

1 Introduction

Millions of people worldwide languish in a gray zone between full citizenship and total statelessness. Lacking the documentary proof to authenticate one's existence can blur the line between the two. Roughly ten to fifteen million people globally are now considered to be truly stateless, defined by international law as someone “who is not considered as a national by any state under the operation of its law”¹ and who has no “enforceable assertion” of a nationality.² However, a much larger number of people – an estimated 1.1 billion people worldwide – have a plausible claim to state membership through either birthplace (the principle of *jus soli*) or parentage (*jus sanguinis*) but cannot officially prove their identity (World Bank 2017). People who go through life without official papers that prove their citizenship typically did not have their birth registered or certified.³ In most countries of the world, having one's birth entered into the civil registry is a vital step on the pathway toward full citizenship.⁴ Lacking essential documentation is not simply a problem among older cohorts, some of whom were born before civil registries even came into existence in their countries; as recently as 2012, there were still roughly 750 million unregistered births globally among children under the age of sixteen years (Dunning *et al.* 2014: 2). One in every three new births in the world still is not registered in a timely fashion.⁵

Failures to register a birth among people who are, in principle, nationals of a country can result in untold deprivations, including some of the very same deprivations associated with full-on statelessness. Not having a birth certificate often bars a person from attending school or sitting exams, receiving health care (including immunizations) and social grants, opening a bank account, inheriting property, voting, and receiving burial assistance.⁶ The difficulty in proving the age of unregistered/uncertified children puts them at increased risk of being subject to child labor (Fagernäs 2014), child marriage (Plan International & Coram International 2015), and underage military recruitment (Simmons 2009: 343). If elderly people cannot show evidence that they are old enough to be

¹ United Nations Convention relating to the Status of Stateless Persons, 1954, article 1(1).

² See Price (2013: 447).

³ Birth registration is the official recording of a birth by the state in the civil registry of a country. Birth certification is an individual's formal proof that this has occurred. It is not unusual in the developing world to find people whose births were registered but who never received a birth certificate.

⁴ Birth registration does not generally confer nationality per se. Instead, it establishes a legal record of where a child was born and who his or her parents are, information that is crucial for showing entitlement to nationality.

⁵ For additional numbers on underregistration, see Gelb and Metz (2018: 44–45).

⁶ In many countries, the absence of a death certificate precludes survivors from eligibility for funeral assistance and from burying the deceased individual in a legal cemetery.

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eligible for a pension, they are vulnerable to income poverty (HelpAge International 2011). In part because it complicates the acquisition of subsequent identity documents (IDs), such as social security cards and passports, lacking a birth certificate excludes individuals from receiving and exercising the full benefits and rights that documented nationals enjoy (Hunter 2019). Proof of state membership not only helps one navigate within one's own country, but also is crucial for one to reach other countries and operate effectively abroad. Leaving a country that is beset with any number of problems (e.g. national disaster, war, famine, or even major unemployment) is impeded by not having the identity papers required to obtain a passport. In conflict situations, prior documentation greatly facilitates one's ability to reunite with family members. In short, proof of state membership, with all the downstream benefits it entails, begins with having one's birth documented.

Beyond the individual costs of nonregistration, there is a collective cost to having large segments of the population unincorporated into civil registration and vital statistics systems. The benefits of birth registration and certification extend beyond individuals to include the effective functioning, planning, and monitoring efforts of modern states. The lion's share of attention in the academic literature has focused on the surveillance and control-oriented aspects of why some states seek to make their populations legible (e.g. Scott 1998, Foucault 2007). It is true that countries headed by totalitarian regimes generally have profiles of near-universal registration. Indeed, objectives such as taxation, the control of movement in border regions and within the country, conscription, and internment rest on knowing the population. However, other compelling collective reasons exist for having fully functional registration and vital statistics systems, but these reasons are less recognized outside specific communities of experts. For example, it is impossible to arrive at an accurate statistical understanding of national epidemiological trends, such as infant mortality and life expectancy, in the absence of reliable vital statistics provided by a complete civil registry, which is why public health professionals have long been among the most consistent champions of birth registration in many developing countries (McGuire 2010). Moreover, everything from determining the number of schools to build to deciding on the number of vaccines to order rests on having an accurate count of the population (World Vision International 2014, Mikkelsen *et al.* 2015).

The issue of undocumented citizenship has commanded the attention of human rights advocates and development practitioners for a considerable time now. Articles 7 and 8 of the 1989 United Nations (UN) Convention on the Rights of the Child declare that national governments should register children immediately after birth and that children should enjoy, from birth, the right to

acquire and maintain a nationality.⁷ The current campaign by The UN Refugee Agency (UNHCR) to end statelessness, marked by the slogan “I Belong,” advocates that “No states have populations which are entitled to nationality under law but which cannot acquire documentary proof of nationality.” The campaign specifically includes undocumented nationals owing to an awareness of the fact that they often end up functionally stateless. In this light, development practitioners from organizations such as the UN Children’s Fund (UNICEF), Plan International, World Vision, the Open Society Foundation, and Namati have been actively engaged in finding ways to enhance documentation among marginalized individuals and communities for the sake of their social, economic, and political empowerment.

Interestingly, however, academic political scientists have paid relatively little attention to the matter of undocumented nationals.⁸ There has instead been much scrutiny of situations in which people lack IDs because they lack state membership altogether (e.g. highly persecuted minorities, people who have fallen victim to border changes and state successions, and various nomadic groups) and of situations involving immigrants who may be citizens elsewhere but not in their country of long-term residence (e.g. people of Mexican or Central American origin with irregular status in the United States and guest workers in some European countries, before recent changes). Political scientists’ neglect of birth registration among those with a legal entitlement to nationality is especially puzzling given that it is the beginning of an individual’s relationship to the state and the precondition for broader citizenship rights, including the eligibility to vote. On the birth certificate in particular, one researcher writes, “For a document as important as the birth certificate there has been surprisingly little discussion of its nature, contents, and significance” (Clapton 2014: 209). Nationals without documents have received even less coverage in the media, although perhaps this is no wonder considering that “For the most part, evidentiary challenges to citizenship occur in dark corners of bureaucracies, their details only vaguely articulable even by those directly affected” (Stevens 2017: 16). Instead, journalists are more inclined to feature stories in which the denial of state membership involves visible frontal conflict, resulting in vulnerable populations being detained or forcibly driven out of countries that do not want them. Occasionally, however, stories surface about

⁷ See Simmons (2009: 312–317) on the Convention on the Rights of the Child.

⁸ Notable exceptions include Scott (1998), Blitz (2009), Blitz and Lynch (2012), Hunter and Brill (2016), and Lawrance and Stevens (2017). Breckenridge and Szreter (2012) outline the political history of a wide-range of identity-registration systems. Political scientist Joseph Wong, founder of the Reach Project, has also underscored the importance of birth registration for social provisioning. See Wong (2015) and Wong *et al.* (2016).

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“citizens without proof” (Brennan Center for Justice 2006), even in developed countries such as the United States.⁹ Their resulting inability to receive basic social assistance and to vote has put their plight into the spotlight.¹⁰ Of those currently without a birth certificate in the United States, most are older African-Americans who were born at home in rural areas of the South. Their marginalization is shared by a subset of older Native Americans.¹¹ Less common, but noteworthy, are contemporary cases of US children whose parents sought an “off-the-grid” existence and never registered their births. Such children tend to be born at home, schooled at home, and not vaccinated.¹² A common theme that runs across these different examples is the difficulty that the undocumented person encounters when trying to obtain delayed registration and certification.

The purpose of this Cambridge Element is to draw attention to the important yet understudied issue of “undocumented citizenship,” that is, of nationals who lack the official papers necessary to be recognized as full citizens in their countries. It focuses on understanding the gray zone between full-on statelessness and officially validated citizenship.¹³ With special reference to the foundational issue of birth registration and certification, *Undocumented Nationals* describes the scope of the problem, where it is concentrated geographically, and the kinds of people that are most afflicted by it. It also identifies, analyzes, and illustrates the causes, consequences, and remedies associated with two different causal patterns of undocumented citizenship or evidentiary statelessness,¹⁴ terms that will be used interchangeably with undocumented nationality. In one pattern, a dearth in documentation is more the consequence of governmental neglect, omission, or failure than of intentional deprivation. In the other pattern, it is the result of deliberate discrimination, generally against racial or ethnic minority groups. Improvements in birth registration rest on a combination of factors that stimulate enhanced societal demand, together with increased state supply or facilitation of documentation. The likelihood of increasing birth registration depends largely on the initial causes of

⁹ See Bradley (2017). See also Kurth and Roelofs (2017).

¹⁰ See National Public Radio (2018).

¹¹ See Granillo (2014).

¹² Tara Westover’s 2018 best-selling memoir, *Educated*, recounts her experiences of this kind. Raised in a Mormon survivalist family in rural Idaho, Westover spent her early years isolated from schools, medical facilities, and the state’s civil registry. Her later experience in trying to obtain delayed registration in order to make her way into mainstream society proved to be no easy task. See also Radiolab (2016).

¹³ Following common usage in contemporary international law, I use the terms “citizen” and “national” interchangeably in reference to the legal relationship between an individual and a state, whereby the state recognizes and guarantees the rights of the individual. I make similar reference to people with “state membership.”

¹⁴ This term should be credited to Jacqueline Stevens (2017).

underregistration, the strength of individual and state incentives for closing the gap, and the appropriateness of bureaucratic measures adopted to do so. The hopeful news is that developing-country governments that are seriously committed to change, even those that are nontotalitarian in nature, can make significant progress in this area. For example, Morocco, Cambodia, Cape Verde, Djibouti, and Honduras all have a gross national income (at purchasing power parity) of less than US\$5,000 per capita but nonetheless have birth-registration rates around 90 percent. Ample political will, together with well-targeted resources around a handful of well-chosen policy measures, have resulted in considerable gains being made, even in low-income countries with limited overall state capacity. International organizations and non-governmental organizations (NGOs) can play a useful role when developing-country governments seek out their contributions in terms of expertise and resources.

Undocumented Nationals is organized as follows. Section 2 presents a conceptual and descriptive overview of undocumented nationality. In the broader context of clarifying what the phenomenon is and is not, it provides information on the number, kind, and location of people who suffer from undocumented nationality, specifically with reference to the lack of the foundational document of a birth certificate. The section makes an important first-cut broad distinction between the *legal* denial of nationality status, which results in entirely stateless individuals, and the *administrative* denial of nationality status, which leads to undocumented nationals. It then distinguishes between two variants of undocumented nationals: those who lack documents owing to acts of state omission and those who lack documents owing to state commission. In the former instance, the state's inattention to stimulating demand for and facilitating documentation can have the de facto effect of leaving poor and marginalized people without official papers. In the latter variant, government officials and street-level bureaucrats deliberately withhold essential documentation from those they wish to exclude as full members of the national club. Interestingly, both of the two scenarios put people in a situation that is the opposite of what Kamal Sadiq (2008) calls "paper citizens" or "documentary citizens," whereby paperwork, often acquired illegally, confers citizenship on immigrants with no legal basis for it.

Section 3 focuses on the first variant of undocumented citizenship, in which low levels of birth registration reflect state neglect and failure more than an intentional effort to exclude specific groups of people.¹⁵ The argument it develops and illustrates is the following: if the state's previous civil registration

¹⁵ This is not to say that there is not occasional discrimination exercised on the part of individual registrars.

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system was not sufficiently affordable and “user-friendly” to incorporate all nationals, governments need to take active measures to both stimulate societal demand for registration and facilitate the state’s provisioning of it. In other words, it is unrealistic to think that previous incentives and procedures for civil registration, gone unmodified, will attract new registrants. Improving birth registration demands a change in strategy. Beyond diminishing the economic costs of registering a child, the challenge of getting unregistered populations to enter the civil registry involves finding ways to reach groups that typically have limited engagement with public institutions (Dunning *et al.* 2014: 6). Facilitating their access to registration demands active state outreach and sometimes requires flexibility with respect to languages and cultural practices other than those dominant in the country.

The cases used to illustrate these dynamics are all from Latin America, although many of them apply well beyond the region. Many people assume that claiming nationality is generally not a problem in the Americas owing to the widespread prevalence of the *jus soli* principle (automatic citizenship based on birth in the territory of a state), which does give children a natural advantage over those born in Europe, Africa, and the Middle East (Vengoechea Barrios 2017: 25).¹⁶ However, for *jus soli* norms to protect people from situations of effective or de facto statelessness, they must be accompanied by full birth registration, a situation that has not existed historically and that remains elusive in some countries of the region. Despite being the developing world region with the lowest percentage of unregistered births (UNICEF 2016a: 6), there are still three million children under the age of five who are unregistered in Latin America and the Caribbean.

After exploring the historical and contemporary factors that account for underregistration in Latin America, Section 3 analyzes the conditions under which birth-registration rates have improved. The quest for social inclusion stands out as a central motive of the state for increasing coverage in recent years. Countries ranging in economic strength and state capacity levels, from Bolivia to Brazil, have made improvements stemming from this pursuit. Another motive, one that can coexist with enhancing social inclusion, is the desire to keep track of populations that were dislocated owing to armed conflicts. Peru and Colombia are examples of countries that reflect both incentives

¹⁶ Some thirty-plus countries, most of them located in the Americas, grant citizenship automatically based on the birth-right principle (Gelb & Metz 2018: 51). A partial exception in some Latin American countries concerns children born of parents who are working abroad in the service of another country (e.g. foreign diplomats and military personnel). In addition, the Dominican Republic has tried to narrow the scope of birth right citizenship, as discussed in Section 3.

simultaneously. To increase the registration and certification of births, governments in these countries and elsewhere in the region have implemented a variety of measures to lift the economic and logistical burdens on families of low-income and education levels, especially those who live in remote rural areas and who may not speak Spanish or Portuguese.

Section 4 focuses on the second variant of undocumented citizenship, whereby not having a registered birth is the consequence of explicit discrimination against groups of people owing to their ascriptive attributes. This variant is intensely political and generally arises in countries where *jus sanguinis* norms prevail, that is, where nationality is determined by what is judged to be the nationality of the parents at the time of a child's birth (Vengoechea Barrios 2017: 18). Contexts that allow bureaucrats to decide whether or not applicants' ancestors were "true" nationals leave far more room for discrimination than those where the guiding principle of citizenship is the state that pertains to the territory of one's birth. As the section shows, in several notable instances, governments have shied away from barring applicants' state membership as a matter of official (legal) policy and instead have erected unreasonable barriers to applicants' ability to access nationality-granting documents. In short, by deliberately depriving nationals of documents, governments can effectively impede them from becoming full citizens. Because it is the state's exclusive prerogative to recognize the facts of a person's birth as entitling them to membership or not, and because no other entity but the state can provide official documentation, attaining full citizenship in cases of deliberate discrimination in *jus sanguinis* systems can be challenging indeed.

The two cases analyzed in Section 4 illustrate somewhat different versions of this dynamic. A clear-cut case of depriving people from a specific ethnic group of official papers in order to block them from attaining full citizenship involves the Nubians of Kenya, who have long struggled to obtain the documentation that would allow them to successfully realize the Kenyan nationality to which they are legally entitled. In another example, the Dominican Republic's recent efforts to diminish or even eliminate the citizenship of Dominicans of Haitian descent is also ostensibly documents based. Many such individuals were born in the Dominican Republic under a permissive *jus soli* framework but were never registered, much less certified. Their Dominican-born parents and grandparents went generally unregistered as well. Following the government's initiative in 2010 to retroactively shift the basis of Dominican nationality to align with a *jus sanguinis* framework, such individuals have been hard pressed to (re)claim Dominican citizenship given the requirement that they provide birth documents that they do not have. In both instances, central to the state's efforts to exclude "outsiders" from becoming fully fledged members of the national club is the

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deprivation of nationality-realizing documents, together with demands that individuals present official papers (knowing full well they are unlikely to have them).

Section 5 concludes the Element. The conclusion in Section 5 begins by briefly revisiting the themes and examples presented in the previous sections. In particular, the fact that even countries of relatively low-income levels and state capacity can make progress in this area, should they wish to do so, is highlighted. Undertaking the right set of policy interventions and enlisting the assistance of international organizations are key in this regard. Admittedly, countries that are travelling the last mile to include all citizens, as opposed to countries that are starting from a much lower point, face somewhat different situations. The conclusion will reiterate the role of politics in affecting the recognition and provisioning of nationality-granting documents, as well as draw attention to the crucial role of policy reforms in facilitating or obstructing the documentation process. Political will, accompanied by a set of well-chosen and effectively implemented policies, can greatly improve birth-registration coverage, even in countries with low overall state capacity and modest resources. A lack of political will, not to mention active resistance on the part of the state and its bureaucrats, generally results in undocumented nationals having to overcome excessively high hurdles. Recent patterns of inclusion and exclusion in a country's civil registry reflect these contrasting dynamics.

2 Evidentiary Statelessness in Perspective

This section presents a conceptual and a descriptive overview of undocumented nationality, also referred to as evidentiary statelessness. The first part explains who these unregistered children and adults tend to be and where they live. The second part places the phenomenon of undocumented nationality in the broader context of discussions about statelessness. It defines various categories of the reasons why people lack documents. A contrast is drawn between legal and administrative sources of statelessness. For example, some people lack nationality-granting documents because they belong to no state, legally. Others have a plausible legal claim to state membership but lack the documents to prove it. In other words, they suffer from what are mainly administrative deficiencies. Some may be in this situation because of documentary challenges that arise from state neglect and failure. Others find themselves in this situation owing to active discrimination against given individuals and groups. These situations are further developed and illustrated in Sections 3 and 4.

Descriptive Overview: Who and Where are the Unregistered?

Regions of the world vary considerably in terms of how many people go unregistered at birth. As the bar graph in Figure 1a shows, Eastern and Southern Africa has the lowest average registration coverage (41 percent). Sub-Saharan Africa is the next lowest (43 percent). West and Central Asia is somewhat higher (45 percent), followed by South Asia (60 percent). Latin America and the Caribbean (95 percent) and the Middle East and North Africa (92 percent) have considerably higher rates, but fall short of universal registration. Given the low standard for a birth being counted as registered (i.e. generally, a caretaker reporting that they have registered the birth, even if there is no accompanying birth certificate), the real rates of registration are in all likelihood lower.¹⁷ Moreover, nearly everywhere where registration is low, even those who are registered frequently lack the certificate that confirms their registered birth. Especially for people born before digital registries came into existence (most people), the actual certificate is of practical importance for proving age and nationality. For example, at an immunization clinic, the health practitioner, who lacks access to the civil registry, will ask to see a birth certificate. In all regions, averages mask significant cross-country variation, as the choropleth map in Figure 1b reveals. Furthermore, country averages mask significant internal variation in registration, as discussed later on.

Whether a child is born in a rural or an urban setting constitutes one of the most important predictors of birth registration status in every developing region, as the bar graph in Figure 1a shows.¹⁸ The disadvantage of being born in a rural setting, along with the other disadvantages discussed below, applies far more in countries with overall lower registration rates. Whereas the reported world average for registration of under-fives is 59 percent in rural areas, it rises to 82 percent in urban areas. The reasons for this gap include the fact that parents in rural areas are generally less likely to see a benefit to registering their children and are therefore less likely to take active steps to do so. Also crucial is the higher proportion of babies born at home in rural settings than in urban areas. The first step toward civil registration is the official reporting of a live birth, which institutions such as clinics and hospitals generally carry out with greater ease than the midwives who oversee home births. Furthermore, civil registries

¹⁷ The methodological challenges of counting people who are not registered are daunting. Especially in settings where it is difficult to determine how many live births took place in a given year (e.g. where there is a high percentage of out-of-hospital births), it is difficult to know with certainty how many people went unregistered. See Harbitz and Tamargo (2009: 3–4) on how researchers arrive at these estimates.

¹⁸ See also a well-done quantitative evaluation of this fact for birth certificate coverage in ninety-four countries (Bhatia *et al.* 2017).

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Wendy Hunter
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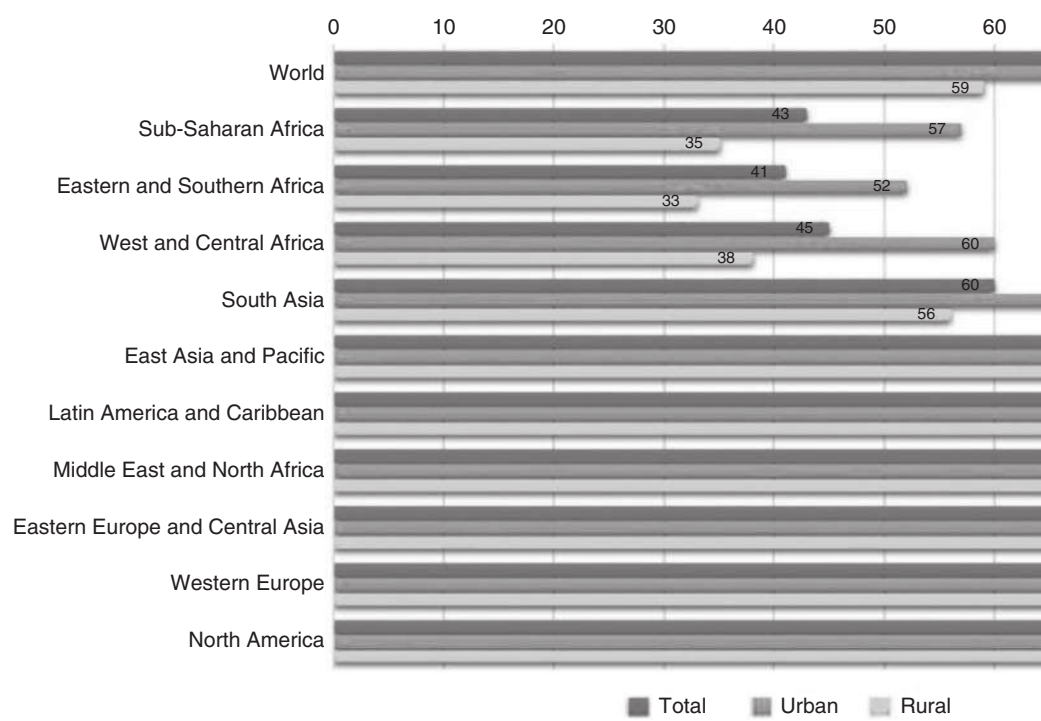


Figure 1a Percent of children under the age of five years with registered birth

Note: The data refers to the most recent year available during the period specified. The data includes children with registered birth, even when this statement was unaccompanied by proof in the form of a birth certificate. The data is not available for all regions.

Source: <https://data.unicef.org/topic/child-protection/birth-registration/>