, at least as a starting point. At the same time, however, it seems to me inadequate to operate within this framework if we wish to comprehensively understand and theorise this complex phenomenon that touches on so many levels of our social life. That is because, ultimately, there is an increasing need to see the State not as a singular unit existing in a “black box”, but instead as societal actors.

What is lacking in both volumes? It is the perspective of the meso-level, specifically an organisational/institutional approach. While Van Waas and De Chickera state that it is a country that refuses to acknowledge that the person is a citizen (p. 62, in “Understanding Statelessness”), it is also the same state authority that grants a person a protection status. Staples adds that obviously the acquisition of citizenship is anything but the decision of the person concerned, instead being constituted by the nation-state, and, further, that those decisions are often arbitrary (p. 184, *ibid.*). In the case of statelessness, registration is rendered even more difficult without documents, and the interpretation of their worth is again in the hands of the authorities. Kingston, for example, points to “structural violence” in which the structure or social institution kills people slowly by denying them access to basic necessities (p. 19, in “Understanding Statelessness”). Considering that the state consists of a large apparatus of organisations (Fligstein & McAdam, 2012), it is the organisational practice in the respective authority of that country that renders a person a citizen or non-citizen or grants them protection against statelessness. It is essential to jump in at exactly this point to research the organizational practices of exclusion, as well as the determinants and grounds for decision-making by street-level bureaucrats



in state authorities granting or not granting citizenship or a protection status – a research gap that I will target in my dissertation.<sup>1</sup>

For anyone interested in statelessness, these books provide an excellent starting point. For readers interested in theory, “Understanding Statelessness” might be the first choice, as it advances theorisation of the phenomenon, at times even offering solutions. For readers with a juridical background and interest in legal solutions for a wide array of different preconditions, “Solving Statelessness” would be the appropriate choice. Although the aims “to understand” and “to solve” statelessness sound ambitious, the two books reviewed here, when taken together, provide a set of invaluable insights into the complex and relatively novel research field of statelessness. Finally, these two most recent publications confirm that research on statelessness still has a predominantly politico-legal focus. Notwithstanding the importance of a solid legal definition and political theorisation – or precisely because of the rich accumulation of knowledge – it is high time for social scientists to embark on studying the phenomenon of statelessness to better “understand” *the actual practices of producing* statelessness in state administration. It would complement existing scholarship and add critical forms of engagement with the theme.

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1 [https://www.researchgate.net/profile/Victoria\\_Reitter](https://www.researchgate.net/profile/Victoria_Reitter)

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