
RESEARCH ARTICLE

Statelessness and the Feminist Toolbox: Another Man-Made Problem with a Feminist Solution?

Deirdre Brennan*

At its goal, a feminist analysis of statelessness solutions would mean 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. This paper explores the potentiality of a feminist critique of statelessness for the dual objective of creating meaningful solutions to statelessness and as a means to push statelessness out of its confines as a subject in law, to an interdisciplinary field in its own right: Statelessness Studies. A feminist analysis during these formative years of statelessness research, is called for to avoid the pitfalls of other scholarship, which after neglecting gender/power differences for centuries must now "add women and stir". Drawing inspiration from the seminal work of feminist critiques of international law, this paper traces the "compartmentalization of gender" in statelessness work since 1954, identifies the persistent gap in feminist-statelessness research today, and provides research questions and ideas that could begin filling in those gaps. Through the limited canon of feminist-statelessness scholarship to-date, this paper shows how a feminist analysis can provide a valuable tool to the statelessness sector for challenging the structures that permit hierarchies, privilege and domination. Such structures, this paper argues, have been the recipe for the creation, maintenance and growth of stateless populations.

Keywords: Statelessness; Stateless Persons; Minorities; Feminist Theory; Feminism; Critical Theory; Postcolonialism; Gender Studies

Being stateless in Nepal is like wearing a badge that says 'my mother is a characterless woman'.¹

1 Introduction

In current statelessness scholarship, it has become common to acknowledge the interdisciplinarity of statelessness research, following its emergence in the legal research field. In the previous *Tilburg Law Review* edition on statelessness, Manly and Van Waas supported the necessity of the expansion of statelessness research into other fields. They regarded interdisciplinarity to be a means to:

better understand why this form of exclusion is allowed to happen—and why it can so stubbornly persist—and what its true impact is on the lives of individual, the fabric of communities and the integrity of the modern nation-state system.²

While Manly and Van Waas celebrated the interdisciplinarity of statelessness scholarship, they did not rejoice at its arrival in an established field of interdisciplinary studies. They contended that complex challenges with respect to methodologies 'must be addressed *if* statelessness is to *become* fully established as an interdisciplinary field' [author's emphasis]. Today, five years later, it could be argued that statelessness research is still *becoming* established, and that the desire for growth 'into a fully established field' remains only that, an aspiration. Tucker insists that statelessness, at least in conceptual terms, 'has yet to break free from its legal origins'.³ I agree that a legal approach is necessary, as Manly and Van Waas point out, to 'pinpoint

³ J Tucker, 'Why here? Factors influencing Palestinian refugees from Syria in choosing Germany or Sweden as asylum destinations' (2018) 6(1) *Comparative Migration Studies* 4.

gaps in nationality laws that may be creating or perpetuating statelessness', and I join in their celebration that statelessness research has had multiple interventions from a variety of disciplines.⁴ However, this article considers that part of the mystery of statelessness' failure to break free from the frame of law (or law failing to loosen its grip on statelessness), in the years since the Manly and Van Waas publication, may be due to the lack of statelessness critique, by a discipline that lies outside law. The proposal of this paper, to the statelessness research sector, is to use a different point of departure in approaching such research and another tool in the statelessness toolbox: a feminist critique. At its heart, the goal of a feminist critique is not to simply ask the "question of women" but, instead, to problematize the status quo, to deconstruct hegemonies, and to understand patriarchal power structures that privilege some and exclude others—both men and women.

The paper begins by drawing inspiration from the first feminist critiques of international law and proposes the areas of statelessness research where feminist scholarship can play a role. Although feminist analysis may seem only of concern to feminist researchers, it in fact offers a host of entry points to the issue for both practitioners and academics in the statelessness sector. The next section examines the value of feminist critiques of statelessness thus far. This is presented through the feminist-statelessness research by Tang Lay Lee and Allison J. Petrozziello conducted over the last fourteen years—work that goes beyond gender discriminatory nationality laws. This paper then identifies work within the statelessness sector that has come into contact with the feminist theory of intersectionality. The application of this feminist theory to statelessness work highlights recognition by the sector of a commitment to propelling solutions that avoid homogeneity. The article concludes by recommending a shift in the vernacular, from statelessness as a subject entrenched in legal studies, to statelessness as a field open to permeation: Statelessness Studies.

The opening quote of this article, although part of a research project on the direct gender discriminatory nationality law in Nepal, alludes to more than the need for equal rights between men and women. Without knowing the context of this quote, numerous questions outside discriminatory laws arise: what is society's perception of women? What are the perceptions of stateless people? In what way does the government translate those perceptions into policies? How are women's everyday lives impacted by the perpetuation of denigration? How do stateless people navigate discrimination within society and amongst peers? Analyzing this quote through a feminist lens is an entrée into understanding that gender and patriarchy are an omnipresent component of the structures of society: who holds power within those structures and; ultimately, how to overcome preventative structural forces to inclusion and equality. Beginning an exploration into how and why this needs to be done for the statelessness agenda, is the task of this paper.

2 International Law and the Compartmentalization of Gender

At some point in the history of most areas of policy and research, there was a feminist spanner in the works. Disciplines and methodologies that appeared to be all-encompassing in nature and therein fully considerate of human kind, were revealed to actually reflect a male perspective.⁵ This article proposes that it is time for the statelessness sector to pause and reflect on its approach to statelessness, to take stock of where it has come from, and re-evaluate where it is going. The means to do so, I argue, is through a feminist analysis. In 1991, Charlesworth et. al. threw a feminist spanner into the works of international law, a centuries-old institution which they asserted had 'thus far largely resisted feminist analysis'.⁶ Their analysis was seminal and while the connection between international law and statelessness is obvious, feminist thought has not yet fully extended its analysis from international law to the statelessness sector. Like Charlesworth et. al., I 'question the immunity' of statelessness to feminist analysis, and query why 'gender has not been an issue in this discipline'.⁷

Understandably, some may object to the argument that statelessness has yet to include feminist analysis. Of course, one way gender is being addressed is through the extremely vital campaigns for the eradication

⁴ As evidenced (and noted by Manly and Van Waas, 6) by the variety of contributions in the last special edition *Tilburg Law Review*, and also at the first workshop on PhDs in statelessness at Tilburg University in November 2018. There, amongst others, geography and drama students presented their research on statelessness.

⁵ Multiple examples are outlined by Hesse-Biber and Leavy (2007) 'Beginning in the late 1960s and 1970s, however, and as a result of feminist consciousness-raising efforts both inside and outside of academia, women began to draw attention to the omission and exclusion of their voices and experiences in multiple arenas – politics; public policy; the professions of law, medicine and business; and the disciplines of science, social science, and the humanities, to name a few'. Charlesworth et al. (1991) point out similar reflections in legal systems, 'Few areas of domestic law have avoided the scrutiny of feminist writers, who have exposed the gender bias of apparently neutral systems of rules'.

⁶ H Charlesworth, C Chinkin and S Wright, 'Feminist Approaches to International Law' (1991) 85(4) *The American Journal of International Law* 614.

⁷ *Ibid.*

of gender discrimination in nationality laws, many of which are led by feminist activists at national and international levels.⁸ And, advocacy for the eradication of those laws is unremittingly fostered by actors in the statelessness sector.⁹ Still, in this way gender and patriarchy are under-appreciated as omnipresent forces in society, and instead statelessness scholarship appears to approach gender in a way that compartmentalizes it.¹⁰ It means gender is addressed as one component of statelessness, like other discriminations or issues, such as ethnicity, religion or childhood statelessness, in need of legislative solutions. Essentially, this approach could be described as “add women and stir”, a method infamous in its shortcomings for equality.¹¹ Instead, this article argues for the use of a feminist analysis of statelessness as it is a tool that—as will be demonstrated through the examples of feminist-stateless research ideas listed below—does not simply raise the question of women. Rather, feminist analysis incorporates critical work from postcolonial theory, intersectionality, poststructuralism, black/race studies, and others to infiltrate an issue at its foundations. The infiltration of feminist analysis serves to make sense of how structural inequalities disenfranchise both men and women, which would include those affected by statelessness. Feminist analysis is therefore a tool used to challenge structures that permit hierarchies, privilege and domination—a recipe for the creation, maintenance and growth of stateless populations.

The goal behind the feminist perspective of international law for Charlesworth et. al. was the ‘rethinking and revision of those structures and principles which exclude most women’s voices.’ In using their goal as a template, a feminist perspective to statelessness solutions would mean the rethinking and revision of patriarchal structures and principles which created and perpetuate statelessness and add further subjugation to women and minorities affected by statelessness. To reach this goal, the following research questions demonstrate some of the ways in which feminist theory and practice can fertilize a more reflective and critical understanding of statelessness, with an aim of ultimately improving solutions toward ending statelessness:

- a) The influential feminist analyses of theories on agency, by Chandra Talpade Mohanty,¹² and Judith Butler,¹³ can help researchers untangle the agent-victim dichotomy emerging in statelessness discourse about definitions and self-identification. For example, in what circumstances do people want to be identified or defined as stateless? What space is there in the sector’s discourse for stateless people to be seen as having agency? What are the implications for the proliferation of the victimization of stateless people i.e. the portrayal of stateless people as “ghosts”, “invisible” and “nowhere people”?
- b) Feminist theorist Kimberlé Crenshaw’s work on the theory of intersectionality can aid in (and as I will show later, in some cases already is aiding) our understanding of the interactions between multiple identities and experiences of subordination.¹⁴ A good case in point is to ask in what way stateless women from an ethnic minority experience statelessness? How can a research study be tailored to collect multiple experiences of statelessness? To what extent, or to what degree of detriment, have stateless people been assumed to be a coherent group with identical problems and needs?
- c) Queer theory is a foundational feminist tool for problematizing the “natural order” of things such as biological sex and heteronormativity. It offers users the opportunity to read against the grain of accepted patterns of thinking. Sara Ahmed’s work in ‘Queer Phenomenology’ would allow us to work through assumptions on stateless persons’ perspectives of statehood and citizenship.¹⁵ For instance, how do stateless people envisage their relationship or orientation with regard to the

⁸ See, Global Campaign for Equal Nationality Rights (GCENR), ‘The Problem’ <<http://equalnationalityrights.org>>.

⁹ See, Women’s Refugee Commission 2013; Equal Rights Trust 2015; Institute on Statelessness and Inclusion 2018.

¹⁰ The UN Women definition of gender, importantly that it is socio-cultural, relational and socially constructed, is used here for the purposes of this paper’s argument, ‘Gender refers to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys... These attributes, opportunities and relationships are socially constructed... Gender is part of the broader socio-cultural context. Other important criteria for socio-cultural analysis include race, class, poverty level, ethnic group and age.’ UN Women ‘*Concepts and definitions*’ <http://www.un.org/womenwatch/osagi/concept-anddefinitions.htm> accessed 10 January 2019.

¹¹ See, S N Hesse-Biber and P L Leavy, *Feminist research practice* (SAGE Publications 2007). Also, K Ellerby, *No Shortcut to Change: An Unlikely Path to a More Gender Equitable World* (NYU Press 2017).

¹² C Mohanty, ‘Under Western Eyes: Feminist Scholarship and Colonial Discourses’ (1988) 30 *Feminist Review* 61.

¹³ J Butler, *Gender trouble: Feminism and the subversion of identity* (Routledge 1990).

¹⁴ K Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) *University of Chicago Legal Forum* 139.

¹⁵ S Ahmed, *Queer phenomenology: Orientations, objects, others* (Duke University Press 2006).

- state? In what way and when does this relationship shift, or become queered upon acquisition (or loss) of citizenship? To what extent does the acquisition of citizenship normalize one's sense of belonging?
- d) Sara Ahmed and Judith Butler's works are also ground-breaking in Lesbian Gay Bisexual Transgender Queer (LGBTQ) research, which could add great value to the sector should the lived experiences of LGBTQ stateless persons ever be documented.
 - e) In working through the domestic law/international law binary of responsibility to end statelessness, feminist critiques of the public/private dichotomy (also known as "the personal is political" nexus) by scholars such as Anannya Bhattacharjee¹⁶ and Aoife O'Donoghue¹⁷ are essential. As will be highlighted later in this paper, Tang Lay Lee offered the first application of this debate in a statelessness setting. Consider the gendered nature of domestic law and how international human rights frameworks lack the enforcement to override such discriminatory laws because of their "private" nature. Can feminist theories on the public/private dichotomy be read into legal challenges of "state sovereignty", a defense mechanism often used against resolving *in situ* stateless populations?
 - f) Feminist research practices, such as standpoint epistemology, advocated by Patricia Hill Collins,¹⁸ and Sharlene Nagy Hesse-Biber and Patricia Leavy's "how-to" guide on such practices,¹⁹ can add value to the recording and portrayal of the lived experiences of stateless persons. A standpoint epistemology can be used to see and understand the world through the eyes and experiences of stateless people. This will ultimately aid other statelessness actors across disciplines and professions, in applying the knowledge of stateless people to how we raise awareness around the issue.
 - g) The policing of women's bodies (specifically their reproductive capacity) through state policy is well-documented by feminist writers in critical human trafficking research,²⁰ in the fight for reproductive justice,²¹ and in the context of marriage migration.²² Allison J. Petrozziello (as will be outlined later) applied this line of enquiry to statelessness in the context of the Dominican Republic. Extending Petrozziello's work to other contexts, to uncover the connectedness between statelessness, state oppression and women's bodies, would be a valuable investigation.
 - h) In unwrapping the implications of postcolonialism in creating and maintaining stateless populations, a host of works by the influential postcolonial and feminist critic Gayatri Chakravorty Spivak,²³ also Butler and Spivak,²⁴ are critical points of departure. As an illustration, one may ask what scope there is to hold former colonizers accountable for their role in present day stateless populations? Furthermore, postcolonial feminist concepts of "othering", the systematic degradation of a group seen as inferior, and the consequences of "divide and rule" colonial policies, should be read as closely linked to the discrimination that leads to statelessness in several contexts today.

There is not a hierarchy amongst the research questions outlined here. Rather, they aim to promote and serve as a springboard for feminist-statelessness research. These varying research ideas also show that statelessness is not immune to feminist analysis but that such an analysis can provide both an application of theory and of research practices to the field. Feminist research practices decentralize power, raise consciousness, and use experiences as a resource. Feminist theory can disrupt accepted patterns of thinking to broaden

¹⁶ A Bhattacharjee, A. 'The public/private mirage' in J Alexander & C Mohanty (eds), *Feminist genealogies, colonial legacies and democratic futures*, (Routledge 1997) 308.

¹⁷ A O'Donoghue, 'The Admixture of Feminine Weakness and Susceptibility: Gendered Personifications of the State in International Law' (2018) 19 Melbourne Journal of International Law 227.

¹⁸ P H Collins, 'Black feminist thought in the matrix of domination' in Charles, L. (ed), *Social theory: The multicultural and classic readings* (Westview Press 1993) 626.

¹⁹ S N Hesse-Biber, & P L Leavy, *Feminist research practice* (SAGE Publications 2007).

²⁰ J O'Connell Davidson, 'Let's go outside: bodies, prostitutes, slaves and worker citizens' (2014) 18(5) *Citizenship Studies* 516.

²¹ A Quilty, C Conlon, & S Kennedy, *The Abortion Papers Ireland: Volume 2*. Cork: Cork University Press.

²² S Kneebone, 'Transnational marriage migration and nationality: the cases of South Korea and Taiwan' (Immigration, Migration, Transnational Networks and Activities in the Asia Pacific Region conference, Seoul National University, 24 November 2017).

²³ See, G C Spivak, 'Can the subaltern speak?' in C Nelson, and L Grossberg (eds) *Marxism and the Interpretation of Culture* (University of Illinois Press 1988) 271. Also, G C Spivak, *A critique of postcolonial reason* (Harvard university press 1999).

²⁴ J Butler, and G Spivak, 'Who sings the nation-state' (2007) *Language, politics, belonging* 58.

our understanding of the issue, foster creative solutions to ending it, and is therefore arguably vital in these formative years of statelessness research.

3 Women's Work and Men's Citizenship

In investigating literature for this article, two pieces of research that explore the dimensions of gender and feminism as they relate to statelessness—specifically beyond research focused on gender discriminatory nationality laws—were found. The first is the 2005 book, 'Statelessness, Human Rights and Gender: Irregular Migrant Workers from Burma in Thailand' by Tang Lay Lee. In exploring Lay Lee's reflections on the history of gendered citizenship, this section teases out when the statelessness sector's compartmentalization of gender began. This section also explains how the deconstruction, or dismantling, of patriarchy can serve the work of statelessness actors.

In 2005, Lay Lee noted an 'absence of feminist critiques on statelessness'.²⁵ She believed it could be due to the fact that current forms of statelessness are mainly in Asia and Africa, which Lay Lee explained by linking this to her claim that 'feminist critiques are primarily Western and European, even those by feminists of colour'.²⁶ The main argument of this paper supports Lay Lee's observation of a gap in feminist critiques of statelessness. However, the reason she posits for this gap is more controversial. There is a catalogue of Black and Third World Feminist theories to refute the claim that even feminists of color are primarily situated in the West.²⁷ More specifically, five years before Lay Lee's publication, a pivotal critique of the gendered and male-centric nature of citizenship (from a largely political science perspective of citizenship as membership) was made by Arab feminists.²⁸ Lay Lee's observation of the gap in feminist statelessness scholarship as such, may have had more to do with the period in which she published. The years in and around 2005 can now be reflected upon as the very beginning of statelessness scholarship. This makes Lay Lee's "early" feminist work an interesting point of enquiry. Although statelessness research has since evolved, the stubbornness of this feminist gap has still not been filled in over fourteen years.

Lay Lee's chapter indeed provides what is probably the first feminist analysis of statelessness and application of feminist theory to statelessness. Lay Lee vividly illustrates the "crystallization" of the fraternal and patriarchal citizenship imperative, in which the principle of *jus sanguinis* was a male-gendered construction. Citizenship was acquired on the basis of having a father or husband who was a citizen. This remains the case today, to some degree at least, in roughly fifty countries.²⁹ This system privileged the "man" and identified him as being part of the fraternal social pact, which Lay Lee explains was necessary in order not to disrupt the social order men had established.³⁰ Lay Lee relies on feminist scholar and political theorist, Carole Pateman's work for this analysis of citizenship. She explains that the international law/domestic law dichotomy mirrors the public/private argument of feminist literature (i.e. the separation of the private and domesticated world of women from the public and political world of men). Pateman's public/private analysis shed light on how states and international bodies historically shirked responsibility for eradicating gender discriminatory nationality laws:

statelessness of a private character, resulting from male gendered nationality laws does not give rise to state responsibility, because the non-acquisition, loss or deprivation of nationality laws is deemed *intra vires* state powers. The legislative organ of the state has not committed an internationally wrongful act for which the state is responsible.³¹

Lay Lee's interpretation of Pateman's work within a statelessness setting posits a convincing argument, at least from a political theory perspective, that patriarchy is at the heart of the creation and maintenance of citizenship laws.³² When a fraternal and patriarchal agenda decides who is excluded and included from membership of the state, it enables the preservation of male domination through the state. Considering

²⁵ T Lay Lee, *Statelessness, Human Rights and Gender* (Brill Nijhoff 2005) 115.

²⁶ Ibid.

²⁷ See, M J Alexander and C T Mohanty, *Feminist Genealogies, Colonial Legacies, Democratic Futures* (Routledge 1997).

²⁸ S Joseph, (ed) *Gender and citizenship in the Middle East* (Syracuse University Press 2000).

²⁹ See, Global Campaign for Equal Nationality Rights (GCENR), 'The Problem' <<http://equalnationalityrights.org>>.

³⁰ T Lay Lee, *Statelessness, Human Rights and Gender* (Brill Nijhoff 2005) 121.

³¹ T Lay Lee, *Statelessness, Human Rights and Gender* (Brill Nijhoff 2005) 132.

³² For the examination of the history of statelessness in America see, L K Kerber, 'Toward a History of Statelessness in America' (2005) 57(3) *American Quarterly* 727. Also, C L Bredbenner, *A nationality of her own: Women, marriage, and the law of citizenship* (University of California Press 1998).

this, it is worth questioning who is being served by the exclusion of certain populations? What is to be gained and what is to be lost in granting or withholding citizenship, and by whom? The concept of patriarchal power is central to feminist theory and so too is it pivotal to these questions around exclusion.

Bringing us back in time, Lay Lee points out that 'deprivation on the ground of sex or gender is not prohibited under the *1961 Statelessness Convention*'.³³ In fact, there is no mention of gender or sex with regards to statelessness in either the 1954 or 1961 Conventions on Statelessness. However, there is one exception under Article 24 of the 1954 Convention, where it is stated that stateless persons should receive the same treatment as nationals in respect of "women's work". Additionally, Articles 1 and 5 of the 1961 Convention also contain references to the categories of children "in wedlock" and "out of wedlock" as being owed an opportunity to acquire nationality. This is an interesting distinction to make between children and requires further unpacking. It does not state that children born in or out of wedlock are owed an "equal" opportunity. As such, the Convention appears to endorse a justification of the different treatment of children based on the child's "legitimacy". The idea that women, specifically women of ethnic minorities, experience oppression differently to men does not appear to have been a consideration for the Convention's drafting committees. We do know, however, that the gender question was given fleeting and dismissive consideration by the drafters of the 1951 Refugee Convention. Edwards' examination revealed that the *travaux préparatoires* indicated that the drafters had 'doubts that there would be any cases of persecution on account of sex'.³⁴ They asserted that equality was a matter for national legislation. This idea that women and equality are domesticated issues points again to Pateman's feminist interpretations of the public/private dichotomy. Edwards continues:

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.³⁵

Knowing that the 1954 Statelessness Convention was originally an annex to an early draft of the 1951 Refugee Convention, that means that like Alice Edwards' enlightening work, an examination of the 1954 and 1961 Statelessness Convention's *travaux préparatoires* and the delegates in attendance would be a welcome addition to feminist-statelessness research. Such an examination also speaks to this paper's earlier call to pause and reflect on our origins as a sector. Excluding gender in 1954, a pivotal point in the history of statelessness, and addressing gender discrimination in a separate Convention (The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) is where, I would argue, the compartmentalization of gender was crystallized. On the other hand, it can be argued that CEDAW, and other human rights mechanisms such as the Convention on the Rights of the Child (CRC), continue to resolve the shortcomings of the statelessness Conventions.³⁶ CEDAW and CRC are indeed more widely ratified and are stronger in their banning of sex-based discrimination, which, at least on the surface, makes the public/private distinction of international law "historic". However, to uncritically celebrate the existence of these treaties is to celebrate a continued compartmentalization gender issues that instead ought to be treated as structural and all-pervasive. It may also be argued that the statelessness Conventions' omissions of considerations regarding gender differences is more a reflection of that period, and not necessarily specific to the sector. It is true, that history has had to resolve the initial exclusion of experiences of women and other structurally disenfranchised groups from a whole host of sectors and fields. The point here, however, is to be cognizant of this 1954 oversight so that our future work continues to read in feminist understandings of patriarchy, gender and power.

While the analysis by Lay Lee and Pateman satisfy my viewpoints as a feminist, their reliance on political theory and its conflation of the term citizenship with membership/participation is unhelpful in statelessness research. Ultimately, Lay Lee's inclusion of "de facto/effectively stateless" female migrant workers in

³³ T Lay Lee, *Statelessness, Human Rights and Gender* (Brill Nijhoff 2005) 132.

³⁴ A Edwards, 'Transitioning Gender: Feminist Engagement with International Refugee Law and Policy 1950–2010' (2010) 29(2) *Refugee Survey Quarterly* 21.

³⁵ *Ibid.*

³⁶ At present, Dr Cassandra Mudgway, Auckland University of Technology Law School, is investigating the strength of Article 5 CEDAW in obligating states to dismantle patriarchal structures and attitudes, from the government to the private sphere. See, University of Melbourne 'Patriarchy in International Human Rights Law' (2019) <<https://law.unimelb.edu.au/centres/iilah/news-and-events/events-2019/dr-cassandra-mudgway-seminar>>.

her analysis of “de jure/legally stateless” is where the agendas of our works disjoin.³⁷ However, this paper claims for statelessness to be decentralized from the legal field, whilst simultaneously—ironically—insisting on clinging on to the 1954 Convention’s legal definition of statelessness. In Charlesworth, Heathcote and Jones, this insistence would be a move described as attempting radical changes ‘via using the system itself’ because actions ‘sit within a spectrum between resistance and compliance’.³⁸ The extent to which feminist analysis should move between resistance and compliance to legal frameworks is a valuable consideration for feminist-statelessness work but is unfortunately beyond the scope of this paper. It is, however, indisputable that the legal definition remains much needed for the practical application of fighting statelessness. Nevertheless, the valuable lesson to take from Lay Lee’s work is the need to reimagine our approach to statelessness by holding the deconstruction of patriarchy at its core. Lay Lee’s unveiling of the omission of gender/women from the 1954 Convention is a testament to what “new” aspects of statelessness can be learned when applying a feminist lens to our work. Applying a feminist lens or including feminist theory in statelessness research is to join in the feminist movement for the dismantling of patriarchy. It therefore provokes the question, what will further revisions of patriarchal powers teach us about the creation of, and consequently, the solutions to, statelessness?

4 Deconstructing History, Deconstructing Patriarchy

Fast-forward fourteen years from Lay Lee’s publication, and the second pivotal piece in the limited canon of feminist-statelessness literature, is a 2019 article by Allison J. Petrozziello, ‘(Re)producing Statelessness via Indirect Gender Discrimination: Descendants of Haitian Migrants in the Dominican Republic’.³⁹ Here, Petrozziello’s examination of women as a “border site”, in the production of stateless populations, highlights the meaningfulness of historical reflections on gender and structural dynamics. It further shows how lessons from the past can guide our work in statelessness for the future.

Looking beyond what Petrozziello calls “direct gender discrimination”, the author demonstrates how access to citizenship in the Dominican Republic has been restricted as a form of migration control, implemented via women’s bodies. This is what Anthias and Yuval-Davis describe as practice which uses women as reproducers of the boundaries of national groups. Petrozziello writes: ‘[t]he Dominican state has a policy of using gender discrimination, specifically linked to women’s reproductive capacity, as a means of limiting access to Dominican nationality for all subsequent generations.’⁴⁰

Petrozziello’s findings also draw parallels to Grossman-Thompson and Dennis’ research in Nepal. Grossman-Thompson and Dennis noted the maintenance of systematic gender discrimination in Nepal, as a preventative mechanism against the state’s fear of Indian encroachment. The link Petrozziello found in the Dominican Republic, between state policy and women’s reproductive capacity, is evidenced succinctly in the Nepali context by a 2015 comment by the leader of the United Marxist Leninist Party:

[w]e are always in favour of gender equality. Issuing citizenship in the name of father and mother, if both are Nepalis, is not a problem for us. But we have to be cautious while issuing citizenship for children born in districts *bordering* India in Terai, as well as Tibet in the mountain, *through mothers*.⁴¹ [Author’s emphasis]

The leader’s use of the phrase “through mothers” typifies the state’s view of women as one which reduces women to their reproductive “value”—a valuable vessel that must be controlled. Interestingly, in both the Nepali context and the Dominican Republic, parallels can be drawn to the fact that while it is women’s bodies that are being manipulated into border sites, it is an unsavory, specifically male, “other” whom the state is attempting to keep out (Indians and Haitians). As suggested earlier, postcolonial feminist authors have a canon of theoretical reflections on “othering” which could be relied upon to investigate exactly who the “stateless other” is in many of the contexts of statelessness.

³⁷ ‘Statelessness is used here to include both *de jure* and *de facto* statelessness’. T Lay Lee, *Statelessness, Human Rights and Gender* (Brill Nijhoff 2005) 150.

³⁸ H Charlesworth, G Heathcote, and E Jones, ‘Feminist Scholarship on International Law in the 1990s and today: An Inter-Generational Conversation’ (2018) *Feminist Legal Studies* 1.

³⁹ First published 31 October 2018 through Wiley Online Library.

⁴⁰ A J Petrozziello, ‘(Re)producing Statelessness via Indirect Gender Discrimination: Descendants of Haitian Migrants in the Dominican Republic’ (2019) 47(1) *International Migration* 213.

⁴¹ B Grossman-Thompson, and D Dennis, ‘Citizenship in the Name of the Mother: Nationalism, Social Exclusion, and Gender in Contemporary Nepal’ (2017) 25(4) *Positions* 810.

In Petrozziello's conclusions on her research, she highlights the work of feminist migration/geography scholar, Rachel Silvey, who concluded that women's reproductive capacities are used as a border site to be controlled by states. Petrozziello's linkage to Silvey's work shows the usefulness of feminist theory in working through issues by moving across disciplines, in this case, across law, geography and migration. Furthermore, these conclusions show how the friction between state control and reproductive justice is another interesting and important point through which, feminist research can penetrate statelessness. The fight for reproductive justice is almost never an event. Rather, it is a continuous process in feminist research and advocacy,⁴² a process which should therefore also be incorporated into the evolution of stateless research.

Petrozziello reaches her conclusions on indirect forms of gender discrimination by researching migrant women's history in the Dominican Republic, from the time of the rise of the sugar cane industry. She carefully carves out the multiple ways in which women were overlooked as subjects, both politically and socially. Petrozziello shows how the Dominican Republic failed to issue Haitian migrant women with work permits: '[i]n the labour migration contracts [women] are neither counted nor registered by the state as workers'.⁴³

To borrow the phrase from the 1954 Convention, "women's work" was not recognized as work and therefore women arriving in the Dominican Republic from Haiti in the early twentieth century were not issued with documentation. Given this, Petrozziello's research situates gender discrimination at its intersections with historical civil registry implementation practices, and not simply discrimination that is inscribed in law:⁴⁴ '[t]he links between gender and statelessness are indeed legal—but also historical, structural, political and procedural'.⁴⁵

Petrozziello's mapping out of the socio-economic position of women of Haitian ancestry in the Dominican Republic revealed that the creation of statelessness was not a technical hiccup, but a "strategy of slippery statecraft".⁴⁶ By exploring historical gender dynamics across state policy, practice, and in the case of the Dominican Republic, local industry, Petrozziello vigilantly exposes how the exclusion and mistreatment of migrant women created and propagates statelessness. This is the type of research that was referenced to earlier in this paper as the pause and reflect stage of feminist-statelessness research. With this nuanced understanding of statelessness in the Dominican Republic, Petrozziello is then able to suggest new approaches to statelessness solutions that include adopting 'a broader interpretation of the relationship between gender and statelessness'.⁴⁷ Petrozziello's work is an excellent embodiment of rethinking and decompartmentalizing gender and power dynamics in statelessness research.

5 Intersectionality

Between Lay Lee's research in 2005 and Petrozziello's in 2019, the lack of publications citing the nexus between feminist theory and statelessness is striking. However, within this period there is a noticeable increase in the awareness and application of an intersectional approach to statelessness. Kimberlé Crenshaw was the first person to use the word "intersectionality" in a feminist context. Intersectionality was Crenshaw's pivotal critique of 'the tendency to treat race and gender as mutually exclusive categories of experience and analysis'.⁴⁸ As shown in the section that follows, statelessness research has adopted Crenshaw's critique to understand multiple modes of oppression operating in conjunction with citizenship status (e.g. (dis)ability, age, sexuality, class, caste, ethnicity, gender etc.).

⁴² This is evidenced under the Trump administration in the United States in the roll back on the Obama-era birth control mandate, the promises to defund Planned Parenthood and the attempts to limit access to abortions. Glenza, J. "Abortion rights in 'dire, immediate danger' as Anthony Kennedy retires" 2018 *The Guardian* <<https://www.theguardian.com/world/2018/jun/27/abortion-rights-immediate-danger-anthony-kennedy-retires>>.

⁴³ A J Petrozziello, '(Re)producing Statelessness via Indirect Gender Discrimination: Descendants of Haitian Migrants in the Dominican Republic' (2019) 47(1) *International Migration* 218.

⁴⁴ As highlighted by Petrozziello (2019 215) see also, B L Fisher, 'Gender Discrimination and Statelessness in the Gulf Cooperation Council States' (2016) 23(2) *Michigan Journal of Gender and Law* 269.

⁴⁵ A J Petrozziello, '(Re)producing Statelessness via Indirect Gender Discrimination: Descendants of Haitian Migrants in the Dominican Republic' (2019) 47(1) *International Migration* 223.

⁴⁶ *Ibid* 224.

⁴⁷ *Ibid* 223.

⁴⁸ K Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) *University of Chicago Legal Forum* 139.

During the drafting stages of this paper, a side event to the 11th session of the Forum on Minority Issues, on the 'Intersectional and aggravating factors affecting the rights of stateless minorities', was being held.⁴⁹ Additionally, a roundtable was being organized for the 2019 World Conference on Statelessness and Inclusion, and was entitled, 'Statelessness, gender and intersectionality: towards a more nuanced understanding of who is stateless, why and what this means for our work'.⁵⁰ Petrozziello's work too is a clear example of incorporating an intersectional analysis to understand where discrimination intersects with gender, race and ethnicity. Prior to this, intersectionality was the special focus of Equal Right's Trust biannual review in 2016. The review features a testimony by Wai Wai Nu, a 29-year-old Rohingya woman, which speaks directly to the meaning of intersectionality:

I think that Rohingya women face different layers of discrimination and marginalization. All women in Burma face various forms of discrimination... if you are from a highly marginalized ethnic group then you will encounter far more discrimination... Personally, as a Rohingya woman, I feel that I have been subject to greater discrimination than if I were a Rohingya man or if I were a non-Rohingya woman. It is hard to describe this discrimination because it's not visible or easily measured.⁵¹

Also, in 2016, Sheila Menz published research on statelessness and child marriage as an "intersectional phenomena". Menz argues that the international community's approach to child marriage risks overlooking the problem of statelessness, which is "a critical element" as she puts it.⁵² In 2015, although the theory was not named, intersectional differences appeared in findings of the research project by Rijken et. al on risks to human trafficking for stateless men and women, and men and women with citizenship, in hill tribes in Thailand. The research teased out the nuances of the stateless experience by evidencing that stateless men enjoy some of the same privileges as women with citizenship, while men with citizenship are at the top of the *privilege pyramid*. But, being both stateless and a woman puts you at the bottom: '[i]n a number of areas, stateless women are more affected by the consequences of statelessness and find themselves in a more vulnerable position than men'.⁵³

As demonstrated through the above findings, the theory of intersectionality broadens one's understanding of differences in lived experiences. In this sense, the theory is helpful in avoiding the mistakes of early western feminist scholarship. Western feminism constructed monolithic images of "Third World Women" as a stable category of analysis and a unified group based on a generalized notion of their subordination.⁵⁴ Creating a monolithic image of stateless people, as has been the case in frequent portrayals of stateless people as "nowhere people", is unquestionably problematic and begs for a more intersectional lens.

The application of the feminist theory of intersectionality is a promising development in the field of statelessness and speaks to the sector's vast understanding that discrimination and oppression are foundational components of statelessness. Use of the theory responds to the concern expressed earlier in this paper, that without a deconstructive feminist analysis, the sector risks regurgitating homogenous approaches to statelessness solutions. Such approaches would otherwise limit the view of people affected by statelessness to a coherent group, completely void of social class or ethnic identities—categorized groups to frivolously "add and stir". As Kathy Davis puts it, in her 2008 reflection on intersectionality as a buzzword, 'intersectionality initiates a process of discovery, alerting us to the fact that the world around us is always more complicated and contradictory than we ever could have anticipated'.⁵⁵ Disrupting and complicating accepted patterns of thinking can in fact provide clearer understandings of lived experiences. This disruption, I argue, will unquestionably foster better approaches by the sector to meeting the needs of stateless people, to raising awareness of their experiences, and, ultimately, to finding ways of ending statelessness.

⁴⁹ Advertised by the Institute on Statelessness and Inclusion, November 2018 <<https://www.facebook.com/instituteonstatelessness-inclusion/>>.

⁵⁰ The proposal for the roundtable by the European Network on Statelessness was shared with the author (N. Murray, personal communication 11 December 2018).

⁵¹ Equal Rights Trust (ERT) 'Special Focus: Intersectionality' (2016) 16 *The Equal Rights Review* 224–226.

⁵² S Menz, 'Statelessness and Child Marriage as Intersectional Phenomena: Instability, Inequality, and the Role of the International Community' (2016) 104(2) *California Law Review*, 497.

⁵³ C Rijken, L van Waas, M Gramatikov, & D Brennan, *The Nexus between Statelessness and Human Trafficking in Thailand* (Wolf Legal Publishers 2015) 106.

⁵⁴ Mohanty, C. 'Under Western Eyes: Feminist Scholarship and Colonial Discourses' (1988) 30 *Feminist Review* 72.

⁵⁵ K Davis, 'Intersectionality as buzzword: A sociology of science perspective on what makes a feminist theory successful' (2008) 9(1) *Feminist theory* 67.

Finally, the timing of the rise in “intersectional thinking” in statelessness is curious. Why did the void in feminist-statelessness research between Lay Lee and Petrozziello arise, punctuated only quite recently by intersectionality? Is it possible to trace this with something that was going on, on a transnational level? Could Petrozziello’s call to adopt a broader interpretation of the relationship between gender and statelessness, and the adoption of intersectional theory by the statelessness sector be related to the recent rise of the far right and the spread of Trumpism? Or, is it simply that as intersectionality became a buzzword in other fields, it organically entered statelessness research and evolved with the exponential growth of the statelessness sector? Identifying these “why now?” links is an investigation worthy of pursuit, and continuous engagement with feminist interpretations of the theory is important to ensure application of intersectionality remains true to its origins.⁵⁶

6 Conclusion

Pausing to reflect on how feminist analyses can be included in statelessness scholarship provides the sector with an opportunity to create solutions that are not homogenous or unintentionally reflective only of a male perspective. To incorporate an understanding of gender and patriarchy as intrinsically intertwined with statelessness, during the formative years of such work, is to avoid the pitfalls of other scholarship that, after centuries, must now “add women and stir”. The statelessness sector’s compartmentalization of gender arguably began with the exclusion of gender differences in the 1954 Convention. Such marginalization has been reflected in statelessness work, for example, through the treatment of gender discriminatory nationality laws as an isolated issue demanding an equal rights-based solution by separate Conventions. Instead, as this paper suggests, gender/power dynamics ought to be treated as an ever-present component of statelessness, embedded in the historically patriarchal structures that create(d) stateless populations—structures which demand critical deconstruction. From a feminist standpoint, treating gender/patriarchal dynamics in isolation and not as a pervasive reality of every aspect of statelessness, could lead to homogenous responses to the issue and may even stagnate progression within the sector.

The point of this paper is certainly not to disparage efforts in the statelessness sector thus far. On the contrary, it is to suggest making a concerted effort to add the feminist critique that has been so strikingly absent for more than the past decade, to this important work. To address this, the beginning of this paper outlined the myriad of points in statelessness work where feminist theory and practice can interject, including in deliberations over definitions to LGBTQ experiences of statelessness, and in deconstructing how colonial “othering” plays a role in excluding groups from citizenship. The works of Lay Lee and Petrozziello demonstrated the two most significant applications of feminist-thought to statelessness thus far. Their focus is on the treatment of women in contexts of statelessness and they conduct their analysis by deconstructing historical narratives and state agendas. After all, the purpose of a feminist analysis is not exclusively to illuminate women’s experiences, despite how crucial and often absent that is. Instead, it seeks to analyze and describe the ways in which the patriarchy impacts individuals and communities (in this case stateless populations). Both authors showed how critically deconstructing historical structures can not only help to understand the past but also shape future approaches in statelessness work. Lay Lee’s analysis of the fraternal roots of citizenship reminds us to hold the dismantling of the patriarchy at the core of statelessness work in championing inclusion. Petrozziello’s dissection of gendered migration policies in the Dominican Republic revealed the insidious ways discrimination is inherent in the creation of statelessness. It highlighted how the state can implement discriminatory policies vis-à-vis women’s bodies as a mechanism to prevent undesirable others, in this case men and women of Haitian descent, from diluting Dominican national identity. Finally, recent work within the statelessness sector that engaged with the feminist theory of intersectionality was highlighted. It showed how the sector, especially in recent years, has considered the differing experiences of stateless people based on their gender, ethnicity or minority status. This work signals the positive impact that interlacing feminist thought with statelessness can have on how the sector responds to affected people’s differing needs.

As suggested earlier in this paper, the additional value of applying a feminist analysis to statelessness is to further loosen statelessness from its grip on the legal discipline. The need to do so is summarized by

⁵⁶ To understand how post-black feminist definitions of intersectionality in the social sciences have erased black women as knowledge producers see, N G Alexander-Floyd, ‘Disappearing Acts: Reclaiming Intersectionality in the Social Sciences in a Post-Black Feminist Era’ (2012) *Feminist Formations* 1.

Lay Lee, who stated: '[t]he human rights framework is not free from gender discrimination because the public/private distinction remains entrenched in the concepts and norms of international law'.⁵⁷

It is true that since the mid-twentieth century, several human rights frameworks, most obviously CEDAW, have sought to remedy the public/private distinction in international law. Despite this, legal structures and policies cannot be separated from their role in constituting and reaffirming patriarchal structures of dominance and power—laws which created and create statelessness. Therefore, it is not possible that the task of critically deconstructing said legal structures should remain within the confines of the legal field alone. Instead, this paper highlighted how feminist scholarship—a discipline outside of law—has the means to provide analytical tools with which the statelessness sector can reflect on the causes and impacts of, and solutions to the issue. However, in drawing guidance again from the work of feminist scholars in international law, it is worth cautioning that despite the considerable contributions by Hilary Charlesworth, Christine Chinkin and others, they recently noted that feminist approaches 'still lack legitimacy and credibility in many mainstream circles, remaining on the disciplinary periphery'.⁵⁸ Inclusion of feminist thought in the statelessness toolbox therefore cannot be a means to a utopian end without breaking statelessness research away from its traditional disciplinary gatekeepers. Currently, statelessness is a *subject* situated within law. The problem this creates, in addition to law's "entrenched" gender discrimination, is an unequal playing field for other non-legal disciplines trying to penetrate the issue. However, if statelessness were to become a recognized *field*, Statelessness Studies, such as Migration Studies, Gender Studies, and Refugee Studies, it would broaden the area of academic interest. The question then is, in addition to this slight linguistic shift, will the issue of statelessness, through the process of critical deconstruction, as Tucker stated, 'break free from its legal origins'? And, to what extent can a feminist intervention address the complex challenges with respect to methodology, cautioned by Manly and Van Waas, to be necessary for statelessness to 'become fully established as an interdisciplinary research field'.⁵⁹

Finally, the concluding remarks by Seyla Benhabib in her latest publication provides guidance for the task ahead: '[a]nalyzing the gender politics of the right to have rights and addressing gender complexities of humanitarian reason is a task ahead'.⁶⁰

Benhabib's reflections add weight to the argument for a pause and (feminist) reflection on the creation of statelessness, and ultimately our solutions to end it.

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Competing Interests

The author has no competing interests to declare.

⁵⁷ T Lay Lee, *Statelessness, Human Rights and Gender* (Brill Nijhoff 2005) 115.

⁵⁸ H Charlesworth, G Heathcote and E Jones, 'Feminist Scholarship on International Law in the 1990s and today: An Inter-Generational Conversation' (2018) *Feminist Legal Studies* 1.

⁵⁹ M Manly and L Van Waas, 'The State of Statelessness Research: A Human Rights Imperative' (2014) 19 *Tilburg Law Review* 6.

⁶⁰ S Benhabib, *Exile, Statelessness, and Migration: Playing Chess with History from Hannah Arendt to Isaiah Berlin* (Princeton University Press 2018) 124.

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