Introduction

IN A 1930 LETTER, the German artist Kurt Schwitters described the impetus for his *Merzbilder*, a style of painted collage that he had invented at the end of the First World War. "Everything was wrecked anyway," he explained, "and new things had to be made from the fragments."[1] Schwitters's collages from the 1920s decontextualize the detritus of modern life, turning everyday trash—old tickets, buttons, train schedules, bus routes, bits of newspaper—into grid-like compositions of abstract shape, color, and line. Re-formed into something else altogether, the reconfigured fragments convey, in certain moments, rigid lines separating distinct territories, while at other moments they show how the territories overlap and blur together.

Like many of the individuals discussed in this book, Schwitters became a stateless person as a result of the political upheavals of the twentieth century. In Schwitters's case this meant that he lost the security of his German citizenship when he fled Nazi Germany in 1937, eventually finding refuge in West London, though not before facing internment as an enemy national on the Isle of Man. Schwitters's *Merz* paintings from the 1920s are an apt place to begin this study of statelessness—not primarily for reasons of biography but rather because his works from this period powerfully evoke the way in which the First World War unsettled the basic concepts that defined political reality. The map of the world, it seemed, would need to be remade entirely. The *Merz* collages date from the decade reconstructed in the first half of this study, an era of imperial breakdown and state creation following World War I, when mass numbers of people defined by their exclusion from any political community entered international politics and became the object of intensive debate about the foundations of political order.

Intuitively, the concept of statelessness relates to a broad set of issues surrounding the political organization of humanity. The term brings to mind contentious conflicts over when and how communities that seek to govern

themselves gain recognition as independent and autonomous agents. It equally suggests the plight of the more than seventy million people who are currently forcibly displaced around the world. When applied to the growing numbers of those whose countries are sinking beneath the waves of the Pacific Ocean, "statelessness" exposes the limits of how statehood and political membership have been defined in international law, as climate change has begun to reshape the territorial basis of sovereignty. In short, statelessness is a concept that encompasses some of the most destabilizing developments of modern politics.[2]

Despite the explosive, and various, political implications of the concept in its broadest sense, it is the international agreements created in the aftermath of the Second World War that define what it means to be a stateless person and set the basic rules for living outside the boundaries of states and seeking entry into them. These agreements demarcate limited exceptions to the general presumption that states possess a fundamental right to determine who counts as a member and to exercise control over who crosses their borders.[3] Governments in turn legislate the basis for nationality in two main ways: according to descent, and according to birth within a particular territory or jurisdiction. They also stipulate a variety of conditions for naturalization. In the narrower meaning defined by the Convention Relating to the Status of Stateless Persons adopted by the United Nations General Assembly in 1954, a "stateless person" is anyone "who is not considered as a national by any State under the operation of its law," which today means that a person does not possess the primary legal affiliation that defines formal membership in any one of the world's 195 recognized states. A refugee, by contrast, according to the 1951 Refugee Convention, is someone who retains their formal legal connection to a state but is "unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion."[4]

Until recently, legal statelessness has been treated as a comparatively marginal issue, gaining prominence only in the past few years among legal scholars and political theorists and within humanitarian agencies.[5] In her 1991 work on American citizenship, the political philosopher Judith Shklar felt compelled to remind readers that legal membership within a state was "not trivial" and that "to be a stateless individual is one of the most dreadful

political fates that can befall anyone in the modern world."[6] Yet what now seems like a small part of the broader crisis of mass homelessness and global migration has a history that clarifies how expectations about the legitimate boundaries of political life were forged in the first place. Despite the fact that not all countries have signed on to such agreements, and not all signatories abide by their provisions, the conventions that set the terms of international inclusion and exclusion are one of the critical ways that the world was carved up into its constituent political parts.

The central aim of this book is, therefore, to reconstruct and clarify the arguments that shaped the eventual stabilization of shared understandings of citizenship and noncitizenship in the decades following the Second World War.[7] I explore the origins of the legal frameworks that govern the relationship between states and their nationals, and the roles of ideas, arguments, and ideological justification in their creation. To do so, this book investigates how the problem of statelessness informed theories of rights, sovereignty, international legal order, and cosmopolitan justice, theories developed when the conceptual and political contours of the modern interstate order were being worked out, against the background of some of the most violent and catastrophic events in modern history.

The emergence of the modern legal category of statelessness has most often been portrayed by historians as a consequence of the triumph of nationalism in the twentieth century and the collapse of more fluid forms of political identification and protection characteristic of expansive empires. According to these narratives, in the name of national cohesion, and often in defense of democracy and popular sovereignty, national states claimed the right to define their communities in more exclusive ways, while the rise of fascism and violence against minority groups produced unprecedented flows of refugees by the mid-twentieth century. The nearly forty-year crisis of mass displacement and political homelessness precipitated by the two world wars and the end of empire culminated, on this account, in the creation of the modern international legal frameworks that define those excluded in one way or another from the security of citizenship. These histories in turn tend to trace the rise of modern regimes of rights and governance, from incipient efforts at the League of Nations to provide legal protection to select groups of refugees, to the creation of more universal legal frameworks at the United Nations, its postwar successor. They describe exclusion from the

privileges of citizenship as the dark side of democracy, sovereignty, and national self-determination—deficiencies that international organizations and international law have tried to address by legalizing the rights of individuals who do not benefit from the protection of states.[8]

This book tells a different story, one that is more responsive to the fact that the conceptual, legal, and political architecture that defines modern international order has in recent years emerged as the urgent object of historical and theoretical investigation. Historians have shown that it was not until the 1960s that alternative forms of political organization—city-states, princedoms, federations, protectorates, dominions, extraterritorial enclaves, and complex polities—gave way to a more homogenized political map of the world. Both historians and political theorists have likewise begun to recover how ideas of collective self-determination, sovereignty, political representation, and democratic self-rule were conceptualized in a range of ways, often compatible with greater integration with imperial polities. The retrieval of such alternative visions of collective political life generates new pressure to explain how the modern state became the dominant form of political organization in the period after the Second World War. It also raises new questions about the role played by international law and international organizations in the formation of the modern international order, an order that is premised on the formal equality of states but which contains persistent hierarchies and asymmetries of power and privilege. In other words, once we appreciate that the nation state as the sole postimperial claimant to international legitimacy is a more recent phenomenon than previously understood, we have reason to investigate how the international categories defining noncitizenship contributed to the formation and legitimation of the boundaries of interstate order.[9]

The dynamics of Great Power politics governed the postwar settlement in myriad ways, but so did ideas and expectations about interstate order, and it is those ideas that this book seeks to elucidate. To provide a comprehensive account of the evolving significance of statelessness in international thought and international politics, I investigate the history of critical reflection on the meaning of statelessness from the parallel perspectives of the international agencies that directly addressed the crisis of citizenship and sovereignty and the legal scholars who related this crisis to wider debates in legal and political thought. To recover the major conceptual and argumentative terms,

I read the archives of international history in the context of more theoretical discussions about law and political order and survey a variety of legal and literary sources including court cases and novels. Writing such a history therefore means bringing international legal sources within the same frame as more canonical figures in the history of political and legal thought, and reading their systematic and critical reflections together with more traditional archival sources of international and diplomatic history. Both constitute the intellectual and legal context in which the problem of statelessness was conceptualized, debated, and eventually codified into international law.[10]

Nationality has most commonly been defined as the legal or international side of citizenship. In the historian Patrick Weil's recent formulation, "The legal dimension of citizenship reflects the formal linkage of each individual to the nation-state. It is manifested in the passports and national identification documents that confer the official status of national citizens on roughly 99 percent of all human beings. Legal citizenship exists independently of an individual's sense of belonging or degree of participation in national and patriotic institutions."[11] But how should we understand the history of the idea of nationality as the legal or formal side of citizenship? It has mainly been social theorists who have taken up the broader transition in legal thought in the twentieth century—often described by the term "deformalization"—away from assumptions about the rational foundations of law and the autonomy of the domain of law from that of politics.[12] This book links ideas about law, and about the fate of the rule of law, to the representation of the relationship between individuals and states. I explore the impact of a wider transformation of legal consciousness on conceptions of citizenship, noncitizenship, and the significance of statelessness for international politics.

The chapters that follow trace the evolution of debates about the meaning of statelessness from the first period of sustained reflection in the decade after World War I through the expansion of the European refugee crisis in the 1930s, which culminated in the creation of a permanent regime of international definition and protection of refugees and stateless persons after the Second World War. Together they tell a story of critical thought on statelessness that itself offers a new way of comprehending how a world based on hierarchical forms of political order was transformed into one based on the formal equality of states and peoples. In reconstructing the ideological struggles that resulted in the grounding of rights in national citizenship, this book

also helps make sense of the process by which the national territorial state emerged as the sole legitimate organizing unit of global politics, and what that has meant for people placed beyond its borders. By documenting a pivotal transformation in how the problem of statelessness was conceptualized from the end of the First World War through the postwar era it shows how the post-1945 political settlement shaped the conceptual and legal boundaries of international politics that we continue to live with today.

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The war that began in 1914 was global in its scale, drawing in soldiers from across Europe, America, and the British and French imperial worlds. At the start of the conflict, there were just over fifty internationally recognized states, mostly found in Europe and the Americas. When it ended, the German, Habsburg, Russian, and Ottoman Empires lay in ruins; millions of combatants had been slaughtered or left carrying the brutal scars of industrial artillery or poison gas; and the future of the formal empires of Britain, France, Japan, and the United States remained the object of Great Power dispute and anticolonial politics. A revolutionary political regime, Bolshevism, established control over the former Russian Empire, while the victors of the war carved up the former imperial holdings of the Ottoman and German Empires, transforming imperial politics through the establishment of the League of Nations. New states that succeeded the Russian, Ottoman, and Austro-Hungarian monarchies included Poland, Austria, Hungary, Czechoslovakia, Yugoslavia, Bulgaria, Lithuania, Latvia, Estonia, and the Greek and Turkish republics.

Revolution and the dissolution of empire left millions without the security of national identification. During World War I, governments began to insist that migrants and travelers carry passports if they wished to cross a border or remain legally within a territory. A subset of people actively pursued recognition as persons without a nationality in order to avoid the punitive consequences of identification with an enemy nation. Over a million émigrés crowded into British-controlled Egypt, Constantinople, Prague, Vienna, Berlin, and Paris after fleeing the Russian Revolution. Thousands more claimed to have become stateless as the successor states to the Austro-Hungarian and Ottoman Empires imposed more restrictive requirements for citizenship. Refugees fleeing violence in the Eastern Front during the war found themselves in the capital cities of the new states of Central Europe

without a claim to citizenship, while former imperial subjects who had remained in their homes during the war discovered that they were unable to provide the necessary documentation to obtain national identification.

But what did it mean to be stateless? Historians have tended to assume that until after the Second World War anyone without a nationality qualified as a legal anomaly because, according to orthodox legal doctrine, individuals entered into international society only through their national status. However, the entry of mass numbers of people without a claim to national identification into international politics began to inspire reflections on the foundations of law and rights in a period when the futures of empire, nation, sovereignty, the state, and international law all appeared in question. Older sources of political legitimacy, including dynastic rule, for the most part did not survive the conflict, and the boundaries of political order and international politics became the object of intense political and intellectual contestation. In this context, the deprivation implied by the absence of national status represented the flip side of its revolutionary implications for the future of international legal order.

The status of individuals without a connection to any sovereign government had been uniquely bound up with debates at the heart of political and international thought for several centuries. In the era of early modern imperial competition, the seventeenth-century Dutch jurist and theorist of natural rights Hugo Grotius argued that an eclectic array of agents, including corporations, individuals, and states, represented the subjects of the law of nations. In his 1625 work *The Rights of War and Peace*, Grotius asserted that individuals, states, and corporations were all equally subject to rules governing contract and exchange, and that the state represented one agent among others in international society.[13] By contrast, the dominant theory of international law at the turn of the twentieth century, a theory developed in the context of Western state building and imperial expansion, argued that individuals become part of international legal order only through their status as nationals of particular states. Legal treatises documenting customary state practice insisted that only states represented the "subjects" of international law and that all other entities—individuals, corporations, and nonstate groups—were the "objects" of international law without independent agency. In this view, only states counted as "persons" in international society, while nonstate groups and individuals accessed international law only derivatively

through their national status.[14] From the perspective of international law, nationality implied that the more concrete connections that link individuals to the state—through family, history, affinity, affection, ethnicity, race, and religion—were not relevant when it came to whether the state is obliged to recognize and protect someone who bears this legal identification. "Nationality" designated the legal side of political belonging, distinguishing the subjects of one political community from foreign outsiders. It was an identification that defined an interstate category of membership while "citizenship" denoted the relationship of individuals to a particular political society. For more privileged legal subjects, nationality provided a formal status ensuring security as individuals moved around the world, safe in the knowledge that their private property and contractual agreements would be respected. Meanwhile, the legal category of nationality furnished imperial powers with a legal apparatus that allowed them to claim to rule over imperial subjects without granting them the full political rights of citizens.[15]

Though nationality had become a more significant source of identification by the end of the First World War, the governing expectations about interstate order—how new sovereign states emerged, how political membership was determined, and how conflicts that arose between political communities over national status were worked out—all represented sources of instability and radical innovation in the decade that followed. Even as the stateless began to represent a new object of humanitarian attention, they symbolized the possibility of legal and political identification beyond the jurisdictional boundaries of states. The growing number of people after the war that began to claim this status represented a particularly destabilizing development from the perspective of officials at the League of Nations, who tried to regulate how new states entered the international system and to contain the conflicts and disorder that arose from the creation of new sovereignties and new forms of international authority. For the same reasons, theorists drew on the novel scale of statelessness and its more widespread recognition as a critical resource for comprehending international legal order, the foundations of sovereignty, and the possibility of rights and self-governance beyond the boundaries of the state in the decade following the conflict.[16] The concept of legal personality became the intellectual battleground for debates about the nature of the state, public authority, and nonstate legal order. In interwar legal thought, the status of individuals,

corporations, and groups depended on a determination of whether such persons possessed agency in the eyes of the law, and on how to explain the nature of that agency. Legal treatises on statelessness from this period argued that if stateless people were able to benefit from legal institutions and the rule of law as claimants in civil suits or before international courts, then they possessed agency in the eyes of the law. The possession of such qualities in turn challenged the prevailing theory of agency and personality in international thought.[17]

The story is framed by a generation of jurists and international legal publicists from the former Russian Empire and the former Habsburg Empire who responded to the collapse of empire and the rise of mass statelessness through juridical analysis and legal advocacy. These figures and their writings illuminate how the grounds of argument about the meaning of statelessness and the relationship between national and international spheres of authority evolved over the twentieth century. This group included Marc Vishniak, Boris Mirkine-Guetzevitch, Andre Mandelstam, Hans Kelsen, Josef Kunz, Hersch Lauterpacht, Maximilian Koessler, and Paul Weis. Each contributed to the development of international law and to the legal architecture of international protection for refugees and stateless persons. From an ideological standpoint, the Jewish background of these jurists meant that they had much to lose from the dissolution of the age of capital, empire, and liberalism in the twentieth century. All faced the challenges of statelessness, exile, and emigration.[18] As the Moscow-born émigré Vishniak recalled in his 1933 lecture on the legal status of statelessness, "it is very natural that the question of regulating the juridical situation of the stateless has been, in numerous cases, taken up by those who have suffered most from the absence of rights."[19] Yet this is only one piece of a larger story that is not limited to the theorist' personal histories. The initial intellectual response to mass statelessness captured a legalistic understanding of international politics, constitutionalism, and social relations that governed international and imperial politics in the nineteenth and early twentieth centuries. Legal and conceptual innovations sharpened in the late nineteenth century were brought to bear on a range of debates and political controversies that dominated political thought after the First World War. In this context, statelessness represented a phenomenon intrinsically bound up with debates about the fundamental nature of law, politics, and modern statehood.

The meaning of statelessness was transformed further as the European crisis accelerated and was followed by the even larger crisis of displacement and flight after the Second World War. Beginning in the late 1930s, mass numbers of displaced people in Asia as a result of the policies of imperial Japan joined the millions uprooted in Europe by total war, Nazi occupation, and the Holocaust. This book follows these thinkers from the postimperial moment after the First World War through the decades following the Second World War, when most of them found new political and institutional homes in the postwar United States. As the book pivots from Europe to the United States, from the League of Nations to the United Nations, the establishment of more permanent international agencies devoted to refugee identification and relief is examined alongside debates about the nature of law and its relationship to international politics. Tracing the evolution of critical reflection on statelessness illuminates how the legal scholars associated with the development of human rights in the postwar period endorsed state authority on new pragmatic foundations. Rather than searching for the source of international legal authority beyond the state, legal scholars sympathetic to the project of international law laid the groundwork for creating international legal norms on the foundations of state agreement and customary practice.[20]

Without question, Hannah Arendt is the most widely studied figure in the history of political thought to reflect on the meaning of statelessness. In a series of articles in the late 1940s and then most famously in *The Origins of Totalitarianism*, published in 1951, Arendt explored the origins of mass statelessness and its implication for global order in the aftermath of the Second World War. Her account traced the rise of mass numbers of people without a political home after the First World War back to the later nineteenth century, when European imperialism, capitalism, and pan-national movements undermined the Enlightenment-era ideals of citizenship and equality under the law. As she surveyed efforts at the United Nations to elaborate the meaning of human rights in the context of the ongoing European refugee crisis, Arendt concluded that the experience of the modern homeless had decisively shown that rights derive only from membership in a particular community. Arendt articulated the tension between the aspiration to make all human beings the bearers of rights and the fact that in reality rights depend on membership in particular states. The complete political organization of humanity

into discrete sovereignties with full control over membership meant that anyone without political status was effectively devoid of rights. The only meaningful right would be a "right to have rights," or a right to belong that could ensure a place in some political community.[21]

Set in the longer history of international thought and empire, Arendt's interventions reveal an unappreciated dimension of the creation of the legal frameworks that govern international politics. The question taken up in the second half of this study is how the wider assault on legalistic approaches to politics transformed the terms of argument and debate about the significance of statelessness and ultimately shaped the creation of the legal frameworks governing non-citizenship. In diverse institutional settings—from the United Nations to the International Court of Justice and the US Supreme Court—nationality began to be defined as something more robust and entrenched than the formal link between an individual and a sovereign government, a mere condition of protection. As empires faced the end of their dominion over far flung territories and peoples, they also sought to reshape legal nationality to suit a legal framework that reflected more substantial ties linking individuals to the national state.

The task for the latter part of the book is, therefore, to explain how the successful assault on the legalist approach to political and international legal order shaped approaches to statelessness and the international legal categories of noncitizenship. International law and international organizations acknowledged the limits of formal inclusion, but the result was a general marginalization of the premise that legal statelessness intrinsically represented a crisis of international order. This study therefore shows how the postwar international settlement domesticated the foundations of political and legal membership—bracketing reflection and contestation over the fundamental boundaries of international politics.[22] I propose that the question we should be asking is not why the postwar arrangements to define and regulate the displaced did not live up to their original promise, or how they were thwarted by sovereignty and politics, but what they did accomplish in the creation of the postwar international settlement and in the domestication of the questions entertained in the interwar era about the foundations of political community and the basis for membership in it.