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CITIZENSHIP IN QUESTION EVIDENTIARY BIRTHRIGHT AND STATELESSNESS									
BENJAMIN N. LAWRENCE AND JACQUELINE STEVENS, EDITORS									
INTERNAL BACKGROUND: Per HSI and ERO, the subject was based on information initially available, and he was arrested May 4, 2011. However, he had derived U.S. citizenship from his parents naturalized before Ocampo turned 18. Once he presented evidence of his LPR IR2 (child of a USC), his multiple convictions made him eligible for removal. He was immediately released by ERO Chicago on May 10, 2011.									
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Subject stated that he has no petitions or applications pending with the Bureau of U.S. Citizenship and Immigration Services. ICE computerized indices reflect no application or petition pending before CIS on behalf of the subject. Subject claims to have no medical issues. PHONE CALL: (b)(6), (b)(7) 224 430 (b)(6), (b)(7)

Reason for Termination:

CITIZENSHIP IN  
QUESTION

# CITIZENSHIP IN QUESTION

EVIDENTIARY BIRTHRIGHT AND STATELESSNESS

BENJAMIN N. LAWRENCE &  
JACQUELINE STEVENS, EDITORS

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Dedicated to the memory of  
JOHANN “ACE” FRANCIS, 1979–2013,  
and to the millions of people struggling to prove  
who they are and questioning the law  
for its betrayed promises of peace, dignity, and justice.

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## PREFACE: ACE'S STORY

*The following is a keynote address by Johann "Ace" Francis, a U.S. citizen wrongfully deported for ten years to Jamaica, delivered at the "Citizenship-in-Question" symposium, Boston College Law School, April 19, 2012. Explanatory remarks in square brackets were inserted from Skype interviews with Mr. Francis by Jacqueline Stevens on December 21, 2009.*

Just being here, in something like this, is huge. I wrote a speech, but it's hard to capture ten years of one's life. You might be asking yourself, how could someone get in a situation like this? I was born in Jamaica, but I grew up in Washington State. My stepfather was in the military so I was in a military family. And we moved all over the country. I moved there [to Washington] when I was seven. When you grow up and you think of yourself as an American, you really don't think otherwise, or to go to immigration when you are fourteen years old [the year his mother naturalized, thus automatically conferring on Ace his U.S. citizenship]. I bought a car when I was sixteen. And then when I was eighteen, I got in trouble. It was spring break and we went to Oregon.

I was in high school, ready to graduate, and my mother moved to Georgia. I said, okay, I'll move down with her when I graduate. But, I lost her phone number. We didn't have cell phones then. And I lost my pager. I was on a trip to Oregon, [to] a town called Seaside. A lot of people [were there] on spring break. Two girls in a convertible (two white females) were in this parking lot. My friends started talking to them. Their boyfriends were pulling in. They were drinking on the back of a pick-up and came up hostile. Everybody got in the fight. The police came up and everyone was trying to leave. When they came around, there were four of them on top of me in the corner.

I'm in an area where the police know the families of the kids. They [the district attorney] came to me and said, "Thirty-six months. This is the best



we can do.” I have no family. Hey, thirty-six months, are you crazy? This was a fight, but “if you go to trial and you lose you’re going to get five to seven years,” they told me. I served time in a boot camp program. I was proud that I graduated. On graduation day, I was told that I couldn’t leave because I have this INS hold. I said, “I thought I was a U.S. citizen.” They said, “Can you prove it?” To tell you honestly, I didn’t know if I was a U.S. citizen. I told them how I came [to the United States], with my mother. But when they said, “When did she get her U.S. citizenship?” I couldn’t answer. They shipped me to Arizona. To Eloy. They flew me to Las Vegas and from there drove me to Eloy [Detention Center].

So my mother’s looking for me in Washington State. By the time she found out that I was in jail, I’m in [an immigration jail in] Arizona. She was looking for me in Oregon, but by the time she found out I was in Arizona, I’m already in Jamaica.

### *At Eloy Detention Center*

I didn’t know I was supposed to see a judge. I waited three months. I never actually saw the judge until I was deported. To tell you the truth, when I went in front of the judge he didn’t ask me any questions. When I spoke with the judge, as a matter of fact, there was no question and answer, so I didn’t talk to the judge. “You’re deported forever,” he said. That was really tragic. I talked to the guy there who handed me the papers and I spoke with the guards on numerous occasions and tried to get in contact with my mother. And the system is kinda set up to the fact that you don’t really get to explain things. I’m eighteen and I work at Taco Bell. You have no money for a lawyer. I was waiting to try to prove I was a U.S. citizen and I was waiting to get in touch with my family. There were people waiting there [at Eloy] two years. I decided I was going to go along with it. What they do is if you can’t prove you’re right [that you are a citizen], you’re deported. The demand is on you to prove your current situation. And really at that point in time, I was just a scared child who really didn’t know where to go or where to turn.

[Seeing the judge] was like an aftermath thing. I [had] already signed everything. It was more [like] him telling me what I did, and [then] based on what you did, you are deportable and you know that. It wasn’t an investigative conversation to understand who is in front of him. More of a telling you that, “Okay, we know what you did, and you did wrong, and you’re not a U.S. citizen, and you’re going to be deported, and you signed this sheet of paper [agreeing to deportation].”

So I got to Jamaica [redacted], 1999. On my birthday. That was so bittersweet. I’m released there. I slept on the bench at Kingston International Airport. They had a little police department, and I went there and said I got deported and they said, “What?!” Really, what they did was kicked me out the door. I spent that

night on the bench, with the mosquitoes biting me. I was happy that I was out of the facility [Eloy].

My mother didn't know I was in Jamaica. I spent one year [in Jamaica] when I was fifteen and my mother brought me to my father [who never had custody and is not listed on Ace's birth certificate], and that's how I knew how to get in contact with him. My father has thirteen kids, and I'm the only one that is in the U.S. That was so lucky. My father got in contact with my mother. "Wow, we've been looking for you!" It was a sigh of relief that I wasn't dead or hurt somewhere. That's the first time hearing my mother's voice again. . . . It was almost painful. I didn't cry but I was alone. I'm from Jamaica but there are no Jamaicans in Washington State. I didn't have any family, no auntie or uncle. All I knew were my mother and sister, and moving to Jamaica, there wasn't even that.

I was living in the house where my father grew up, a rural area near the airport. It's really the woods, where people still have outside bathrooms. For breakfast I'd get up and go in the bush and drink coconuts. It's so amazing what you can do with a coconut. You can make oil, there's fresh meat, milk. You drink two, you'll be filled up. Before it's a coconut it's called jelly. It's actually soft in the middle. I lived off of jelly coconuts. The land also had sugarcane. That's not really a well-balanced diet. The house had holes in the floor and ceiling. When it rained too much you've got to set up buckets. It's the most primitive living you can think about.

In high school I had a personality. I was the [TV] anchor. I was the guy who ran for president. Moving [with my mother to Georgia] was not an option for me. I was very popular. I had that spark, always trying to make something out of nothing. I'm five foot seven and played basketball. I started my own basketball clinic in the local area. I don't have any work so I would go to whatever shops and ask them to sponsor my team, and really that was mostly for uniforms and the rest of the money was for dinner.

The worst thing about it [being in Jamaica] was I couldn't say my name is Johann and I've been deported from the U.S. and I'm a citizen. Those people who are deported, [they] are outcasts. They are looked down upon. You had your chance and you blew it. Why should I help you now? The first couple of years were really hard because I still had an American accent. I had to come up with a story about how I went to school there but I'm back here. I'm still going with that story up to this day.

That was a mental drain. Those first four years were very difficult for me because I had an accent and I was unable to speak Jamaican without the accent. I've been constantly somebody else. I think three people knew my true story. I don't know if you know psychology, but when you hear a foreign person that

speaks another language and when they get upset they start speaking that language; it's an expression of themselves and who they are, and they relate better speaking the language they know, and feel frustrated speaking a language they don't know. That's me for ten years. In the seventh or eighth year I started associating myself with other deportees for the sake of being home in America. That was so weird. I could relate to them whether I was a citizen or not. I could relate to them. I told one or two of them the truth because you wanted to talk to somebody. You want to tell your story.

I figured it out about my seventh or eighth year. My mother told me. She was under the assumption that I was unnaturalized and then deported. Up to last night I had to explain it to her. No, I didn't get unnaturalized. They made a huge mistake. She was under the impression that there was nothing that could be done. And I didn't know. I only listened to what the judge told me. And the judge told me never to return.

I didn't know or understand the whole law. I knew they weren't supposed to, but they did. I signed the papers. It's my fault and the judge said never to return [Ace starts crying]. I have nightmares. I could have stayed in there. . . .

The system down there [in Jamaica] is so bad. They're just putting medical and birth certificates on computer records. Everything before was manual. They're checking records thirty years back. I filed on three different occasions to get [my birth certificate, the first document in the U.S. government file for Ace from when he entered as a child]. I needed a birth certificate number. [In 2009 the Jamaican government] started an online program where they'll look for your number for you, and somebody called me and provided a number. I was so happy. I really didn't have any identification. I had to be very creative just getting a tax number so I can work [in Jamaica]. All my IDs are from my work IDs.

[Until obtaining the birth certificate] I was unable to prove who I was. I could prove who my mother was, but I couldn't prove who I was. This was the first valid identification I've had in ten years. When I got it, I told myself, this is the prettiest piece of paper I've seen.

### *Back in the United States*

[After I arrived at the Miami airport, on December 24, 2009], Homeland [Security] stopped me. You go through the checkpoint, and they asked me how I am, and I said I was good and gave them my passport. He was looking at the computer, staring with a confused look, like he didn't know what to think or do. "What kind of trouble have you been in?" I said, "I got something better for you." I pulled out the papers [the consular officer in Jamaica gave him in a

sealed envelope, in case there was a problem]. I said, “They deported a citizen.” He said, “They can’t do that.”

I’m scared, really. I’m keeping notes, and I kid you not, the simplest thing stirs so much emotion. You hear the buzz from the hot water, coming back home, my first hot shower. The water smells different. I’ve been away for so long. It’s like if you haven’t eaten salt for ten years and someone gives you, like, a chimichanga.

*Mr. Francis lived in the Atlanta area and worked at Atlanta’s Hartsfield-Jackson Airport as a manager for a company that sells credit cards on behalf of an airline. He was heartbroken about the ten years he felt he lost, from nineteen to twenty-nine, especially for the missed educational opportunities: “maybe not a Boston College education, but an education somewhere,” he told the audience. Mr. Francis died of cancer in early 2013.*

## ACKNOWLEDGMENTS

This volume reflects important collaborations beyond those of the coeditors, Benjamin Lawrance and Jacqueline Stevens, who first conceived of the project at a dinner party in Berkeley, California, in 2009. Comparing experiences outside academia, Lawrance as an expert witness and Stevens as an investigative journalist, they noted similarities in their encounters with people struggling to prove their identity and citizenship. Conversations with Dan Kanstroom, Rachel Rosenbloom, and Rogers Smith, all of whom have expertise at different edges of the overlap between citizenship law and theory, ultimately led to the five of us convening a symposium.

The chapters in this volume came out of “Citizenship-in-Question: Evidentiary Challenges to *Jus Soli* and Autochthony from *Authenticité* to ‘Birtherism,’” an event hosted by Dan Kanstroom at Boston College Law School and the Boston College Center for Human Rights and International Justice in April 2012. The symposium and publication of this volume were made possible with generous support from the Conable Endowment in International Studies, the Program in International and Global Studies, and the Department of Sociology and Anthropology, in the College of Liberal Arts, at the Rochester Institute of Technology (RIT); the Boston College Center for Human Rights and International Justice, of Boston College Law School; the University of Pennsylvania Program on Democracy, Citizenship, and Constitutionalism; and Northeastern Law School.

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We are indebted to Johann “Ace” Francis, who contacted Stevens by e-mail shortly before his return to the United States from ten years of wrongful exile. Though he did not live to see this volume’s publication, he inspired us and lives in every page and every story.

## INTRODUCTION

JACQUELINE STEVENS

### *Citizenship Studies and Ambiguities of the Ascriptive Citizen*

Experiences such as those of Ace, a U.S. citizen deported from his own country at age nineteen, rarely receive public attention (see the preface to this volume). Ad hoc reporting by the news media tends to cover such incidents as idiosyncratic horrors inflicted by an inept officialdom on an unwitting, unlucky individual lacking the wherewithal to set the record straight. Readers or television viewers are led to believe that the events are anomalous errors amenable to correction. Stories such as ones titled “Wrongfully Deported American Home after 3 Month Fight” (Huus 2010) or “Texas Runaway Found Pregnant in Colombia after She Was Mistakenly Deported” (Dillon 2012) imply that if the individuals were more wealthy, or older, or just more articulate, or if the bureaucrat put some thought into her work, then such oddities would vanish altogether. The government would be using the legal definition of citizenship correctly, deporting only identifiable foreigners, and we would find our taxonomy of citizens, on one hand, and aliens, on the other, perfectly adequate for describing different populations.

One reason that these cases are not widely reported is that it is just as difficult for journalists to produce evidence of a subject’s U.S. citizenship as it is for the citizens themselves. The putative citizen was not conscious at the moment

of her citizenship's instantiation, and DNA databases are neither widespread nor transparent repositories of the truth. Testimony by mothers may not be available or may be dismissed as biased. In short, for its verification the status of citizenship has no independent eyewitnesses, just state documents and their government curators. The government can simply insist that the documents and databases it creates and controls prove a citizen's "alienage." Citizens thus are at the mercy of information the agency opposing them is creating, maintaining, and hiding from them (Stevens 2011a). This makes challenges to government classifications difficult or impossible. Moreover, earlier errors may render their discovery as such impossible. Differences between spellings or dates on a birth certificate and in a database may create a permanent problem for someone who is a legal citizen. Or the government simply may lie about, conceal, or fail to produce evidence that might vindicate an individual's claim to citizenship, such as when Thai officials assert DNA results disproving citizenship but do not share the medical report with the individuals affected, who in turn cannot challenge the foreign status the government assigns them (Flaim, chapter 8 of this volume). Thus, largely for reasons of practical obscurity, the conundrums of those denied citizenship have been marginal to prevailing theoretical and policy debates about citizenship and immigration.

The essays collected here take up the challenges posed by "citizenship in question," a phrase coined by coeditor Benjamin Lawrance. We use the term in two different senses. First, the chapters describe how states question the citizenship status of their own citizens. Second, as editors and contributors, we reflect on how the state renders its own citizens stateless to raise our own questions about citizenship as it is presently practiced. The following chapters describe and theorize the significance and meanings of governments mistaking their own citizens for foreigners. The authors also provide insights into the psychological causes and consequences of these systemic practices. Invisible to many scholars of migration and citizenship, these often liminal actions and possibilities illuminate concepts at the heart of citizenship.

*Citizenship in Question: Evidentiary Birthright and Statelessness* focuses attention on how states create and interrogate individuals' evidence of citizenship and considers the implications of the state's micro-level authorizations and revocations of this status for the concept of citizenship more generally. Some chapters focus on policies and data that reveal citizenship in question, for instance, Polly Price's review of the statistics on birthright citizenship policies and migration and birth patterns in South America that produce de jure citizenship and effective statelessness (chapter 1), or Jacqueline Bhabha's cross-country analysis of challenges facing the contemporary Roma (chapter 2). Others focus



on the nuances of individual-level experiences in court cases or at the border. For instance, Benjamin Lawrance describes his experiences giving testimony on a possibly Portuguese asylum seeker in England via Togo (chapter 3). And Rachel Rosenbloom writes about U.S. children delivered by midwives in Texas and denied U.S. passports who then encounter internal border patrols in their own neighborhoods (chapter 7). The specific demands birthright citizenship may incite for evidence of ancestry or other *documentary* proof of birthright citizenship provoke reconsidering the concept of citizenship as presently understood. The chapters provide new and important descriptive contributions to citizenship studies and encourage retheorizing citizenship's core meanings.

In addition to exploring evidentiary challenges to proving citizenship, the essays in this collection describe effective statelessness and its consequences. This occurs when courts, relying on regional and international law, make documentary requirements so demanding that respondents cannot possibly meet them and are rendered stateless, bereft of their attendant rights under international law. As refugees from civil and regional wars in the Middle East and Africa seek asylum on a scale previously not contemplated, immigration offices and courts adjudicating their cases in Europe and North America will have their hands full deliberating forensic questions whose proper scrutiny would require teams of investigators spanning continents. Absent funds for such work, and amid episodic panics over terrorist infiltrators, inferences will be made based on quite literally flimsy evidence and guesswork. Crucially for this volume, such ordeals invite close attention to those features of citizenship that appear as a series of significations that begin with a registry and an identity card and end with people sorted into states staged as quasi-random boxes for the storage of those inspected. Often the documents send people to the locations that they prefer to inhabit, but sometimes they may be sent elsewhere because of confusions about their documented status, not their having the wrong one. Or documents may scatter people in the infinitely vast legal space that lies between these boxlike states. Even developments in international law responsive to the plight of the stateless (Szreter 2007) cannot rescue those who cannot prove what they are not, that is, not a citizen of any state or "stateless," any more than they can prove who they are.

The debate over whether to extend citizenship to undocumented residents or to further enhance barriers at the borders rages worldwide. This volume's contribution to such debates is to raise fundamental questions about whether the citizenship they are discussing actually exists. The ideology of citizenship assumes a stability not only of personal identity via documents and laws that assign citizenship but also of borders, as well as the coincidence of genetic,

legal, and de facto families. Yet the authors here observe how personal identities are rendered indeterminate because of changes in documentation regimes, laws denoting citizenship, and a country's borders themselves. These studies of what might be called "administrative citizenship," that is, citizenship and alienage performed by officialdom, reveal instructive tensions between citizenship as an abstract concept and citizenship as operationalized. From Argentina to Australia, Togo to Thailand, regimes cannot reliably distinguish citizens from noncitizens. Such a discovery suggests the need to revisit attitudes and policies premised on viewing citizenship as categorical and easily observed.

The striking similarities in citizenship's (mis)recognitions across countries, the brutal consequences, and the high rate at which they are occurring suggest symptoms of underexplored qualities of the concept of citizenship. These events are symptomatic of key facts and meanings of citizenship and not merely aberrations of normal citizenship conventions. Moreover, the scope of such infelicitities is much larger than usually recognized. In chapter 1, Polly Price points out that in Mexico alone, forty million births are not registered, causing problems for those who, through their parents' citizenship, automatically acquire U.S. citizenship at birth when born in Mexico but lack official paperwork and face questions about their legal identities. Kamal Sadiq describes the administrative processes that produce widespread effective statelessness in India and Malaysia (chapter 9). He and Amanda Flaim, in her work on Thailand (chapter 8), reveal that the very administrative regimes implemented to integrate unenumerated individuals into the state bureaucracy are actually removing them from political society and the welfare state altogether. Only after one is expected to have a piece of paper can one be judged for not having it.

The disparity between the rituals of administration and the facts of habituation—that people struggle to prove through and to a bureaucracy who they are in everyday life—invites reflection on the paradoxes of an identity that seems at once given and scripted, qualities captured by the concept of "ascriptive." According to the *Merriam-Webster* dictionary, "ascriptive" refers to "arbitrary placement (as at birth) in a particular social status."<sup>1</sup> The sense here is that ascription is something that is not chosen but happens to one because of social or political structures. In contrast, the etymology of "ascriptive" takes us to the ritual for individuals deliberately joining a political community. During the Roman Empire, cognates of *ascribere* referred to the first step of submitting one's name for the purpose of enrolling in a Roman colony, a process Latins could use to become Roman citizens (Smith 1954, 18).<sup>2</sup> The act of securing and performing their membership was their ascription to a particular group.

Ascriptive citizenship can be defined as an identity that can occur through writing. Or it can be defined as ontological, that is, given at birth, *as if* biologically.<sup>3</sup> These possibilities and their relation invite analyzing citizenship through tropes of deconstruction. The metonymic relation among citizenship's qualities as natural (from the Latin *nasci*, meaning "birth"), a legal identity, and an identity ascertained by writing suggests opportunities for reflecting on the meanings of their disruptions, paradoxes, and chaotic confusions. What if the events bringing citizenship's failures to the fore are not just burdens on the individual but revelations of how written ascription materializes, more or less completely, into that ascription experienced as given, as at birth? Susan Coutin, a scholar who has for years grappled at close range with documentary regimes and thus is familiar with the elusive and illusory truths of "real citizenship," writes: "Of course, 'real' [citizenship] is a problematic term, a point that suggests that distinctions between 'reality' and 'fiction' may be difficult to sustain. This difficulty arises not because law 'in action' differs from law 'on the books' but rather because by creating the domain of the undocumented, the unauthorized, and the 'as if,' law itself gives rise to its own violation, creating worlds that are governed both by law and by something else that is not law" (Coutin 2013, 112). Another way to represent citizenship's paper-thin and thick realities is as the materialization of legal words into things, along the lines celebrated by G. W. F. Hegel and complicated by Friedrich Nietzsche (see esp. Hegel 1967 [1821], §167, remark, and Nietzsche 1974 [1882, 1887], §58). Citizenship's propensity to include and exclude members, that is, national protagonists and antagonists, arbitrarily and the location of these modern operations in written, civil law are strong inducements to mobilize for citizenship's interpretation insights of deconstruction. The content as well suits the form, a method that emerged out of questioning deportations based on citizenship being stripped or denied by laws instantiating seemingly biological distinctions the laws themselves created.<sup>4</sup> Citizenship law lends itself to such interventions—to wit, Annette Appell's observation that "the birth certificate is proof of these facts [of age, sex, gender, nationality, race, and parents] (even when it is counterfactual)" (2014, 9). Citizenship's forensic (i.e., legal and public) evidence may be counterfactual to other records and testimonies, and the court findings using these incoherent documents for performing our citizenship are alerting us to something important about the construction of citizenship's contradictions and ambiguities.

By revealing the contingent, questionable documentary evidence constituting citizenship, these chapters convey the literary quality of legal membership. Drawing on insights from Derrida, they help us reflect on how citizens are

textual creations materialized by the force of law (Derrida 1989–90). Perhaps the clearest evidence of the force of identity documents and their dangers is concern about fraud. Defenses against documents misconstrued as deceptive suggest an autoimmune response. To keep out unwanted invaders, the sovereign attacks its own community, more or less indiscriminately. Benjamin Lawrance (chapter 3), Beatrice McKenzie (chapter 6), Rachel Rosenbloom (chapter 7), and Kamal Sadiq (chapter 9) reveal hardships entailed by vigilance about fraud that is overzealous or animated by prejudice. Crucially, this collection problematizes Hannah Arendt’s famous assertion about the protections citizenship affords us that humanity does not (Arendt 2007b [1943], 273) and suggests qualities of citizenship akin to Plato’s *pharmakon* (Derrida 1981b [1968], esp. 100–101). Just as writing more generally is a *pharmakon* that has qualities of a cure and poison, citizenship, meaning citizenship as certified, may be beneficial and also itself harmful.

Ace’s U.S. citizenship—a source of protection and of danger—derived from his mother’s naturalization and is an arbitrary placement (as at birth). This would be true as well were he a U.S. citizen by birth in the United States. This also would bestow citizenship on him by means of an “arbitrary placement (as at birth)” through *jus soli* (law of soil). And the same holds were he to have become a U.S. citizen at birth outside the United States to parents who were U.S. citizens, through *jus sanguinis* (law of blood).<sup>5</sup> These legal terms of art used throughout this collection convey the ambiguities of citizenship as inherently legal and scripted—on and from a map or a family tree, paradigmatically of children born in the legally fashioned relation of wedlock—and also as signifying the phenomenology of preliterate, material facts of soil and blood.<sup>6</sup>

In modernity, citizenship is the cornerstone of any political society as a membership organization, and it is the quintessential ascriptive form of being, an identity “as at birth,” to recall the dictionary’s ambiguous definition. “As” could convey that this identity occurs at birth. Or, “as” might mean that an ascriptive status is created *as if* at birth. With the ascription of one’s citizenship and other hereditary status identities, including race, it is *as if* we were born with certain prepolitical characteristics. Writing that uses the alphabet, not hieroglyphics, effects the signified as a word and not a thing, materializing, in this context as an identity card as citizenship, and not just evidence thereof (Derrida 1988 [1972]). Citizenship’s registration system also creates a state archive with implications for state power: “The power of the archive and of the historico-political order always maintains, within the broadest structures of the apparatus of writing, an irreducible adherence to power that is properly epistemic” (Derrida 1979, 143). Through sheer repetition, the hypothetical condition of a written status

“as at birth” comes to define the significance of *what might be* (a merely written entry) as *what is* (the state’s knowledge and power) “as at birth.” This significance of birth, the meaning of qualities we imagine we acquire ambiguously “as at birth,” as opposed to those developed *as if at birth* (as recognizable copies) or later (as recognizable self-craftings or social-craftings—both of which affirm the authority of the written original) (Butler 1991, esp. 22)—and the significance of a national identity, are so central to who we are that we come to believe we are ontologically as the government interpellates us at birth. Our citizenship rules convey who we are as if we were born this way, and this hypothetical condition materializes us into these actual state facts.

Nonetheless, the nonfictionalization of ascription, an inherently literary process, has failed millions of us. It is tempting to imagine these failures result from a combination of deficits of resources and goodwill. But the chapters here, reiterating the same state-led patterns of exclusions, do not suggest there is an underlying truth of birthright citizenship states are not recognizing. Rather, they reveal that we are not citizens in the ways we often imagine we are, as if we were born this way without the state, as though being born Portuguese or Pakistani is the same as being born with brown or green eyes. But of course this is not exactly right, and we need to think further on how birth does and does not create a citizen. The dictionary’s parenthetical reference to ascription “as at birth” is precisely what the politics of citizenship’s geographic (not geologic) and kinship (not genetic) rules contravene. This is an observation one might make simply on the basis of observed laws, but the sorts of observed disruptions that are occurring in practice between the signifier (i.e., facts and records about birth and other biographical events) and the signified (i.e., state-recognized citizenship) further yield important insights about the sign “citizen.”<sup>7</sup>

The preceding discussion, alluding to the events and ambiguities noted in this volume, plays virtually no role in dominant political theories of citizenship, which tend to cluster among three different positions. The first recognizes and endorses clear demarcations between citizens and aliens, and the prerogatives of the nation-state to carefully control and monitor entry of the latter.<sup>8</sup> A second portion of this literature questions the legitimacy of the nation-state’s exclusions and proposes a range of legal responses in support of free movement or routes to citizenship other than birth (e.g., Carens 1987, 2013; Shachar 2009; Stevens 2009b) or, in the case of Engin Isin (2012), calls attention to the immanence of existing citizens in motion. A third camp proposes or recognizes substantial shifts of citizenship rights in domestic and international law.<sup>9</sup>

The chapters are gathered here as a response to this first and most widespread intuition about the idealized benefits of preserving the nation-state’s

conventional boundaries between insiders and outsiders. Rather than challenge views at the level of abstract arguments mobilized by political theory, or economic analyses on the costs and benefits of free movement versus strict border controls, the essays herein provide representations and analyses of what citizenship looks like at a granular level, including the disputes over the very grains and colors of the paper and ink of which it is constructed.

These analyses of citizenship in practice require questioning key assumptions informing our more general theories of citizenship. For instance, many believe citizenship using laws of descent excludes racialized others and that citizenship through the rights conveyed by *jus soli* would include them. But lacunae in the archives of descent in the United States result in the deportation of more U.S. citizens, largely those of Mexican descent, than failures of laws effecting citizenship through *jus soli* (Stevens 2011a). In other words, people born in Mexico whose parent or parents are U.S. citizens may acquire U.S. citizenship at birth automatically by operation of law but then fail to have this recognized by the U.S. government. None of this is official policy, but effective statelessness results nonetheless. Thus, citizenship's enforcement occurs in places and through discourses that are largely invisible to the broader public and even to those with expertise on citizenship.

Kristin Collins (2014), in her work on citizenship by descent in the United States, notes the break between law and practice. Describing the inconsistency between the citizenship *policy objective* of avoiding statelessness and the *implementation* of citizenship laws in the context of countries that reciprocally followed patrilineal rules for citizenship, she writes: "In the many hundreds of pre-1940 administrative memos I have read that defend or explain recognition of the nonmarital foreign-born children of American mothers as citizens, I have identified exactly one memo by a U.S. official that mentions the risk of statelessness for the foreign-born nonmarital children of American mothers as a concern" (Collins 2014, 2205n283). Collins recognizes that even though government is creating a method that will systematically render stateless children of U.S. citizens, this operation invites no systematic caution, much less antidote.

As is the case for much work in the field of population production, it is tempting to turn to Michel Foucault's theories of biopower and governmentality. But the persistence of scenarios such as the preceding one revealing citizenship's certifiable failures of signification are those of a randomly acting pharmakon, and not a systemic toxin used in a uniform fashion against a persistent other. These government transcriptions pose a problem for the prevailing Foucauldian disciplinary critique of power and may be one reason these rereadings and rewritings elude theoretical scrutiny: the government's power is being exercised incoher-

ently, by local decree, and largely independent of any standardizing, normalizing discourse. The forces of power and knowledge responding to citizens as aliens, or treating citizens of one country as though they were not citizens of that country, or treating those who are stateless as though they were citizens of a country, are not being implemented through professional or government networks whose concepts might be organized and mobilized in any recognizable pattern, even one that is subtle and diffuse.<sup>10</sup>

The lessons from this collection might be situated alongside the research on inequalities of ethnicity, race, sex, and sexuality that eventually was superseded by questions about whether one could meaningfully discuss these categories as self-evident to anyone save the naive observer. These essays examine the frays at the boundaries of citizenship's legal recognition. As opposed to debates premised on certainty as to shared knowledge of who is and who is not a citizen, this project focuses on the uncertainty of these boundaries and their political, psychological, and personal meanings. The studies in this collection extend inquiry into the theoretical claims about citizenship's contingencies to observations about its individual-level assignments. Just as studies of the discourse of the hermaphrodite called into question intuitions assuming two discrete sexes (Barbin 1980; Fausto-Sterling 1992), and the nonprocreative unions of early Christians troubled claims about the traditional reproductive, heterosexual family (Boswell 1994), and new findings and then discourses on genetic variation undermined ontological taxonomies of race (Hey 2001), the essays in this collection, by revealing micro-level, even molecular-level, confusions about citizenship, challenge the assumption that citizenship is the sort of self-evident characteristic that one either has or lacks.<sup>11</sup> The discrepancies between our ideologies of citizenship and its daily operations raise questions about the meaning of these disparities on which these chapters reflect.

If citizenship is the state's certifications of citizenship, and if these are not self-evident but a legal gray zone (Morawetz 2007a), then citizenship suggests a different morphology (of existence and research) than heretofore understood. Just as insights about the politics of taxonomies and heuristics have reshaped discussions of equality among putatively natural groups, knowledge about the operational details of assigning citizenship has the potential to profoundly affect understandings of this identity as well. To many, it may seem that the phenomenology of citizenship already encompasses practices that are legal, and not biological. Unlike the one-drop rule embraced in the Supreme Court decision *Plessy v. Ferguson* (1896), for instance, the taxonomies of citizenship seem transparently administrative, and not biological. Even those who perceive *nationality* as a natural, material, inherited fact might be sympathetic



to problematizing laws on birthright *citizenship*, understood as acts of government, not nature.<sup>12</sup> But this does not occur.

Long-standing and widely shared, though inaccurate, intuitions about identities wrought through birth explain why the concept of citizenship based on birth in a geopolitical territory still incites some of those along the southern border of the United States to fight as Minutemen, and Minutewomen, on behalf of identities created by state cartographers. Even for those who are politically active, the phenomenology of birth inspires a defense of a citizenship that is purely nominal, and not incitements to voter turnout drives, regardless of whether the citizen's identity as such emerges through the state's sacralization of lineages of family or lines on maps.<sup>13</sup>

Likewise, families take shape and change in all sorts of ways inconsistent with the expectations of citizenship laws, both through the creation of new laws for marriage and legitimacy and within specific families, pursuant to changes of marriage, divorce, adoption, and remarriage. Amid the legal flux, citizenship's categorization remains rigid, discrete, and largely exclusionary. Importantly, earlier European governments seemed more interested in accommodating these ambiguities in the laws regulating the civil registers through including uncertain cases. The postrevolutionary French Civil Code of 1792 "did not require mayors to declare the truth of an individual's 'real' or 'natural' identity. . . . It was not by chance that the Civil Code prescribed the sex of an infant should be 'stated' and not 'verified'" (Noiriel 2001, 44). Gérard Noiriel describes the tribune Simeón disparaging authorities during the Revolution demanding proofs and "treating as an inquisition" reviews of marriage and legitimacy: "It was thus explicitly to protect individuals against arbitrary treatment and to ensure 'family harmony' that the Civil Code defined civil identification as the certification of statements and not research into the truth of an individual's identity" (Noiriel 2001, 44). If the truth of the family were easily discerned, there could be no inquisition. If family facts are potentially ambiguous, due to any of a number of factors—from changes in boundaries to laws that might eliminate a parent's identity at birth, to the vagaries of the sex of the parent or the child—then citizenship is inherently in question and thus at odds with the prevailing ideology that it is self-evident.

### *Chapter Overviews*

The chapters herein reveal what it looks like when citizenship in practice today bumps into the contingencies of borders, laws, and (family) life. To supplement the meanings of "de jure" or "legal" as adjectives denoting the



state's recognition of citizenship, these chapters reference "effective" citizenship and also statelessness. Legal citizenship or statelessness may be irrelevant to ensuring the rights associated with either status. *Effective citizenship* is citizenship that would be recognized as such save for quasi-legal, often pseudo-legal challenges by government agents, be they border agents or federal judges. Evidentiary questions may arise because of ambiguities in documents, databases, borders, or laws. The venues where these disputes occur may be at the border, or in homes, workplaces, administrative offices, mail, civil hearings, prisons or immigration jails, or court proceedings. Indeed, in many cases questions about citizenship crosscut several of these dimensions and locations. The cases discussed here also bring into play jurisdictional and evidentiary standards for two or more countries that implicate problems of what Polly Price calls "effective statelessness," when people cannot prove citizenship and are effectively stateless even though the country of their residence does not recognize this statelessness at law. In other words, by operation of law, as the cases in the chapters by Jacqueline Bhabha and Benjamin Lawrance highlight, the government may refuse to recognize people either as citizens or as stateless, leaving them outside the protections of international law designed precisely to address the vulnerability of those Hannah Arendt singled out as the most politically fragile group that exists (those without a state) (2007a [1944]).

These contributions are amenable to several possible groupings. The ones chosen for this volume emphasize, in part I, how global politics of sovereign borders, as well as interpretations of international and regional law, manifest in citizenship determinations. These first chapters introduce readers to how civil authorities respond to dyadic, regional, or global treaties and institutions, including those developing legal definitions of statelessness. The scenarios exemplifying government decisions framed by international and regional law occur in administrative venues and also courts.

The second and third sets of chapters are organized by venue. Chapters in part II describe determinations and exclusions imposed by frontline officials or administrators, that is, those who are directly operationalizing citizenship challenges and denials. Chapters in part III exemplify how national, electoral politics and campaigns may throw the citizenship of leaders and then of the populace into question; they also theorize what it means when people create these distinctions, and thus define one portion of themselves as aliens.

In chapter 1, “Jus Soli and Statelessness: A Comparative Perspective from the Americas,” Polly Price explains the global fissures, as well as the treaties and institutions, that instantiate citizenship’s as well as statelessness’s rules, hurdles, and inadequate protocols for redress. By focusing on how movement among jus soli regimes may produce statelessness, Price alerts readers to how rules that appear inclusive may in practice be exclusive. Price reviews how twenty countries, from Canada in the North to Chile in the South, constitute populations of citizens effectively stateless. Quoting from a U.S. State Department report, Price describes children born to the Ngobe-Bugle, a group that migrates from Panama to Costa Rica for plantation work: “In these cases the children were not registered as Costa Rican citizens because the families did not think it necessary to register the births, but when the families returned to Panama, the children were not registered there, either” (U.S. Department of State 2011e). Price highlights the hypocrisy of such infelicities in citizenship’s recognition as she explores how international law and treaties acknowledge both the possibility of statelessness and their own massive failure to address it, as well as the consequences for subsequent generations also rendered stateless.

In chapter 2, “The Politics of Evidence: Roma Citizenship Deficits in Europe,” Jacqueline Bhabha uses the concept of “legalized illegality” (Çağlar and Mehling 2013) to explore what happens in the absence of documentary evidence for Roma citizens of several European countries. Paying special attention to the European Union and drawing on insights from her earlier work on how evidentiary challenges produce statelessness (Bhabha 2009, 2011), Bhabha draws our attention to failures of regional and global institutions that portend to extend citizenship and also to protect the stateless. Despite regional and international laws demanding otherwise, gaps in civil registries, as well as inconsistencies between those entries and the papers in possession of the Roma (e.g., different spellings or dates of birth), result in substantial deprivations of health care, education, employment, and housing.

Chapter 3, “Statelessness-in-Question: Expert Testimony and the Evidentiary Burden of Statelessness,” draws on Lawrance’s experiences as an expert witness for asylum seekers in the United Kingdom, analyzing the specific operations in individual cases that produce statelessness. For instance, one account reveals how a woman walked into a government office as a Portuguese national and left effectively stateless. In this and the legal decisions made by officials in Togo, Portugal, and France affecting outcomes in the United Kingdom, Lawrance details how citizenship is waylaid by decisionism, with bureaucrats and

judges substituting their own guesswork for the legitimate narratives of those before them. Lawrance provides an insightful discussion of the paradoxical significance of legal practices creating effective statelessness based on government misreadings of their own documents.

In chapter 4, “Reproducing Uncertainty: Documenting Contested Sovereignty and Citizenship across the Taiwan Strait,” Sara Friedman situates the production of documentary ambiguities in the context of the fraught relations between the governments of Taiwan and the People’s Republic of China. Drawing on extensive interviews with border-crossing spouses and the government officials issuing identity papers, Friedman uses her close readings of their statements to question Derrida’s effort to separate the role of intention from the force of documentary identities. Friedman, an anthropologist, offers an ethnography of a Taiwanese government official’s anxiety about forged documents being used by mainland Chinese to enter Singapore (for work) and not Taiwan, and the elaborate system in place to authenticate the copy. Her chapter creatively draws on work by Yael Navaro-Yashin (2007, 86) to interpret the nuances in a range of contexts producing and interrogating documentary identification and theorizing how geopolitical structures mobilize “emotional investment for their bearers . . . intertwined with the material form of the documents themselves” for the bureaucrats and supplicants alike.

Again engaging the implications of sovereign decisions on the world stage for the quotidian level of an individual’s identity, in chapter 5, Kim Rubenstein explores the impact of colonization on the nation-state’s understanding of citizenship. In “What Is a ‘Real’ Australian Citizen? Insights from Papua New Guinea and Mr. Amos Ame,” Rubenstein (with Jacqueline Field) draws on information she encountered through her legal representation of Amos Ame in his effort to have the Australian High Court persist in recognizing him as an Australian citizen, a claim the court rejected on the grounds that the population of Papua New Guinea became part of Australia through what one commentator calls an “accident of European history” (Waiko 1993, 26). The High Court affirmed the removal from Mr. Ame of his Australian citizenship on the grounds that he was not a “real” Australian. The judge ruled that following Papua New Guinea’s independence, its new borders *ex post facto* correctly defined Mr. Ame’s Australian citizenship.

In sum, the chapters in part I reveal how fluid boundary formations, crossings, and transformations in the context of global and regional laws of the post-Westphalian international system, as well as the quandaries raised because of colonialism and its aftermath, put citizenship in question.

The chapters in part II focus in more depth on how administrative judgments produce ineffective citizenship. From bureaucrats employed by the United States in the late nineteenth century to Indian government workers today, these chapters document the technical operations that produce ineffective citizenship and effective statelessness. In chapter 6, “To Know a Citizen: Birthright Citizenship Documents Regimes in U.S. History,” Beatrice McKenzie, former vice-consul in the U.S. embassy in Kampala, Uganda, offers close readings of several U.S. court cases in which judges evaluated the sufficiency of individuals’ facts and documents proving citizenship. The trajectory of the decisions she selects, focused on Chinese exclusion cases in the United States, suggests changing standards of scrutiny over time for verbal and written statements about facts. Attention to these cases highlights both the discretionary character of citizenship findings and their reliance on subjective, nonwritten criteria that are systematically racist.

Rachel Rosenbloom, a former supervising attorney for the Post-Deportation Human Rights Project at Boston College Law School, testified before Congress on the unlawful detention and deportation of U.S. citizens (U.S. House of Representatives 2008). Rosenbloom’s chapter 7, “From the Outside Looking In: U.S. Passports in the Borderlands,” presents original research on recent policy directives, as well as the new internal border policing and harassment of U.S. citizens behind the uptick in U.S. passport denials in south Texas. Rosenbloom also reveals how transborder lives prompt parents to register as born in Mexico children who were in fact born in territory under U.S. sovereignty (an unidiomatic way to state “the U.S.” in order to reiterate the artifice and contingency of nonfraudulent U.S. birth certificates, insofar as Texas was until 1848 the sovereign territory of Mexico). Rosenbloom points out that despite this ruse being well known to Texas county clerks, State Department adjudicators ignore the accurate Texas birth certificates and, after locating fraudulent Mexican birth registration, defer to narratives of fraud against the U.S. government and reject U.S. citizens’ passport applications. Her research indicates the precariousness, unreliability, and centrality of government papers for assigning citizenship and highlights the importance of these evidentiary reviews to determinations of U.S. citizenship.

In chapter 8, “Problems of Evidence, Evidence of Problems: Expanding Citizenship and Reproducing Statelessness among Highlanders in Northern Thailand,” Amanda Flaim draws on the field research she obtained from a 2009–11 United Nations study she designed and supervised. Flaim surveyed 292 villages with more than 700,000 people and found a civil registration system that on

the basis of putative DNA tests and other seemingly arbitrary or pseudoscientific findings produced statelessness incommensurate with underlying biographies. One statement from a stateless villager is especially revealing: "I was working in the fields when a man . . . interviewed my young daughter and my elderly mother-in-law about everyone in the house. When I came home from the field, I saw a piece of paper, but I couldn't read it and I didn't know what it was. My mother-in-law and my child did not understand what it was either. Then I let my children play with the paper, but they tore it up." This individual's statelessness thus was produced by the state's tracking of her, as well as her location and illiteracy, not her legal status.

In chapter 9, "Limits of Legal Citizenship: Narratives from South and Southeast Asia," Kamal Sadiq extends his research into "paper citizens" (Sadiq 2008) by describing more recent field research in India and Malaysia on how the enormous expansion of the twentieth-century state is paradoxically producing statelessness. Sadiq's work conveys a point that emerges from Flaim's research as well. As Sadiq puts it, the state's requirement of identity papers to keep its machines humming means an incessant demand for "information that the poor, the homeless, and the mobile do not emit." Sadiq thus alerts us to how the Indian welfare state, like many others described in this collection, fails the very people on whose behalf it was seemingly designed.

This view of the modern state provides a new context for considering Jane Caplan and John Torpey's claim in their important 2001 collection that Weberian equality before the law "tends to raise up persons and groups who had previously been thought not worthy of notice, yet it simultaneously reduces those subordinated to the state's governance to a status as subjects of direct administration and surveillance" (5). An examination of the micropractices of modern states, perhaps especially in postcolonial, developing countries, suggests that the infrastructures established for equality before the law are actually removing the poor from government social welfare programs rather than enhancing access to them. Such patterns contradict T. H. Marshall's (1992 [1949]) theory that enlarging citizenship increases the availability of access to new material rights. Again, these insights are available only by aggregating the individual-level analyses of what Sadiq calls "state artifacts" of identity documents and their specific function in producing class-based internal civic banishment, because of and not despite protocols of modern citizenship. Together the chapters in part II reveal how the hurdles of documentation, reflecting more and less overt and targeted commitments to national purity, deprive millions of their citizenship rights.

For the most part, evidentiary challenges to citizenship occur in dark corners of bureaucracies, their details only vaguely articulable even by those directly affected. But on occasion disputes erupt not only in courts but also in public discourse during political campaigns or over local cases. Although the forensics of citizenship generally receive little public attention, national elections may trigger attention to the citizenship bona fides of political candidates and thus also make salient citizenship's delineations among the population more generally. Both Margaret Stock and Alfred Babo explore how strategic questioning of the citizenship status of presidential candidates and presidents occurs in tandem with broader legal changes and public conversations about these. Margaret Stock, a practicing immigration attorney, professor, and retired U.S. Army colonel who crafted citizenship policies to allow U.S. military personnel to naturalize, reviews how certain campaigns in the United States have questioned the citizenship of presidential candidates and sitting presidents, and how a proposed change to U.S. citizenship law would have made it impossible for past presidents to have assumed office. Chapter 10, "American Birthright Citizenship Rules and the Exclusion of 'Outsiders' from the Political Community," historicizes the attacks of "birthers" on the credibility of President Barack Obama's Hawaiian birth records, reviews the origins and meaning of the Fourteenth Amendment's references to a "natural born citizen," and explains the implications of more restrictive rules for U.S. citizenship for past presidents and what this might mean going forward.

In chapter 11, Alfred Babo describes the strategic questioning of presidential candidate Alassane Ouattara's nationality as Ivorian, or *ivoirité*, a term employed by a previous president, Henri Konan Bédié. Babo's chapter, "*Ivoirité* and Citizenship in Ivory Coast: The Controversial Policy of Authenticity," documents how candidates used *ivoirité*, an autochthonous authenticity rhetoric, to "eliminate political rivals." Babo takes readers back to the origins of authenticity and its aftermath. He documents how its implementation has resulted in discrimination against "hundreds of thousands of Ivoirian nationals" and "permitted government agents, particularly the military and police," to challenge the authenticity of identity documents and thereby strip citizens of their rights. Stock and Babo describe the intersection of national elections with broader policy debates. Stock focuses on the ambiguity of laws and unintended consequences of nativist interpretations, while Babo attends closely to the evidentiary reviews that occur more frequently in the wake of disputes over presidential qualifications.

Babo explicitly highlights the episodic character of these questions, which arose in 1993 and resulted in the defeat of presidential candidate Ouattara, even

though in 2010 Bédié “reversed himself and appealed to his supporters to vote for Alassane Ouattara, who was henceforth permitted to run for election after a long battle over his nationality and citizenship issues,” a turnaround revealing the situational if not arbitrary or even random timing of these challenges. Likewise, Stock points out how similar citizenship challenges could have been but were not posed of presidential candidates at different periods in U.S. history.

In chapter 12, “The Alien Who Is a Citizen,” I reflect on the meaning of the U.S. government detaining and deporting its own citizens. Drawing on insights from Franz Kafka and Derrida, the chapter explores how these episodes might best be understood as apologies, that is, morality stories told to enhance the government’s authority, and not as rational efforts to make individualized determinations of citizenship. The chapter explores the meaning of these cases through deconstructions of illustrative court decisions and a regulation explaining how “aliens” may prove they are “U.S. citizens” in an immigration court, a paradoxical protocol, since by definition aliens are not U.S. citizens. The scenarios in law and practice highlight Kafka’s depiction of harms inflicted by bureaucracies in liberal democracies as a form of self-oppression characteristic of modernity.

Finally, Daniel Kanstroom’s afterword draws on insights gleaned from his own pathbreaking scholarship and litigation as the founding director of the Boston College Law School Post-Deportation Human Rights Project. Kanstroom has been developing protocols for a Declaration on the Rights of Expelled and Deported Persons. His afterword opens with a tantalizing thought experiment on the proof that might be demanded of someone claiming to be a citizen of the world, reflects on the problems for those claiming citizenship in one nation-state, and explains the importance of expanding human rights protections to all people, regardless of recognized citizenship.

### *Bias, Affect, Money*

Many other themes crosscut the material in these three parts, including the distinction between deserving and accidental or strategic citizens; decisionism at all levels of government review; the affect elicited by identity papers; and monetary barriers to effecting recognition of one’s citizenship. These themes do not intersect in any obvious way but emerge as key factors that shape the possibilities of achieving effective citizenship. The idea of deserving citizens appears in McKenzie’s chapter. McKenzie’s recollections of her consular work recalls as well Bhabha’s epigraph quoting French president Nicolas Sarkozy on the difference between immigrants who are “worthy” of French nationality and those who are not. McKenzie’s point about people who can tell a recognizable story



about their citizenship captures a recurring pattern of official decisions based on biases and traits that are extralegal but have important consequences for applicants seeking official status. For instance, Babo points out the encounter of a woman whose application for a national identity card was rejected in the Ivory Coast because of a patronymic name associated with Burkina Faso. After fluently speaking to the agent in the local dialect, the officer “insulted her mother and asserted that such women sold their Ivoirian nationality to foreigners by marriage.” Similarly, Friedman, Flaim, Lawrance, and Rosenbloom emphasize the role of snap judgments by border agents or low-level office clerks—the absence of evidence or reason leading Flaim to describe the contingency of agents’ mere “beliefs,” and Lawrance, the specious “assumptions” absent evidence driving these official, life-altering determinations.

Relatedly, several chapters point out the role of affect in these seemingly formal engagements. Friedman describes the “affective states” of desire, anxiety, humiliation, lack, and pride that are “intertwined with the material form of the documents themselves” (chapter 4; and see Stoler 2004) and also register in the encounters between the officials and the applicants. Lawrance describes the inquisitorial atmosphere incited by paper documents whose information comes largely from what one’s parents provide to authorities for birth registries and certificates, and about which the individual possessing an identity card would have no firsthand knowledge.

Sadiq describes how the state artifact of citizenship documentation has “affective attributes . . . of loyalty, belonging, membership, and identity.” Document fees pose more prosaic monetary hurdles to obtaining identity documents, a tax not only on the right to vote but also on the right to have any legal recognition whatsoever. Such impediments are important to debates in citizenship studies about the relevance of citizenship to welfare and other civil and political rights (Soysal 1994, 2012).

In addition to citizenship and migration studies, these chapters raise questions about newly emerging research questions at the intersection of political theory and administrative law. The investigations that follow, in conversation with the research agendas of Giorgio Agamben and Foucault, as well as left and right critiques of liberal democracies by Walter Benjamin and Carl Schmitt, respectively, invite us to reflect on the significance of civil and not criminal legal institutions as the sites of these encounters. There are crucial differences among the discourses, institutions, and sovereignty noted by these theorists and the paradoxes of citizenship’s (mis)recognitions. Whereas Foucault and Agamben stress biopower that is producing its own subjects and narrating its own authority, the legal dilemmas for citizenship in question lack a coherent epistemic or



political logic and do not even tell a good story. One might fail at being Thai because a child throws away a piece of paper, or because a government official requires a DNA report and then sits on the results. Second, the sovereign decisionism that pervades all of these encounters advances its authority through civil and not the criminal or national security laws discussed by Benjamin and Schmitt. At the same time, such laws allow and incentivize physical violence, often commingled with rhetoric of criminality and illegality that is largely not triggered by other encounters with civil authority. And third, the subversions of citizenship from within its own practices reflect neither the racist logics described in critiques of failed liberalism, nor the coherent subject positions of most Foucauldian discourse and analysis. These chapters are about the ascribed performances of the inherently ambiguous statuses of the citizen and the alien and also their remarkable persistence as such across time and space, unlike the abstractions of the Foucauldian sodomite and homosexual, for instance, which have specific meanings based on patterns inferred from reading a cross section of materials produced in a specific time and place (Foucault 1978).

### *Citizenship as Arbitrary*

In conclusion, I want to say a few words about characterizing the decisions that make and unmake citizens as “arbitrary,” a concept that appears throughout these chapters. What does “arbitrary” mean? Are inconsistencies among cases and between oral histories and official edicts symptoms of bureaucratic randomness, or are intuitively unfair outcomes evidence of systemic biases, and thus not at all arbitrary in the sense of the first meaning? This question might be posed of many other disparities in group treatments, including the distribution of wealth, employment, and educational resources across a range of peoples and not just citizenship papers. The dual meanings of (mis)recognitions return us to the question of whether the cases described in these chapters can be remediated by better bureaucracies, or whether birthright citizenship inherently entails systemic absurdities and injustice. Can we fix the pharmakon of citizenship so that its effects are under the control of knowledgeable authorities wielding power appropriately? Or does the very nature of citizenship pose a systemic risk of serious haphazard, harmful outcomes not worth the potential pragmatic benefits?<sup>14</sup>

Mariane Ferme, pointing out the challenges faced by deterritorialized citizens of Sierra Leone, represents these features of “arbitrariness and the law” as (1) a “well-guarded secret that exists to serve the interests of particular categories of people”; (2) “arbitrariness in the way laws are applied”; and

(3) situations in which the state obscures the “threshold between legality and illegality” (2004, 83). This theme is pursued as well in the astute analysis of “capricious citizenship” put forward by Sujata Ramachandran (2015) in her study of Bengali-speaking Indian citizens. Contrariwise, Barbara Yngvesson and Susan Bibler Coutin, in their study of adoptees, emphasize the possible truth of identity’s significations: “Paper trails, which ought to substantiate truth, sometimes plunge their referents into a reality that is incommensurable with their sense of self” (2006, 84). Apparently, a certificate can be arbitrary because it is embedded in a system of outcomes that systematically serve powerful interests, as nonsense, or because it does not give us the truth.

Not everyone who finds citizenship’s pattern of recognitions and mistaken revocations unfair sees these actions as “arbitrary.” In chapter 6, McKenzie argues: “Citizenship is not an arbitrary status bestowed upon individuals in government offices stateside or abroad. . . . It is, however, more easily defended by some individuals than others.” Peter Nyers (2006) also takes this perspective, focusing on “accidental citizens” as a phrase used to impugn the status of those born in the United States to parents who are not white and were foreign-born. McKenzie finds these variations in citizenship determinations a logical consequence of appeals from differently situated supplicants, while Nyers, a critic of birthright citizenship, sees the pejoratively labeled accidental citizen a necessary outcome of sovereignty, and also a symptom of sovereignty’s illegitimacy (2006, esp. 35–37).

Those who represent citizenship and national identity as created through the random self-divisions of what could be called the “Human Being Project”—an ongoing practice whereby people are constantly (re)producing and attacking themselves represented as others, the view of this introduction—are using an analytic framework at odds with those who represent the cases in these chapters as exemplifying errors citizenship done right would not incur. Returning to a point made earlier, it might appear that this view of citizenship and foreignness as emerging from legal texts and practices and not prepolitical groups or attachments should be self-evident. Citizenship *per se* seems to emerge from law, and its signs are entirely written. Nyers argues that the concept of the “accidental citizen” makes this especially clear. This figure “breaks the bond between nativity and nationality, creates a potential catastrophe for birthright conceptions of citizenship,” and thus reveals the “bond forged between sovereign and subject at birth [is] arbitrary” (2006, 35). Nyers’s critique of the concept of the accidental citizenship is apt. Yet, as Derrida helps us to understand, the logical contradictions implicit in the accidental citizen do not express their potential to undo and thus destroy belief in birthright citizenship. Citizenship’s written documents are the state’s references through letters, not a less real realm

of mere symbols. The writing in the state archive has the force of state truth, a force, as Hegel points out, more robust than any biological or other prepolitical, unscriptive fact.

Reflecting on J. L. Austin's characterization of performatives onstage or uttered in "special circumstances" as abnormal or parasitic of ordinary contexts, Derrida asks, "Is the risk [of a statement spoken in a staged or abnormal context being taken for a felicitous performative] a failure or trap into which language may *fall* or lose itself . . . or, on the contrary, is this risk rather its internal and positive condition of possibility? Is that outside its inside, the very force and law of its emergence?" (1988 [1972], 17). These interpretative questions help explain why the citizen who is effectively stateless, as well as the so-called accidental citizen, whether or not later officially expatriated, do not inherently unveil a true citizenship untroubled by confusions. The utterance "I promise . . . to pay you a million dollars" announced in a play, that is, an easily staged performance outside the original context where it might effect actual results, does not, in fact, problematize or undo the exemplary force of the performative "I promise" in ordinary speech and contexts. Likewise, citizenship's legal performances, and others J. L. Austin (1962) finds "felicitous," such as marriage's "I do," occur under conditions that also are staged, that is, in a courtroom before a judge. It is a testament to the power of writing and state rituals that at any point words and signs are so easily taken as original, authentic, or real, as at birth (!), that generally only Brechtians and devotees of Kafka perceive the judge's courtroom and its proceedings a form of theater.

Consider Nyers's point that the enemy combatant and U.S. citizen "Yaser Hamdi" is "actually spelled 'Himdy,'" attributing the error in U.S. references to an "improper translation from the Arabic to English on his Saudi passport and then on his American birth certificate" (2006, 39n5). This narrative suggests the authority of some putatively original document to signify a correct "Himdy." But of course the name and spelling are never other than copies, of a phonetic name either created or uttered by an ancestral relative or scribe, perhaps one from which "Himdy" was an inaccurate copy of a previous name that could have been transcribed as "Hamdi." Presumably Nyers would agree that the difference between a transliteration of the letter *i* or *y* from the Arab to the English alphabet is strictly arbitrary.

Contemplating these contexts, that is, signifiers of signifiers, Derrida writes, "Rather than oppose citation or iteration," including its copies (e.g., "Hamdi" to "Himdy"), "one ought to construct a differentiated typology of forms of iteration" (1988 [1972], 18). One example of this typology might be the intergenerational (re)production or iteration of a name. Derrida continues, "In such

a typology, the category of intention will not disappear,” that is, for this example, the current experience or phenomenology of the family name inscribing membership will remain important, but these politics “will no longer be able to govern the entire scene” (18). The string of family names can be understood as iterations of a family romance and not apolitical truisms that compel obedience or rebellion. Via deconstruction, knowledge of the arbitrary iteration of “Himdy” as a name and as a citizen with a specific nationality emerges from such encounters with its ambiguities and contradictions and those of larger psychic and political structures specific to its possibility made explicit.

The tension between a critical understanding of the accidental citizen’s logical flaws, on the one hand, and a deconstructive view, on the other, is symptomatic of what might very well be the signature paradigm of legality’s paradoxes, figured by Walter Benjamin as the “subordination of citizens to laws” (1986 [1921], 284), insofar as these laws exist only through these citizens. The ambiguities and contradictions of citizenship are all seemingly “arbitrary.” Consider the third definition of “arbitrary” in the *American Heritage Dictionary*: “Law relating to a decision made by a court or legislature that lacks grounding in law or fact . . .” Birthright citizenship as law depends on signs that are closer to literary tautologies materializing as facts than an ostensive representation, and thus any decisions on this basis are always arbitrary.

Perhaps it is this tension between the legality associated with most of the sovereign’s prerogative when they are rational and evenhanded, and the sovereign’s decisions on citizenship as those of caprice that mobilizes the spirit of critique scholars in this collection bring to their endeavors. When circulated through the legal system of law review articles and courts, forums where some of our authors appear regularly, their responses may prove more immediately effective than other scholarly critiques. Lawrance agitates over the conundrum posed when judges or lower-level government personnel produce decisions that are paradoxically legal *de facto* but not *de jure*, observing the increasing deployment of “*de facto* statelessness,” a vague term of art mobilized inconsistently in the international legal community (Harvey 2010, 261). Lawrance highlights the importance of scholars marshalling their expertise in history, anthropology, literature, and the law for leveraging the epistemological privilege of academic inquiry to question and destabilize concepts whose force of law is not weakened by their incoherence alone. Regardless of their specific politics or theories, the chapters individually, and especially cumulatively, orient the audience to underexamined intuitions about citizenship and statelessness, provoking further queries about not only the magnitude of harms of birthright citizenship but also

their meanings iterated through operations that exclude ourselves under the pretense we are excluding others.

#### NOTES

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1. On the difference between words and concepts, see Pitkin 1973 and Ziff 1967.
2. “I suppose that the process of ‘ascriptio’ consisted, in this case, of dividing the names handed in among the different colonies; very probably these lists would be publicly exhibited, and we need not doubt the sincerity of those who had been thus ‘assigned.’ Professor Daube has written to me on this point as follows: ‘One small matter of interest is that apparently ‘ascribi’ has several senses. It signifies primarily ‘to be enrolled.’ But since in the vast majority of cases one who is enrolled for a colony subsequently becomes a member—namely, by his inclusion in the first census—the verb is often used as denoting ‘to become a member’” (Smith 1954, 19).
3. For more on how practices that instantiate identities at birth come to be favored as ontological and essential, as opposed to those identities that are understood as developing through our own decisions or actions, see Stevens 1999, 2009b. These texts and Stevens 2011a inform the analysis here.
4. Deconstruction arose “as an attempt to come to terms with the Holocaust as a radical disruption produced as a logical extension of Western thinking” (Johnson 1987, xviii).
5. As a purely bureaucratic question, it would have been much easier for deportation agents to affirm his U.S. citizenship than that of someone who obtained this through *jus soli*, simply because the same federal agency that would deport Ace possessed the documents confirming his U.S. citizenship, whereas the Department of Homeland Security does not have direct access to the birth certificates maintained by state agencies. Ace’s inability to procure his own birth certificate in Jamaica, a copy of which his mother had turned over to the U.S. government when he was six, meant his effective citizenship status was one of statelessness.
6. There is a rich literature on the role of miscegenation and marriage law in various city-states and nation-states, and in colonial and postcolonial contexts, all highlighting the discrepancies between biological (“blood”) and legal families, and their implications for citizenship. See Domínguez 1986; Haney-Lopez 2006; Lape 2004, Loraux 1993, 2000; Stoler 2002.
7. The meanings of the terms as used here are from Ferdinand de Saussure’s *Course in General Linguistics* (1986 [1916]).

8. Middle to late twentieth-century examples of the first include most famously Michael Walzer's (1983, chap. 9) defense of using kinship rules for determining membership in the modern state; Peter Schuck and Rogers Smith's (1985) argument that the Fourteenth Amendment should not be interpreted to apply to children of parents who reside in the United States without legal authority; and John Rawls's (1999) idea that citizenship rights derive from intergenerational communities based on racial and ethnic descent. All these authors, and many others, argue at some point that the sorts of expansive rights to social welfare that T. H. Marshall (1992) locates in the development of the modern state require a range of prudential cultural and economic closures to ensure a feeling of national cohesion and preclude economic collapse.

9. For instance, Yasmin Soysal (1994) has argued that the benefits of the European Union's social welfare state are available on the basis of residence and not citizenship; Aihwa Ong (1999) has argued that people are more frequently strategizing to acquire the economic benefits from acquiring new citizenships; and Ayhan Kaya (1999) has shown how German political institutions have established autonomous cultural communities for enclaves of Turkish residents in Germany, despite their lacking rights of citizenship, developments embraced by Seyla Benhabib (2007) in her arguments, contra Walzer, that states should extend and protect residents regardless of their citizenship status but still maintain this distinction and its basis in current paradigms of birth.

10. Foucault's description of Ubu-esque or bumbling yet brutal, clownlike state authority in *Abnormal* (2003a [1974–75], esp. 34–54) is much more fitting and also largely ignored by Foucauldian critics.

11. For a study of citizenship as a legal "gray area" in U.S. courts, see Morawetz 2007a.

12. For an explanation of why nationality also is best understood through law and politics, not biology, see, e.g., Durkheim 1915; Lévi-Strauss 1969; Stevens 1999.

13. U.S. Americans bemoan low rates of voter participation but then fiercely attack the credentials of putative foreigners.

14. For a lengthy literature review and analysis of the utilitarian and so-called liberal arguments for citizenship based on the nation-state, see Stevens 2009b, especially the introduction and chapter 1.