

The Cycle of Non-belonging: Statelessness and Institutionalized Discrimination

Key Words

Statelessness, citizenship, human rights, institutionalized discrimination, feminist theory, modern nation-state structure, gender studies, international law, nationality law, post-colonial policy

Abstract

This paper explores social institutions that maintain and perpetuate statelessness as a global phenomenon. In this paper I ask: To what extent is statelessness driven by institutionalized discrimination? Statelessness is to a great extent the result of institutionalized discrimination, and therefore statelessness will sustain for as long as the flawed institutions that permit discrimination do. This research explores those institutions to understand their nature: First, international law that defines statelessness was found to be built on patriarchal principles that favor male-gendered nationality and further subjugates women and children affected by statelessness. Secondly, states often make legal the act of creating statelessness by writing discriminatory policy in the name of national security and national identity regularization. The current international political system prioritizes state sovereignty over individual human rights as part of the modern nation-state structure and as a legacy of colonization, both social structures that have ingrained discrimination in society. Finally, the two case studies of Lebanon and Malaysia are reviewed to link how discriminatory norms extracted from international law, the nation-state structure, and post-colonial policy directly trickle down into national law, and subsequently create and proliferate statelessness.

By
Alanna Pasco

“What happens when the caregiver of human rights ends up being the vehicle which perpetrates the denial of those rights?”- Gonzalo Vargas Llosa, Former UNHCR UK Representative

Introduction

The very nature of human rights is that our humanity justifies our deserving of them. Stripped of all political, social, and cultural identity, indeed one still possesses their humanity, in theory the key to human rights. Yet in reality, human rights are codified in international law treaties, which the State is responsible to its citizens for upholding. Human rights are therefore put to the test when one is excluded from the political membership of any nation-state and left purely human; stateless, not a citizen (Arendt, 1951; DeGooyer & Hunt, 2018). There is indeed no state or entity inherently responsible for ensuring that social, civil, economic, or protective rights are met for citizens of nowhere, and moreover stateless persons often face worse human rights violations with little to no reprimanding of the abuser (Arendt, 1951). When this is the case, as it is for the world’s stateless, it becomes clear that the real key to human rights is *citizenship*, held in the hands of none other than the State (Arendt, 1951; DeGooyer & Hunt, 2018; Institute on Statelessness and Inclusion, 2019). The paradox of human rights, then, is that the entity responsible to ensure them is the very same vehicle that has the power to deny or revoke the key to access them.

This paper explores the social structures that sustain statelessness as a global phenomenon. The Institute on Statelessness and Inclusion (ISI) (2019), estimates that there are at least 15 million stateless people worldwide today, defined by the UN General Assembly as “a person who is not considered as a national by any State under the operation of its law” (UN General Assembly, 1954, Article 1). Being denied a nationality¹ comes with devastating

¹ Nationality and citizenship will be used interchangeably throughout this paper and refer to the legal bond an individual has with a state.

consequences, as most of our conceived human rights are provided by the state in which we reside and are a member. For that reason, stateless persons are denied access to basic health care, public education, and legal employment. They are not able to travel freely, open a bank account, register a birth, marriage, or even death certificate (UNHCR, 2014). They are at higher risk for exploitation and human trafficking (ISI, 2014) as their existence is unnoticed to begin with and therefore untraced if they disappear, and their lack of protection often leads to a paralyzing sense of insecurity, exclusion, confused understanding of identity, and ultimately disenfranchisement. They are also unable to transfer any citizenship to their children, continuing the cycle of non-belonging.

In 2014, the United Nations High Commissioner for Refugees (UNHCR) established a framework to resolve existing statelessness, prevent new cases, and protect stateless communities in its #iBelong campaign to end statelessness in ten years (UNHCR, 2014). A righteous aim, indeed, yet four years into the campaign the Refugee Agency had to “call for more resolute action by states” in recognition that it was not achieving its goals as easily as anticipated (UNHCR, 2018, paragraph 1). A significant dilemma attributing to this is that statelessness is most often *inherited*, that is, the largest origin of statelessness is children being born stateless. On average, 56,000 people overcome statelessness each year while 70,000 children are born into it (ISI, 2014). Therefore, statelessness is perpetually growing while the global community attempts to combat it.

The way in which statelessness grows through generations, like branches spreading from a family tree, suggests that there are systemic forces at play that sustain it, and these forces are of a global nature. The worldwide, historical perpetuation of statelessness is not caused by a single State actor or individual, nor a particular conflict or war. No region in the world is left unaffected

by it, and it is in fact growing. It is this element of continuity that begs the question: To what extent is statelessness perpetuated by **institutionalized discrimination**? The Open Education Sociology Dictionary defines ‘institutionalized discrimination’ as “discriminatory **policies** and **practices** favorable to a dominant group and unfavorable to another group that are **systematically embed** in the existing **structure of society** in the form of norms” (Institutional-discrimination, 2014, definition). It is essentially the unjust mistreatment of a particular social group not just by society but also by its institutions. This makes it extremely difficult to eradicate, because long after the people who put those institutions in place are gone the system remains. The purpose of puzzling whether institutionalized discrimination upholds something is to be able to look beyond the laws and policies themselves and instead challenge the *foundations* of these structures: How is society structured? What are, and how deeply ingrained are the social structures that permit and maintain statelessness?

With the support of my research, I argue that statelessness is to a great extent perpetuated by global institutionalized discrimination because the policies and norms that proliferate it as well as international law that defines it are all favorable to a dominant social group and unfavorable to another. In other words, systemic discrimination is so pervasive to the issue of statelessness that it exists in every facet of the phenomenon. Moreover, inequitable policies concerning statelessness are both reinforced by and reinforce perceived gendered, ethnic, and religious social hierarchies, highlighting the extent of which they are embedded in the structures of society in the form of norms. Statelessness is often incorrectly understood to be an issue of migration, classified within the umbrella of refugeehood, or a problem that can be solved by resettling and rewarding current stateless persons with new citizenship. This research highlights that in order to address statelessness as a human rights issue, we cannot simply ask states to give

the stateless citizenship; to solve statelessness will require equitable changes to international legal systems, the removal of national policies that legalize discrimination, and work from the ground up that eradicates perceived social hierarchies based on gender, ethnicity, and religion that reinforce discriminatory policy. I approach my argument through a feminist lens, which feminist scholar Deirdre Brennan (2019) establishes as “the rethinking and revision of patriarchal structures and principles which create and perpetuate statelessness and add further subjugation to women and minorities affected by statelessness” (p.1).

In this paper I will first provide a background of statelessness at the individual, state, and international levels, along the way explaining the challenges of measuring statelessness that pervade each. Then, I will present a literature review and explain why I disagree with the legal and political approaches, and instead align with the feminist approach. Next, I will critically examine the institutions that define and proliferate statelessness. First, the definition of statelessness, defined in international law, is founded on patriarchal principles, and therefore is a form of institutionalized discrimination that favors male-gendered dominance in society while subjugating the female gender identity. Secondly, states do not simply rescind citizenship from individuals as an accident or in an unorganized way; states often make legal the act of creating statelessness by writing discriminatory policy in the name of national security and national identity regularization. The current international political system prioritizes state sovereignty over individual human rights as part of the modern nation-state structure and as a legacy of colonization, both social structures that have ingrained discrimination against minority identities in society, and therefore states are left unchallenged in their creating of mechanisms that perpetuate statelessness. Lastly, I will review the two case studies of Lebanon and Malaysia that link how discriminatory norms extracted from our definition of statelessness directly trickle

down into national law and eventually create the devastating consequence of statelessness. This leads me to the conclusion that institutionalized discrimination is all-pervasive to the issue of statelessness and that every case of statelessness today can be linked back to a social system that systematically discriminated against that individual by marking them, in paper and policy, as unfavored next to a favored, dominant group.

Statelessness is not solely a consequence of political upheaval and conflict. Underneath the ebb and flow of displacement and violence lies a web of societal norms that have banned certain individuals from ever reaching validation through citizenship. Discrimination, social hierarchies and injustices are what lead to a mother not being able to give her child statehood, or entire communities from being excluded from the political membership ruling the land they have resided on for centuries. This common thread is found throughout global society, and unless these inequalities are properly understood, the rise in those without civil rights - and human rights - will continue to grow.

Background: The Challenges of Measuring Statelessness

Individual Level

Stateless persons live completely outside the nation-state system, but that does not mean they live outside of any state at all. Alas, they most often live in the very place they call home, though a person can be rendered stateless equally in migration (ISI, 2014). Statelessness can affect someone at the time of his or her birth when a child fails to be or cannot legally be registered or when the state rescinds a person's citizenship without their acquiring another (ISI, 2014). To paint the picture more explicitly, the following is an excerpt from photojournalist Greg

Constantine's book, *Nowhere People* (2015), which has explored the lives of stateless people globally for the last ten years:

“Watching your child walk into a school for the first time. Holding a diploma in your hands after years of studying. The new taste of freedom after receiving your first driver's license. Casting your vote and knowing your voice has been heard. Knowing you have the protection of laws and the security of a passport or an ID to prove who you are. Having the freedom to travel from one place to another, however short of long the distance might be, to find work or visit loved ones. Owning a small plot of land or a house or business. Getting married. Having a child and receiving a birth certificate with the child's name on it. For most, these moments are of great significance. They are some of the passages of life. Yet they are out of reach for most stateless people.” (Constantine, 2015, p. 16)

On the individual level, stateless persons typically do not self-report as such either because they lack the willingness to or lack the access to resources that allow them to (ISI 2014). In essence, it is very difficult for a stateless person to safely report their status and to seek help due to the discrimination and violence they face with surrounding authority figures. Data collection thus far has relied heavily on self-reporting and therefore undercounts individuals, though just *how* far it undercounts we must widen our scope to appreciate.

State Level

Despite the existence of multiple international law conventions that attempt to preclude statelessness, it is entirely within a state's sovereign powers to deny or revoke citizenship based on its nationality laws (Lori, 2017). Indeed, state sovereignty and national security remain obstacles for mitigating the creation of new cases of statelessness because the legitimate right for

States to regulate its citizenship is directly at odds with every human's right to one. States often exclude people who ought to be granted citizenship as a means of national identity regularization and in the name of national security (Lori, 2017). However, perhaps counter-intuitively, it is in States' best interest not to create cases of statelessness for the sake of national security, because the lack of representation of stateless persons within their national boundaries ironically creates the very uncertainty that challenges their ability to recognize their true population and therefore challenges their national security (Lori, 2017). Furthermore, States should be invested in mitigating statelessness in order to reduce internal conflict, avoid large portions of their true population from being disenfranchised, and for general ethical reasons that align with human rights law. In the powerful words of Fionnuala Ní Aoláin, Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms, "...rights and security are not at odds. Rather, it is only through the meaningful enforcement of rights that security in all its dimensions will be realized for states and individuals" (ISI, 2020, Preface of the Principles on Deprivation of Nationality as a National Security Measure).

Statelessness is clearly a taboo subject for states to discuss because of their direct role in sustaining it. Not only do States not act to mitigate cases, but also in many instances do not even report or acknowledge it. Another issue at the state level is that of interpretation: States define nationality differently and prescribe their own laws around the conference of citizenship (ISI 2014). Subsequently, it is difficult to understand the true prevalence of statelessness when figures from different countries are compiled using different methodologies, or even deliberately ignored entirely.

International Level

Perhaps the most complex challenge of measuring statelessness is at the international level. UNHCR is the primary entity responsible for reporting official numbers. This poses a few problems: According to ISI (2014), UNHCR's reported statistics on statelessness only counts those exclusively under UNHCR's statelessness protection mandate. This means that stateless persons who are also refugees or fall within the protection mandates of other UN bodies, such as United Nations Relief and Works Agency for Palestinian Refugees (UNRWA), are completely excluded from official statelessness numbers. To understand how severely this undercuts its prevalence, stateless refugees are very common in the Middle East North Africa (MENA) region: Black Mauritians in Algeria, Kurdish populations in Syria, Rohingya refugees spread across the MENA, and Palestinians in Lebanon, to name a few cases. So as not to double-count, these populations are only represented in UNHCR's official refugee statistics (ISI, 2014), and not at all counted in their stateless numbers. Furthermore, stateless Palestinians specifically under the mandate of UNRWA, of which there are over 5 million, are also excluded (ISI, 2014). The data shows that if we estimate the number of stateless refugees from UNHCR's statistics and include the potential number of undercounted or otherwise not reported cases, then in total there are more than 15 million stateless persons worldwide (ISI, 2014). Alas, UNHCR officially reports a mere 3.5 million (UNHCR, 2016).

In attempting to quantify statelessness, challenges are revealed at the individual, state, and international levels. Nevertheless, these complexities only highlight the exigency of expanding research that appreciates the plight of the stateless and attempts to understand social systems that perpetuate it.

Literature Review

In the last decade, the international community recognized the 60th and 50th anniversaries of the two integral legal documents that define statelessness, proclaim the rights of those affected by it, and outline states' responsibilities in response to it. Recognition of these anniversaries juxtaposed with the United Nation's official reporting that statelessness now affects a dire 12 million people (UN News, 2018) has sparked an increase in literature on the topic of statelessness in the last ten years. Ironically, most authors from this time period also acknowledge that there exist major gaps in the literature, and therefore gaps in our understanding of and approaches to addressing statelessness.

This review of statelessness literature first outlines common viewpoints in the legal field and the political domain, two of the most frequent approaches to statelessness, and highlights their limitations. Specifically, I point out that international law has failed to address the issue thus far and by nature is not apt to. While the political approach is more comprehensive and realistically applicable, I argue that it is too shallow and demands more unpacking. This is followed by an overview of feminist theory, which I find to be the most inclusive and comprehensive understanding of the issue while recognizing that there are still gaps in feminist literature. A feminist approach clearly showcases that statelessness deserves its own field of study, similar to immigration studies or refugee studies, and rejects how most scholars compartmentalize statelessness under other general issues of migration. I will then contribute to the feminist approach by attempting to fill some of those gaps and use feminist theory to explore social structures that sustain statelessness.

Proponents of a legal approach to statelessness often view international law as the tool that can resolve statelessness. As such, they believe in the international law system and accept the norms it was build upon. Curtis Doebbler is one such scholar and examines statelessness in

his article “A Human Rights Approach to Statelessness in the Middle East” (2002). While admitting that some aspects of international law have failed to address statelessness in the past, Doebbler (2002) argues that applying human rights law has potential to mitigate statelessness in the future. He points out that states are the very actors that create international law, and therefore as it currently stands statelessness can only be dealt with by states taking action (2002). A current limitation then is states’ lack of acceptance of the two integral treaties regarding statelessness; Currently, no state in the Middle East is a contracting party of either the 1954 Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness (Doebbler, 2002) despite this region holding some of the largest numbers of stateless persons. Another major limitation is the priority of state sovereignty over the rights of individuals, though the legal approach is optimistic that international law may be used to overcome this as well (Doebbler, 2002).

Against this backdrop of legal limitations, Doebbler (2002) then advances his argument that human rights law has the potential to address statelessness in the Middle East and North Africa. Human rights treaties, such as the Convention on the Rights of the Child, are more widely accepted in Arab states than treaties governing individual matters (Doebbler, 2002). International human rights law fixates not on how a state should make decisions, but on the morality of the actions that violate the law. For this reason, Doebbler (2002) believes that including statelessness in human rights law is a convincing approach to getting Arab states more invested in mitigating the issue. However, Doebbler contradicts himself in arguing this because international human rights law is just as futile as other international treaties because there exists no entity of enforcement under international law. Because of this, even states that do sign onto human rights conventions can violate them with no reprimanding. Additionally, Doebbler

himself argues that states are both the creators of international law and of statelessness, and therefore I reject that international law is even apt to address the issue. States have no incentive to create legal frameworks that result in sustainable outcomes for the stateless and instead have created loose ones that symbolically acknowledge the issue without addressing it. States accept statelessness as it is because they are the driving force that causes it, and so they will not naturally act to end it.

Noora A. Lori, on the other hand, takes on a political focus in her article, “Statelessness, ‘In-between’ statuses, and precarious citizenship” (2017). Proponents of the political approach often find politically charged reasons for the creation of statelessness and attempt to provide diplomatic solutions. Lori (2017) argues that states perpetuate statelessness as a political strategy because they are avoiding larger dilemmas about citizenship and national membership in their societies, specifically in regards to minorities, refugees, and economic migrants. States most commonly exclude minorities, refugees, and labor migrants based on identity, claiming that they do not fit the identity of the ideal citizen that makes up their nation (Lori, 2017). She also explains that global trends in international security and the development of new border technology increase a state’s ability to identify and therefore exclude unwanted populations (2017). While states intend to increase their ideal citizen’s security by tracking the movement of people within and around their borders, this also allows them to be selective and displace populations that may have existed in one place for generations (Lori, 2017). However, there are instances when states suddenly wish to include their precarious populations to their political advantage, such as allowing illegal migrants to vote if it will increase the likelihood of a favored party succeeding (Lori, 2017). This only further exemplifies the degree of control states have over the membership and boundaries of their nations, and underscores that political membership

to a state is not an inherent human right but earned through conforming to a particular identity that affords acceptance.

While I do align with Lori's argument that people fall into precarious citizenship because of state policies, and not because of depoliticized forces, I also find this approach not comprehensive enough. Lori uses the term "identity regularization" to refer to the phenomena that the less a person fits into the ideal identity of a nation, the more likely they are to lose their citizenship (Lori, 2017, p.750). I am interested in puzzling what exactly leads to identity hierarchies and what social structures maintain those hierarchies. I would like to unpack what exactly are those "dilemmas" that Lori refers to when arguing that states are putting off other, more profound dilemmas by ignoring the statelessness they are causing.

Finally, a look through the feminist lens offers answers to some of the questions posed above. The feminist approach, such as that offered by Dierdre Brennan in her article "Statelessness and the Feminist Toolbox: Another Man-Made Problem with a Feminist Solution" (2019), advances a critical understanding of statelessness because of its ability to investigate and disrupt social norms of thought. A feminist analysis, according to Brennan (2019), must include the "rethinking and revision of patriarchal structures and principles which create and perpetuate statelessness" (p.1). Part of that rethinking is challenging the foundations of structures that permit and maintain "hierarchies, privilege, and domination" in society (Brennan, 2019, p.1). These structures are the very dilemmas that Lori refers to above as the profound issues states are putting off addressing as a political strategy. Indeed gender and patriarchy are omnipresent components of society that determine who holds power and therefore the perception of those who do not. However, a feminist approach is not limited to gender; it also examines other issues that lead to power imbalances such as discrimination based on ethnicity or religion, and draws

upon postcolonial theory and intersectionality to probe statelessness at its foundations. Brennan does not, however, investigate these issues deeply herself, as one of her main arguments is that the lack of feminism in global approaches demands that statelessness get pushed out of its confines as a legal issue and be defined as its own study – statelessness studies – and hopes to influence other feminist scholars to fill in the gaps (Brennan, 2019). Author Andreas Wimmer also agrees with this point, and accurately claims that citizenship is a form of “legal discrimination” in that states are able to legally exclude those they feel are unfit for their imagined ideal society (2013). This further proves that statelessness ought not to be understood as a legal issue because the legal structures themselves permit statelessness.

In conclusion, in this review of statelessness literature I assert that the legal field is inapt for addressing issues of statelessness while the political approach begs a little further unpacking. I align myself with the feminist approach because it offers a more critical understanding by examining national membership and exclusion as social issues that are the result of gendered, hierarchal structures, which I argue is the foundational cause of statelessness.

International Law, Gender, and Covert Discrimination

Article 15 of the 1948 Universal Declaration of Human Rights codifies every individual’s right to a nationality and subsequent entitlement to the political, civil, and economic rights that follow this legal bond to a state: “Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality” (UN General Assembly, 1948, Article 15). Yet in reality, an estimated 15 million people worldwide are currently arbitrarily deprived of their right to a nationality. Recall that statelessness as a global issue is to a great extent driven by institutionalized discrimination because the policies and

norms in place that proliferate it *as well as international law that defines it* are all favorable to a dominant social group and reinforced by perceived gendered, ethnic, and religious social hierarches. Thus, an exploration of the extent to which statelessness is upheld by institutionalized discrimination must, by all means, begin with a critical review of the very institutions that define it.

For the purposes of this paper, I consider the entirety of the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness as society's collective definition of statelessness, as these are the two internationally agreed upon documents that solidify and standardize the world's way of perceiving and addressing statelessness. I will explore the Conventions' rhetoric to extract the patriarchal nature of the way in which we've come to define statelessness and call attention to its highly gendered language that covertly permits discrimination on grounds of gender – and to a smaller extent, ethnicity – maintaining male-gendered dominance in society. To be clear, the conventions do not explicitly encourage discriminatory practices; the purpose of examining their rhetoric is to extract the foundational norms that were accepted in the writing of the conventions to reveal how those norms leave room for discrimination at the lower, domestic level. Lastly, male-gendered dominance doesn't only mean female-gendered subjugation – it also implies subjugation of other vulnerable identities such as children and historically discriminated against populations. Patrilineal societies where property and identity are inherited through male lineage are an example of patriarchal character in society that is still inequitable for *some* men. For example, the instance where a female national has a child with a stateless man wherein the child is rendered stateless because the female may not confer her nationality is also inequitable for the man and child of the family unit.

To begin, Article 3 of the 1954 Convention prohibits discrimination against race, religion, and country of origin that would cause a person to be stateless, but there is no mention of sex or gender. This repeats itself in the 1961 Convention where political discrimination is included but still there is no mention of gender (UN General Assembly, 1954, Article 9). Nonetheless, male dominance isn't only promulgated in the lack of acknowledgement of gender, but also via the use of deliberate rhetoric. The 1954 Convention makes reference to "women's work" in Article 24 on Labor Legislation and Social Security (UN General Assembly, 1954, Article 24, paragraph 1a). 'Women's work' is a misogynistic phrase that classifies particular tasks as female, suggesting that they ought to be performed by women only and, conversely, that women ought to perform them in their life. It refers to unpaid work performed in combination with child-care responsibilities carried out within the walls of a household. It both assigns a binary gender to labor and explicitly subjects women to domestic life, excusing men from performing such work and permitting them an external, non-domesticated life. This is in contrast to stereotypically "men's work," which refers to tasks that involve physical labor, labor performed outdoors, or tasks that involve a particular skill gained through apprenticeship. While the Conventions recommend states apply equal treatment to stateless persons in regards to "women's work" and other types of labor benefits, the deliberate use of misogynistic language that separates tasks based on gender highlights the patricentric norms that were assumed in the writing of the Conventions. The plenipotentiaries could have instead used gender neutral language by stating that equal treatment be given to stateless persons in terms of all labor and social security, but because of social norms that inherently prioritize the male identity it may not have been assumed that "women's work" was included in that, hence the need to clarify that it is.

The 1961 Convention specifies “a child born *in wedlock* in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless” (Article 1.3). This distinction is of particular concern: it does not state that children born in or out of wedlock are owed *equal* opportunity at nationality. It states that children born *in wedlock* ought to be given citizenship, and this rhetoric permits the justification of discrimination against children based on legitimacy (Brennan 2019). This means that children born in wedlock are not inherently deserving of their mother’s nationality, and children born out of wedlock may either only acquire their father’s nationality or none at all – it is up to the discretion of the state. In both instances, male-conferred nationality is not only prioritized, but also female-conferred nationality is nearly non-existent, only an exception to the norm. This creates male dominance in nationality privileges, and permits discrimination against children based on legitimacy, subjugating ‘illegitimate’ children, women, and their families.

Moreover, the final clause of the above quoted, “if it otherwise would be stateless,” subtly asserts that the right for a woman to pass her citizenship to her children is only earned via this Convention when that child would otherwise be rendered stateless, and is not proclaimed an inherent right for women in all cases. When brought up during the writing of the convention, drafters decided that equality was a matter for national legislation (Brennan, 2019) and therefore while asking for action under this very specific circumstance – that is, a child born specifically in wedlock, specifically wherein the child would otherwise be born stateless – the Convention leaves generality for States to choose how to apply that same safeguard differently under any alternate circumstance. More simply put, the Convention leaves room for discrimination because it does not demand the right to confer nationality to *all women*, but only under the given circumstance - even when demanding the right for all women to confer nationality would be

more effective in ending statelessness, and women would then earn equity from this Convention. Instead, the drafters deliberately articulated that women's equality is a matter of domestic contemplation, a decision to be made, and not an intrinsic part of society, revealing once again the patricentric norms assumed in the writing this law.

Brennan (2019) fittingly points out that the idea that women and equality are domesticated issues is to deny that gender – specifically gender discrimination – is structural and all-pervasive to the issue of statelessness. Leti Volpp dives into this topic in her feminist research that focuses on how law is shaped by culture and identity. She explains the reason for the historical omission of gender from matters concerning citizenship and statelessness has to do with the fact that patriarchal nation-states have created a division of public and private life which has “split the single human sphere into two gendered bodily spheres” (2017, p.154). The two spheres correlate with different allocations of social resources: Women are historically assigned to the private or domestic sphere, whereas citizenship and global political membership have been reserved for the public, male sphere (Volpp, 2017). The key here is the relationship between citizenship and reproduction (Volpp, 2017). A mother, in part due to her physical capacity to give birth to future citizens but also her assigned duty to prime future citizenry with virtues from her private home, loses her autonomy when states prioritize identity regularization over human rights (Volpp, 2017; Lori, 2017). As Volpp expresses, “their bodies become sites of conflict about national cultural identity” and become subject to reproductive and other forms of control (2017, p.161). In some cases this manifests in the form of physical sterilization or regulation on the number of children a family is allowed to have, as in the cases of the Rohingya in Myanmar and children of Filipino migrant workers in Malaysia who are not the idealized ethnic identity of the state they reside in and are therefore facing devastating statelessness today (Constantine,

2015). In others, it manifests as a denial of the right to confer citizenship, or making a woman's right to citizenship dependent on whether she marries a national, as maintained by the nearly 50 countries worldwide that have gender-discriminatory provisions in their nationality law (Harrington, 2019).

This vision of the female body as a representation of a nation's identity and honor extends to the child whose claim to citizenship eclipses the citizenship of the pregnant woman. In other words, an 'illegitimate' child's claim to citizenship eclipses the ability of the mother to exercise her human right to confer citizenship because that child may not represent the arbitrary national identity a state has chosen to subject its population to. Because men are the predominant political leaders, voice of moral authority, controllers of a majority of power, property and social privilege in a patriarchal society, national identity regularization is controlled by and favorable to men. A basic example of this in US domestic policy is the creation of unjust and borderline violent anti-abortion laws by men making claims to moral justice. Perceiving women as the private, domestic sphere of society, as proclaimed by the Conventions, adds further subjugation to women and minorities effected by statelessness because their voices will not be heard in the making of policy that directly affects – and discriminates against – them. The patriarchy is *the* element of society that systematically discriminates against women and minority identities, and creates inequitable elements of society like statelessness, yet ironically our very definition of the phenomenon is written in its voice.

Lastly, Article 9 of the 1954 Convention, asserts that “nothing in this convention shall prevent a Contracting state, in time of war or other grave and exceptional circumstances, from taking measures which it considers to be essential to national security...” (1954, Article 9). This is a dangerous assertion to endorse when modern times have witnessed an increase in the

security state, xenophobia and systemic racism. States regularly create covertly discriminatory policies in the name of national security, particularly in the case of immigration regulation, that create cases of statelessness and exclude groups of unfavored people from the national population identity. This is because states see national security as a term pertaining to matters beyond physical security; they see any threat to the status quo, such as an increase in migration from a particular group of people that offsets the demographic balance of the country, also as a threat to national security. This was the case in 2010 when The Dominican Republic amended their constitution to strip all Dominicans of Haitian descent, close to 210,000 people, of their Dominican citizenship despite residing on and running most of the agricultural sector of the Republic for decades (meaning through multiple generations) (Constantine, 2015). As a greater percentage of the country was of Haitian decent, the government feared a the loss of a stable national demographic. This caused new cases of statelessness because most were also too far removed from Haitian heritage to be eligible for Haitian citizenship (Constantine, 2015).

Groups of ethnically different people end up within the same borders without migration taking place too, however, most commonly via the drawing of new state borders in the aftermath of colonization and creation of new states following the fall of the Soviet Union. In these instances, sectarian tension and power struggles have risen between ethnic and religious groups pitted against each other through divide and conquer techniques used by colonizers to weaken the colonized. The concept of the ideal citizen, social hierarchies that idealize a particular religion or position in society, and violently subjugating and excluding those who do not match an ideal identity of a nation are all closely linked to colonial policies and to this day push masses of people into statelessness who are seen as a threat to the status quo by those who assumed power post-colonization.

In fact, the 1954 Convention makes 15 references to stateless persons residing “lawfully” in the territory of a contracting state vis-à-vis pushing for the equal treatment between “lawfully” present stateless persons and citizens in a number of areas of legislation (UN General Assembly, 1954). If a state then deems a person’s presence unlawful under its domestic law, it is under no such obligation to provide the equal rights recommended (Belton, 2011). However, the Conventions do not address instances where domestic law has been rightfully observed, but a person has still been rendered stateless and is denied civil rights (Doebbler, 2002). Alas, international law cannot overstep the sovereignty of any state and its domestic law, but that is the very element of Article 9 that reveals the problem: States do technically reserve the right to weaponize citizenship as a form of population control under the guise of national security and as an exercise of sovereignty. The weaponization of citizenship can either take form in the actual withdrawal of nationality, but also in the form of authorities making clear that they no longer will treat a person as a national (ISI, 2020). For example, authorities may persistently refuse to renew identification documents, as is the case with the Roma people of Iraq, who carry outdated passports from the time of Saddam Hussein and are refused Iraqi citizenship under new leadership because they are seen as nomads, and do not share ethnic roots with Iraqis (Constantine, 2015). In other words, states can make legal the action of creating statelessness by deliberately writing laws that systematically strip a targeted group of people of citizenship in the name of national security and as an exercise of sovereignty (T Lay Lee, 2005). Just because something is legal, however, certainly does not make it right, but it is a form of institutionalized discrimination that leads to statelessness.

Again, the purpose of dissecting the Conventions’ rhetoric is not to say that the Conventions explicitly call for discrimination, but instead to uncover social norms embedded in

society that maintain statelessness. In this case, it is clear that state sovereignty and the principle of non-interference are sanctified, and unfortunately at the cost of some individual human rights. The reality, however, is that no matter the reason a state has for creating new cases of statelessness, the grave and devastating long-term impact this has on an individual and their dependents is likely to render this measure immoral and incompatible with other areas of international law, so much so that it becomes an arbitrary use of power (ISI, 2020). For example, the Convention on the Rights of the Child requires states to act in the best interests of the child in all legal proceedings (ISI, 2020). It can never be in the best interest for a child to be made stateless, so any instance of a state creating policy that makes a child or its parents stateless in the name of national security, while permitted by Article 9, is a severely immoral act under international law. In the words of the Institute on Statelessness and Inclusion, “as more states instrumentalize nationality and treat it as a privilege that can be taken away [instead of a human right], members of minority communities, human rights defenders, dissidents and suspected terrorists are all more likely to be stripped of their nationality,” diminishing the inviolability of citizenship for all (2020), and further sinking institutionalized discrimination and subsequent statelessness into society as a norm, or simply a side-effect, of the modern nation-state structure.

As it is not documented in detail, no one can confirm if the drafters of the 1954 and 1961 Conventions turned a deliberate blind eye to the all-pervasiveness of gender and national identity regularization to the issue of statelessness or if they were oblivious to the patricentric nature of their language without the tools of modern feminist theory. Either way, underneath the international legal codes that define statelessness lie discriminatory norms highlighted by the Convention drafters employing distinctly gendered language, considering a child’s rights dependent on whether they are “legitimate,” offshoring women’s rights and equality to domestic

authority, and prioritizing state sovereignty and identity regularization over the safeguarding of human rights. The empirical outcome of creating flawed international norms founded on patriarchal principles is the subsequent formation of national systems that are likewise favorable to a dominant group and unfavorable to another. Perhaps the social hierarchy embedded in the rhetoric of the Convention's language contribute to the continuation of statelessness because while the Conventions push for the mitigation of statelessness, it favors the mitigation of statelessness among a favored male-gendered and majority identity while still subjugating already vulnerable populations. Thus, there are flaws in the way it is defined that contribute to its perpetuation, and a rethinking of these structures is the only equitable and effective way to reduce statelessness via the decentralization of male dominance from our current understanding of the phenomenon.

“It is no surprise that there was not a single woman among the plenipotentiaries who met in Geneva in 1951 to draw up the Convention.” - Alice Edwards (2010)

Domestic Law and Overt Discrimination

Statelessness is commonly attributed to forced migration due to the inability to track or prove one's nationality (Lori, 2017). Drawing upon the Syrian case for its magnitude, more than 300,000 Syrian children have been born in exile since the start of the refugee crisis, and while most of them do have Syrian citizenship it is significant that Syrian children acquire their nationality exclusively from their fathers under national law (UNHCR, 2016). A report addressing statelessness in MENA published by UNHCR notes that it is of “particular concern” then, that the conflict has “left one-fourth of Syrian refugee households with no fathers to attest to the children's nationality” (2014, paragraph 4). Thus, when these children return to Syria

some day, they may be denied education, healthcare, or humanitarian assistance. Without proper documentation or passports, they may even not be able to travel to or enter the country. This predicament highlights that the source of statelessness amongst Syrian children will indeed not be rooted in displacement, but rather the national legal system and its gendered bias.

From the above discussion on international law we know that gender and male-favored power imbalances are an omnipresent component of the structures of society and subsequently of our understanding of statelessness. This next section will explore how states translate norms and perceptions into policies and explicitly discriminate against vulnerable populations in their nationality law to create new cases statelessness and suppress some communities into inter-generational statelessness en masse. To support my argument that statelessness is driven by institutionalized discrimination, I will review case studies of statelessness in Lebanon and stateless Pilipino children in Malaysia that will showcase the empirical consequences of social systems and norms that discriminate against women and exemplify the profound extent people in power will go to exclude those who challenge the state's arbitrarily defined national identity.

Case Study: Women's Rights and Colonial Legacies in Lebanon

Lebanon is one of 50 states worldwide that have separate nationality laws and citizenship privileges for men and women: While some countries permit women to pass citizenship to only their children and not their spouse, and others have varying additional restrictions, Lebanon does not allow women to confer citizenship to either their spouse or their children with absolutely no exception (Harrington, 2019) – all while rewarding men the full right to confer nationality under all circumstances.

Additionally, echoing through present-day discriminatory nationality laws in Lebanon is a legacy of colonial history and governments that have worked to define Lebanon as a Christian

country, marginalizing religious minorities and women. Indeed, the Lebanese nationality laws in effect today are based on laws that were implemented in 1925 while the territory was still under the colonial French mandate (Constantine, 2015) and in some ways acts as a continuation of former colonial power. Before this time, the people on the land known as Lebanon today had no common pre-colonial national identity, and the one built post-colonization would be dictated by the power structures left behind in the aftermath of the French successfully pitting religious groups against each other, privileging the favored Christians and marginalizing all other groups.

Within Lebanon's original borders was a predominantly Maronite Christian population and the first constitution, written in 1926, implemented a system where power was proportional to religious demographics (Constantine, 2015). France's expansion of territory to form greater Lebanon as it exists on the map today added four surrounding predominantly Muslim regions to the population, threatening the Christian elite (Constantine, 2015). Thus, in the decade leading up to Lebanon's first and only ever recorded census in 1932, the mechanisms that defined Lebanese nationality were "manipulated and exploited to unnaturally tilt the religious makeup of Lebanon for political purposes" (Constantine, 2019, *Stories: Lebanon*). This is precisely the root of what became an intergenerational cycle of statelessness that is still growing today: During this time of manipulating religious demographics to maintain the Christian elite, many Lebanese citizens were stripped of their nationality and there forth denied access to apply for citizenship. Today, more than 80 years later, there are families whose heritage dates back to the land they've lived on for over a century who are stateless because their religion would have offset the delicate demographic balance Lebanon's government needed to maintain power through the census (Constantine, 2015).

Now, consider the common predicament in which a Lebanese woman with nationality marries a stateless Lebanese (by identity, not by citizenship) man, perhaps a descendent of one of the Muslim minority communities whose nationality was rescinded between 1925 and 1932. Neither the man nor the children of the family will have any claim to Lebanese nationality, and the cycle of non-belonging continues. Likewise, if a Lebanese woman marries a Palestinian living in Lebanon – another common predicament considering some 500,000 registered Palestinian refugees residing in Lebanon – again, her spouse will not be eligible for citizenship, and their children will be the first generation of what will continue as intergenerational statelessness.

The original 1932 census has set in stone the country's political structure and has preserved Christian elitism for the last 80 years, and is still the only cited record of information collected officially on the country's population (Human Rights Watch, 2018). In other words, the real demographic split of the country is actually unknown, and it is in the government's interest to maintain both gendered discriminatory nationality laws and the suppression of religious minorities from attaining validation through citizenship due to power being assigned according to religious demographics. If the laws were updated and mothers were suddenly permitted to confer citizenship to their children, tens of thousands of children, including stateless children and children to Palestinian fathers, would enter into the political membership of the country and disrupt the country's fragile demographic balance. Thus, no matter how arbitrary it may be, this balance has been used as justification for maintaining the status quo and continuing the expansion of statelessness.

Drawing upon the previous discussion, the case of Lebanon portrays how statelessness is perpetrated by institutionalized discrimination in two ways. First, nationality laws explicitly

discriminate against women in their right to confer citizenship, underscoring the male-favored and patricentric characteristics of Lebanese society. A Lebanese woman's child's claim to citizenship eclipses her right to confer nationality because that child may disrupt an intricate but arbitrary system of national identity regularization in the shadow of colonization. Second, systemic mechanisms in place that determine who may apply for, change, acquire, or confer nationality are designed to exclude religious minority populations – that may actually be a majority today, though there is no official record to prove this – as a legitimate exercise of state sovereignty and again as an effort to regulate national identity. Even the act of avoiding conducting a new census is an embodiment of institutionalized discrimination because the purpose of avoiding it is to justify the continuation of the subjugation of particular religious minority groups fighting their way through intergenerational statelessness for the last 80 years.

Case Study: Stateless Children in Malaysia: Vulnerable but Resilient

Despite being a signatory to the United Nations Convention on the Rights of the Child in 1989, in 2002 the Malaysian government reformed its Education Act to prevent “non-citizen” children from enrolling in its schools (UN General Assembly, 1989) (Allerton, 2019). Slowly depriving children of child rights is just one of the many ways in which the Malaysian government has worked, in paper and in practice, to identify ‘others’ to preserve Malaysian nationalism. Nevertheless, the lived experiences of Malaysia's stateless are characterized by both vulnerability and resilience: After 2002, stateless communities built informal schools to continue educating their children. Local authorities regularly destroy the informal buildings, and the community, in recognition of the value of education, rebuild the schools again and again (Allerton, 2019).

In the 1970's and 80's both civil war in the Philippines and the demand for cheap labor on Sabah's timber and palm oil plantations attracted thousands of migrants to Malaysia, mostly from the Philippines and Indonesia (Constantine, 2015). Even though the survival of the region's economic structure is almost entirely dependent on migrant labor, strict and discriminatory citizenship policies have been implemented to preserve the interests of local Malaysian populations and diminish any influence this immigrant community may have if extended rights. One of those policies criminalizes the act of becoming pregnant while working legally as a migrant worker. The fear of exposing pregnancy leads most women to give birth in secrecy, as migrant women found to be pregnant face immediate deportation. The secret births leave children unregistered and therefore stateless (Constantine, 2019).

The country's deliberately designed labyrinth of paperwork required to register a legally born child or legal marriage of migrant workers makes it nearly impossible for migrant workers, especially those living in rural areas, to follow procedure, also leading to new undocumented cases and statelessness that could have been avoided with more streamlined services. In response to locals' belief that migrant workers bring unwanted social strains to society, authorities have increased migration raids over the years to deport undocumented workers, often separating families and leaving stateless children behind to fend for themselves (Constantine, 2019). For both women who become pregnant and undocumented people living and working in Malaysia, the fear of being exposed to authorities influences their decisions to seek healthcare or visit government offices to register themselves. As a result, more and more children are born without birth certificates. Today there are over 800,000 stateless people – mostly children – who grew up in Malaysia and have no connection to the birth place of their parents but are not welcome in the only home they do know.

Some of Sabah's stateless are now third or fourth generation deep in the cycle of non-belonging. But stateless children are not the children of illegal immigrants – they are simply unable to be documented at birth in their country of residence, and the Philippines and Indonesia no longer recognizes multiple generation children of migrant workers as citizens. They are not illegal, but the Malaysian government has made their existence illegal with discriminatory mechanisms that disproportionately subjugate children and women migrant workers. Drawing on the above discussion, statelessness in Malaysia portrays how the phenomenon is driven by institutionalized discrimination again in two ways: First, gender is proven to be an all-pervasive element to the issue, as women are disproportionately discriminated against vis-à-vis the regularization of women's bodies in policy. Second, the complex mechanisms in place that hinder people from documenting themselves and their children are deliberately in place to preserve Malaysian citizenship to a favored ethnic group, and not extended to those who the entire backbone of the economy relies on – those who keep society running through their physical labor. This is again a legitimate exercise of state sovereignty to select who gets to be a member of society and regulate national identity, but it is this form of systematized discrimination that allows new cases of statelessness to keep forming, and for the denial of social and civil rights to continue through generations.

Conclusion

In summary, statelessness is to a great extent perpetuated by institutionalized discrimination because the policies and norms that proliferate it as well as international law that defines it are all favorable to a dominant social group and unfavorable to another. Systemic discrimination is so omnipresent to the issue of statelessness that it exists in every facet of the

phenomenon and every case of statelessness today can be linked back to a social system that discriminated against that individual. The way in which we define statelessness via international law is founded on patriarchal principles, and therefore is a form of institutionalized discrimination that favors male-gendered dominance in society while subjugating the female gender identity. Furthermore, our international political system prioritizes state sovereignty over individual human rights as part of the modern nation-state structure and as a legacy of colonization. This drives states to legalize – institutionalize – discrimination against unfavored ethnic and religious minorities for a number of reasons including claims to the protection of national security and national identity regularization to create an idealized citizenry, usually for political reasons.

It seems from my findings that I would suggest a complete turnover of the current international world order and a conceptual rejection of international law and the modern nation-state system as a resolution to statelessness. This is not the case, but I will suggest that current approaches to mitigating statelessness, such as UNHCR's #iBelong campaign that see the only solution as giving the stateless citizenship of the country they reside in are, in practice, empty and ill-informed (Venkov, 2019). Because of the nature of statelessness being the lack of identification or membership in an entity that can be accounted for, statelessness remains a largely hidden phenomenon. The international community lacks frameworks to fully explain or address the issue, and the solely legal approach taken thus far is not apt for solving the issue in a sustainable way. The fact of the matter is that statelessness as a human rights issue cannot be resolved while minorities and women are disproportionately marginalized by policies and norms because new causes of statelessness will always be born so long as marginalizing systems are in place. Even for those who are awarded citizenship in their homeland, while marginalizing

systems are in place there is no guarantee that their complete human rights will be met because there is a greater system in place that will continue deliberately silencing them for political power, the preservation of nationalism, or other reasons along those lines.

Statelessness as a global issue must be driven out of its confines as a purely legal issue and understood in an interdisciplinary manner, alongside other issues such as international development, humanitarian affairs, children's rights, economics, democracy, peace building and security (Brennan, 2019). This research highlights that in order to address statelessness as a human rights issue, we cannot simply ask states to give the stateless citizenship; to solve statelessness will require equitable changes to international legal systems, the removal of national policies that stem from colonization that legalize discrimination, and work from the ground up that eradicates perceived social hierarchies based on gender, ethnicity, and religion that reinforce discriminatory policy. Unless these inequalities are properly understood, the rise in those without civil rights - and human rights - will continue to grow, like branches spreading from a family tree.

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