

GHOST CITIZENS

Decolonial Apparitions of Stateless,
Foreign and Wayward Figures in Law

Jamie Chai Yun Liew

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ONE

THE STATELESS

Wayward Foreign Ghosts

The Conjuring of Ghost Citizens

The Tale of the Ghost of Pontianak

When I was a little girl, I heard ghost stories. These were not the ghost stories you might have heard at summer camp around a fire. They were folk tales my aunties told that people feared and believed. They were told to teach lessons but to also instill a respect of the unknown, our ancestors, and of things that may affect our fate.

One of the most memorable stories told to me was of a woman ghost known as Pontianak. I remember this story because my auntie, visiting from Southeast Asia, was shocked to find a small banana tree as a plant flanking our bay window in the kitchen of my childhood home. She warned me that Pontianak likes to live in banana trees and that she is a vengeful spirit that can inflict bad luck on those around her. I never looked at that plant the same way again. Yuen Ben Lee Adrian, a scholar in communication and film studies, explains that

The *pontianak* is widely recognised as the most dreaded supernatural being in Malay folklore and mythology. Often described as a fearsome mythical creature with vampire-like qualities, she is said to have fangs, possesses ghost-like traits and can only be subdued using a sharp object which is usually a nail struck to the back of her neck. She is also recognised through her high-pitched shrieks, long flowing hair and a fondness for the blood of children. Despite possessing such fearsome and horrifying characteristics, the *pontianak* peculiarly remains popular among Malaysian and Asian audiences ...¹

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Pontianak's story has been retold in folklore as that of a beautiful woman who died shortly after giving birth. In some versions of the story, she died from the shock of hearing that her child was stillborn and then returns from the dead. She is the equivalent of the Western conception of the female vampire with her long black hair and long robe-like dress. Historical and modern sightings of Pontianak are frequent with attestations and videos shared on social media. The myth of how she died or why she has come back has evolved. She conjures fear with the bad luck she can bring, and the ways in which to avoid or kill this spirit in violent ways are frequently discussed.

Adrian explains that Pontianak is a figure that transcends traditional belief in folklore and popular culture, manifesting in cinematic representations in horror films.² He finds her popularity increasing because of social, cultural, and political anxieties. Adrian discusses how Pontianak emerged "as a form of 'living dead'" transgressing normative forms of proper behaviour but asking for repentance.³ Adrian further notes that

The *pontianak* is a nebulous figure not only because of her existence as a being neither dead nor alive but also because of her ambiguous role as it is not clear if she is a villain or hero ... On one hand, she could be seen as a villain or antagonist due to the chaos, destruction and murder of those regardless of their innocence; on the other, she could be read as a hero or the protagonist as she seeks justice for those who are oppressed.⁴

Pontianak haunted me in Malaysia while I was conducting field research. Friends would send me videos where wispy apparitions would be seen to float on a dark highway. The superstitious side of me held a respect for the warnings and stories, but the scholar in me also started to see a parallel between the lived experiences of stateless persons and Pontianak. I began to believe again, like I did as a child, that ghosts, the living dead, were among us.

A Preliminary Note on Statelessness and a Universal Case Study

This book is about the existence and maintenance of statelessness, the condition of not having citizenship to any country whatsoever. Being without citizenship is not for the faint of heart, for it means, at the very least, an inconvenience in obtaining life sustaining benefits such as employment, education, health care and identification, but at its worst, it can also mean racist violence, genocide, and oppressive and indigent living conditions. The status of citizenship can shield you from criminalization, prison, a life of limbo, and deportation to unknown parts of the world. Citizenship allows you easier and greater access to things such as social services and legal venues. Statelessness often means hiding for fear of detection and mistreatment.

This book is grounded in research from a place I consider to be one of my homes: Malaysia. Studying statelessness in Malaysia is also not a remote exercise. Malaysia has a history of British colonization and a vibrant Indigenous population. It is multijuridical with a common law system; it has a large administrative state, making this is an apt case study. Much of the world's stateless populations reside in states that were colonized by the British with colonial legal vestiges scarring its citizenship laws and administration. What is gleaned from this seemingly remote jurisdiction is common and familiar in many places in the world.

Defining Ghost Citizens

This book is about ghosts, but more specifically about *ghost citizens*. Like Pontianak, stateless persons have a bifurcated reception; while many view stateless persons as illegals, cheaters, and foreigners, some view stateless persons as kin, citizens, and resilient advocates.

Ghost citizen is a term I use for stateless people in situ, or for stateless persons who reside in the state they consider their “own country.”⁵ Stateless persons are those that are without any citizenship whatsoever; no state has legally conferred citizenship to them. Ghost citizens are a subset of the millions of stateless people around the world; they live within the country with which they have genuine, long-standing, enduring, effective and thick links. Thus, it is not just the status of being stateless but the added condition that they *also* live within their home country that makes a person a ghost citizen. A stateless person is con-

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sidered to live in their “own country” if they have deep links with the state. These links may include their birth on the territory; long-term or permanent residence; family, including generational links with parents, grandparents, and children in the territory; employment or business; and cultural and ethnic community and support networks. Ghost citizens are persons who are stateless but who are living in a country where they believe they are citizens, but for a variety of reasons, have no citizenship in the country they are in. More than that, ghost citizens contest their statelessness by identifying ties, bonds, relations with their home state.

The term ghost citizen is more than a descriptor of stateless persons within their home country. It is a term I use to describe *how* stateless people become and remain stateless. Ghost citizens denotes the manifestation of statelessness in two ways. First, stateless persons become stateless because they are ghosted by their home states. In other words, the state they have genuine and effective links to does not recognize or acknowledge them as a citizen; they are denied citizenship by their own state. The term ghost citizen traces the historical, colonial construction of race and citizenship to uncover how and why stateless persons are being ghosted, denied, or ignored by their home states.

Second, stateless persons are rendered a citizen of a foreign country by their home state. In other words, their own state confers ghost citizenship on them; they deem them a citizen of another foreign state even though the home state has no jurisdiction or power to do so. I use the term ghost citizenship to recognize that states are making factual findings that a person is a citizen of an alternative state despite the lack of evidence, documentary proof, or legal assurance that they are in fact a citizen of another foreign state. It is citizenship in absence of any concrete confirmation, corroboration, or substantiation, hence the use of the term ghost alongside citizen. It is citizenship without actual conferral and is seemingly conjured. Ghost citizenship reduces stateless persons to the Other, the foreign and, consequently, provides fodder or rationale for why the home state does not recognize the person as kin or citizen.

More than that, the factual finding of foreign citizenship without any evidence allows states to gaslight stateless persons and their lived experiences. It allows states to simultaneously cast doubt on claims that stateless persons are indeed citizens of their home country and denies them the status of being stateless. Ghost citizenships are used to deny

that statelessness exists; they are used by states to counter a stateless person's narrative about their history with their home state and to manipulate perceptions of the stateless person's memory or place within their own country.

The term ghost citizen is grounded in the experiences of in situ stateless persons. In my conversations with stateless persons, they have communicated their feelings of invisibility in a variety of ways that invoke ghostlike imagery. For example, one stateless person told me, "I found out I was stateless when I was around 18 years old when I wanted to apply for a bank account, when I was sick and went to the hospital, and I realized this is statelessness. I can't go anywhere. I can't do anything. I'm invisible."⁶ Another stateless person poignantly reflects: "It's been difficult without status. I'm still young. It feels like I am missing out; that I'm missing out on life. People are living and going on without me."⁷

Beyond people's lived experience, the term ghost citizen also exhibits the actions and activities by which persons come to live in a phantom-like state through the taking of documents at a government office, the denial of applications by a bureaucrat, the finding of fact by a court that a person has foreign citizenship without concrete evidence, for example. One stateless person provides, "When my documents were taken away, I felt lost. Missing the documents has meant I feel like I am a missing person."⁸ Moreover, the term ghost citizen evokes a make-belief problem; the term explains the gaslighting of the stateless person's lived experience. One advocate for stateless persons told me that "Even the legal decisions are not there for us to see. A lot of decisions are not public. It's like this problem doesn't exist."⁹ Another advocate told me that "Unfortunately, people do just give up. They are not in the records. They are nowhere. They just disappear."¹⁰

This book documents the duality of the term ghost citizen: the ghosting of persons by the denial of citizenship on the one hand, and the conferral of ghost or foreign citizenships without any evidence to substantiate any citizenship has been conferred by any state.

Further, creating ghost citizens in the ontology of how we discuss citizens or statelessness is helpful in recognizing the lived experiences of stateless persons. Like Pontianak, stateless persons live a phantom-like experience. They experience an administrative death in the denial of their citizenship but live among us, sometimes hiding and other times

making appearances while invoking questions of the unknown. They are sometimes ignored, rendered invisible, and they hide in the crevices of our society because they themselves fear the consequences of interacting with those free to benefit from citizenship rights. These consequences include arbitrary and lengthy detention as well as deportation to a foreign country. Some live in poverty, unable to obtain legal work, relying on the goodwill of family or members of their community. Some work in unauthorized, exploitative, and abusive employment to survive. A large proportion of stateless persons are children, and many cannot access education, living in a purgatory waiting for their status to be resolved to begin their lives. Some never resolve their citizenship issues and lead a life drifting from one survival mechanism to another. Due to their structural exclusion from education, employment, and social services, some turn to informal means to survive and sometimes come into conflict with the law, which criminalizes them and further deems them deviant. Many cannot access health care and are forced to struggle with injuries and other ailments or simply perish due to neglect. The things we may take for granted such as opening a bank account, obtaining a cell phone, or signing up for a sports team sometimes requires identification that a stateless person cannot provide. Everything in a stateless person's life is difficult and requires overcoming a multitude of barriers. Sometimes stateless persons and their families simply abandon the pursuit to be a citizen.

Stateless persons also haunt and terrify people. The misunderstandings about who stateless people are and the narrative that states have crafted—where foreign persons are portrayed as taking advantage of the legal system—have instilled a fear in the national citizenry of a flood of alien figures invading the state, taking up precious space, resources, and jobs, muddying the national identity of the state. In some contexts, stateless persons are subjected to violence, discrimination, and oppression.

It is not a coincidence that Pontianak is female. This book chronicles the occurrences of statelessness among persons whose mother was a foreigner, a citizen of another state, and her connection to a child is seen as marring their perceived loyalty, identity, and ultimately chances of obtaining citizenship. While Pontianak represents the racist and misogynistic framework of citizenship law, a vestige of colonial British law, she also represents the vehicle by which citizenship denial is undertaken. She is the foreign citizen mother haunting the courtroom, the govern-

ment counters, casting shadows on citizenship applications. The mother, whether known/present or not, is a legal device to deny citizenship and ghost persons that may otherwise have genuine, strong, and enduring links to the state. She is the proxy by which to mark a stateless person wayward, Other, or foreign.

As with sightings of Pontianak however, we should be wary of conclusions drawn from perceived apparitions and scrutinize the conception of reality told to us by others, especially that by the state. We should not place importance on an imagined citizenship, one that is not based on evidence or proof of actual conferral of such status. This book disturbs the narrative the state has crafted around stateless persons. It upsets the accounts conveyed through the factual findings in legal and administrative decisions where stateless persons are made to be citizens of other states but also non-citizens of their self-identified own state. The research here challenges the construction of ghost citizens by highlighting the erasure of the status of statelessness and by foregrounding the general gaslighting—that such persons are not necessarily kin or members of the community.

This book, however, also chronicles the survival work undertaken by stateless persons and traces the troubling paths ghost citizens float through to disrupt notions that they do not belong or are wayward Others. As well, during my time in Malaysia, I was searching for people who were hiding from the state, and was aided by guides, overseers or undertakers who ferried me to communities and persons to interview. This book, thus, also recounts courageous efforts by advocates to guide persons from purgatory back to life.

While this book uses the case study of Malaysia, I see ghost citizens in other contexts. Therefore, I argue that the ontological turn to ghost citizen is useful in not only identifying similar trends in a multitude of locales where stateless persons reside, but an important way to disturb narratives and stories about who are stateless. For example, in my examination of statelessness in Canada, I see administrative and judicial decision makers referring to “entitlement to foreign citizenship” as a reason to make factual findings that a person is not stateless, but a foreigner. This allows Canada to deny its obligation to confer refugee protection or to preserve citizenship for a particular person.¹¹

Ultimately, this book attempts to make sense of what is happening to stateless people and to “imagine possible futures.”¹² While documenting

the administrative and legal construction of statelessness, I imagined stories of hope, where ghost citizens will be brought back to life. In some ways, I imagine the folktale ending this way: Pontianak died in childbirth but was mistakenly told that her baby died too. She stays in purgatory trying to right a wrong. In the end, even though the baby's new parents want to keep ghosts away, she is somehow able to meet her baby and tucks a passport or citizenship certificate in her baby's swaddle. Once she is able to do this one last task, she leaves the in-between and floats into the afterlife. She is ultimately a hero in a story of oppression.

Imagining Purgatory: Understanding Statelessness

A Preliminary Understanding of the State

Contemporary citizenship, whether we agree with the conceptual principle or not, rests on the notion of states as defined territories that are self-contained political units. The world is scarred with borders, even in contested forms, giving states the seemingly normative authority to govern activities, people, and institutions within such borders.¹³

The emergence of the state has been attributed by some to the end of the Thirty Years War, and the Peace of Westphalia in Europe (which encompasses a pair of treaties).¹⁴ The peace treaties led to the demise of the overarching power of the Catholic Church and the Holy Roman Empire, both of which were sources of legal and moral authority. They also led to the advent of an international legal system where autonomous states became sovereign over their own domain.¹⁵ It is important to understand that the treaties do not only address sovereignty over territory but also over a state's citizens, referring to "vassals," "subjects," "soldiers," "inhabitants," "servants," "people," and others. Passages referring to such citizens in the peace treaties were written with the intention to provide protection; that is, the state's sovereign right not only included unencumbered right to rule over people but the reciprocal responsibility of protecting citizens.

While this system of international law started in Europe, other states were folded into this new world order through the violent expansion of European colonial empires. States that were not colonized reluctantly adopted this European model. As a result, by the early twentieth century, the European model of international legal order was universalized.

At the core of this system was the principle of state sovereignty, albeit sovereignty that favoured colonial powers.

The necessary corollary of creating self-contained and sovereign states is the development of rules and procedures by which people can enter, stay in, and exit such states. Ultimately, sovereign states necessitate the creation of national communities where certain people are conferred membership and others are not.

The idea of citizenship is often cited as a consequence of the rise of the modern sovereign state. However, English common law reveals that there were early iterations of the concept of citizenship. Calvin's case is the earliest and most influential theoretical articulation of birthright citizenship by an English court. Robert Calvin, who was born in Scotland around 1606, had inherited estates in England but to claim his rights to the estates, he had to prove he was an English subject. The question was whether he was an English subject even though he was born in Scotland. The Court of King's Bench ruled that Calvin was an English subject since he was born in Scotland after the Union of the Crowns (Scottish and English) and entitled to the benefits of English law.

Despite this early pronouncement of the concept of birthright citizenship, Calvin's case does provide limitations. The court makes exceptions where ambassadors of foreign nations have children within England; they are not "natural-born subjects" of the king. Similarly, enemies that come into the kingdom, possessing hostility, are not loyal or obedient to the king, and therefore cannot be subject to the king. These exceptions, bounded in loyalty, are reflected in the modern legal conceptions of citizenship.

Throughout this book I use the term "state." This refers to the state in the Westphalian sense where the territorial boundaries that demarcate enclosed tracts of land are identified as countries and where persons within are at the behest of the governments managing those communities. There has been a plethora of research discussing how states should be studied in a "civic" or "ethnic" sense, but these approaches are outside of the scope of this book.¹⁶ This book also does not reconcile the debate as to how nation-states are formed and does not propose how one would resolve contested claims of statehood.

In utilizing the term "state," I also refer to the government in both the administrative and legal senses. Since this book focuses on a case study that has a democratic context, the term state refers to not only

the institutions that make laws, but the agents that embody those decision makers. Further, the state is evoked in the administrative sense and points to the administrative bodies that represent the state be they registrars and bureaucrats that implement and enforce law. As well, the state embodies the decisions flowing from the judiciary, one of the arms of government.

I acknowledge that at times, when using the term state, I may be attributing actions and decisions to the state writ large. I do this to contest narratives that occurrences of statelessness are one-off, isolated, or individual instances and instead challenge the reader to think about how state actions and decisions are masking more systemic and deliberate strategies to hide or deny the common experience of statelessness. Further, I invite readers to think about how state action, while manifested in one encounter with a bureaucrat, or a decision by one judge, may be part of a pattern and approach undertaken by the government to create ghost citizens by denying their citizenship and rendering them foreign citizens of other states. I argue that this design was a result of the racial categories created during British colonial rule and the post-colonial bargains undertaken between the racialized communities that formed during British colonial rule. The racial categories are now firmly entrenched in law, whether in the constitution as law-in-text, legislation, or administrative and judicial decisions.

I want to make clear that while this book acknowledges that the Westphalian model of states prevails, I recognize that this is a colonizing framework. I do not endorse this model. I see the colonial violence this model has created by destroying communities and denying their statehood and demands for self-determination. Indeed, part of the work of this book is to discuss the state's location as a product of colonialism. This book questions the focal point on "recognition by states,"¹⁷ or a "state's monopoly over access, status and belonging"¹⁸ and challenges the prevalent view that the nation-state in theory is a sanitized, neutral construct which we should not take for granted. As Rita Dhamoon and Andrea Smith point out, "the nation-state itself is a settler-colonial structure and form of governmentality" that is "governed through domination and coercion" and "based on control over territory."¹⁹ This book acknowledges that statelessness is a product of migrations and the movement of people regulated by a system of nation-states, and furthers scholarly work that situates persons "in the service of settler colonial

projects” and that understanding the “state-produced colonial hierarchies that privilege non-Indigenous peoples, including people of colour, at the expense of Indigenous peoples” is an “ongoing practice of ruling.”²⁰ This book extends research that there are “uneven colonial processes of settler dominance” and that there are “differentials of power *among* marginalized peoples.”²¹ While I am working with the Westernized, colonizing definition of state, this book also, particularly through Chapter 2, utilizes the work of Jodi Byrd in presenting the “cacophony” of connections across different forms of racism and colonization illuminating the “multiple interactions among different colonialisms, arrivals and displacement at work” to understand the “multiple co-constituting” struggles of “colonizer-colonized and other minority oppressions.”²² Therefore, while I utilize the term state, make no mistake that this book is, in part, about disrupting the generative Eurocentric systems of creating and managing hierarchies, constructions, and categorizations of people. In fact, even though this is outside of the scope of this book, I recognize that different communities may conceive of communities and membership differently than that modelled in the world. This book aims to encourage more dialogue about how we might want to conceive of communities and membership differently than state-citizenship models that necessarily invoke borders as violent means of exclusion. I am also mindful of past erasures and renderings of Indigenous peoples and communities to the “mythic past or ‘the dustbin of history’” and the reduction of “groups of racially and culturally defined and marginalized individuals” as “drowning in a sea of settlers.”²³ I know that my work may not fully grapple with these conversations and for that, I acknowledge also that there may be shortcomings in how this is discussed in this book.

Worldwide Statelessness

There are over 10 million stateless persons in the world, persons without any citizenship whatsoever.²⁴ This number is an estimate since the counting relies on government data.²⁵ The problem of statelessness is often conflated with the plight of refugees and forced migrants, but in many cases, persons are stateless *in situ*, meaning that they were both born and continue to reside in countries to which they have genuine and deep connections.²⁶

There is an urgency to understanding how persons are rendered stateless, especially within their own country. The International Court

of Justice (ICJ) in *The Gambia v Myanmar* is currently assessing whether Myanmar has committed genocide against the Rohingya.²⁷ Since Myanmar gained independence from the British Empire in 1948, the Rohingya have been subjected to military-led violence, residential segregation, forced labour, and the deprivation of citizenship and basic rights including education, health care, freedom of movement, marriage, and reproductive autonomy.²⁸

In the state of Assam in India, colonial- and postcolonial-era struggles' construction of Assamese indigeneity vis-à-vis Muslim Bengali foreignness have persisted and resulted most recently in the deletion of over 1.9 million residents from the 2019 version of the National Register of Citizens, rendering them at risk of statelessness and deportation.²⁹ In both cases, the stateless populations of the Rohingya and Muslim Assamese have long-standing connections and links to the impugned state spanning multiple generations.³⁰

Malaysia, the focus of this study, shares a history of British colonial occupation and a significant in situ stateless population with the examples of the Rohingya and Muslim Assamese. This warrants further study because in Malaysia, the creation and maintenance of statelessness differs from that in Myanmar and India. That is, statelessness in Malaysia is produced mainly through administrative law rather than through executive orders (as is the case in Myanmar) or via legislation (as in India).

There is a rich body of research on statelessness. Political theorists have pointed out the exclusion of stateless persons from theory, discourse, and scholarship, rendering the stateless figure as leftover residue, invisible, forgotten, or ignored, calling for a more inclusive lens on theory.³¹ Legal scholars have pointed out the historical perception that statelessness is a legal problem that requires tweaking or filling in gaps in the law³² and also have turned to human rights as a mechanism to resolve statelessness.³³ Despite legal reform, some posit that the problem rests with legal interpretation or implementation.³⁴ Others have found that focusing on law reform masks the political, social, and cultural structures enabling statelessness.³⁵

The occurrences of statelessness and the experiences of stateless persons are well documented in multiple places, for example, in the Caribbean,³⁶ Europe,³⁷ in member states of ASEAN (Association of Southeast Asian Nations),³⁸ Middle East (especially among Palestinians),³⁹ India,⁴⁰ Myanmar,⁴¹ Nigeria,⁴² Thailand,⁴³ Tibet,⁴⁴ and Vietnam.⁴⁵ This

book contributes to the literature, but also discusses how statelessness is constructed through the material legacies of colonial administrative and legal mechanisms. The research herein disrupts state narratives that there are no stateless persons, that stateless persons are foreigners with citizenship elsewhere, and that stateless persons have no genuine links to the state they are claiming as their own. In doing so, this book proposes the conceptual device of the ghost citizen.

The Study of Statelessness

There is a plethora of work interrogating the state's treatment of migrant workers,⁴⁶ immigration detainees,⁴⁷ undocumented persons and/or "irregular" migrants,⁴⁸ and refugees⁴⁹ among others.⁵⁰ There is also research that questions the salience of citizenship⁵¹ and work on the broader category of non-citizens.⁵² Scholarship on statelessness, however, is an emerging area.⁵³ This book contributes to this developing body of research.

Theories of the state and citizenship typically begin with the dichotomous assumption that persons are either citizens (or subjects) or foreigners.⁵⁴ The republican model posits that a social contract exists between citizen and state⁵⁵ whereas the liberal model sees citizenship as ideally inclusive and indefinitely extensible.⁵⁶ Feminist critiques of the republican and liberal model point out that some citizens are more equal than others and discuss how laws structure personal circumstances.⁵⁷ As well, universalist conceptions contextualize perspectives to argue that citizenship rights should be extended to groups previously excluded (such as African Americans and women in the American context).⁵⁸ Critics of the universalist conception advocate for a differentiated citizenship to discourage generalizations, which, in turn, points to discussions on the types of demands that citizens can make (i.e. special representation, multicultural rights, self-government).⁵⁹ In discussing how citizenship can lead to better integration, liberal nationalists argue that only specific forms of political practice can lead to trust and loyalty from citizens such as a common identity.⁶⁰ On the other hand, postnationalists argue that a pluralistic society allows minorities to find their place within a state; instead, a pluralistic society centres around something other than nationalism like the constitution and a common political culture.⁶¹ Still others may find the liberal nationalist approach too narrow,⁶² focusing on different things such as whether a person is affected by a state decision⁶³

or has a connection to the territory or place.⁶⁴ In exploring the salience of the border and the right to free movement, some theorize citizenship through open borders or how members from poorer communities can and should access richer communities through a moral or human rights perspective.⁶⁵ Others theorize the protection of the integrity of existing communities and borders.⁶⁶ Membership somewhere is assumed. Indeed, Rainer Bauböck writes that the contemporary conundrum is that there are “citizens living outside the country whose government is supposed to be accountable to them and inside a country whose government is not accountable to them.”⁶⁷ Irene Bloemraad goes so far as to assert that empirical evidence for the importance of citizenship is thin, finding that “most residents are citizens of their state.”⁶⁸ Existing empirical research on statelessness however counters Bloemraad.⁶⁹ Studies of citizenship have not always acknowledged the existence of the stateless person, because their existence or presence is disruptive and disturbing when attempting to construct a theory of citizenship or statehood.⁷⁰ Theories of citizenship have privileged the voice of the insider and kept the stateless “at the margins of theory.”⁷¹ As Phillip Cole writes, rather than dismiss statelessness as “a leftover residue lying outside of the international system of sovereign states” or as “some minor inefficiency” that needs to be tweaked in the system, we should instead view this issue as “a structural failure, a product of that order” which may “involve rethinking everything.”⁷² Tendayi Bloom points to a special individual-state relationship of “noncitizenship.”⁷³ Lindsey Kingston maps out various kinds of hierarchies of personhood and the idea of “functional” citizenship,⁷⁴ and Kelly Staples discusses that the frame should be not one of member but of human and “bare life.”⁷⁵

This book presents an ontological position via ghost citizens to critically reflect on the assumptions some theories rest on: that the only salient relationship is the one acknowledged by the state and that the conditions with which recognition is conferred is sound. My research extends the work of Amar Bhatia who questions why the focus should be on “recognition by the state.”⁷⁶

Statelessness in Non-Western, Postcolonial Contexts

Tendayi Bloom describes liberalism as “a broad church” containing the core elements of individualism, equality, and liberty.⁷⁷ These Western values do not find prominence in non-Western states. For example,

individualism contrasts sharply with Asian preferences for collectivism and its associated values. As Bloom notes, liberal thought claims, “universalism and a distanced rationality” giving “the appearance of being impartial” and “hiding its epistemic location” when scholars writing the “core texts of liberal theory” are “unfamiliar with the experience of activated noncitizenship.”⁷⁸ Samantha Balaton-Chrimes concurs: “In keeping with this emphasis on autonomy in private life, the liberal political tradition turns a blind eye to difference associated with citizens’ (or non-citizens’) private lives, including identities such as ethnicity.”⁷⁹ Kamal Sadiq writes, “While citizenship has a long lineage in developed Western states, we know very little about citizenship’s advance in post-colonial developing states.”⁸⁰ Sadiq further notes that “Missing from European accounts of citizenship are the rights and experiences of people in the colonies and their imperial centers”⁸¹ and that “Europe’s liberal claim becomes unstable once the conceptual lens is expanded to include a broader range of minorities and their various experiences of political, social, and economic discrimination.”⁸² Further, as Erin Aeran Chung states, “The study of citizenship in various non-Western contexts provides a distinctive lens through which we can analyze its contradictions and contingencies.”⁸³ This book problematizes statelessness using narratives and storytelling in social and cultural contexts of postcolonial states.

Addressing the Rights Paradox: State Prerogative Versus the Right to Citizenship

Hannah Arendt is often invoked in relation to statelessness, given she was stateless for 13 years. She wrote that everyone has the “right to have rights.”⁸⁴ The right, as explained by Seyla Benhabib is, “addressed to humanity as such and enjoins us to recognize membership in some human group.”⁸⁵ Benhabib points out that “the use of the term ‘right’ evokes a *moral imperative*: ‘Treat all human beings as persons belonging to some human group and entitled to the protection of the same.’ What is invoked here is a *moral claim to membership* and a *certain form of treatment compatible with the claim to membership*.”⁸⁶ David Owen writes that while Arendt’s appeal for a “right to have rights” has been “established as one of central importance to political reflection,”⁸⁷ the “problem of statelessness to which Arendt drew attention has not been resolved.”⁸⁸ Michael Weinman agrees: “We have seen that the existing

rights regime and the international institutions that support and give it codified expression are insufficient to the task of ensuring actual legal protections to non-citizens.”⁸⁹ Further, Ayten Gundogdu, in reference to Arendt’s paradox of statelessness points to “rightlessness of those who appear in their bare humanity.”⁹⁰ In other words, statelessness necessitates a positionality of the absence of rights.

Since Arendt wrote about the right to have rights, the *Universal Declaration of Human Rights* has turned human rights discourse into, “a set of pleasant normative assertions.”⁹¹ Despite movements toward adopting a rights-based framework, much of the adoption of the rights-based approach has taken place among Western states.⁹² The turn toward rights is not one that is as omnipresent in other parts of the world, including Asia, where a large proportion of the world’s stateless rest. Even where some states take up human rights protections, however, these tools have not provided much comfort for stateless people in both Western and non-Western contexts.⁹³

While many have benefited from the traction of and turn toward human rights, it is at the border, on the body of migrants and stateless persons, where human rights seem to either have a dampened effect or miss its mark. Sovereign privilege of the state almost always seems to trump any rights claims. Arendt’s call for a right to have rights seems not to have been realized even in the West where it is most strongly embraced. Samuel Moyn writes that “to parade a list of rights before people who lack basic citizenship was ‘something like offering a detailed inventory of the courses of a lengthy meal in the presence of the starving.’”⁹⁴

There is an inherent belief that states will be assumed to act in bona fide ways to ensure its members will be conferred citizenship; the “human rights regime assumes one’s relationship to a government.”⁹⁵ Further, one can argue that rights associated with citizenship are still evolving and states are slowly coming around to recognizing certain obligations. The experience of stateless persons, however, shows a different story—that signing up to treaties does not mean they will automatically lead to resolution.⁹⁶

The other consideration is the sovereign prerogative to say no. Scholars find a tension between borders and the egalitarian values pronounced by rights.⁹⁷ Other scholars go beyond identifying a tension and call sovereign prerogatives “punitive and disciplinary”⁹⁸ questioning the “weak presumption” states have to prohibit people from entering terri-

tories as well as the idea of property in service of this.⁹⁹ Duncan Ivison, Paul Patton, and Will Sanders, who write about Indigenous persons and political theory, state that “egalitarian political theory has often ended up justifying explicitly inegalitarian institutions and practices.”¹⁰⁰ The presumption of borders leads to the legal rationale states turn to time and time again: the sovereign prerogative to govern within its jurisdiction and the right to decide who are its members.

Human rights protections are diluted by the state prerogative; rights are a paradox that mask and perpetuate structural conditions of harm and disparity, reinforcing rather than challenging established arrangements.¹⁰¹ As Dean Spade has written in relation to trans rights in the United States, “law reform work that merely tinkers with systems to make them look more inclusive while leaving their most violent operations intact must be a concern of many social movements today.”¹⁰²

Acknowledging Stateless as Constructed Racial “Others” and “Foreigners”

My research builds on scholarly work on the construction of the Other¹⁰³ and how colonial rule relied on a graded, racialized and hierarchical conception of membership that informs the codification of citizenship.¹⁰⁴ The ontological turn to ghost citizens questions the label that states impose on persons without considering how stateless persons themselves understand their identity.¹⁰⁵ Scholars have discussed how migrants have been cast as illegal, deviant, strange, fraudsters, cheaters, and liars and so on.¹⁰⁶ The “phantasm” of “binary mode of self/other, clean/dirty, responsible/irresponsible, and independent/dependent” is “viewed as natural rather than political or economic” and that these attitudes, “take the individual as the unit of analysis and structural factors are ignored.”¹⁰⁷

In Malaysia, scholars have written about how British colonization created and reinforced segregated racialized communities¹⁰⁸ and “Indigenous” status among Malays.¹⁰⁹ Contemporary Malaysia is dominated, shaped and factualized by colonial knowledge¹¹⁰ informed by colonial censuses,¹¹¹ and the bargains or compromises various racialized groups made to garner citizenship in nascent Malaysia.¹¹² This book builds on this literature to map out how the colonial vestiges of administrative and legal documentation, systems, and tools have persisted and evolved to shape a hierarchical and racialized national identity in

Malaysia. Further, this research explores how stateless persons perform citizenship and how they contest the label of foreignness.

Harsha Walia interrogates the formation and function of borders as a “spatial and material power structure”; that borders are an “ordering regime, both assembling and assembled through racial-capitalist accumulation and colonial relations.”¹¹³ This book furthers Walia’s work in interrogating how colonialism and racial categories have created borders on the bodies of stateless persons, and expands existing interrogations into the state’s obsession with purifying spaces from so-called contaminants — stateless persons — regularly identified as deviants, wayward, illegal, and foreign.¹¹⁴

Statelessness as a Development and Registration Issue

Statelessness has also been seen as a technical problem of documentation where one need only attend to the administrative task of registering with the government. Tied to this is the state’s capacity to manage this technical or administrative work. Statelessness is thus seen as a consequence of developmental difficulties manifested through poverty and low levels of education.¹¹⁵ Looking at statelessness through this lens, however, ignores the incredible capacity of the state to document and survey the population:¹¹⁶ that states are using the technical under-registration of persons as an excuse for why there may be stateless persons within its borders, masking other structural reasons.¹¹⁷ The turn toward sustainable development as a mechanism to solve statelessness has overlooked the work law has done to construct “citizens” especially in postcolonial states.¹¹⁸ This book contributes to scholarship that reveals that states and their membership-making process is not one-dimensional but socially constructed and contested.¹¹⁹

The historical development of various forms of identity documentation demonstrates how the regulation of people’s identities and movement are central to nation-state building.¹²⁰ The Holocaust and the Rwandan genocide show the extreme ways in which exclusion and even extermination was made possible with the use of bureaucratic records and documents to construct boundaries and notions of difference.¹²¹ These practices have continued in the contexts of Myanmar with Rohingya and India with Muslim Assamese. Documents make “imagined communities” become realized on a practical level.¹²²



Photo Credit: Jamie Liew

The Case Study of Malaysia

Why Malaysia?

In the dark and murky waters of the Brunei River sits Kampong Ayer. Kampong, in Malay, means village. We could call it a suburb or neighbourhood, but those images are sure to conjure bungalows or two-storey houses flanked with manicured green lawns or condos and apartment buildings with sidewalks leading to open playgrounds and parks in Canada. Kampong Ayer is on water, framed by mangroves clutching edges of the river, sipping the salt water. Houses, schools, shops are perched on stilts over the restless river, connected by boardwalks, docks, and boats. Take away the water, the stilts, and the heat, and the images are no longer foreign. Clothes hang on lines adjacent to homes, children ride their bicycles, and potted vegetables and plants frame windows and porches.

My father grew up in a neighbouring water village that no longer exists, and Kampong Ayer is where my family takes me to bear witness to where we are from. My father has no love for his childhood home. This cannot be blamed on the lack of charm or community in the village that exists today. Born in Brunei, my father was stateless.¹²³ Brunei, a

sultanate, did not confer citizenship to Chinese people. It was this lack of citizenship that led my father to migrate to Canada. His rootlessness in Brunei however, led me back to Asia to try to understand why. How could someone be born into a country and not have citizenship? How could the proboscis monkeys swinging from the trees above the water village feel more at home than he did?

My father's life story is for another time, but it is his lived experience that prompted me to try to understand the phenomenon of statelessness. When I am asked where my parents come from, I find it difficult to answer. How can I explain the purgatory my father was in as a place he came from? How can I attribute his existence to a place that wanted him invisible?

While I initially wanted to study the issue of statelessness in Brunei, this research is situated in Malaysia. The Sultanate of Brunei is not a democratic state and there are political barriers to interrogating why people are stateless there. Fear of the government, and a lack of openness and transparency made research impossible for a foreigner like me in Brunei. I turned to Malaysia, a country where my mother was born, and a country where I also have roots. There, statelessness was ubiquitous, not only on the bodies of thousands of people, but in political discourse. I chose Malaysia because it is a democratic state, a former British colony. It is a state that is not signatory to many human rights instruments, and there is a vibrant advocacy community for stateless persons.

I also felt that my face, shared culture, heritage, and language, combined with my father's own personal history of being stateless would allow me to connect with stateless persons there. My own personal connection to the place as both inspiration and instrument in this research is important to providing perspectives on statelessness. I try to point this out throughout the book. I follow the lead of other racialized scholars such as Heba Gowayed who found that her "insider/outsider status" as an Egyptian American and an Arab American woman enabled her to do her fieldwork on Syrian refugees resettled in Canada, the United States, and Germany;¹²⁴ and Kimberly Kay Hoang who recognized the "reflexive dialogue about the racialized, gendered, and classed relations that differentially reward and discipline white scholars, as opposed to scholars of color and male and female scholars from diverse class backgrounds" even as she was warned that studying sex workers in Vietnam would marginalize her as either an "area-studies scholar" or as someone

who does “me-search.”¹²⁵ This book provides reflexive dialogues that flow from research from racialized scholars like Gowayed, Hoang, and others.

Like Gowayed and Hoang, I do not appear much in this text, as a deliberate effort to place the stories of stateless persons at the heart of the analysis.¹²⁶ I hope their stories are represented in an honest and respectful way. Despite this, while I am hyper-aware of my place as a privileged, Western-born, educated lawyer and scholar, I do provide a few insights, given my personal positionality with statelessness, that I think are “worthy” of discussing.¹²⁷

Statelessness in Malaysia

Some of the research in Malaysia details the challenges stateless persons face in accessing education,¹²⁸ while others provide accounts of statelessness in communities such as the Rohingya in Malaysia,¹²⁹ the Bajau Laut in Sabah,¹³⁰ the Tamils in Peninsular Malaysia,¹³¹ and migrants.¹³² Further, there is vital research on citizenship law in Malaysia.¹³³

Catherine Allerton, in writing about child statelessness in Sabah, points out that “statelessness...is *always* embroiled in wider moral and political arguments” and “though laws exist to apparently prevent child statelessness, in practice, the path toward Malaysian citizenship ... is unlikely to be straightforward.”¹³⁴ Allerton argues that “statelessness is fundamentally an issue of (social, moral, and political) recognition and is not simply a question of the lack of citizenship.”¹³⁵ Adding to Allerton’s thinking, this book argues that the legal recognition is not simply one of neutral or benign operation of an administrative process. This book discusses how the state is actively reconstructing stateless persons as foreign or as ghost citizens.¹³⁶ My research compliments Allerton’s writing to uncover the “work *against* recognition”¹³⁷ against stateless children.¹³⁸ This book documents how Malaysia, by rendering stateless persons as foreigners (ghost citizens) denies them citizenship of the state with which they have genuine and effective links.

Searching for Ghost Citizens in Malaysia — Methodology

Forty-five people, including nineteen stateless persons or their parents and/or siblings were interviewed in Malaysia over a period of approximately three months from January to April 2018. The interviews took place in Kuala Lumpur, Selangor; Georgetown, Penang;

Kota Kinabalu, Saba; and Miri, Sarawak. I also observed a registration rally in February 2018 where advocates gathered approximately sixty stateless persons and/or their parents to assist them in submitting their citizenship applications in a registration office. As well, I accompanied a stateless person on a day trip in March 2018 to meet with top officials in the Ministry of Home Affairs as part of her plea for citizenship. My observations and conversations as well as the papers gathered in these encounters document the lived experiences of ghost citizens.

Alongside this ethnographic data, I conducted a review of the *Federal Constitution of Malaysia* and related legislation, as well as all reported Malaysian case law involving stateless persons. Additionally, I acquired information for a few unreported cases via lawyers and the media up to April 2020. The discourse in the legal decisions enhances our understanding of how ghost citizens are created in law. Finally, reports, pamphlets, scholarly articles and other writings from advocates and scholars in the region provided context to the findings in this book.

The stories of the nineteen stateless persons and their families, as well as twenty-six advocates (lawyers, paralegals, NGO [nongovernmental organization] representatives, and a few academics) are heartbreaking. Their accounts were shared punctuated by tears, heavy sighs, anger, and frustration, but also hope that things will change for them individually and systemically. One of the most surprising aspects of this research project was how easy it was to find people to talk to and how forthcoming they were with me. They wanted to say something, to tell someone what they have been going through, and to appeal to anyone who could help them. Many were steadfast in asserting they were Malaysians, that they were not foreigners. Most of all, they wanted people to know they exist.

As a lawyer, it was painful for me to part after such personal encounters. I am used to hearing people's stories but then I take those stories, mash them up, rework them, and use them in legal documentation like affidavits, memoranda, and factums. I follow clients in their journey through a legal process. In those written actions, I feel I am taking a positive step for those who shared something intimate with me. In these encounters, I did not know if I would see or hear from these persons again; I did not have any concrete plans to help them on their journey except the promise that I would write about statelessness. This book, if nothing else, is a testament to the lives of stateless persons and a reminder of their brave act of speaking out.

I was jarred by the faces of children who accompanied their parents since they made me think of how I could have easily been one of them, that in my ancestral homeland, places could have been reversed, and I, or my parents, could have been telling someone about my struggles living as a stateless person.

I make several caveats. First, there is research on the experience of statelessness and the associated consequences.¹³⁹ This book supplements this research but does not provide a full picture of what stateless persons face in various aspects of social, political, and economic life.¹⁴⁰

Second, in discussing each case, there is no nuanced legal opinion proffered as to the stateless person's eligibility or entitlement to citizenship. Nevertheless, on the face of the law in Malaysia, in my own legal assessment, many persons interviewed appear to meet the legal requirements for citizenship but face administrative and legal barriers from obtaining that citizenship.

Third, this book acknowledges that the labels of stateless and ghost citizens (foreign citizens) are being recreated here and that they invoke potential plural and diverse meanings.¹⁴¹ While there is an exercise of categorization in identifying stateless persons in this book, this is not a finite list or a full picture of statelessness but a glimpse of what kinds of statelessness exist. The book hopes to illuminate the work of categorization. As Rita Kaur Dhmoon points out, the "re/making, re/organizing and managing" of "subjugating formations of difference" work to create relations of dominance.¹⁴² This book describes how the colonial project of categorization and race-making manifests into the further classifications of statelessness allowing race to play the proxy for the foreign and wayward or disloyal Other.

Finally, a few terms are used to refer to persons stateless in situ (persons who are in their "home" country). I refer to a stateless person and *de facto* stateless synonymously as a person who is either stateless and is a migrant or a stateless person in situ because both include persons who have no legal recognition as a citizen in any state. I refer to three terms, *de jure* stateless, "administratively" stateless persons, and *de facto* citizens synonymously as persons who have no legal recognition as a citizen in any state but may have legal entitlement to citizenship, that is persons who are entitled to citizenship on the face of the law but due to various administrative or legal barriers, are unable to obtain the legal proof of citizenship. Some may question my use of the term stateless for

persons who appear to meet the legal requirements for citizenship and prefer to use the term “undocumented citizen.” My view is that the legal fact of being conferred citizenship is important. As such, persons should be considered stateless until they are legally recognized as a citizen.¹⁴³

I refer to refugees as persons who self-identify or have been identified by NGOs/advocates (including the United Nations High Commissioner for Refugees [UNHCR]) as persons who are fleeing persecution, as outlined in the *Convention Relating to the Status of Refugees* (“*Refugee Convention*”),¹⁴⁴ and persons who are fleeing torture and unusual and undeserved treatment, as outlined in the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (“*Convention against Torture*”).¹⁴⁵ I refer to migrants as persons who have themselves moved to Malaysia. If the migrant person’s child was born in Malaysia, I do not automatically consider the child a migrant.

Finally, Indigenous persons refers to any person in Malaysia that are Orang Asli, Orang Ulu or Anak Negeri. As I explain in Chapter 2, while people of Malay descent may be considered “Indigenous,” this label is a social construction born of the postcolonial bargains made in the constitution. They form most of the population and are politically, economically, and socially dominant and therefore not ethnic minorities.¹⁴⁶ They are not included in the term “Indigenous” persons when I use it.

This book elevates voices of persons at the margins through narrative.¹⁴⁷ This project draws from research that interrogates the construction of the “imperial category of Native”¹⁴⁸ while recognizing the violence that the distinction between “natives,” “Indigenous,” and “Aboriginal” creates.¹⁴⁹ This book continues the work of Renisa Mawani on how the postcolonial state deploys indigeneity,¹⁵⁰ in this case, to advance or deny citizenship claims through jurisdictional terms of racial status and subjecthood, looking to the “histories of racial classification that animated the oscillating divides between ‘aboriginal’ and ‘native’ specific to the Malaysian and statelessness context.”¹⁵¹ The mobilization of indigeneity has been used to assert self-serving claims to citizenship and racial superiority. In this way, as Mawani asserts, Indigenous peoples were not vanishing or in the past, but indigeneity materializes in the present and future; indigeneity is “an effect of racial and colonial power, produced through protracted struggles and violent histories of British imperial rule.”¹⁵² This book uses this frame to complicate and bring to light the different “figures and forms of indigeneity”¹⁵³ in rela-

tion to statelessness in Malaysia. This research, however, also attends to the decolonizing practices interrogating indigeneity, being mindful of how such research may reproduce or amplify the ongoing colonization of Indigenous peoples. Where possible I point out gaps in the research and invite further research. This book uses ethnographic and sociolegal research to elevate the voices¹⁵⁴ and experiences of racialized stateless communities, to inform understandings of how “native,” “Indigenous,” “foreign,” and “migrant” categories create statelessness.

Ghost Hunting: Outline of the Book

This book has eight chapters. This chapter introduces you to the concept of ghost citizens. Chapter 2 provides a brief overview of the historical context of the case study: Malaysia. The chapter discusses how British colonialization constructed segregated racial and ethnic identities and how these identities are reproduced in contemporary law, policy, and public discourse on who is a citizen.

Chapter 3 provides a brief overview of international law and how state practice and law-as-text (conventions and legal decisions) have held firm to the principle that the state has the prerogative to decide who are citizens. Flowing from this state prerogative is the emerging praxis where states deny citizenship to those with genuine and effective links with that state (ghosting citizens).

Chapter 4 presents an overview of Malaysian citizenship law but also reveals findings from a case law survey of Malaysian legal cases and ethnographic interviews on how stateless persons experience the legal system. In situ stateless persons with genuine and effective links are not only denied citizenship (where the state is ghosting their citizens) but are also prevented from utilizing the status of stateless, deeming them foreign citizens where there is no proof that citizenship by a foreign state has been conferred (conferring ghost citizenship).

Chapter 5 provides findings from the case law survey and ethnographic interviews to identify who are stateless in Malaysia. This chapter argues that many stateless persons are not necessarily “foreigners” and have genuine and effective links to states they reside in.

Chapter 6 presents findings that the government counter is not a neutral place but one where persons not only become stateless but are deemed foreigners, ghost citizens of other states. The chapter argues for

a more focused gaze on administrative processes and the work of front-line government officials.

Chapter 7 follows Roisah, a young stateless person at the time of field research but has since successfully obtained citizenship in Malaysia. Roisah's case illustrates the strategic performance to *masuk Melayu*, become Malaysian, to become a citizen.

Chapter 8 summarizes the multiple state practices of ghosting in situ stateless persons who are de facto citizens by conferring ghost citizenship, invoking foreignness, otherness, wayward deviancy and illegality and invites further research on *ghost citizens* using voices and experiences of stateless persons elsewhere.