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## From Citizen to Migrant: The Scope of Child Statelessness in the Twenty-First Century

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The Algerian coast guard rescued on 10 April the corpses of 13 migrants that set sail from the beach of Mers the Hdjadj, in the coast of Oran, in the direction of Spain. “On board were 16 youths, from 17 to 25 years old, and after their shipwreck three of them were still missing.”<sup>1</sup>

—A routine Mediterranean press report

Cristina (13) and Violetta (10) gave their fingerprints [to the Italian police implementing compulsory fingerprinting of all Roma including children] shortly before they died. Violetta was upset. She ran away and started crying. She thought the police were coming to take her away. Cristina was angry and scrubbed the ink from her thumb. She understood everything. She knew we were being treated like animals. She died knowing she had no real hope of a better life.

—Mariana, mother of two Roma girls who drowned on an Italian beach while summer beach life resumed around their bodies<sup>2</sup>

Legal identity does not guarantee a good life, but its absence is a serious impediment to it. An absence of legal identity interferes with many fundamental encounters between the individual and the state. It affects the individual’s capacity to make claims on the state, and it disrupts the state’s ability to plan and provide resources and services to the individual. This problem takes two conceptually distinct forms—the lack of legal identity and the inability to prove the legal identity that one does have. The former, the lack of legal identity, characterizes both *de jure* (or *legally*) *stateless* people (people without the nationality of any state, the literally stateless) and also *de facto stateless* people (people who have a nationality but whose status where they reside is not legal because they are illegal, irregular, or undocumented migrants in their current location). Both these groups lack legal identity. The latter, the inability to prove the legal identity that one has, affects people who are legal citizens but who lack the documents necessary to assert their legitimate claim to state services. These are people whose birth, family affiliation, or

connection to society is not registered or otherwise provable. They may, despite their possession of nationality and a legal status, find themselves *effectively stateless*. Together, these three constituencies represent different aspects of twenty-first-century statelessness, a form of disenfranchisement that is familiar to European historians of the twentieth century and yet is distinctive and neglected in its contemporary aspects. As one scholar observes, “It is not easy to reconcile twenty-first-century challenges and problems with twentieth-century resources and nineteenth-century models.”<sup>3</sup>

Twenty-first-century statelessness has significant human-rights repercussions for children in today’s world, jeopardizing their access to fundamental social protections and entitlements that many take for granted. It can result in dramatic abuses, such as the detention or deportation of very young unaccompanied child migrants,<sup>4</sup> or the acute rights violations against accompanied European Union (EU) citizen children in Italy (fully described later in this volume by Elena Rozzi). But contemporary statelessness also causes more endemic quotidian deprivations, such as the lack of access to education and primary health care of rural migrant children in China<sup>5</sup> (described in Kirsten Di Martino’s chapter) and of Rohingya refugee children (noted in Brad K. Blitz’s chapter).

Until recently, human-rights scholars, advocates, and policy makers have underestimated the problem of statelessness,<sup>6</sup> ignored its serious effects on children, and completely missed the important and revealing connections between the different types of statelessness just outlined. One of the central arguments of this book is that analyzing key contemporary children’s-rights violations in terms of statelessness helps to explain their genesis and suggests clues to their solution. A focus on statelessness draws attention to important but neglected dynamics that generate rightlessness for many different groups of marginalized children.

At first glance, the two categories of stateless children—those without a legal identity (whether *de jure* or *de facto* stateless) and those with a legal identity that they cannot prove (the effectively stateless)—seem radically different, not only conceptually but in practice. One category lacks a legal identity; the other category includes people who cannot provide documentary proof of the legal identity that they do have. One category consists of outsiders, whether foreigners or internal migrants; the other group consists of nationals and locals. One category can, as a matter of law,<sup>7</sup> be forced to leave the place of residence; the other category is immune from such treatment. From a human-rights advocate’s perspective, these might seem to be immensely significant differences.

There are also marked divisions from the perspective of scholarship and policy. Detention and deportation are concerns of immigration and children's-rights advocates and legal scholars. Lack of birth registration is a topic for demographers, statisticians, and development economists. Although the links between states' interests in controlling migration and "the development of techniques for uniquely and unambiguously identifying each and every person on the face of the globe"<sup>8</sup> have been commented on,<sup>9</sup> the effects of irregular migration and lack of birth registration on the rights of children have never, to our knowledge, been considered together. So what is the justification for linking them? And why is the topic of statelessness important as an overarching framework for considering the legal and moral claims of very large groups of disadvantaged children?

A *stateless person* is defined in international law as "a person who is *not considered* as a national by any State."<sup>10</sup> This book argues that statelessness has several different contemporary manifestations, with comparable effects on children's access to key human-rights protections. *De jure* or *legal statelessness* is the absence of any nationality—what could be called statelessness *stricto sensu*. Examples of this form of statelessness include Palestinian children (see the chapter by Christina O. Alfrev) and, as discussed below, unregistered children born to Haitian parents in the Dominican Republic or Burmese Rohingya children. *De facto statelessness* is the absence of a legal migration status despite a legal nationality. Examples include undocumented children in the European Union (see chapters by Jyothi Kanics, Luca Bicchì, and Daniel Senovilla Hernández) or the United States who are nationals of a country other than their country of residence (see chapters by Stephen H. Legomsky and David B. Thronson) and rural Chinese child migrants residing without the requisite *hukou* (permit) in urban conurbations. Finally, we consider *effective statelessness*, which is the inability to prove formal nationality and legal immigration status despite having both. This type of statelessness affects children who are living within their own countries but whose birth has never been registered (see chapters by Bela Hovy and Caroline Vandenaabee) or legally present but unregistered Roma children living in the EU (see the chapter by Elena Rozzi). Any of these types of statelessness (any case where there is an absence of demonstrable legal identity) is potentially devastating for a child because it jeopardizes the child's automatic claim to inclusion by and attention from the state. It is therefore a key indicator of vulnerability, a proxy for problematic access to essential resources, services, and protections. Statelessness in children, we suggest, has profound human-rights repercussions.

In itself, this is not a new insight. The framers of the 1948 Universal Declaration of Human Rights (UDHR), the foundational document of modern international human rights, emphasized the centrality of legal identity to the protection of human rights by dedicating two<sup>11</sup> out of the UDHR's thirty articles to the right to a legal identity. In so doing, the UDHR was consolidating a long tradition. As Simon Szreter points out in his chapter in this volume, "Registration at birth (or its absence) is the outcome of an ancient historical legacy." But the framers of the UDHR were also responding to a peculiarly modern realization—that the absence of demonstrable legal identity that attaches individuals to a responsible state could pave the way for some of the most serious problems of social exclusion and political marginalization in the world.<sup>12</sup>

Despite the plethora of recent attention to questions of citizenship<sup>13</sup> (European,<sup>14</sup> multicultural,<sup>15</sup> transnational,<sup>16</sup> postnational<sup>17</sup> and even arrangements that reach "beyond citizenship"<sup>18</sup>), its converse—the problem of statelessness and its effect on children—has not been adequately investigated.<sup>19</sup> From the perspective of human-rights enforcement, this is regrettable. As this book shows, the complexities involved in counting irregular or unregistered populations and adequately describing their magnitude and their problems directly affect the enfranchisement of children, but they are yet to be fully addressed.<sup>20</sup> Equally important is an assessment of birth-registration campaigns and other mechanisms for improving children's access to social rights (see chapters by Caroline Vandenabeele and Simon Szreter), but data on this are also fairly limited.<sup>21</sup> And attention to the range of different migration situations that render children effectively stateless (see chapters by Elena Rozzi and Kirsten Di Martino) is in its infancy, a situation with deleterious effects on policy development in this area.

As globalization, modernization, and migration unsettle established mechanisms for obtaining legal identity without generating effective replacements, the problem of statelessness is likely to grow. According to Refugees International, approximately 12 million people in the world lack an *effective nationality*, and "many others are vulnerable to statelessness."<sup>22</sup> Statelessness is a sizeable contemporary human-rights issue, and it will increasingly lead to consequences that mirror those related to a lack of registration<sup>23</sup>—namely, lack of access to a protective state. Linda K. Kerber demonstrates this point in her chapter. She analyzes the nationality problems of nonmarital children born to male U.S. military personnel on foreign missions and explains how a failure to register these children can lead directly to *de facto* statelessness in the United States.

In the case that she focuses on, a father's failure to comply with a registration requirement—formally acknowledging paternity of a child born abroad—before the child turns eighteen renders the child deportable from the United States, despite having spent all but the first six years of his life there. A registration requirement compounded by migration resulted in *de facto* statelessness for the child.

When a child remains in the country of birth and does not migrate, then a registration failure at birth or subsequently usually does not lead to legal (*de jure*) or *de facto* statelessness. Children do not fail to acquire or lose their nationality or legal status simply by not having their details officially recorded; they remain legal citizens of the countries they reside in. As Caroline Vandenebeele points out in her chapter: “Legal identity, or the right to be recognized by the government of the country of which one is a citizen, is a primary right that exists regardless of whether one has a document to prove this citizenship. . . . [O]fficial, government-issued and -recognized documents . . . do not *confer* legal identity; they merely *confirm* it.” Nevertheless, failure to register a child can lead to effective statelessness, which can be as serious as the consequences of legal statelessness. This is particularly true in the post-9/11 world, where growing skepticism about multiculturalism has led to more probing into ethnic and cultural identity and heightened official insistence on documentation.<sup>24</sup> Both legal statelessness and effective statelessness can lead to exclusion from state protection and vulnerability to state coercion, exactly the dangers that the UDHR's insistence on access to legal identity was designed to avoid. To quote Vandenebeele: “in day-to-day reality, the absence of this proof of legal identity can disqualify a citizen from access to rights or state protection flowing from his or her citizenship.”

Moreover, in an age where migration is a significant feature of life and is often a survival strategy for millions, the absence of registration can lead to consequences that merge with those caused by statelessness. It is not just that absence of registration can deprive the person of a valuable citizenship, with the benefits that flow from it (U.S. citizenship and nondeportability in the case analyzed in Linda K. Kerber's chapter). The absence of registration may also seriously hinder a child's access to legal migration routes. As John Torpey points out in his important study of the role of passports: “In a world of nation-states, in which the population of the globe is theoretically divided up into mutually exclusive bodies of citizens, international migration is an anomaly with which the state system has some awkwardness coping.”<sup>25</sup> This awkwardness is

exacerbated when routine bureaucratic requirements, such as production of a valid passport to effectuate border crossing, are not complied with. A long-term stateless U.S. resident provides a clear example of the interplay of migration and lack of legal identity documents:

[I] became stateless as a young child when the Soviet Union collapsed. I have been stateless for 17 years. . . . In the former Soviet Union, permanent residency and citizenship documents were issued at the age of 16. I left the Soviet Union when I was only seven. . . . Being stateless is a psychologically crippling condition. I have spent years at a time without access to health care, the right to drive, attend college.<sup>26</sup>

Although the precise mechanisms that generate these obstacles vary from country to country, the general principle is clear. As Caroline Vandenabeele points out, “Identity documentation has a clear and direct link to overseas travel and employment and the opportunities that these bring.” There are other close links between the statelessness resulting from irregular migration status and from lack of birth registration. As Luca Bicocchi, Elena Rozzi, and Jyothi Kanics point out in their chapters, children born to irregular migrants are at considerable, perhaps growing risk of statelessness.<sup>27</sup> One reason for this is that access to birthright citizenship is increasingly qualified by conditions relating to length and status of parents’ residence,<sup>28</sup> with the result that children born to irregular migrants are less likely to acquire the nationality of their country of birth. Another reason is that the risk of detection and deportation acts as a disincentive to come into contact with officialdom for irregular migrants, including as a disincentive to register their children at birth. As one scholar puts it, “There are many obstacles in the way of ensuring that children born to irregular migrants are registered at birth: problems of law, logistics and attitudes.”<sup>29</sup> A compelling example of this dynamic is described in Elena Rozzi’s chapter, where she reflects on the circumstances of undocumented Roma children in Italy:

Italian law provides that all undocumented children, simply by virtue of their minority, be issued a residence permit “for minor age,” valid until the age of eighteen. However, in practice, this has a very different effect on the two groups of children. Children accompanied by undocumented parents are generally not issued any residence permit because only the parents can make the relevant application (no guardians are appointed for accompanied children). But since undocumented parents risk expulsion if they come into contact with the police, these applications are rarely made.

Children born to undocumented Colombian refugees in Ecuador lose their entitlement to Ecuadorian citizenship by birth for the same reason: their parents fail to register them for fear of deportation.<sup>30</sup>

The lack of birth registration is particularly significant for children of irregular migrants. Not only does it deprive them of access to the nationality of their place of birth, but absence of a birth certificate may also disqualify a child from eligibility for his or her parents' nationality, thus increasing the risk of *de jure* statelessness.<sup>31</sup> Parental failure to register children's birth is not the only reason for this. According to the United High Commissioner for Refugees (UNHCR), "statelessness is often caused by States' deliberate policies not to confer nationality to children born to refugees."<sup>32</sup> These policies do not apply only refugees, one might add. In her chapter, Jyothi Kanics describes the plight of many different groups of migrant children and children of migrants born in Europe who are denied appropriate identity documents. For example, quoting a 2007 U.S. State Department report, she notes that in Greece, even legal immigrants (in addition to significant numbers of undocumented migrants) are denied birth certificates for children born in Greece. If these children are not able to secure their parents' citizenship by descent, then they are likely to become *de jure* stateless.

Beyond the close connection between birth registration and *de jure* statelessness is the much broader link between birth registration and effective statelessness, which may directly affect children's entitlement to economic and social rights. It is worth articulating the links in this process. Birth registration is critical to obtaining a birth certificate with full information about date and place of birth and names of parents. This certificate, in turn, is a key part of the evidence of legal identity. And evidence of legal identity is a common prerequisite to the enjoyment of public services. As a child-rights researcher remarked at a conference: "Lack of a birth certificate places a child outside the community of citizens."<sup>33</sup> Remarkably, given its potentially devastating consequences, this is a commonplace situation. According to the United Nations Children's Fund (UNICEF), 36 percent of all births are not registered, leaving more than 48 million children under age five without a legal identity.<sup>34</sup> Other statistics are equally dramatic: one-third of developing countries have birth registration rates of less than 50 percent, and 55 percent of Sub-Saharan and 63 percent of South Asian children are unregistered children from ethnic or indigenous groups. Internally displaced persons (IDPs), refugees, and orphaned children (including those orphaned by AIDS) are particularly at risk of nonregistration. Children in remote rural areas are more likely to be unregistered than their urban counterparts. In Macedonia, for example, birth registration in the capital is reported to be 99 percent, but in an outlying region it is only 68 percent.<sup>35</sup> Single unmarried mothers in traditional societies are less likely than married mothers

to register the birth of their children. The same is true of families that are caught up in armed conflict and civil war.

On the basis of extensive research, UNICEF asserts that there is *a clear link* between birth registration and access to state benefits.<sup>36</sup> The evidence has led UNICEF and nongovernmental organizations (NGOs) such as PLAN International to launch high-profile campaigns calling on governments to promote energetic efforts to increase birth registration. Their argument is that since lack of birth registration is responsible for serious rights deprivations, particularly among the poorest of the poor, promoting registration can be expected to reduce these deprivations. UNICEF has suggested that this is true not only in peacetime but also in societies emerging from war: “Birth registration can play a key role in peace agreements and in the establishment of stable post-conflict transition.”<sup>37</sup> If birth registration is the ticket to (or a crucial prerequisite of) access to benefits and services, then this rallying call makes good sense. Analogously, calls for amnesty for undocumented migrants accurately reflect the reality that regular legal status is a crucial ticket for accessing important social and legal benefits and for securing guarantees of permanence within a society.

There certainly are situations that justify UNICEF’s emphasis on the importance of birth registration. A recent example is the predicament facing a number of Burmese refugees in India trying to resettle in New Zealand. According to an advocate involved in their case:

The major problem is the fact that they do not have identity documents the New Zealand High Commission would accept—either a birth certificate, passport or the national identity card. . . . All Burmese nationals, however, have the “Family Chart” . . . , a document that is drawn up for all families in Burma, which gives information about the number of people, their age, sex, occupation, address. This document is issued under the seal of the Department of Immigration of the Union of Myanmar. This seems to me to be sufficient if all that the New Zealand High Commission wants to do is to verify the authenticity of the applicant. I am however told that this has not been accepted by the people in the High Commission in Delhi.<sup>38</sup>

But birth registration may not be *the* ticket to legal identity in the way that a regular immigration status is *the* ticket for inclusion for the *de facto* stateless. As Caroline Vandenaabee points out in her chapter in this book: “Many documents can confirm a person’s legal identity. . . . an overreliance on birth registration as the sole means for establishing legal identity and as a prerequisite for accessing other rights and protections risks exacerbating poor and vulnerable groups’ patterns of exclusion.” Unlike the New Zealand authorities in the example just cited, societies

may have a range of effective credentialing mechanisms for establishing legal identity. Advocates need to ascertain what these mechanisms are before they insist on the indispensability of birth registration.

As Vandenabeele rightly says, a clear link between birth registration and access to social benefits does not mean a causal link. The link might simply highlight the correlation between a failure to register birth and other factors leading to social disadvantage, such as poverty, illiteracy, or minority status. Drawing on empirical data from Nepal, Bangladesh, and Cambodia, Vandenabeele disentangles the nature of this link, demonstrating complex connections between access to services and identity registration and the multiple credentialing mechanisms in use for establishing legal identity. In her analysis of the right to education in Nepal, she deconstructs access to basic education into various elements: “the narrow sense of being allowed to sit in a classroom when teaching is going on,” her research suggests, is “sometimes, but not always, dependent on possession of a birth certificate.” But other critical elements of the right to education *are* conditional on registration: “being eligible for government scholarships and free schoolbooks, being allowed to sit for the school-leaving certificate, and having access to higher education are usually conditional on possessing a birth certificate.” Those who do not have a birth certificate are effectively stateless for the purposes of these crucial educational entitlements.

Kirsten Di Martino also scrutinizes the underlying causes of the educational handicaps facing citizen children in the developing world—in her case, rural migrants in China. Because they migrate from villages to urban areas and lack the required official permit (*hukuo*), rural children in cities are irregular migrants (albeit nationals) and face some of the same exclusions that *de facto* (noncitizen) stateless children face in other countries. In contrast to the United States (see Stephen H. Legomsky’s chapter in this book), access to primary and secondary education in China presents greater obstacles than access to the meritocratic higher-education system: “Expenditures are tilted toward higher-education institutions at the expense of the institutions providing compulsory education” (see Di Martino’s chapter in this book). Di Martino reports that according to a 2003 UNICEF survey, 47 percent of migrant children do not enter school at age six, the official school age, and notes that financial problems also bedevil access to public education for these *de facto* stateless Chinese children. Thirty-eight percent of migrant children in Beijing cannot attend public school and have to fall back on lower-quality high-cost alternatives.

Compare this situation in developing countries to the one that confronts irregular migrant children in Europe or undocumented migrant youngsters in the United States—populations that are *de facto* stateless. The similarities are remarkable. A complaint lodged by Defense for Children International against the Netherlands and cited by Jyothi Kanics in her chapter claims that Dutch legislation deprives undocumented child residents of key economic and social rights. In his chapter on undocumented children in the EU, Luca Bicchieri also criticizes the practical failure to protect all children within the jurisdiction equally, despite contrary norms. He contrasts the generally enabling approach of national legislation toward the education of undocumented children (some countries, such as Belgium, make explicit legislative references to the educational rights of undocumented children) with the situation on the ground. His chapter describes multiple examples of practical barriers, including a requirement to produce identification documents before enrolling in school, difficulties paying for books and school transportation, and discrimination against undocumented children demonstrated by a refusal to issue graduation diplomas. The net result is captured by a quotation that he cites from a French NGO: “The simple task of registering in school becomes a kind of war between, on the one side, parents and students, and on the other, the administrative system, the latter of whom has the power to hijack this right.”<sup>39</sup> When the state has the power to hijack rights because of the precarious status of the rights holder and when the inevitability of nondiscriminatory access to fundamental social rights is absent, then one is in a condition of statelessness.

Elena Rozzi points out similar difficulties facing undocumented children in Italy who lack legal permission to reside within the country. She cites data that show that in 2006, 20,000 Roma children were estimated to be outside the compulsory school system altogether.<sup>40</sup> This situation was further exacerbated when “In December 2007, the Municipality of Milan issued an ordinance preventing children of irregular migrants from enrolling in kindergarten” (see Rozzi’s chapter in this book), a measure that was eventually struck down by the courts.<sup>41</sup> Despite this legal victory, she notes, “undocumented children are often not accepted outside the compulsory school system, particularly in vocational training courses.”<sup>42</sup> Far from being legally stateless, however, some of these Roma children are Italian and some are of Romanian nationality and citizens of the EU. As a matter of European community law, all nationals of EU member states are EU citizens. This common citizenship raises the expectation of equal treatment regardless of specific member-state citizenship

at least in theory or maybe as a future aspiration.<sup>43</sup> Indeed, EU citizenship was developed to incorporate notions of choice and membership that are cardinal principles of liberal political theory. In practice, however, the potential of a radically inclusive status has yet to be realized. It has eluded undocumented Roma children in Italy, a sobering demonstration of the complex relationship between politically driven frameworks for inclusion and bureaucratically controlled practical mechanisms that translate those structures into human realities.

The chasm between general principles of inclusion and practical rights is also illustrated by the situation in the United States, particularly the elusiveness of comprehensive educational entitlements for *de facto* stateless populations, such as children with irregular immigration status. Despite a landmark U.S. Supreme Court decision a quarter century ago guaranteeing the right to free elementary and secondary education for all children in the United States, irrespective of their immigration status or nationality,<sup>44</sup> the culmination of an educational experience (college or university education) remains elusive for undocumented populations. Again, it is generally not the case that these would-be students are legally barred from attending tertiary educational institutions. Instead, practical barriers, particularly financial ones, constitute the primary impediment. This is not accidental. As Stephen H. Legomsky points out in his chapter in this volume:

These barriers are not merely a result of their frequently low family income. They are also a product of deliberate policy decisions enshrined in law. Two of these barriers are particularly noteworthy. First, undocumented students are legally ineligible for all federal and state educational financial aid. Second, the laws of at least forty states require undocumented students who attend public postsecondary educational institutions to pay tuition at the higher rate reserved for nonstate residents.

Given the high cost of U.S. higher education, these financial hurdles act as effective bars to access. So *de facto* stateless and effectively stateless children face similar educational hurdles, whether they are undocumented populations in the United States, irregular migrant children in Europe, or unregistered children in Nepal. Despite differences in formal nationality or immigration status, the access of these diverse populations to fundamental social rights is similarly flawed: they lack the effective protection of a state.

*De jure* or legally stateless populations—those without any nationality at all—face similar handicaps across a range of jurisdictions. Absence of state protection is as devastating for the legally stateless, despite inter-

national legal measures to combat this, as it is for *de facto* or effectively stateless populations who are not covered by international legislation on statelessness. In her chapter in this volume, Christina O. Alfrev provides a compelling account of the hurdles that confront children born to Israeli Palestinians. Like their parents, they face complex legal barriers to the most fundamental of rights, starting with access to a legal identity. As Alfrev points out, many members of this community are presented with a harsh choice. They can either exercise their right of residence in their home country at the expense of family unity with immediate relatives disqualified from joining them, or they can enjoy the right to family life at the price of exile from their country. Alfrev, therefore concludes that “Israel’s nationality laws, taken together, have a harmful effect on Palestinian children.”

Other *de jure* stateless populations also face difficulties that recall those described for the *de facto* stateless. Brad K. Blitz comments on this at some length in his chapter, citing the position of the Rohingya as a particularly acute example of the perils of legal statelessness. A *de jure* stateless Kuwaiti Bidun, for example, describes a situation identical to that documented by Legomsky: “I was one of the lucky few to finish high school, but my effort was really in vain because I’m not allowed to attend Kuwait University.”<sup>45</sup> Syrian Kurds present another example of the exclusionary impact of *de jure* statelessness. Classified by law as *Ajanibi* (foreigner), they are subject to persistent discrimination. A recent report by Refugees International cites a touching first-person account:

As a stateless Kurd, I was seen as a *persona non grata* because I was an outsider in the eyes of the Syrian authorities. When I traveled from my hometown to Damascus for study, Syrian security officers stopped vehicles on the highway asking for IDs. The moment they saw my “Foreigners” red ID, they detained me so long that I missed the bus. At that point, I was at their mercy. They slapped and interrogated me. There is nothing worse than to be classified as a “Foreigner” in one’s country of birth. It really is a catastrophe.<sup>46</sup>

Another frequently cited example is the situation of the Haitian population in the Dominican Republic. Though the Dominican Republic has a *jus soli* system of nationality attribution (birthright citizenship), the state operates an arbitrary and discriminatory rule that excludes children of Haitians residing in the country from nationality because their parents are held to be “in transit” and therefore, under a recently passed law, “illegal.”<sup>47</sup> The sentiment behind this discriminatory law was pithily summarized by Manuel Polanco, head of the Dominican Army: “An illegal person cannot produce a legal person.”<sup>48</sup> As a result, hundreds of

thousands of children born in the Dominican Republic to long-settled Haitian families find themselves legally stateless, relegated to second-class status with respect to a range of services, benefits, and documentary protection. Educational access is problematic, too, just as it is for the *de facto* and effectively stateless populations discussed earlier:

As well as the risk of expulsion, Dominican children of Haitian descent face barriers when they try to obtain a birth certificate from the Civil Registrar Office. Without a birth certificate (the identification document for minors), they are unable to study beyond primary level.<sup>49</sup>

To summarize the reasoning so far: A central argument of this book is that the millions whose births have never been registered (the effectively stateless) and the millions who have an irregular, illegal immigration status (the *de facto* stateless) or who are without any nationality (the *de jure* or legally stateless) challenge the professed liberal and democratic commitment to nondiscrimination and social equality in fundamental and similar ways. Despite the optimistic rhetoric of universal rights proclaimed in international legal instruments and despite the best efforts of human-rights advocates, international jurists, and civil society organizations, claims for the enjoyment of human citizenship and its associated benefits are increasingly mediated by proof of legal identity, nationality, or immigration status, and as Hannah Arendt first noted over half a century ago, “bare personhood” does not suffice for this purpose. The absence of demonstrable legal identity is a grave handicap in today’s world.

But this book makes an additional claim that, to our knowledge, has never been directly and comprehensively addressed. Statelessness is a particularly important social and political *child-rights issue* because children are peculiarly dependent on states. There are two aspects to this dependency: all children depend on states for basic services, and many children depend on states when their families fail them.

First, children are inherently dependent on states for crucial aspects of their lives. Educational access has already been discussed. But several chapters in this book show that children without demonstrable legal identity may also be excluded from other state services that are essential for survival—primary health care and shelter, for example. Elena Rozzi quotes a poignant vignette about a Romanian Roma twelve-year-old in Italy that captures the exclusionary essence of statelessness:

Rebecca is a Romanian girl of the Roma ethnic group, and she has spent half of her life out on the street. She has slept in a van, in a makeshift shelter, and on the floor. On some days, she has begged on the streets of Spain and Italy with

her parents. At other times, she has seen her makeshift shelter destroyed. She has been attacked by Italian police officers. She listened (hiding under a blanket) as her father was beaten up after he attempted to defend her. She has seen babies and children die due to a lack of medicines. She shared the fear of the Roma people fleeing from Ponticelli (Naples) when their camp was set fire to. . . . The family had not slept under a proper roof for five years. “In Romania, we had a home, but we had nothing to eat,” explains Rebecca. “We ate thanks to charity from our neighbors. Then in Milan, my parents were unable to find work,” she continues, “and we had to go out and beg.”<sup>50</sup>

Destitution and homelessness are rights violations that stateless children encounter repeatedly, as Brad K. Blitz also illustrates in his chapter. But some stateless children face another serious human-rights violation—the deprivation of the right to family unity. In her chapter, Jyothi Kanics notes the perverse separation of *de facto* stateless children from their parents, merely because of the parents’ destitution or immigration problems, a practice that renders the children “social orphans.”<sup>51</sup> She questions the legitimacy of these psychologically damaging forced separations of children, including very young children, from their parents. Measures such as these appear to violate one of the obligations of the Convention on the Rights of the Child (CRC)—the article prohibiting the separation of child from parents unless the separation is deemed “necessary for the best interests of the child.”<sup>52</sup> Despite their possession of a nationality, these children are effectively in the same position of statelessness as the Palestinian children described by Alfrev, who also encounter grave threats to the right to family unity.

There is a second aspect to children’s dependency on states that makes statelessness particularly devastating for children. Children rely on the state for surrogate protection when the family—their primary source of protection—fails them. Without demonstrable legal identity, however, this insurance against social hazards is much more elusive because the chances of effective state engagement with the child are compromised. Luca Bicocchi reports on the widespread gap in European countries between a theoretical entitlement to education irrespective of legal status and extensive practical barriers for unaccompanied and irregular child migrants in access on the ground (see Bicocchi’s chapter in this book). Another disturbing and clear illustration of the potential for discrimination is the situation in Ireland, described by Jyothi Kanics: not only are undocumented children who are unaccompanied or separated from their parents frequently detained, but even when they are placed in the custody of child welfare authorities, the care that they receive is inferior to that provided to citizen children (see Kanics’s chapter in this book). The same

is true elsewhere. In the United Kingdom, according to material cited by Bicocchi, *de facto* stateless children have access to medical care only in emergencies (see Bicocchi's chapter in this book).

It is worth listening to some first-person accounts of this situation from separated children. An unauthorized Romanian fifteen-year-old living rough in Paris had this to say: "It was eleven at night. Four police cars came after us. I did eighteen hours of detention. They don't touch your face. They beat you in the ribs, on the legs, the feet, everywhere."<sup>53</sup> Meanwhile, in the United Kingdom, a sixteen-year-old unaccompanied asylum seeker from Chad told this disturbing story:

[I] claimed asylum on a Friday, and the Asylum Screening Unit in Croydon told [me] that they did not believe that [I] was a child. It referred [me] to the Refugee Council's Children's Panel in Brixton. The Panel referred [me] on to the local social services department, who had closed their offices by the time [I] arrived there. [I] returned to the Refugee Council to discover that it too was closed. [I] spent the weekend living on the street.<sup>54</sup>

The problem is not confined to northern Europe. In his chapter, Daniel Senovilla Hernández cites an official UN report on Spain's treatment of undocumented migrant children who are facing expulsion back to their country of origin against their wishes—*reunification*. The report illustrates what it is like to be an unaccompanied or separated child without a state and subject to rights violations inflicted by both the Spanish and Moroccan governments. Writing in 2004, the UN High Commission for Human Rights had this to say:

The Special Rapporteur believes that because of the way in which some family "reunifications" have been carried out, allegedly leaving the minor in the hands of the Moroccan police without the presence of his family or the social services, these reunifications are interpreted [by the children] as expulsions. [M]any "reunited" minors return to Spain and some speak of ill-treatment by the Moroccan police.<sup>55</sup>

All these groups of children were denied state protection and shelter and had no alternative provider and no immediate legal recourse. Although the children were not legally stateless, they could not rely on any authority to make their best interests a primary consideration during encounters with the state. By contrast with these *de facto* stateless children, citizen children held in arbitrary detention or denied shelter would have had legally enforceable claims to the protection of social welfare agencies.<sup>56</sup>

Since the invention of childhood<sup>57</sup> as a distinct phase of human life, society has accepted an obligation to protect the youngest members of

its population. This book hopes to demonstrate that stateless children have a peculiarly strong claim to that public protection. Children, particularly those who are unaccompanied or separated, are also vulnerable to the coercive power of the state, especially when the social position they occupy is irregular and gives him the status of outsiders. Small children who are smuggled across a border to join undocumented relatives or who are trafficked by exploiters do not know who can help them. Older children who smuggle themselves across borders to secure a livelihood (legal or illegal) and unregistered children who are denied legal identity and therefore travel documents find themselves in a dangerous limbo—because they do not exist as persons before the law. But in addition to the general vulnerability that they share with similarly situated stateless adults is the acute need that comes from deprivation of key elements of childhood—a consistent education, a secure home, and a supportive family and community. This makes them peculiarly defenseless.

Like all children, stateless children are vulnerable and dependent, but they have the added handicaps that come from legal and social disenfranchisement. Unlike citizen or otherwise legal children, their claim to protection as minors is in tension with their excludability as outsiders. In this sense, their membership in the broader community of citizens, including noncitizen residents and others legally present on the territory, is always marginal and precarious. The reaction of a Mexican child trying to cross into the United States through the Arizona desert illustrates the emotional correlate of that legal limbo: “My first impression when I ran into the officials [as I was crossing the border] was that they thought I had robbed a bank or was a criminal. They yelled at me not to move, and that made me very nervous. We were questioned individually.”<sup>58</sup> Some state practices violate children’s rights in the opposite way—by failing to question them in detail and by denying them a right to a hearing. To cite Senovilla Hernández: “Some children are returned without even an attempt by the authorities to locate their family. Others do not receive a hearing or are never informed of the repatriation process.”<sup>59</sup>

What is more, repatriation techniques can be brutal. Senovilla Hernández writes:

Sometimes police forces come to a reception center in the middle of the night and pull a child out of bed and drive the child directly to the airport without allowing the child to take his or her personal belongings. Other children living in the center witness these practices, and the threat of being the next victim causes

them extreme stress and mistrust. At other times, police have come to schools or vocational training centers, taken children from their lessons, and treated them as delinquents in front of their colleagues.<sup>60</sup>

The long waiting time to obtain a residence permit and “the confiscation of the children’s passports [while they are in state custody] are other common forms of mistreatment” (see Senovilla’s chapter in this book). Although lack of a regular migration status is not a criminal offense, statelessness renders these children liable to be treated as delinquents who are outside the regulatory framework of the juvenile justice system. This presents particular risks for the children implicated.

Another tension aggravates the conflict between states’ child-protection obligations and their border-control or national-security responsibilities. Children, particularly young children, are not held to be responsible for the decisions that have led to their irregular status, but punitive approaches to their parents, who are considered culpable (for having agreed to their being trafficked, for having brought them in illegally, or for having given birth to them while undocumented) directly affect the children. A case in point is the detention of accompanied migrant children pending deportation of families, a phenomenon that has in recent years been on the rise in the United States. Some immigrant family-detention policies are so harsh that they have attracted repeated public criticism. A privately run detention center, the T. Don Hutto Residential Center in Taylor, Texas, had such poor living conditions for its inmate families that it became the object of litigation: “The children were dressed in prison garb like their parents. . . . The only children who weren’t wearing prison clothing were the infants because they couldn’t find prison uniforms small enough.” According to the University of Texas School of Law’s Immigration Clinic, “Families were counted seven times a day and children spent most of their time inside prison cells.”<sup>61</sup> These practices were discontinued as a result of the lawsuit.

The perverse transfer of culpability from adult to child is not limited to situations where children are *de jure* or *de facto* stateless. It also occurs in situations of effective statelessness when children are citizens or legal residents of the country they are in although their parents are not. Because of the parents’ irregular status, children are denied fundamental rights. The *de facto* statelessness of the parents is transferred to the children, rendering their citizenship ineffective as a channel to rights. David B. Thronson provides a compelling illustration of this situation in his chapter, demonstrating that U.S. citizen children can become effectively stateless by being denied the right to enjoy security of residence in

their country with their parents. As he says: “the very connection between children and parents that family law works to create and protect can result in a diminished connection between children and state as a variety of formal and informal barriers assimilate them to the status of noncitizen.” He describes the harsh rules that apply to these so-called mixed-status families in the U.S. context to deprive citizen children of the right to family unity, as if it were natural or inevitable that children’s citizenship would have no effect on parents’ status. But there is nothing inevitable about this. European law, for example, approaches the problem differently.<sup>62</sup> The European Court of Justice (ECJ) has ruled in favor of a citizen child’s right to use her Irish nationality to secure residence rights for her mother, even if—as in the case—that nationality had been acquired solely for this purpose.<sup>63</sup> By contrast, Thronson shows that “the devaluation of children and their interests in immigration law often operates to deny U.S. citizen children in mixed-status families (that is, families in which all family members do not share the same immigration or citizenship status) the full social benefits of citizenship” (see Thronson’s chapter in this book).

The noncitizen parent’s outsider position effectively cancels out the child’s citizenship status. The state here not only fails to protect children from harm but actively provokes the hardships that they are subjected to. Far from being an authority to which these children can turn for enforcement of their rights, the state is a source of oppression. These children therefore, like *de jure* or *de facto* stateless children, lack a state that they can rely on, a state that acts in their best interests.

But why does this occur? Given all its devastating consequences, why is statelessness among children, even among legal or citizen children, pervasive? Many have suggested a simple explanation—invisibility. Children are stateless in many cases because they are not seen and therefore their needs are not attended to. A typical account is the following: “Unregistered children are ignored by statistics and neglected by city and state planners. They are *invisible* when policy decisions and budgetary choices are made.”<sup>64</sup> The claim is that invisibility is not just the consequence of statelessness, although it certainly is that. Failure to register birth can obliterate the child’s civic existence, denying the child the fundamental right to be “a person before the law,” a sure route to invisibility in relation to officialdom. Avoidance of state authorities because of undocumented status, as Bicchocchi observes, can literally prevent children from being seen by the social service providers they need. But the dominant explanation is that invisibility is also *the cause* of the persistence of

the problem. In other words, it is claimed that the pervasive reality of child statelessness is the product of oversight or myopia<sup>65</sup> on the part of policy makers—what could be called *reverse ageism* or *adult centrism*. Using phrases like *invisibility*, *hiddenness*, *slipping between the cracks*, and *void*,<sup>66</sup> it has been suggested that states have innocently overlooked the problems of migrant children and their correlative duties because of a dual perception lacuna: for issues of migration, they have focused on adults, and for issues of child welfare, they have focused on citizens. The implication is that states are well intentioned in their concern for and commitment to migrant children but have been incompetent, unperceptive, unprepared. Adults make policy and in the process ignore or overlook the interests of children, especially when these are not related to other interests they are pursuing. UNICEF, for example, suggests that “[t]he value of birth registration as a fundamental human right is often *overlooked* due to the continuing lack of awareness that registration is a critical measure.”<sup>67</sup> Despite the somewhat tautological nature of this explanation (the value of birth registration is overlooked because the value of birth registration is overlooked), there are reasons for its popularity. If the consequences of nonregistration are invisible, by definition they are not on the political map, and so they do not lead to political pressure for reform. If the “victims” of nonregistration have no legal identity, they are in no position to exert political pressure. As Saudamini Siegrist pithily puts it, “a child who is not counted does not count.”<sup>68</sup>

The same argument that has been used to explain the problems facing the unregistered (the effectively stateless) that Caroline Vandenaabee explores (invisibility causes lack of rights) is also used to account for the destitution and lack of protection of irregular child migrants (the *de facto* stateless) (invisibility causes lack of rights). The explanation implies that increasing visibility and recognition of their presence would bring with it improved access to protection. Greater visibility, it is claimed, would produce more engagement with these children’s distinctive situation. This in turn would lead to status enhancements, which would reduce the vulnerability to exclusion and repression.

The strategy of much recent advocacy has been driven by this perspective. It has focused on making the problems of effectively and *de facto* stateless children visible and on drawing attention to their invidious exclusion and deprivation—by trying to bring them into the same legal and institutional framework as child citizens (for example, demands for access to education, health care, and shelter), as registered children (such

as campaigns for increasing access to documentary proof of legal identity), and as legal child migrants (for example, demands for access to permanent residence, to adequate legal representation, and to protection from detention). Has the strategy been successful? Have advocates been able to reap human-rights yields from publicity and greater social and political awareness of the circumstances of these stateless children? Is their analysis of the problem correct?

Some continue to suggest that invisibility is the root of the problem of rights exclusion for stateless children. As Elena Rozzi discusses in her chapter, Silvio Berlusconi, the current prime minister of Italy and head of one of the most xenophobic contemporary European governments, recently claimed that his policy of mandatory fingerprinting of all Roma in Italy, including children, did not constitute a flagrant violation of human rights but was a means for tackling invisibility, a justifiable social-planning measure. Accused of providing ammunition for blatantly discriminatory mass state deportations of legal EU migrants and violating EU principles of social integration, the Italian premier replied: "We also need to know who these [Roma] children are to guarantee that they can go to school. What we are doing is defending the right [of children] to go to school."<sup>69</sup>

But recent developments raise several questions regarding the invisibility thesis. First, how convincing is it given current political and legal realities? With the Inter American Court's ruling about Haitian and Dominican children,<sup>70</sup> the May 2008 anti-Roma pogroms and subsequent legislative developments in Italy,<sup>71</sup> the resurgence of aggressive anti-immigrant policies in France,<sup>72</sup> and the recent raids on undocumented migrant families in the United States,<sup>73</sup> can we really argue that the legal problems of child migrants or unregistered children are caused by their invisibility? Haven't they more and more been catapulted into the headlines?<sup>74</sup> The condition of stateless children, particularly *de facto* stateless child migrants, is an increasingly central preoccupation of less instantaneous or journalistic social reflection, too, as witnessed by contemporary cultural work in theater, art, and film.<sup>75</sup> Not since the Elian Gonzalez saga has public attention been this focused on the problems raised for and by this section of our society. But something is different this time. The simple image of child innocence captured by pictures of the photogenic five-year-old Cuban Elian Gonzalez rescued from the waves or of tearful child detainees with handcuffs falling off their tiny wrists now shares the space with a more complex and threatening portrait of the stateless but pubescent Palestinian suicide bomber, the disen-

franchised but evil Roma teenage child snatcher, the marginalized but lethal British adolescent Islamic jihadist, the disadvantaged but antisocial Hispanic tattoo-covered gang member, and lurking behind these images the omnipresent young illegal other.

There is a second problem with the invisibility thesis. Is its empirical claim accurate? Turning from public attention to quantitative information, it is not clear that accessing data about *de jure* stateless populations really is as elusive as sometimes suggested. In his chapter in this volume, Bela Hovy illustrates various strategies, using population census information, for capturing levels, trends, and basic characteristics of stateless persons, including children. He suggests that available data are underutilized rather than nonexistent, demonstrating a failure of political will rather than of raw material. In other words, we do not need to wait for more comprehensive and reliable census systems or better state overview of legally stateless communities to generate data for policy makers who are committed to providing services to legally stateless children. And for *de facto* and effectively stateless populations, similar doubts arise. Creative statistical analysis and alternative information gathering techniques can already generate data on undocumented and unregistered populations that could justify economic and social rights access that are sorely lacking.

The authors of this book generally disagree with the invisibility thesis as an explanation for children's statelessness and their resulting lack of access to rights.<sup>76</sup> We argue that children do not *in the main* end up without a state by accident or oversight. These factors may account for some problems of *de facto* stateless children—for example, the failure to establish mechanisms for child guardianship for the unaccompanied migrant children described in Jyothi Kanics's chapter, where citizen children would have this protection. But invisibility fails to capture the more complex dynamics that are in play for many others groups of stateless children. After they are identified as victims of trafficking, trafficked children without legal immigration status (*de facto* stateless) are not as a rule considered for forms of long-term protection such as asylum but instead tend to be repatriated "home," even where home is a place where re-trafficking is likely and caring family is nonexistent. This policy is driven by immigration control considerations and is not an approach that is stymied by lack of information.<sup>77</sup> Again, undocumented migrant children who are associated with gangs or forms of petty delinquency or antisocial behavior *who enter the asylum process* are routinely excluded from asylum protection (they never lose their *de facto* stateless status),

irrespective of the evidence of serious risk presented.<sup>78</sup> These children's vulnerability and needs are not hidden. We see them: many groups of professionals (detention facility staff, immigration officials, adjudicators, and social workers) come into contact with them.

As a general explanation, it does not seem accurate to say that stateless children are invisible. A better explanation is that we (policy makers and administrators) see but are torn over how to act. We are ambivalent. The pressure to protect the vulnerable child is in ongoing tension with the drive to punish and exclude the young tribal, rural, or ethnic outsider, the threatening juvenile, or the dangerous young terrorist. Rather than seeing them as vulnerable children in need of protection on a continuum with our children, we tend to view them as disruptive juvenile outsiders who are in need of discipline and punishment—young adults in essence if not in age. Accordingly, we fail to engage effectively with their manifest problems. States' failure to adequately address the needs of these stateless children arises out of a cognitive, not a perception, deficit: we see, but we do not have a clear strategy for acting. We legislate the children's right to public education and health care irrespective of their legal status, but at the same time we erect practical obstacles preventing access to these services—demanding documents, proof of residence, and social ties. We accept obligations to protect the children from exploitation and abuse, creating—in our legislative chambers and international congresses—antitrafficking visa protections for them and criminal sanctions for their exploiters. But on the ground, at the borders, on the streets, and in the police stations, we blame them for the risks they pose to our social fabric and look for ways of removing them from circulation in our societies.

Children who are stateless end up without a state for a reason: they are considered dispensable, undeserving, threatening, or dangerous. Insofar as their rights conflict with government priorities (whether immigration control, the enforcement of national security, majoritarian dominance, or responsiveness to xenophobic public opinion), they are placed in disenfranchised legal or *de facto* situations. Daniel Senovilla Hernández makes a strong case illustrating this point. In his chapter in this book, discussing the situation of *de facto* statelessness in Spain, he writes:

For over a decade, national and regional authorities in Spain have chosen to return migrant children to their home country in preference to other options. Return to the country of origin is viewed as the best durable solution to the situation of unaccompanied and separated children and has been used to justify deterrent policies and practices targeted at potential new migrants to Spain.

In three summer months in 2001, the Spanish authorities are reported to have carried out expulsions of at least thirty-two *de facto* stateless, unaccompanied children from Spain to Melilla, the Spanish enclave on the northern coast of Morocco.<sup>79</sup> This policy, which contradicts Spain's obligations under the CRC to consider the child's best interests prior to the implementation of its policies, has attracted international criticism. For example, a 2002 observation by the UN Committee on the Rights of the Child, quoted by Senovilla Hernández, expresses concern "at reports of summary expulsions of children without ensuring that they are effectively returned to family or social welfare agencies in their country of origin."<sup>80</sup>

It is not just migrant children who are the targets of oppressive or negligent government procedures. Citizen children, too, can be targeted for exclusion from protection because of government policy. Kirsten Di Martino illustrates the mechanism in relation to the Chinese context, showing how invisibility is actively generated. She writes: "Many [rural child migrants] are not registered in their new place of residence and remain invisible to the local authorities as there is no requirement to collect data and register children under sixteen years of age in their new place of residence" (see Di Martino's chapter in this book). This is not a real but a manufactured invisibility—a product of the decision to ignore the migrant children in cities by not collecting relevant data on them. Because the children are not registered, they lack the requisite *hukuo*, or legal permission to reside where they are. As we have seen, this has serious consequences for education, shelter, and access to medical care. It places the children outside the community of citizens. This exclusion reflects government opposition to the migration of children to the cities, just as the Spanish government's expulsion policy reflects its immigration-control agenda.

Invisibility is not the *cause* of child statelessness but the *result* of state strategy toward particular groups of children. This is demonstrated by the evidence just cited of intentional state conduct that deprives children of rights, surely caused by acknowledging and not ignoring their presence. It is also demonstrated by the opposite situation—by state conduct that accords children rights despite their lack of birth registration or other identity qualifications. So where there is no political agenda to exclude or penalize particular groups of children, then legal invisibility per se does not automatically result in rights denial. Instead, creative solutions around it are found. For example, in the case of unregistered majority ethnic children, Caroline Vandenabeele shows that the simple

lack of birth-registration documents leads not to effective statelessness but to the substitution of alternative credentialing mechanisms: “In Bangladesh, a statement by a local official who knows a child’s family may be enough, in some locations, to enroll a child in school. In Nepal, traditional Hindu religious documents (such as astrologic charts that note the time and place of birth) have been used to establish age and thus to allow access to basic education” (see Vandenabeele’s chapter in this book). Conversely, formal citizenship alone does not guarantee rights enjoyment, as the situation of EU citizen Roma children in Italy today demonstrates.

The larger point here is that effective rights access does not flow simply from purely formal solutions. The gap between legislation and practice in Spain, for example (described in Senovilla Hernández’s chapter) illustrates that clearly. Practical effects on individual lives and on state policy are the product of complex negotiations and moves implicating norms and procedures, legislators, judges, and, probably most important of all, members of the executive, particularly those working at the coal face. As has been pointed out: “Purely formal solutions . . . might reduce the number of stateless persons but not the number of unprotected persons. They might lead to a shifting from statelessness *de jure* to statelessness *de facto*.”<sup>81</sup>

For children, it is not simply lack of a set of documents that produces statelessness. Rather, the obstacle to rights realization is a more complex absence of a legal identity, however caused. An additional point needs to be made. Just as invisibility may not cause statelessness, so visibility may not guarantee enfranchised citizenship. States require identity documentation to develop their economic and social policies. But the state’s monopolistic role in documenting its inhabitants’ presence also provides an opportunity for surveillance and control that may particularly endanger some groups of children. Undocumented child migrants trying to escape *la migra* know this well. There is a long history to this darker side of state investment in identity documentation. As Simon Szreter argues in his chapter, state- rather than individual-serving functions and Foucaultian control rather than Fabian provision of services were the primary reasons behind early state identification projects:

Systems for recording the existence of persons have existed throughout history for a number of reasons, the most well-known being military and tax-related censuses. These include the census taken over two thousand years ago by the Roman occupiers of what is today Israel and the census in operation in the

Andean empire of the Incas when the Spanish arrived there.<sup>[82]</sup> This kind of registration was conducted for purposes of state or imperial administration.

In fact, as Szreter demonstrates, surveillance often gave way to more oppressive state conduct, which directly depended on states' abilities to document the population under their jurisdiction:

The European imperial powers, motivated by colonizing projects of economic extraction and political subjugation, created a diverse range of registration systems . . . often for labor-regulation purposes. This was also true of the tsarist empire in continental Russia, which wished to regulate the geographical movement of laborers without granting them full citizenship rights.

Herein lies one of the central dilemmas of social-justice advocacy today. For all the talk of globalization and regional integration, the state remains the key dispenser of the means to rights realization (hence the crucial significance of identity registration) and the key dispenser of the means to rights repression (hence the perils of excessive surveillance). James Scott famously argued that “seeing like a state” is a mixed blessing that the human-rights movement advocates at its peril.<sup>83</sup> By calling for more engagement, one is also opening oneself up to more scrutiny. Would more data on China's migrant children in major cities enhance their access to public education, or would it increase the likelihood of government sanctions, including perhaps expulsion? Bela Hovy suggests that governments frequently fail to collect data on migrant populations consistently but that even when they have adequate data, they “may use indicators that are not well suited for protection purposes” (see Hovy's chapter in this book).

Human-rights and child-migrant advocates who insist on the importance of legal identity documentation have to make the sometimes perilous assumption that the populations they serve are going to be advantaged by greater state engagement with and scrutiny of their lives. This may be relatively unproblematic for effectively stateless child populations, minorities, or marginalized ethnic groups in urgent need of educational and health services, particularly in societies that still have rudimentary systems of data storage and recovery. But in developed societies, the risks may be substantial. Even mainstream citizens who have perfectly straightforward claims to citizenship and legal status are wary of the risks of “privacy invasion”—as is evident in the heated debate about mandatory identity cards. As one scholar comments: “as ID cards become ubiquitous, a *de facto* necessity even when not required *de jure*, the card becomes the visible instantiation of a large, otherwise unseen, set of

databases. If each use of the card also creates a data trail, the resulting profile becomes an ongoing temptation to both ordinary and predictive profiling.”<sup>84</sup> For *de jure* and *de facto* stateless children, who are noncitizens more likely to be exposed to the harsh and repressive than the protective side of the controlling state, calls for greater visibility by government presuppose inclusive and pro-immigrant political climates, which are currently not much in evidence.

Difference can elicit control and repression. The complex and dual state role is nowhere more evident than in the case of stateless children. Reference has already been made to the dangers lurking behind the seemingly well intentioned call for mandatory fingerprinting of Roma children by the Berlusconi government in Italy. David B. Thronson describes the traumatic effects that immigration raids designed to identify illegal aliens have had on immigrant communities, including citizen children in the United States over the past few years. Citing a recent report, he writes in his chapter in this book:

Mass immigration raids cause “crisis scenarios in terms of the care arrangements for the hundreds of children who temporarily lose their parents.” . . . [Some] families have hidden “in their basements or closets for days.”

One of the most pervasive uses of procedures to establish legal identity is age determination—the process by which state authorities purport to establish the age of children who arrive without acceptable<sup>85</sup> identity documents. Whatever the situation on the ground, as a matter of law children are usually in a more privileged position than their adult counterparts in detention, deportation, and other harsh aspects of state migration-control policy. So there is at least a theoretical benefit to be derived from being classified a minor by the authorities. For this reason, establishing a distinction between a seventeen-year-old and an eighteen-year-old can be a critical but also a vexed issue for stateless children. Being wrongly classified as an adult can result in months or even years of detention pending determination of a claim to asylum or some other legal immigration status (see Daniel Senovilla Hernández’s chapter in this volume). It can also increase the chances of summary removal without access to legal representation, social services intervention, or any scrutiny of best-interest considerations.<sup>86</sup> Disputes about age can even undermine a child’s credibility as a truthful witness if in the process of being questioned to establish age, the child provides seemingly inconsistent answers. The protective potential of identity determination may thus turn into a repressive instrument.

Large numbers of *de facto* stateless children are affected by age-determination procedures. A recent study of unaccompanied and separated children seeking asylum in the United Kingdom noted that in 2004, 37 percent of child applicants had their cases age disputed. In one council, about 50 percent of those age disputed were eventually found to be children. Being “age disputed” has serious consequences.<sup>87</sup> A child who was denied welfare services until the authorities secured medical confirmation of her age commented:

Social services treated me like a dog—they didn’t ask me any questions at the beginning because they wouldn’t bother with it because the Home Office [the authority responsible for Immigration] said I was not under 18. They just told me to go away. I was so sad.<sup>88</sup>

Many immigration destination states use medically unconvincing methods to ascertain the accurate age of undocumented migrants suspected of falsely claiming to be children. This methodology is a contested issue between immigration authorities and child advocates. For the authorities, scientific tests provide black and white answers that are welcome for implementing the sharp legal distinction between who is and who is not a child. For the medical and child-welfare community, current practices are inappropriate and flawed. As the British Royal College of Paediatrics and Child Health noted: “an age determination is extremely difficult to do with certainty, and no single approach to this can be relied on. Moreover, for young people aged 15 to 18, it is even less possible to be certain about age. “Age determination is an inexact science and the margin of error can sometimes be as much as 5 years either side [and] estimates of a child’s physical age from his or her dental development are accurate [only] to within + or – 2 years for 95 percent of the population.”<sup>89</sup> The Royal College therefore recommended a holistic approach to age assessment rather than one based on a single test such as a dental or shoulder or wrist X-ray. Yet single-procedure age-determination tests are still widely used, often with deleterious results.

Birth certificates or other identity-documentation techniques have a role to play in facilitating accurate age determination. But if the political climate is one of mistrust or xenophobia, the value of even genuine birth certificates can be undermined. Advocates report frequent cases where immigration authorities prejudicially assume that all documents from certain countries are forgeries.<sup>90</sup> This complex balance— between the protective role of identity documentation as a ticket to social benefits and its repressive role as an instrument of surveillance and exclusion—

therefore needs to be carefully measured and assessed. That is the task this book sets itself.

## Conclusion

This book investigates the paradox that although children's rights are widely upheld in theory irrespective of a child's status, access to these rights in practice is uncertain and conditional on proof of legal identity. Simple visibility will not solve the problem. As others have also concluded, we need a new twenty-first-century notion of citizenship that reconceptualizes the ticket to full entry into the community:

Upholding the principle of democratic inclusion and placing political members on a more egalitarian plateau in the new millennium may . . . require . . . a willingness to explore new ways of articulating the alliance between citizenship and democracy.<sup>91</sup>

Indeed, our critique suggests a radical rethinking of mainstream advocacy strategy regarding *de jure*, *de facto*, and effectively stateless children. In David B. Thronson's chapter, for example, the denial of rights to citizen children—whether through raids on immigrant workplaces or through court decisions regarding deportation appeals—is shown not to be accidental or a result of oversight. It is a product of state policy. Similarly, Elena Rozzi's description of the brutal policies of the Italian state toward Roma children does not suggest ignorance about the problem but rather a determined policy. We suggest that children's rights urgently need to be brought into the flourishing discussion over citizenship and its boundaries. In this book, we propose a meticulous and empirically grounded deconstruction of the concepts of citizenship and legal identity as they apply to children. Our hope is that—through an examination of the meaning of citizenship for children and their access to its benefits—we can clarify why in an age when children's rights are vaunted<sup>92</sup> they are also flaunted and we can begin to develop corrective strategies.

In a xenophobic climate with economic uncertainty and political polarization, visibility may be counterproductive. We therefore propose a more complex approach that does not presume universal sympathy toward stateless children but rather takes realistic note of the widespread ambivalence toward this group. Policy makers and advocates need to be equipped to tackle the complex obstacles to rights enforcement with cogency. Why should undocumented, "illegal" children have a right to free public education? Why should irregular migrant children not be

promptly repatriated to their homes abroad? Why should populations that do not comply with birth-registration requirements be assisted with alternative forms of certification? Why should children of irregular migrants not accompany their parents when they are deported? The answers and the political clout to implement them require engagement with two factors that complicate the simple protection mandate—first, the suspicion and hostility toward stateless populations including (and sometimes particularly) children and second, the realization that protection must be complemented with respect, including respect for different, unorthodox, challenging solutions.

Elements of this more complex approach to child statelessness are set out in various chapters. They include detailed empirical analyses of country-specific situations to explain the genesis and effects of child statelessness. There are, for example, significant legal and political differences driving the circumstances of *de facto* stateless children in Spain (Daniel Senovilla Hernández's chapter), in Italy (Elena Rozzi's chapter), and in other EU member states (Luca Bicocchi's chapter). So, too, the modalities of effective statelessness, as Caroline Vandenabeele shows, are different in Nepal, Bangladesh, Cambodia, and China, as Kirsten di Martino details. Understanding the differences contributes to forging the solutions, since the historical role of identity documentation and immigration control in the different countries varies. As Christina O. Alfrey, Simon Szreter, and Linda K. Kerber illustrate, state structures leading to statelessness and exclusion are the product of multiple complex determinants, often an archeology of diverse interests and goals that produce layered structures of exclusion and inclusion. Family books in Cambodia, as Vandenabeele shows, are the product of a tyrannical, compulsively intrusive regime of control and surveillance, but today the family book functions as an effective mechanism for identity documentation. It may not make sense to call for birth registration and birth certification to substitute for this functioning system of inclusion, at least not at this stage of Cambodian economic development (although Simon Szreter advances a powerful counterargument in favor of a comprehensive birth registration requirement).

A second element of the approach to child statelessness that we advocate is a more energetic engagement with the diversity of stateless children's interests, leading to more active embrace of the tension between protection and respect. Childhood, to be sure, is a unitary category in international law—"every human being below the age of 18"<sup>93</sup>—but a hugely diverse grouping physically, psychologically, and socially. For

example, the young stateless children (as documented by Jyothi Kanics) who are abusively detained in harsh facilities in Ireland require nurturing in a family context, whether through fostering or other welfare means. They should not be prematurely treated as self-sufficient adults just because of their harsh life experiences. By contrast, independent adolescent migrants want an opportunity to work and, as Senovilla and Bicocchi explain, often demonstrate, by their disappearance, a radical rejection of the infantilizing care facilities in which they are placed. In Ireland, for example, over three hundred unaccompanied children have gone missing from the care of local authorities in recent years.<sup>94</sup> By imposing a reductive, culturally inapposite calculus that considers “childhood” a uniform, work-free zone, current social responses avoid the complex challenge of engaging with the dilemmas and limited strategic options facing stateless children. Current interventions misclassify the risks and needs that drive these children’s behavior, wrongly assuming that family, school, play, and home are fixed and necessary points of reference for all children.

This book is not a purely scholarly project. In connecting the work of academics from various disciplines with the work of writers engaged in international or nongovernmental organizations, we hope to contribute to the development of policies that improve the current situation of stateless children. All the chapters in this book take this on in some way. Some argue in favor of more creative uses of statistical data already available or identity documentation mechanisms already in place, to assist countries in promoting the protection needs of stateless children. Others suggest greater scrutiny of administrative procedures that violate domestic and international obligations. Yet others advocate legal challenges and the mobilization of political constituencies to correct “the scandal of invisibility”<sup>95</sup> and discredit the comfortable myth that rights deprivation is inevitable for stateless children. Implicitly if not explicitly, all advocate a more inclusive, plastic notion of citizenship that recognizes the importance of children’s current residence as a justified basis for claim making and state protection. After all, “everyone should have the right to citizenship somewhere,”<sup>96</sup> most of all children.

## Notes

1. Platform for International Cooperation on Undocumented Migrants (PICUM), *Newsletter*, May 2008, <<http://www.picum.org>> (accessed July 30, 2009).
2. Dan McDougall, “Why Do the Italians Hate Us?,” *Observer Magazine*, August 17, 2008, 14–25.

3. Dora Kostakopoulou, *The Future Governance of Citizenship* (Cambridge: Cambridge University Press, 2008), 2.
4. See, for example, the egregious case of five-year-old Tabitha, who was detained and deported alone back to the Democratic Republic of the Congo (DRC) by the Belgian authorities. *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, application no. 13178/03, <<http://www.coe.int>> (accessed July 30, 2009). The following is a U.S. example. Eight immigrant teenagers who were held at a detention facility for unaccompanied minors sued the U.S. government over alleged abuse and denial of access to attorneys. They alleged that they were beaten and subjected to other rights abuses while in custody at the 122-bed Houston facility run by Cornell Companies, Inc. Michelle Roberts, “Detention Facility for Immigrant Kids Sued for Abuse,” Associated Press, April 3, 2008. Undocumented children who are held in “secure facilities” (juvenile jails) are still routinely brought to court shackled and handcuffed in San Francisco, despite vigorous protests over this practice for years. Aryah Somers, Vera Institute, personal communication to the author, June 18, 2009.
5. According to Kirsten Di Martino, 38 percent of migrant children in Beijing are excluded from the public school system (see Di Martino’s chapter in this volume). There is also evidence of higher neonatal and infant mortality among migrant children and differential access to health care between migrant and nonmigrant children. According to UNICEF’s research, only 48 percent of migrant children in China have regular physical examination cards compared to over 90 percent of nonmigrant children in Beijing.
6. This general statement needs some qualification. For interesting recent work on statelessness that has a direct bearing on the argument being advanced here, see Audrey Macklin, “Who Is the Citizen’s Other? Considering the Heft of Citizenship,” *Theoretical Inquiries in Law* 8, no. (July 2007): 333–366; Laura van Waas, *Nationality Matters: Statelessness under International Law* (Antwerp: Intersentia, 2008).
7. This qualifier is important. As David B. Thronson shows in his chapter on U.S. citizen children of undocumented migrants, citizen children who have the same right as adult citizens to stay permanently in their own country might nevertheless find themselves “constructively” deported—forced to leave their home country because their parents or other sole caregivers are deported (see Thronson’s chapter in this volume).
8. John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge: Cambridge University Press, 2000), 7.
9. Van Waas, *Nationality Matters*.
10. United Nations (UN) General Assembly, Convention Relating to the Status of Stateless Persons, art. 1, September 28, 1954, United Nations, *Treaty Series*, vol. 360, p. 117, <<http://www.unhcr.org>> (accessed August 1, 2009).
11. Article 6 states: “Everyone has the right to recognition everywhere before the law.” Article 7 states: “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and

against any incitement to such discrimination.” UN General Assembly, Universal Declaration of Human Rights, December 10, 1948, <<http://www.unhcr.org>> (accessed August 1, 2009).

12. Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, 1951).

13. Acknowledgment of the mismatch between the current reality of millions and the framework of nation-state citizenship has prompted many suggestions for new bases for affiliation, including easier and nondiscretionary access to naturalization (Rainer Bauböck, “Citizenship and National Identities in the European Union,” Harvard Jean Monnet Working Papers, Harvard Law School, Cambridge, Mass., 1997); constitutional patriotism (Craig Calhoun, “Constitutional Patriotism and the Public Sphere: Interests, Identity, and Solidarity in the Integration of Europe,” in Pablo De Greiff and Ciaran P. Cronin, eds., *Global Justice and Transnational Politics: Essays on the Moral and Political Challenges of Globalization* (Cambridge: MIT Press, 2002)); cosmopolitan solidarity (Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge: Cambridge University Press, 2004)). But it has generally taken as given an undifferentiated “disadvantage” flowing from otherness rather than probing its specific manifestations.

14. Siofra O’Leary, *European Union Citizenship: The Options for Reform* (London: Institute for Public Policy Research, 1996).

15. Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995).

16. Bauböck, “Citizenship and National Identities in the European Union,” 1.

17. Yasemin Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago Press, 1994); David Jacobson, *Rights across Borders: Immigration and the Decline of Citizenship* (Baltimore: Johns Hopkins University, 1996).

18. Peter Spiro, *Beyond Citizenship: American Identity after Globalization* (New York: Oxford University Press, 2008).

19. The preeminent legal authority on legal statelessness is Paul Weis, who was commissioned by the United Nations Department of Social Affairs to issue “A Study of Statelessness,” United Nations document E/1112, February 1, 1949, document E/1112/add., May 19, 1949, prior to the adoption of the 1954 Statelessness Convention. See also Paul Weis, *Nationality and Statelessness in International Law* (Alphen aan den Rijn: Sijthoff & Noordhoff, 1979). Several studies have adopted a regional focus. See, for example, Tang Lay Lee, *Statelessness, Human Rights and Gender: Irregular Migrant Workers from Burma in Thailand* (Leiden: Martinus Nijhoff, 2005); P. R. Chari et al., *Missing Boundaries: Refugees, Migrants, Stateless and Internally Displaced Persons in South Asia* (New Delhi: Manohar, 2003); Tang Lay Lee, “Refugees from Bhutan: Nationality, Statelessness and the Right to Return,” *International Journal of Refugee Law* 10 (1998): 118–155; Amnesty International, *Bhutan: Nationality, Expulsion, Statelessness and the Right to Return*, ASA 14/001/2000, London, September 2000; Tibet Justice Center, *Tibet’s Stateless Nationals: Tibetan Refugees in*

*Nepal* (Berkeley: Tibet Justice Center, June 2002); Sumit Sen, "Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia" (Parts 1–2), *International Journal of Refugee Law* 11, no. 4 (1999): 625–645 and 12, no. 1 (2000): 41–70; Médecins sans Frontières Holland, *Ten Years for the Rohingya Refugees in Bangladesh: Past, Present and Future*, MSF Holland, March 2002; Susan M. Akram, "Palestinian Refugees and Their Legal Status: Rights, Politics and Implications for a Just Solution," *Journal of Palestine Studies* 31, no. 3 (Spring 2002): 36–51; Curtis F. Doebbler, "A Human Rights Approach to Statelessness in the Middle East," *Leiden Journal of International Law* 15 (2002): 527–552; Patrick Barbieri, "About Being Without: Bidun," Refugees International, October 2007; Andras Fehervary, "Citizenship, Statelessness and Human Rights: Recent Developments in the Baltic States," *International Journal of Refugee Law* 5 (1993): 392–423. For a useful overview, see *Forced Migration Review* special issue on statelessness, issue 32, April 2009.

20. The public health importance of birth registration is addressed in Philip W. Setel, Sarah B. Macfalane, Simon Szreter, Lene Mikkelsen, Prabhat Jha, Susan Stout, and Carla Abouzahr, "A Scandal of Invisibility: Making Everyone Count by Counting Everyone," *Lancet* 370 (October 2007): 1569–1577; Prasanta Mahapatra, Kenji Shibuya, Alan D. Lopez, Francesca Coullare, Francis C. Notzon, Chalapati Rao, and Simon Szreter, "Civil Registration and Vital Statistics: Successes and Missed Opportunities," *Lancet* 370 (November 10, 2007): 1653–1663.

21. United Nations Children's Fund (UNICEF) has researched the relationship between statelessness and armed conflict. See UNICEF, "Birth Registration and Armed Conflict," *Innocenti Insight* (Florence: Innocenti Research Centre, 2007); UNICEF, "Birth Registration: Right from the Start," *Innocenti Insight* (Florence: Innocenti Research Centre, March 2002).

22. Katherine Southwick and Maureen Lynch, "Nationality Rights for All: A Progress Report and Global Survey on Statelessness," Refugees International, March 2009, 7, <<http://www.refugeesinternational.org>> (accessed August 1, 2009).

23. Laura van Waas identifies deficient birth registration and migration as the two "new" sources of statelessness and argues that by not addressing these issues, the 1961 Convention on the Reduction of Statelessness has become outdated. See van Waas, *Nationality Matters*, 152.

24. Kostakopoulou, *The Future Governance of Citizenship*, 33.

25. Torpey, *The Invention of the Passport*, 244.

26. Southwick and Lynch, "Nationality Rights for All," 9.

27. See also Laura van Waas, "The Children of Irregular Migrants: A Stateless Generation?," *Netherlands Quarterly of Human Rights* 25, no. 3 (2007): 437–458.

28. See T. Alexander Aleinikoff and Douglas B. Klusmeyer, eds., *Citizenship Today: Global Perspectives and Practices* (Washington, D.C.: Carnegie Endowment for International Peace, 2001).

29. Van Waas, "The Children of Irregular Migrants," 2.
30. *Ibid.*, 12.
31. *Ibid.*, 8.
32. United Nations High Commissioner for Refugees (UNHCR), "Refugee Children: Guidelines on Protection and Care," UNHCR, 1994, cited in Saudamini Siegrist, UNICEF representative, paper presented at the conference on Children without a State, Harvard University, Cambridge, May 5, 2008, available from the author.
33. Siegrist, paper presented at Harvard University, May 5, 2008.
34. UNICEF, "The 'Rights' Start to Life: A Statistical Analysis of Birth Registration," UNICEF, 2005, 3, <<http://www.unicef.org>> (accessed August 1, 2009).
35. Siegrist, paper presented at Harvard University, May 5, 2008, 3.
36. UNICEF, *The "Rights" Start to Life*.
37. Siegrist, paper presented at Harvard University, May 5, 2008, 7.
38. Personal communication with Sahana Basavapatba, who can be reached at [sahana.basvapatba@gmail.org](mailto:sahana.basvapatba@gmail.org).
39. Alexandre Le Cleve, Hors la Rue, France, cited in Luca Bicocchi's chapter in this volume.
40. European Commission against Racism and Intolerance (ECRI), "Third Report on Italy, Adopted on 16 December 2005," Strasbourg, sec. 97, cited in Elena Rozzi's chapter in this volume.
41. Court of Justice of Milan, 1st Civil Section, Ordinance no. 2380/2008, <<http://www.asgi.it>> (accessed August 1, 2009).
42. A recent attempt by the Milan city council to prevent irregular migrants from enrolling their children in state kindergartens was overruled by a court, which held that insisting on a valid residence permit as a precondition for enrollment "unduly subordinate[d] children's rights to their parents' residence status." Milan Tribunal, 1st Civil Section, no. 2380/08 R.G., February 11, 2008 (see Elena Rozzi's chapter in this volume). It is interesting to compare this rights enhancing judgment with the U.S. Supreme Court's decision in *Plyler v. Doe*, 457 U.S. 202 (1982) (reference in the next paragraph of the text).
43. Although all Romanian children, including the Roma, are citizens, their legal status may expire after three months in Italy if they are dependent on public funds for their support. In this case, their claim to equal treatment as a citizen is compromised and may simply become a future aspiration. See also E. Meehan, "Rethinking the Path to European Citizenship," in William J. V. Neill and Hanns-Uve Schwedler, eds., *Migration and Cultural Inclusion in the European City* (Basingstoke, England: Palgrave Macmillan, 2007).
44. *Plyler v. Doe*, 457 U.S.202 (1982).
45. Southwick and Lynch, "Nationality Rights for All," 15. *Bidun*, the report explains, is the Arabic word for "without" and in this context is an abbreviation of *bidun jinsiya*, which means "without citizenship."

46. *Ibid.*, 11.

47. See Human Rights Watch, “‘Illegal People’: Haitians and Dominico-Haitians in the Dominican Republic,” April 4, 2002, B1401, <<http://www.unhcr.org>> (accessed August 1, 2009). Even though the Inter-American Commission on Human Rights ruled that equating “in transit” with “illegal” is unconstitutional and a violation of the American Convention on Human Rights in *Case of the Girls Yean and Bosico v. Dominican Republic* (2005) I/A Court HR (Series C), no. 134, recent investigations by Refugees International and the Robert F. Kennedy Memorial Center found that the Dominican authorities continue to exclude from Dominican nationality children born to Haitian parents. See Haiti Innovation, “Dominico-Haitians: Stateless in the Dominican Republic,” Inter-American Court of Human Rights Series C, no. 130; see also Open Society Institute Justice Initiative, “Inter American Court Affirms the Human Rights to Nationality,” October 17, 2005, <<http://www.justiceinitiative.org>> (accessed August 1, 2009).

48. Human Rights Watch, *Illegal People*, cited in Van Waas, “The Children of Irregular Migrants.”

49. Amnesty International, *Dominican Republic: A Life in Transit—The Plight of Haitian Migrants and Dominicans of Haitian Descent*, March 22, 2007, AMR 27/001/2007, <<http://www.unhcr.org>> (accessed August 1, 2009).

50. “Querida Europa,” *El País*, July 13, 2008, <<http://www.elpais.com>> (accessed August 1, 2009); see also Elena Rozzi’s chapter in this volume.

51. See chapters by Jyothi Kanics and Luca Bicocchi in this volume. These practices are generally confined to *de facto* stateless children in Europe because citizen and resident families are entitled to state accommodation when they have minor children within the household. In the United States, however, this is not the case, and the major predictor of mother-child separation is homelessness, Kirsten Cowal et al., “Mother-Child Separations among Homeless and Housed Families Receiving Public Assistance in New York City,” *American Journal of Community Psychology* 30, no. 5 (October 2002), cited in Kelsey Quigley, Research Proposal Abstract, April 2009, available from the author.

52. UN General Assembly, Convention on the Rights of the Child (CRC), art. 9, November 20, 1989, United Nations, *Treaty Series*, vol. 1577, p. 3, <<http://www.unhcr.org>> (accessed 3 August 2009).

53. Marine Vassort, *Paroles d’errance* (Marseille: Editions P’tits Papiers, 2006),<sup>13</sup> (translation by the author).

54. Jacqueline Bhabha and Nadine Finch, *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection in the U.K.* (Cambridge: President and Fellows of Harvard College, 2006), 56, <<http://www.humanrights.harvard.edu>> (accessed August 1, 2009).

55. “Report submitted by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur, in Conformity with Resolution 2003/46 of the Commission on Human Rights: Addendum. Visit to Spain,” United Nations Commission on Human Rights, 60th

session, E/CN.4/2004/76/Add.2, January 14, 2004, <<http://www.unhchr.ch>> (accessed August 1, 2009).

56. Whether citizen children could secure effective legal representation to translate the legal entitlement into a practical reality is another matter. But the absence of a legal entitlement eliminates a prerequisite for state protection.

57. Philippe Aries, *Centuries of Childhood*, trans. Robert Baldick (London: Pimlico, 1996).

58. Jacqueline Bhabha and Susan Schmidt, *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection in the U.S.* (Cambridge: President and Fellows of Harvard College, 2006), 4.

59. See Amnesty International, “Amnistía Internacional denuncia expulsiones encubiertas de menores no acompañados,” October 25, 2007, <<http://www.es.amnesty.org>> (accessed August 1, 2009).

60. See P. Perez, “De naufragos y navegantes: Los menores y jóvenes no acompañados,” *Boletín Puntos de Vista, Juventud e Inmigración*, no. 10 (2007): 12.

61. Melissa del Bosque, “Children of the State: The Feds and Texas Quarrel over Custody of Undocumented Kids,” *Texas Observer*, May 16, 2008, <<http://www.texasobserver.org>> (accessed August 1, 2009).

62. Kostakopoulou, “The Future Governance of Citizenship,” 138–139; Jacqueline Bhabha, “Get Back to Where You Once Belonged: Identity, Citizenship and Exclusion in Europe,” *Human Rights Quarterly* 20 (1998): 592–627.

63. European Court of Justice, *Chen & Others v. United Kingdom*, no. C-200/02, 2002.

64. Siegrist, paper presented at Harvard University, May 5, 2008.

65. I used the phrase “Adult-centered myopia,” for example, in “Not a Sack of Potatoes: Moving and Removing Children across Borders,” *Boston University Public Interest Law Journal* 15, no. 2 (2006): 197, 209. For a recent report on *de facto* stateless child migrants that invokes this perspective, see Save the Children, *Our Broken Dreams: Child Migration in Southern Africa* (Maputo: Mozambique: Save the Children UK and Norway, 2008). Speaking of “a culture of silence and invisibility,” the country director of Save the Children in Mozambique says: “Unaccompanied child migrants are extremely vulnerable to abuse and exploitation, but this is an issue which has *slipped through the cracks* of public concern in southern Africa and around the world.” Integrated Regional Information Networks (IRIN), *Southern Africa Child Migrants Tell All*, April 29, 2008, <<http://www.unhcr.org>> (accessed August 1, 2009).

66. Bhabha and Schmidt, *Seeking Asylum Alone*, 7. For a similar approach, see also Jacqueline Bhabha and Wendy Young, “Not Adults in Miniature: Unaccompanied Child Asylum Seekers and the New U.S. Guidelines,” 11 *IJRL* 84 (1999): 87–88; Jacqueline Bhabha and Wendy Young, “Children Seeking Asylum Held in Detention,” *Women’s Commission News* (Women’s Commission for Refugee Women and Children, New York) (Summer/Fall 2001): 10, <<http://www.womenscommission.org>> (accessed August 1, 2009). See generally Simon

Russell, "Most Vulnerable of All: The Treatment of Unaccompanied Refugee Children in the U.K," *Amnesty International*, 1999; Christopher Nugent and Steven Schulman, "Giving Voice to the Vulnerable: On Representing Detained Immigrant and Refugee Children," *Interpreter Releases* 1569 (October 8, 2001); Human Rights Watch, "Detained and Deprived of Rights: Children in the Custody of the U.S. Immigration and Naturalization Service," 1998, sec. 4, <<http://www.hrw.org>> (accessed August 1, 2009).

67. UNICEF, *The "Rights" Start to Life*, 3.

68. Siegrist, paper presented at Harvard University, May 5, 2008.

69. Deutsche Presse Agentur, "Barroso: Confident Italy Is in Line with EU Immigration Principles," July 15, 2008, <<http://www.monstersandcritics.com>> (accessed August 5, 2008).

70. *Case of the Girls Yean and Bosico v. Dominican Republic*. See Southwick and Lynch, *Nationality Rights for All*, 7.

71. Christina Fraser, "Italy Police to Protect Gypsies," *BBC News*, May 14, 2008 (see Elena Rozzi's chapter in this volume for details).

72. Miguel Benasayag, in *La chasse aux enfants: L'effet miroir de l'expulsion des sans-papiers* (Paris: Decouverte, 2008), documents the traumatic effects on families and children of discriminatory state policies in France.

73. Urban Institute, *Paying the Price: The Impact of Immigration Raids on America's Children* (Washington, D.C.: Urban Institute, 2007). See also David B. Thronson's chapter in this volume.

74. Erika Haysaki, "Mayor Criticizes Raid for Disrupting Families: Immigration Arrests in Massachusetts Stranded 140 Youths," *L.A. Times*, March 9, 2007, A16; Ali Noorani, "U.S. Immigration System at Its Worst," *Boston Globe*, March 9, 2007, <<http://www.boston.com>> (accessed August 1, 2009); Pierre Avril, "L'Europe prête à incarcérer tous les mineurs illégaux," *Le Figaro*, April 25, 2008, <<http://www.lefigaro.fr>> (accessed August 1, 2009).

75. See, for example, films such as *The Lost Boys of Sudan*, *In this World*, and *The Visitor*; plays such as *Edgar Chocoy*, a documentary theater piece by Jeffrey Solomon's Half Moon Theater Company about the murder of a deported Guatemalan child migrant, <<http://www.detentionwatchnetwork.org>> (accessed August 1, 2009); and contemporary art works on displacement, marginalization, exclusion, and illegality, such as *Guests*, the installation art work by Krzysztof Wodiczko, representing Poland at the 2009 Venice Biennale art show. This piece depicts the blurry figures of immigrant youth filmed through the opaque windows they are washing, "within arms reach" and at the same time "on the other side," a metaphor for their ambiguous status. See Bozena Czubak, catalog essay, in *Fare Mondi, Making Worlds: Fifty-third International Art Exhibition* (Venice: 2009 Fondazione La Biennale di Venezia, 100.

76. Not all authors have a uniform view, and invisibility is not always dismissed as an irrelevance. Luca Bilocchi, in his chapter in this volume, refers to invisibility as a relevant factor in understanding child statelessness and its implications.

77. Jacqueline Bhabha and Christina Alfrev, "The Identification and Referral of Victims of Trafficking to Procedures for Determining International Protection Needs," UN High Commissioner for Refugees, October 2009, PPLAS/2009/03, <<http://www.unhcr.org>> (accessed November 1, 2009).
78. Personal communication, Barbara Hines, Radcliffe Institute Exploratory Seminar on Unaccompanied and Separated Children, Harvard University, Cambridge, June 17–20, 2009.
79. Human Rights Watch, "Nowhere to Turn: State Abuses of Unaccompanied Migrant Children by Spain and Morocco," May 7, 2002, D1404, 28–32, <<http://www.unhcr.org>> (accessed August 1, 2009).
80. UN Committee on the Rights of the Child (CRC), "UN Committee on the Rights of the Child: Concluding Observations: Spain," June 13, 2002, CRC/C/15/Add.185, sec. 45(e), <<http://www.unhcr.org>> (accessed August 3, 2009).
81. Manley Hudson, special rapporteur for the International Law Commission, cited in Carol A. Batchelor, "Stateless Persons: Some Gaps in International Protection," *International Journal of Refugee Law* 7, no. 2 (1995): 234.
82. P. Granville Edge, "Vital Registration in Europe. The Development of Official Statistics and Some Differences in Practice," *Journal of the Royal Statistical Society* (1928): 346–79, 354–355.
83. James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998).
84. Michael Froomkin, *Identity Cards and Identity Romanticism* (New York: Oxford University Press, 2009).
85. Sometimes, the judgment that an identity document is unacceptable appears to be arbitrary and irregular. See Bhabha and Schmidt, *Seeking Asylum Alone*, 57.
86. See Bhabha and Schmidt, *Seeking Asylum Alone*; Mary Crock, *Seeking Asylum Alone: Australia* (Sydney: Themis Press, 2006).
87. Bhabha and Finch, *Seeking Asylum Alone*, 56.
88. *Ibid.*, note 29.
89. Cited in *ibid.*, 61.
90. For a case in point, see *ibid.*, 57.
91. Kostakopoulou, *The Future Governance of Citizenship*, 8.
92. Preparations are already afoot for international celebrations of the twentieth anniversary of the 1989 UN Convention on the Rights of the Child, the most comprehensively and rapidly ratified of all international human rights instruments. See, for example, the UNICEF Web site, <<http://www.unicef.org>>; Movement, Socialist Educational International Web site, <<http://www.ifm-sei.org>>; and the Web site of the Office for Standards in Education, Children's Services and Skills, <<http://ofstednews.ofsted.gov.uk>> (accessed August 1, 2009).
93. CRC, art. 1.

94. Over the last seven years, 388 children placed in the care of the Irish authorities as suspected victims of trafficking have gone missing and have never been traced. See Sr. Stanislaus Kennedy, "Who Cares About the Disappeared Children?" <<http://www.ireland.com>> (accessed May 23, 2008).

95. Setel et al., "A Scandal of Invisibility."

96. Matthew J. Gibney, "Statelessness and the Right to Citizenship," *Forced Migration Review* 32 (April 2009): 50.