

Foster, Michelle & Lambert, Hélène, *International Refugee Law and the Protection of Stateless Persons*. Oxford Scholarship, 2019. 288 Pages. US\$99.00 (Hardcover). ISBN: 9780198796015

Michelle Foster (Professor of Law and Director at the Peter McMullin Centre on Statelessness at the Melbourne Law School) and Hélène Lambert (Professor of International Law at the University of Westminster Law School) have once again teamed up to make a significant new contribution to the field of International Refugee Law (IRL). With characteristic sophistication and thoroughness, this book addresses a critical gap in existing literature, by arguing that the capacity and potential of the 1951 Refugee Convention, coupled with international human rights law, can be harnessed to protect stateless persons in ways that have been inadequately developed and understood. In order to develop their concepts, the authors look at international human rights in regards to refugee law, collecting jurisprudence that anchors their claims, and complementing it with meticulous and thorough commentary. For the authors, statelessness is depicted broadly, including stateless persons on the move between states, or stateless persons who have already moved (and not with the stateless *in situ*), because it is members of this group who require recognition of their status in order to establish themselves in a new country following a decision to flee.

For decades, IRL attention has overshadowed the plight and protection needs of stateless persons even though, as Guy Goodwin-Gill has noted, “refugees and stateless persons once walked hand in hand” (1). The authors situate this evolution within sixty years of nationality related issues, specifically regarding state discretion in matters of nationality, and including the acquisition and deprivation of nationality and the treatment of non-nationals. The authors draw on historical and contemporary interpretation of international law based on the *travaux préparatoires* to the 1951 *Refugee Convention* and its antecedents, notably the *travaux* of the 1954 *Convention*, academic writing, UNHCR policy and legal documents, UN Human Rights Council resolutions, UN Human Rights Committee general comments, UN Secretary General reports, and UN General Assembly resolutions. They supplement this contextual analysis with global case law, emphasizing that a broad range of stateless persons might be entitled to refugee protection.

The drafting histories of the 1951 and 1954 Conventions provide the basis for the claim that IRL has a greater capacity to accommodate stateless persons than has been assumed. The extensive rights regime in both Conventions operates as one of the earliest examples of the emerging modern human rights system, in spite of the belief on the part of its negotiators that statelessness was more as a technical legal issue, rather than a human rights issue. The authors elaborate upon this point when in chapter three they argue that nationality has expanded from being a state right, to being also an individual right. They provide a detailed account of how the advent of international human rights has slowly but consistently intruded into state discretion such that we can now see that, in many instances, both a denial to grant nationality and a withdrawal of nationality violate norms of international law. This leads to an investigation on how the right to a nationality can, in some circumstances, constitute persecution or serious harm for the purpose of refugee law. Similarly given that human rights law extends the ‘right to enjoy rights’ to those without a nationality, a restriction on such rights may also constitute persecution in refugee law.

In chapter four the authors turn their attention to identifying the key challenges faced by stateless applicants seeking recognition as a refugee under the 1951 Refugee Convention. The authors provide a detailed review of two scholarly debates relating to the capacity of a stateless person to claim refugee status, one of which concerns whether a stateless person is required to establish well-founded fear, or whether an alternative and more straightforward test is appropriate, while the other conversely involves the question whether a stateless person can ever meet the criteria for refugee status when he or she is unable to return to the country of former habitual residence. The authors cite

relevant principles of international law and the guidance of reasoned judicial authority to explain how these challenges can be surmounted. For example, they acknowledge the commonly misunderstood idea that “the burden of proof in establishing nationality in refugee status determination is on the applicant”, and so “while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application” (115).

In chapter five the authors suggest that refugee claims by stateless persons rarely focus primarily, or even in some cases at all, on the socio-economic harm to which they would likely be subjected on return. They cite a number of cases to make this claim, including a recent decision by the UK Tribunal which maintained that the treatment, mainly in the form of socio-economic deprivation, of undocumented Bidoon amounts to persecution because the definition of persecution in Article 9 of the EU Qualification Directive accommodates discrimination, where measures involve ‘persistent and serious ill-treatment without just cause’, are ‘of a substantially prejudicial nature’, and ‘affect a significant part of the individual’s or group’s existence’ (180). There is a relatively small number of cases where the denial of socio-economic rights has been found to amount to persecution, individually or cumulatively. They also note that statelessness ‘impacts especially negatively upon women and children’, in most refugee claims involving a stateless family, decision-makers fail to consider the impact of return on children independently of the adult family members. As Laura van Waas and Amal de Chickera observe, ‘to be stateless as a child can stunt opportunity, erode ambition and destroy the sense of self-worth’ (185). The authors conclude the book with the original assertion that the 1951 *Convention relating to the Status of Refugees* is clearly relevant to the protection of de jure stateless persons on the move.

In chapter six the book turns to consider under what circumstances a stateless person may cease to be entitled to protection, or excluded from refugee protection. The authors begin by examining in what situations Article 1C of the 1951 *Refugee Convention* may apply to a stateless person, before turning to consider the application of Article 1D (in relation to Palestinians) and Article 1E (de facto nationality) to refugee claims by stateless persons. They acknowledge that not all of the cessation clauses in the *Refugee Convention* are relevant to stateless persons; according to the United Nations High Commissioner for Refugees (‘UNHCR’), both clauses (4) and (6) in Article 1C apply to stateless persons (195). While in previous chapters the authors examine the many elements of the ‘inclusion clause’ in relation to stateless applicants, the authors use chapter six to examine the potential grounds on which a stateless person may be denied refugee protection. They rely upon the UNHCR and jurisprudence to explore how a stateless person can be denied refugee protection due to (1) protection no longer being required (Article 1C); (2) protection is not necessary, due to alternative protection options (Articles 1D and 1E); or (3) protection is not warranted due to the previous conduct of the applicant (Article 1F). One example of the authors ability to explore how a stateless person can be denied refugee protection through jurisprudence can be seen through their discussion of a Swiss case where an interesting question arose as to whether recognition of refugee status by Switzerland, of an applicant from Vietnam claiming to be stateless, required the Australian Tribunal to assess her claim on the basis that she was a recognized refugee (by Switzerland) and hence could only be denied an Australian protection visa if Article 1C(5) applied (200).

Chapter seven concludes with a reflection by the authors on the relationship between stateless persons and those protected under the 1951 *Refugee Convention*, in the context of sixty years of doctrinal development in human rights law.

Foster and Lambert make clear that we need for a better understanding of the causes and consequences of statelessness in the context of refugee status determination. Such work has serious

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implications for refugee advocates and decision-makers, as well as scholars, researchers, and advocates interested in the protection of stateless persons. They point to a need for more research across multiple disciplines, but particularly work that would bridge the social, economic, and philosophical issues at stake in statelessness. They conclude by asserting that the 1951 Convention is relevant to the protection of de jure stateless persons on the move. The pertinence of such work has increased steadily over the years, and we can only hope that it will lead to a more progressive reading of the Refugee Convention by senior courts, legal practitioners, and scholars.

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