12. THE ALIEN WHO IS A CITIZEN

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Apologues of Citizenship

The Prison Guard

Until his retirement the man was a Supervisor for the Bureau of Prisons. Only Citizens could work there. One day he learned he never was a Citizen. He exclaimed, "This cannot be real." When his name was removed from the register of eligible voters, he wept.

The Youth

Before the Judge stood a young man without a Lawyer. The Youth was there to demand his release from a jail for aliens. In court that morning an Attorney employed by the People, the Youth's fellow citizens, handed him a document. It had a photo of the Youth as a toddler. It stated his birth in another country. The Youth, in shock, thought it must be true. He was flown to this foreign land. Years passed. A second Attorney, also employed by the People, presented him, now a grown man, with a Passport allowing return to his native Land. The Government Agent stated that since birth he had been a Citizen. The document the Attorney showed him ten years earlier was a fraud. Years passed. A third Attorney from the People sent notice that based on encountering documents of

the Government removing him decades earlier, the Government had just revoked his Passport.

The Runaway

The Runaway was caught stealing clothes. She made up a name and foreign place of birth. The Police wrote it down and secretly gave it to the employees who maintained the Government's list of Foreign Visitors allowed entry. The name the girl invented was not there. The Government flew her under her invented name to the country she had never visited. Years later, the girl's bereft family discovered her whereabouts and she returned home.

The Sincere One

The man swore he was a Citizen. The Officer signed a form saying he was Alien. The Judge said he believed the Officer and ordered the man sent away. The country of his arrival did not recognize him as their own Citizen and sent him to a third country. The third country did not recognize him as a Citizen and sent him to a fourth country. There a Diplomat procured a pass for his return home. When he reached the port of entry, the Sentry checked a register and saw the man had been deported. The Sentry ordered the man arrested and sent away.

The Boy Who Was Kidnapped

When the Father left his Wife, he took with him their Son and raised him in a foreign land. As soon as he was large enough to take care of himself, he packed a bag and found the Certificate of Birth proving he was his Mother's child and a Citizen of the same land as her own. But he had been away a long time, and no longer spoke the language. The Sentry ignored the official record in the young man's hand and refused him entrance. Hoping to find a more sympathetic Sentry the man returned another day. The second Sentry arrested him. In a court in his homeland, the Judge asked if the man could produce a document from his own country proving he was the person named on the Certificate. The man said no, he had grown up abroad. He showed the Judge a photo of himself as a child, holding a Certificate discernibly identical with the one before the Judge. The Judge said he needed a government document saying the man before him was the man named in the Certificate and deported him.

These renditions of the alien who is a citizen, all drawn from recent experiences, appear in this form to convey the apologue, the rhetorical form driving citizenship laws and operations.[1] An apologue is a form of rhetoric that is used to reaffirm the status quo. The stories we read of hardships experienced by individuals encountering state narratives at odds with their own biographical self-knowledge incite sympathy but also, in their repetition, affirm these hardships, and make them appear inevitable. The effect is to recapitulate the force of state officials and official identities.

This chapter first explores the rhetorical form of the apologue to elucidate through concepts from deconstruction how law today epistemically privileges state archives and identity papers over information gleaned from more immediate, concrete memories and relations. Second, I pursue close readings of two narratives outside the context of citizenship claims that enact the epistemic authority of written documents over other sources of information. Third, and finally, I analyze in detail paradoxes attendant three examples of U.S. citizens encountered by their government as aliens. These analyses suggest that citizenship is the materialization of sovereignty, the acts of blessing some and banishing others announcing the sovereign's eminent domain and eclipsing in importance every other political or practical contingency that follows from the status. Just as the individual's property right depends on the sovereign's enforcement and falls to the sovereign's assertion of its own prerogatives to claim title, citizenship rights must give way to the government's assertions of its own supremacy, including, paradoxically, over naming the membership body from which it is supposedly constituted.

Legal Apologues

One constant operation across the citizenship cases discussed here is the reduction of people, inherently complicated and even mysterious, to stick figures who possess just one thin and arbitrary set of characteristics of interest for the law: their own government-written documents and references to these in state registries. The use of written record keeping to constitute a citizenry is an example of what Jacques Derrida has in mind when he describes how writing forces a break from the context of any particular present, including the putatively initial one, for an apparent purpose of a moral consciousness (Derrida 1988 [1972], 18). One way to capture the meaning of this in citizenship and deportation cases is the apologue, a "moral fable, especially one having animals or inanimate objects as characters."[2] Of course one might refer to documentary

stories of status and identity through other rhetorical forms, such as myths, fantasies, or legal fictions. But these other forms imply more persistent grandeur, purpose, or agency than the conventions classifying and controlling the character of the alien who is a citizen.[3] On this reading, of citizenship operations as apologue, the only intention before the law is the one created by the government's readings of its own writings.

The Reverend William Warburton, an eighteenth-century writer whose texts Derrida (1979) elsewhere examines in detail, writes: "As speech became more cultivated, [the] rude manner of speaking by action was smoothed and polished into an APOLOGUE or Fable, where the speaker to enforce his purpose by a suitable Impression, told a familiar tale of his own Invention, accompanied with such circumstances as made his design evident and persuasive" (Warburton 1837 [1742], 37). To enforce the purpose of creation and reproduction, the government tells a familiar tale of natives and foreigners accompanied with circumstances of citizenship and alienage, as well as registers and documents, that make the government's design evident and persuasive.

Rather than an instrumental response to the question, why persecute those who may or may not have documents putatively inconsistent with registration systems of citizenship and alienage, the heuristics of the apologue help us understand what this means. In addition to advancing a moral truth through stories in which the protagonists lack agency (and may not be putatively human), the apologue also sounds rote, bereft of specific detail and not just intention, as are the lives before the law of aliens who are citizens: "An apologue is a work organized as a fictional example of the truth of a formulable statement or a series of such statements" (Sacks 1964, 41). The focus on the abstract truth crowds out all else, including the singularity of the person and her emotions, desires, and other feelings. As Sacks explains, "If we become more interested in Russelas' emotional reaction to the Stoic's misery than we are in his recognition of the futility of achieving earthly happiness by the acquisition of invulnerable patience, the apologue has failed: all elements of the fiction have not been subordinated to the creation of an example of the truth of a formulaic statement" (1964, 15).[4] In the apologue and the inquiries into the alien who is a citizen, individuals lose their formal singular quality of persons before the law and appear instead as characters.

According to the *American Heritage Dictionary*, a person is a "living human," whereas a character is a "person portrayed in an artistic piece such as a drama or novel." A person at the border can demand a fair review of her singular context and insist that, as a citizen, it is not lawful to stand her before the law as an alien. But a character lacks will, intention, and responsibilities. The experiences of the animals or figures who populate apologues such as *Aesop's Fables*

counsel patience, endurance, and acceptance of the status quo, regardless of its absurdity. The one-dimensional characters populating apologues destroy the susceptibility of audiences to ascribe will to fictional characters, and also foreclose affective identification. If the figure has an encounter that makes no sense, this is not told in a manner to elicit an emotional response. Apologues fail to inspire audience identification with the specific plot and characters, but this does not mean their abstract qualities lend them to generalization. Indeed, many traditional apologues offer strange, idiosyncratic lessons that convey the superior and somewhat arbitrary pessimism of the apologue's cynical author, before whom the weak are powerless.[5] These stories are inherently conservative: "Myth establishes the world. Apologue defends the world. Action investigates the world" (Crossan 1975, 42). The stories of the alien who is a citizen do not provide lessons that are helpful for others proving either alienage or citizenship but instead shore up the authority of law to enforce these distinctions.

It is tempting to imagine apologues in service of business or other material benefits. But the citizenship accounts reviewed in this chapter, and indeed many others in this volume, are based on iterations that serve no rational purpose instrumental to economic benefits, including those of White supremacists and other nativists. To the extent that the apologues advance a story of White America, this suggests the relevance of deconstruction's operations that might address the tautologies of this notion of group consciousness. The apologue exposes the paradox of the group's initial division into aliens and the guards who may be arresting their own family members. That is, there is (1) no noncircular account of how groups' putatively original borders (territorial or intergenerational) emerge, and (2) no account for the necessary participation of the alien-who-is-a-citizen guards. (Without their bilingual skills, the deportation machine in this country would grind to a halt.) Practically speaking, the inclusion of immigrants is in service of exclusion. Again, it is important to see this as characteristic of citizenship's potential and the legal tendency in the United States to reveal its citizens as aliens and vice versa, and not as the strategic individual decision to be co-opted, along the lines of the Jews who collaborated with the Nazis. The U.S. guards are working as citizens supervising and supervised by themselves, while the Jewish Kapos are employed as Jews (i.e., foreigners) by the Germans. In the case of generalized restrictions on movement across state borders, individual rationality defeats a causal explanation. In contemplating guards whose native language is Spanish, we begin to see that the absence of any persistent boundaries for the group defeats an account based on group interest and forces us to realize these are distinctions our writing imposes on ourselves reproduced as others.

The juxtaposition of the following two excerpts, from the same newspaper on the same day, reveals intuitions about the unique accuracy or proof conveyed by original written records and official sources, as well as their susceptibility to omissions, error, and correction.[6] Such an investment in a written record is crucial for the legal apologues of citizenship. Unlike other legal proceedings, especially those of criminal law, citizenship cases proceed indifferent to pain, trauma, suffering, or any other emotional facts, and they also disregard intention altogether. Examples from other contexts illustrate the simultaneous contingency and epistemic authority of written texts, those accounts gaining credibility because they exist in a medium that seems permanent, objective, and inalterable (even if also on a website and digitized).

Consider these examples from the *New York Times*:

> In the absence of those half-century-old records, [Richard] Parsons's unspectacular time on the freshman team cannot be fully authenticated. Because he did not play beyond his freshman semester, he does not appear on a list of varsity lettermen. (*New York Times* 2014b, B13)

> An article last Friday about the killing of two young Palestinians in clashes with Israeli security forces, using information from a hospital, misstated the name and age one of them. He was Mohammad Mahmoud Odeh Salameh, not Muhammad Odeh Abu al Daher, and he was 16, not 20. (*New York Times* 2014a, A2)

In the first instance, the journalist, who points out the University of Hawaii athletics department lacks the relevant records, has tracked down a teammate of Parsons, who confirms his team membership: "Bill Robinson, who attended Hawaii in the 1964–65 academic year, recalled playing with Parsons on the freshman team. 'I can verify that,' said Robinson, a lawyer and retired naval aviator whose name was provided by the N.B.A. 'You have my word on it.'" But for the reporter and Robinson himself, his word is not enough. The last line of the article quotes Robinson, "I don't know if you can find proof that I played, either."

Robinson's eyewitness testimony memorialized in his own mind indicates Parsons played. Likewise, the "Corrections" section on that same date, the second passage quoted, about the killing of a Palestinian, indicates basic facts about someone's name and age were incorrectly published in the *New York Times* on the basis of information conveyed from an authoritative hospital source.

These instances might be construed as evidence for trusting oral statements and doubting the accuracy of information in the written, official record. And yet in encounters with immigration files, officials, and adjudicators, as well as federal judges, citizen supplicants regularly have their personal testimony and that of their friends and relations subordinated to records containing information unverifiable save for a signature, regardless of who affixed it. The preceding passages might thus serve as context for explaining misunderstandings about the true personal histories for those who are de jure U.S.-American citizens but fail to have this status recognized de facto. However, these are not the points this chapter develops.

Instead, I want to use these examples, alongside the apologues preceding them, to suggest that the very possibility of the truth to which we ascribe not only the written record but also its possible supplements is fantastic thinking: in the name of truth, what really is at stake in U.S. citizenship cases is internal coherence and the state authority derived therefrom. Consider the case of Teresa Trinh, whom U.S. authorities denied permission to change her certificate of naturalization to reflect the date of birth on her Vietnamese birth certificate.[7] Several features are noteworthy. First, Trinh sought permission to change the naturalization certificate because its failure to match her birth certificate prompted state authorities to deny her a driver's license, and federal authorities a U.S. passport. Second, the U.S. government resisted changing her naturalization certificate, even though it found nothing wanting in the accuracy of the Vietnamese birth certificate. The government claimed that allowing any changes jeopardized the integrity and thus authority of their document regime (see McKenzie, this volume). The district court judge wrote: "USCIS [U.S. Citizenship and Immigration Services] argues that it 'has a strong interest in denying amendment requests that, if granted, would encourage naturalization applications containing untruthful information, undermine the reliability of naturalization certificates, and erode respect for the naturalization process.'"[8] Here, the government is claiming that inaccurate information on its naturalization certificates is preferable to accurate information, because changing information to match other authoritative and required government documents, in this case the Vietnamese birth certificate, would undermine the credibility of its record keeping.

Third, despite the judge ultimately ordering USCIS to amend the certificate, his narrative of the initial confusion obscures the government's responsibility for this. The judge writes, "Petitioner's parents have not explained how immigration authorities arrived at this date."[9] But how could they? The bureaucrats, not the parents, were the ones who created the official record. (Most likely

a U.S. immigration agent, perhaps relying on a refugee camp doctor's estimate, produced this outcome.) The effect of the judge's observation is to leave the impression that individuals are responsible for their state records, and to elide the centrality of government records and actors to the creation of our biographies. Moreover, nothing in the order for this individual case changes the CIS policy of not making changes to its database, or the substantial and expensive burden on individuals seeking to rectify inconsistencies. Thus, it is not surprising when there are inconsistencies and when these are viewed in a light that favors the government's interpretation and not that of the citizen supplicant.

The documentary gaps, inconsistencies, potential lies, and so forth occasioning citizenship certificates' production, amendments, and removals may seem to be failures of the signifier (i.e., the naturalization certificate) to match the signified (Trinh's actual date of birth).[10] Instead, these and many other accounts reveal the triumph of official signatures that convey a putatively unique inaugural moment of a person's legal recognition over any other memory or experience of identity. If we recall Henry David Thoreau's objection to paying taxes—he did not consent to join the state that was taxing him for policies he found morally repugnant—we might note he also never agreed to be identified by a first and patronymic name entered in a state register on the basis of a calendar relying on a Christian chronology. The judge imputes intentionality to Trinh's record that the law itself renders impossible. Although the judge states that Trinh's parents did not account for the inaccurate date in her immigration file, he might also have pointed out that her parents did not account for the existence of a system of sovereign authorities and its instruments of control. The parents also did not explain how it was that the United States and Vietnam existed as authoritative as to her identity, nor how they came to rely on certain criteria for assigning and evaluating its assignations, nor how these sovereignties came to the war that rendered them homeless refugees.

Moreover, in another case with a similar fact pattern, the Ninth Circuit in 2015 denied the appeal from a petitioner who, the record states, possessed an authentic 1931 U.S. birth certificate the petitioner used to obtain a U.S. Social Security card and U.S. passport in 1953 and 2005, respectively. The fifty-nine-page en banc decision contains crisscrossing concurrences and dissents as to the standard for review for factual findings of alienage; whether such findings by the federal district court judge were factual or legal; and whether under a lower standard the federal judge's factual findings about citizenship were clearly in error, the government itself having conceded that some of his factual findings

were demonstrably wrong (*Salvador Mondaca-Vega v. Loretta Lynch* 2015). Perhaps most disturbing are the opinion's analogies with the standard for reviewing facts in criminal, including death penalty, cases. These also require deference to the factual findings of lower courts, but *these facts are findings of juries*. The absence not only of any de novo review of facts in citizenship cases in which the government controls the records but also of judicial cognizance that the federal courts are effectively placing someone's citizenship in the hands of a single judge, who in this case misstated points of law and fact, is reminiscent of the protocols of the 1850 federal law authorizing the capture and return of "fugitives"—the word "slave" does not appear in the so-called Fugitive Slave Act—and challenges thereto.[11]

In pursuing further analysis of the U.S. documents regime for citizens and aliens, conveyed especially pointedly in a regulation that describes how "aliens" can prove they are "citizens" (8 CFR 1235.3, discussed later), I am relying on insights about the written record and the signature Derrida introduces in "Signature, Event, Context" (1988 [1972]). His discussion of the effect of writing has important implications for problems of assigning citizenship. Derrida points out that writing appears as a medium passively communicating information from the past, but that writing also, more insidiously "carries with it a force that breaks with its context" (9), without appearing to do so. Recalling the experience of Trinh, we see that if she wants to leave and return home (either by car or through a U.S. border checkpoint), she must go to court. She must address in the government's own idiom of documents its documentary entries, and thus endure a clear break of her present context and the government's intrusion into her web of family, work, and other relations, as well as her habits, pleasures, aversions, and aspirations.

Derrida's dense essay on the signature, event, and context reviews the relation between J. L. Austin's performatives and their written, legal contexts. Derrida's insights here, and also from "Force of Law: The 'Mystical Foundation of Authority" (1989–90), provide metaphors and accounts central to understanding the infelicities of the U.S. citizen who appears before the law as an alien. Summarizing Derrida's work for understanding failures of police responsiveness in India, Veena Das writes: "If the written sign breaks from the context because of the contradictory aspects of its legibility and iterability, it would mean that once the state institutes forms of governance through technologies of writing, it simultaneously institutes the power of forgery, imitation, and the mimetic performances of power. This, in turn, brings the whole domain of infelicities and excuses on the part of the state into the realm of public" (2004,

227). To produce authentic pasts through technologies of writing, the state makes possible their forgeries.

Like all paradoxes, those here betray attempts at analysis through logic, and thus allow no foothold for an instrumental explanation for why the U.S. government would devote millions of dollars each year to arresting and deporting its own citizens.[12] In these cases, any explanation for one result, including racism, easily may be undermined by the possibility of its opposite, that is, civil rights laws against this passed by a majority, as well as the reliance on border patrol agents who are U.S. citizens of Mexican descent. In the case of U.S. citizens before the law as aliens, the first paradox lies in the legal texts themselves, which posit the character before the law as "an alien . . . who is a citizen," even though U.S. law also stipulates that a citizen is by definition not an alien. (Dual citizenship is largely legal, save those swearing fealty to foreign sovereigns, and does not require an admission of alienage.)[13]

The second paradox, parasitic on the first one, is that of a political community governed by laws passed by a constituency of these aliens who are citizens. We are used to thinking of exclusions by "us" (or "them") of "the other." This regulation exemplifies and concretizes an otherwise abstract idea: the alien who is a citizen makes up the political community passing legislation. Thus citizenship law not only penalizes those authorizing the law (when citizens are treated as aliens) but also is fundamentally incoherent. The alien-who-is-a-citizen is the part of us we cannot recognize as such, the foreignness from which we create ourselves as others, and through law perform our otherness. But this process, understood reciprocally, means that the foreigners we create from and as ourselves also are the ones passing these laws. Thus the laws producing aliens come from a citizenry that is alien. Such a demographic violates policies confining the franchise to citizens and prompts rethinking the real basis and significations of our membership protocols.

Finally, third, there is the paradox of those charged with reading the law actually rewriting or otherwise circumventing it. The examples from the apologues, the operations of which are described in more detail later, reveal officials and judges inventing texts they claim to be enforcing. This is not a shortcoming of policy implementation specific to citizenship laws. But because the determinations at stake are always purely those of status, and the implications raise existential questions about the political community as such, these challenges of textual interpretation, as well as document creation and destruction by states and others, expose the paradoxical fragility of laws whose enforcement depends on their rigidity and persistence.

Paradoxes of the Alien Who Is a Citizen

Definition of the Alien Who Is a Citizen (Self-Contradiction)

> (iv) *Review of order for claimed lawful permanent residents, refugees, asylees, or U.S. citizens.* A person whose claim to U.S. citizenship has been verified may not be ordered removed. When an alien whose status has not been verified but who is claiming under oath or under penalty of perjury to be a . . . U.S. citizen is ordered removed pursuant to section 235(b)(1) of the Act, the case will be referred to an immigration judge. . . . If the immigration judge determines that the alien was once so admitted as a lawful permanent resident or as a refugee, or was granted asylum status, *or is a U.S. citizen*, and such status has not been terminated by final administrative action, the immigration judge will terminate proceedings and vacate the expedited removal order. The Service may initiate removal proceedings against such an alien, but not against a person determined to be a U.S. citizen, in proceedings under section 240 of the Act.[14]

The regulation at the heart of this chapter defines the one who stands before the law as "an alien." Yet this definition is subject to refutation, unlike actual axioms, which may not be so refuted by empirical evidence. By contrast, most laws refer to those before them as persons or else use pronouns for those who may or may not have committed specific acts the government codifies as illegal. For instance, the law against defrauding the government concerns "*whoever*, knowingly and with intent to defraud the United States, or any agency thereof, possesses any false, altered, forged, or counterfeited writing or document" (18 USC § 1002, emphasis added), not "fraudsters" whom judges later may determine have not committed fraud.

Laws Deporting Aliens Who Are Citizens (Self-Exclusion)

The citizens brought before immigration judges typically are U.S. citizens at birth either because of the Fourteenth Amendment or under statutes conferring citizenship by descent automatically by operation of law. Citizens who have this status because of naturalization are less likely to receive, but not immune from, treatment as aliens—their records assigning citizenship are more available (Becker 2011; Stevens 2011). In cases of those born in Latin America, which, like many other postcolonial countries relies on jus soli (see Price, this volume), people may hold dual citizenship at birth. Still, as long as the criteria for U.S. citizenship are met, such persons are citizens and not aliens under U.S. citizenship law. By

standing before the law as aliens those who are its citizens, the government performs the illegitimacy of those laws.[15] The alien who is a citizen crystallizes the paradox that shoots through U.S. citizenship's significations: Who will verify the alien who is a citizen who will verify the alien who is a citizen? Those authorizing these laws lack recognition for their eligibility to pass or enforce such measures, posing the infinitely regressive impossibility of verifying the identity of those eligible to verify identity. This scenario calls into question the formal legitimacy not only of citizenship laws but of all other laws as well.

The enforcement of citizenship laws shares some infelicities with other realms of law enforcement. But there are also some important differences. First, the rates of agent and guard abuse, false confessions, and erratic judicial opinions in the United States are higher and often have more serious consequences in deportation proceedings than in the sphere of criminal arrests and trials.[16] Second, the violation of immigration and citizenship laws is purely a status violation, which means it is by its very nature a failure of one set of records and documentation to comport with the criteria deemed relevant for another set of records and documents. Although assessments of citizenship status often are based on information that is visual or oral (e.g., clothing, lack of fluency in English), and these ensuing assessments ultimately may lead to the revocation of U.S. citizenship, these operations are performed via the production of written documents. Questions about intent at the time of an encounter or any other time frame, or other states of mind, are moot. If the written documents verify a U.S. citizenship and agents desire another outcome, then agents may force people in their custody to affix signatures to documents announcing alienage, tear up birth certificates issued in the United States, or commit perjury (Johnson 2013; Stevens 2011a, 2011b). Although rarely does the government actually come forward and announce that it values its authority over accuracy in specific cases, the rationale behind the dispute driving Trinh's court case reveals undesirable outcomes when the government advocates its own unquestioned executive authority over the databases and certificates creating our identities and status of citizenship and alienage more generally. Likewise, the Ninth Circuit decision in *Mondaca-Vega* reveals what happens when we leave the review of these decisions to a single judge and not a jury.

In several cases discussed thus far, the supplicants have been of non-European descent. Mai Ngai has introduced the concept of "alien citizenship" to refer to the "nullification of the rights of citizenship—from the right to be territorially present to the range of civil rights and liberties—without formal revocation of citizenship status" and as an example references the mass forced migration of U.S. citizens of Mexican descent in the Great Depression and

the internment of citizens and residents of Japanese descent in World War II (2006/2007, 2522). The focus on racialized citizenship is crucial for pursuing questions about individual- and community-level experiences of unlawful discrimination and the specific jurisprudence of second-class citizenship that enables it. To do so, Ngai describes citizenship practices unfolding through historical and current racial hierarchies. Her work and other important work on citizens whose rights the U.S. government marginalizes, including Leti Volpp's (2006/2007) fascinating discussion of the effective statelessness of accused terrorists, occur within the confines of the historical present's distribution of affinities, trust, and power.

Studies of racialized and securitized citizenship are crucial for orienting us to important political challenges. This chapter offers something else, namely, a close reading of the inherently paradoxical scene of citizenship's reproductive phenomenology: an ontologically unstable dynamic of affirmations and othering produced by aliens differentiating within themselves through creating citizens, and by these very citizens differentiating within themselves as aliens.[17] Rather than describe the synchronic effects of a racialized history, this chapter looks at how our citizenship scenes are written and in particular considers the significations produced *by the alien*. The legal protagonist here, the alien who is a citizen, embodies in its fluidity and contingent morphologies the literal, legal, and thus political sovereign citizen subjects who are manufacturing their own self-marginalizations and copies that are disadvantaging themselves.

The persistent inability of state actors in the United States to tell a coherent narrative—that is, to characterize those introduced at one moment as bearing the same identity in later chapters of the legal story of that person or the country—typically occurs under one or more of the following conditions: (1) individual government agents lack knowledge of citizenship laws, (2) lawyers lack knowledge of citizenship laws, (3) government standards of proof are not met, (4) officials knowingly violate the law, or (5) immigration judges knowingly violate the law. Consequent to these events, the government makes interpretations of documents inconsistent with those dictated by earlier ascriptive conventions. In short, the agents fail to follow the rules that obligate them, and those who are mislabeled cannot effectively challenge these decisions or never have known the identities and statuses that were theirs under prevailing laws and the circumstances of their own family histories. It is absolutely the case that the low level of protections afforded people in these contexts reflects current domestic and global distributions of wealth and sovereign power, but it is also the case that these distributions (1) are not ontological but emerge in a manner that is cyclical, self-splitting, and also self-destructive; and (2) require

attention to their specific emergences and persistence. Instead of the White race excluding Asians, for example, we start by reflecting on how Asians, Europeans, and Africans emerged from accidents of imagination that also created the maps, family genealogies, religions, and banal pathos of daily lives unable to find anything more interesting than resort to these narratives in particular to alleviate existential anxieties (see Stevens 1999, 193; 2009b, 1–26).

The following examples illustrate these five failures of coherent storytelling, what happens when the fictions of the moment deviate substantially from past stories. Before proceeding, it is important to recognize that the written record invites the possibility of fraud. Das attends to fraud because it reveals how the government's document regime is amenable to falsehoods. The analysis here recognizes this phenomenology but also stresses how these mishaps illustrate the ways in which the records are not a written past tense that freezes a moment's truth. Archives are ongoing writings that are constantly (re)creating new pasts (i.e., new stories) amid expectations that these records are persistent, self-identical, and transparent.

NO KNOWLEDGE OF THE LAW (1) AND (2)

According to the federal appellate court, Sigifredo Saldana Irachata's application for a certificate of citizenship was denied because "no decision maker has clearly applied the correct Mexican statutes to Saldana's claim of citizenship." The court goes on to note: "In both Saldana's case and other cases involving similar situations, DHS officers and the Administrative Appeals Office ('AAO') within DHS have relied on provisions of the Mexican Constitution that either never existed or do not say what DHS claims they say."[18] The court ridiculed the government's excuses: "Though the government attempted to dismiss the error as a mere 'typo,' we cannot agree. It is unclear what legal authority the BIA actually relied on in Reyes. . . . The BIA's mistake in citing a non-existent constitutional provision, perpetuated and uncorrected by DHS in subsequent years, prevented the agency from making the correct inquiries or possibly from applying the correct law in subsequent cases. That error has wound its way through multiple agency decisions in immigration matters, which are significant to the impacted individuals."[19] The government's position is that simple typography in one specific case misrepresented the Mexican Constitution. But the judicial panel states the government is disingenuous on this point. The court points out how the iterability of the government's invention produced the status and identities of numerous other citizens as aliens. These decisions will ripple through the offspring of those registered on the basis of the BIA's version of the Mexican Constitution.

This is an interesting natural experiment in the operation of citizenship rules applied more generally. What if a branch of government just invented a rule and relied on that one for the designation of citizenship, rather than on the statutes passed by Congress? We now know the answer: for thirty-five years it looked no different from the application of every other correct rule, regulation, and law for determining citizenship. Of course, there is no current evidence of how many other laws or constitutions are being similarly rewritten by the officials in the BIA, and even federal courts, including the Supreme Court, are adding to this their own literary creations.[20]

BURDENS OF PROOF (3)

If one asserts birth in the United States of America, then the burden of proving alienage is on the government, and the standard of evidence is "clear, unequivocal, and credible." If one concedes birth in a foreign country, say, the Republic of Mexico, the person in removal proceedings bears the burden of proving U.S. citizenship.[21]

There are numerous reasons people may lack the documents sufficient to confirm the status legally theirs at birth. These mostly derive from time and distance attenuating a foreign-born person's ties to the citizen parent(s), who possess(es) the required evidentiary documents. If charged with violating immigration laws that are part of the criminal and not civil code, the burden of proving guilt, in this case alienage, is on the government, as is the case with any other criminal charges. Numerous individuals have been found "not guilty" of illegal reentry (8 USC § 1324) or false personation of a citizen (18 USC § 911) based on evidence of their U.S. citizenship persuasive to either a jury or a U.S. attorney (who drops the charge), and yet are immediately thereafter deported by Immigration and Customs Enforcement (ICE) (Stevens 2011b).

The disparity in the standards of proof, and perhaps differences between how the guards, officials, and adjudicators employed by the deportation agencies and those outside those bureaucracies (juries and U.S. attorneys) evaluate the evidence clearly are leading to different outcomes. For instance, in 2008, a jury found Esteban Tiznado not guilty of illegal reentry (Stevens 2011–13). Jury notes and a trial transcript indicate they relied on the baptismal certificate and other evidence presented by his government-assigned attorney (not available in civil proceedings), vindicating the accuracy of his father's Arizona birth certificate and discrediting statements by an official testifying for CIS (Stevens 2011a). Since 2008, Mr. Tiznado has been repeatedly deported and inhabits that space between the criminal and civil standards of proof: a constitutional bar against trying anyone twice on the same charge (double jeopardy) means

the government cannot again charge him with illegal reentry.[22] But the file, created in part by false statements coerced by a Border Patrol agent, means the U.S. government repeatedly ignores Tiznado's assertions of U.S. citizenship.[23] In other cases, prosecutors see the evidence of U.S. citizenship and drop the criminal immigration charges. In these cases the U.S. attorney may alert ICE but not the lawyers or their clients, who abruptly find themselves on the Mexican side of the border bereft of identification or funds.[24] To advance their own narratives of U.S. citizenship, those in deportation proceedings must produce documents they do not possess.

In most of these cases, the government, having itself generated the basis of these beliefs about U.S. citizenship held by those in its custody, itself possesses the most relevant evidentiary documents but does not release or, in many cases, read them. According to one U.S. citizen in ICE custody for several months: "[The ICE agent] was asking for something to prove my citizenship. I told him, 'I'm in prison. Whatever I told you is all I can give you. I gave you my social security number; my ex-wife is a permanent resident because of me. All you have to do is go to the immigration building.' I don't think anyone did nothing to find out. All they had to do is call to the [U.S.] embassy in Mexico. I really don't think he did a thing to find this out" (Stevens 2011b, 665). In this and other cases, the government produces a certain written record, fails to read it carefully if at all, and fails to make it available to those claiming to be the character the government scripted and not another.

AGENT MISCONDUCT (4)

Government agents at the border or behind a desk may intentionally destroy pieces of the person's story previously created (Stevens 2011, 656), coerce signatures to statements to create a database of life events producing an alien when the actual story is one of citizenship (Johnson 2013; Stevens 2009a); or disregard the information in their systems' records and create a new narrative, one in which the character who is a U.S. citizen is rewritten as an alien (Stevens 2011–14).

IMMIGRATION JUDGE MISCONDUCT (5)

The government appoints people to supervise the law's consistency, the apparent purpose being a responsible rendition of the country's Book of Life—that is, an accurate registry of all its members in perpetuity.[25] This is a task for God, not mortals. Frustrated by the nuances of citizenship laws and the complexities of persons' lives, immigration adjudicators take shortcuts and simply defer to the stories written by their colleagues in other government agencies, turning

the hearing rooms put forward as chambers of independent analysis into another office where government attorneys dressed in black robes demonstrate their proficiency with a rubber stamp.

Jimmie Benton, a recently retired adjudicator, in response to my questions about inaccurate statements he made in the 2013 hearings for a U.S. citizen, Frank Serna, in ICE custody in 2004 and 2012–13 (Stevens 2013a), wrote the following to me in an e-mail he intended published: "Based upon the two cases you brought to my attention I was obviously flawed in my analysis of the citizenship claim. It would also be fair to say that I was weak in the area of citizenship. This was definitely something that EOIR [Executive Office of Immigration Review] should have addressed in the form of training. The substantive IJ [immigration judge] training involving active give and take, questions and learned input from colleagues has been sorely missing for several years now" (see also Stevens [2011b, 609–10, 631n86, 669]; 2010).

Analyses of Paradoxes

In a long paper prepared for a conference at Cardozo Law School, Derrida states, "For me it is always a question of differential force, especially of all the paradoxical situations in which the greatest force and the greatest weakness strangely enough exchange places" (1989–90, 929). Commentators, including Derrida himself, often have focused on the paradox of legal violence, especially as explicated in Walter Benjamin's "Critique of Violence" (1986 [1921]). Only claims of justice render actions legitimate that in real time are just violence. Benjamin stresses the object lesson provided by the present state's very emergence out of civil war or war. An equally if not more compelling figure of legal paradox is the alien who is a citizen, implying the transitive definition of the citizen who is an alien. The citizen who is an alien also embodies the paradoxical law authored by the character who signifies in law her own inability to signify.[26] Derrida's ideas about the signature help us understand how this impossible character emerges from a legal context implied by the performative effect of the signature of the alien who is a citizen: her legal testimony of her own identity instantiated, recognized, and destroyed before the law. The signature of hers, the agents, and those from previously executed certificates, orders, sworn testimonies, and other documents are the effects of a law that assumes them as their axiomatic preconditions. The legal context conjures a presignifying identity and signature that logically cannot exist without the legal infrastructure productive of the signatory identities in the first place.

This scenario is hard to follow amid concrete examples of well-known, individually motivated signatures on legal documents. It certainly is the case that John Hancock approved the Declaration of Independence, and many witnessed this in person, and thus could confirm Hancock's endorsement even without his signature. Still, the Hancock signature is not a prelegal fact of nature. The legal infrastructure of files, seals, registers, and inspectors to verify their authenticity are more than legal niceties for confirming de facto identities. Rather, the signature authorizing the government underlying the possibility of a signature indicates an identity indivisible from a status constituted by the state, one that nonetheless appears to be one's own unique prelegal persona, an effect Derrida shows is constituted by the form of writing itself, which establishes the originary moment that can be invoked to shape events at a much later time. The government-registered individual "John Hancock" makes possible this signature.

It is this scenario of a scripted apparent origin that appears at a later time, and possibly generation, as the so-called truth at the border—and all other venues that interrogate legal status—that confronts the alien who is a citizen. The records establish a reality and are most meaningfully analyzed through synchronic readings, that is, readings that view context as a snapshot of the present. Rather than look for meaning anterior to or within an individual's documentation, the documents are today's story. Once we grasp how documents are pre-forming, a-scribing scripts we perform—and not reporting on our God-given roles in life—the role of the past starts to appear more obviously as one that is historiographical, as a written medium that incites studies and interrogations of a written past that irresponsibly intrudes into the present. These reports, perhaps in the form of "alien files," can then be seen as deliberate, written iterations of continuity with a plausible, discernible, storied origin. Understood thus, the political problem with the document regime is not our failures of transcription or investigations but the discourse that legitimates inquisitions into inconsistencies and holds individuals responsible for them.[27]

While the paradoxical alien who is a citizen can be understood internal to the meanings of the law, the failure of the government to track its own laws might be best understood through the work of Franz Kafka, not least because federal judges cite him in their citizenship decisions.[28] In the same section where Derrida mentions his interest in paradox, he also references a passage from Kafka's novel *The Trial* (*Der Prozess*) (1998 [1925]), a work dramatizing how government irrationality is of a piece of, though not reducible to, those who work for and authorize it: government employees and citizens. The protagonist K's downfall is a result of the monstrosities and stupidities of the people, of whom

he is himself a part, and not anything separate (e.g., a Weberian bureaucracy). The domestic spaces and activities inside K's court building (e.g., K. enters a kitchen in a judge's chamber as meals are being prepared) call into question the formal dichotomy between officialdom and our personal lives. Kafka shows us as we really are. Unlike the Weberian impersonal administrator mechanically grinding out fair if heartless memorandums, Kafka's robed people in government offices are us every bit as much as is K. Kafka narrates K's subjectivity, but this only fills out the effects of what we have wrought on ourselves. Throughout his essay referencing Kafka's work, Derrida foregrounds the impossibility of easily and definitively observing discrete moments of legitimate or just, or illegitimate or unjust, violence absent contexts created through writing and its iterations and readings over time. Kafka and Derrida both help us see how in the name of establishing law and order we are destroying ourselves and the justice on which law is founded, and creating instead paradoxes and injustice.[29]

Conclusion

The alien who is a citizen in U.S. law certainly can be understood as a more generalizable characterization of a liminal, paradoxical status that holds across regimes and countries. Readers are encouraged to note these, and also attend to features specific to an archive of the laws, registers, and identity papers reviewed by the government of the United States. All state-nations (Stevens 2009b, 134) require targeting those whose otherness "we" are ourselves creating. The deconstructive readings in this chapter are in service of delineating how we split ourselves such that some of us are citizens and others aliens. As the chapters heretofore have demonstrated, contemporary document regimes across countries share many features. Still, variations in techniques require strategies of forensic intelligence most appropriate to resistance and change in specific contexts (Stevens 2015a). The hardships and confusions of citizenship, easily noticed through the legal obstacles confronting aliens who are citizens before the law, are not due to legal failures but reveal law's dominion over our identities. These cases distill the essence of citizenship's paradoxes in the United States and also encourage us to expand on the texts that might provide similar lessons of sovereign tales told through the misery of those whose backstories are less amenable to the more obvious configurations of their citizenship status. The child born in the territory mapped as Guatemala and turned around en route to the United States by Mexican border guards, for instance, is no less a paradoxical character in citizenship fables than those with documents verifying U.S. citizenship that are eventually recognized (or rejected, or both) by the U.S. federal

government. Both indulge irresponsible, tragic fantasies. Our traumas cannot be eased by better documents created to appease sovereign (national) fantasies or document regimes, but require nomos for the earth and lives of mortal citizens.

NOTES

1. The sources, in order presented, are Alvarez 2014; Stevens 2013b; Jonsson 2012; Stevens 2012; and Stevens 2011a, 659.

2. From the Greek *apologos*: *apo* + *logos* (*American Heritage Dictionary*).

3. Other forms of storytelling of course play a major role in America's creation. For instance, the knight chivalry tales animating the conquest and exploration of the Americans by the Spanish and English produced narratives that were violent and racialized. These stories are youthful, aspirational, and heroic (Goodman 1998). The stories of the alien who is a citizen are those of the settled nation: backward-looking to a cold-blooded register the apologues themselves create.

4. Sacks is aware that other fictions may be written to didactically convey specific moral lessons but nonetheless stresses the focus of this in the apologue, for its exclusion of everything else. Booth (1964, 187n22) emphasizes the apologue's overlap with other forms of persuasive fiction.

5. Curiously, many of these substantially reinforce the lessons of the border and other arbitrary conventions of inequality codified by law or practice. For instance, "The Dove and the Crow" is a lesson on how the restrictions of mobility turn the joy of life into its endurance. "A Dove shut up in a cage was boasting of the large number of young ones which she had hatched. A Crow hearing her, said: 'My good friend, cease from this unseasonable boasting. The larger the number of your family, the greater your cause of sorrow, in seeing them shut up in this prison-house.'" In the tradition of the parable, the story might invite those so caged to escape, or perhaps call into question the advantages of class privilege as mere appearances, and in fact a gilded cage. However, the apologues are stories of hard knocks, told only to point out that life for those who may appear well off is demeaning, not to change this. Consider as well "The Farmer and the Stork," in which the farmer, to preserve his seed, slaughters cranes. A stork caught in his net pleads for release: "I am not a Crane, I am a Stork, a bird of excellent character." The stork explains his broken leg accounts for his presence in the farmer's field, his respect for his family, and his innocence of any harm to the farmer. "Look too, at my feathers—they are not the least like those of a Crane. The Farmer laughed . . . , 'It may be all as you say, I only know this: I have taken you with these robbers, the Cranes, and you must die in their company." The apologue is known for the lesson "Birds of a feather flock together." But note that the farmer observes in the stork no malice of will, weakness of character, or evidence of deceit on these points. Thus, there are no possible lessons for others seeking to elude the destiny of group slaughter. In other words, birds may be found together who are of different feathers, and yet the lesson about collective guilt will prevail nonetheless.

6. This is *the* paper of record and thus a demonstration project for the truth.

7. "Petitioner and her family did not have any identification documents with them when they were forced to flee Vietnam. Consequently, Petitioner did not have any written documentation confirming her date of birth . . . at the time of her . . . refugee application." Case 14-mc-80337-MEJ, Order, May 5, 2015.

8. Case 14-mc-80337-MEJ, p. 4.

9. Case 14-mc-80337-MEJ, p. 1.

10. I rely here on Ferdinand de Saussure's formulation of the sign (a concept, e.g., the citizen) conveying the inherently conjoined signifier (the word, e.g., "citizen") and the signified (the referent, e.g., the phenomenology of a biological or ontological, factual citizen) (Saussure 1986 [1916]).

11. Arguing for the "Unconstitutionality of the Acts of Congress of 1793 and 1850," Lysander Spooner writes: "1. They authorize the delivery of the slaves without a trial by jury" (1850, 5).

12. Elsewhere I have summarized the economic literature indicating such policies are economically irrational and also fail to advance other material instrumental goals (Stevens 2009b, esp. chap. 1). See also Carens 1987, 2013.

13. 8 USC 1481 § 349(a)(1). For its interpretation by the U.S. government, see the State Department webpage "Dual Nationality," https://travel.state.gov/content/en/legal-considerations/us-citizenship-laws-policies/citizenship-and-dual-nationality/dual-nationality.html.

14. 8 CFR 1235.3, emphasis added. 8 USC 1182(a)(6)(C)(ii) contains the same language referring to "aliens" who may be admissible if they believe they have a parenting fact pattern indicating they are in fact U.S. citizens at birth.

15. One percent of those in removal proceedings have their deportation orders terminated because they are U.S. citizens (Stevens 2011b). The absolute number of those so affected may not always affect electoral outcomes, though the intergenerational effects of prior ethnic cleansing are not so infinitesimally small as to be omitted from political consideration.

16. The rate of erratic judicial opinions has been noted by numerous commentators and in biting federal court decisions, including a notorious Seventh Circuit rebuke in which Judge Richard Posner detailed the low quality of immigration court decisions: "In the year ending on the date of the argument, different panels of this court reversed Board of Immigration Appeals in whole or in part a staggering 40 percent of the 136 petitions" and pointed out that 18 percent of other civil case decisions in which the United States was the appellee were overturned. He then excerpted some comments by his colleagues on these cases, e.g., "There is a gaping hole in the reasoning of the board and the immigration judge." *Niam v. Ashcroft*, 354 F. 3d 652, 654 (7th Cir. 2003), quoted in *Benslimane v. Gonzales*, 430 F. 3d 828 (7th Cir. 2005). All of the factors identified by Wes Skogan and Tracey Meares (2004) that correlate with police misconduct are endemic to the enforcement of immigration laws. See Julia Dona (2011–12), an empirical analysis of detention custody hearings; Jennifer Lee Koh (2012), an empirical study of deportations in absentia and through coerced or fraudulently obtained waivers; Fatma Marouf, Michael Kagan, and Rebecca Gill (2014), documenting "errant deportations"; Wadhia (2014), on speed producing wrongful classifications of removability; Mark Noferi (2012), on the effects

of deportation hearings absent attorneys; and M. Isabel Medina (2012), on the problems with allowing nonlawyer legal assistance to those in deportation proceedings.

17. On this view, race emerges from the legal territories that are the touchstone for actual or observed physical characteristics associated with a geographic territory of origins. On this view, the Chinese American, Japanese American, or Asian American is the outcome of one or more countries that make up Asia, for instance (tautologically defined by reference to its component countries), while governments also navigate specific of shifting sovereign alliances that produce the racialized alien or "terrorist" (Stevens 1999, chap. 5).

18. *SI v. Eric Holder, Jr.*, U.S. Attorney General, Case 12-60087 (Fifth Circuit Panel, September 11, 2013).

19. *SI v. Eric Holder, Jr.*, U.S. Attorney General, note 3.

20. See Laura Murray-Tjan's blog, Huffingtonpost.com/.

21. For references and discussion of the relevant laws and regulations, see Stevens 2011b, 636–38.

22. Insofar as alienage is a status distinction, the government, unable to prove Tiznado's alienage "beyond a reasonable doubt," cannot retry him for subsequent reentry into the United States, and in fact has not subsequently prosecuted Tiznado on this charge on encountering him in the United States following his deportation to Mexico (Stevens 2011–13).

23. Stevens 2011b, 2011–13. Additional cases include those of Hector Trevino and Sergio Madrid, whose 1326 prosecutions were withdrawn after U.S. attorneys saw evidence of their U.S. citizenship; both are now in Juarez, Mexico.

24. Cases on file with author.

25. The Christian Bible references the "Book of Life" as God's running list of names for those allowed entry to heaven (Philippians 3:5; Revelations 4:8 and passim).

26. Bonnie Honig's (2001) point about the episodic possibility of the lawmaker requiring foreignness or alienage is another characteristic of this paradox, insofar as those theorizing if not establishing constitutions concede the moment of founding as inevitably leveraged from an Archimedean point implying externality. The foreigner as founder and the citizen who is an alien both convey the fragility of the nation's imagined unity and coherence.

27. By referring to the quest for iterations of the original signature and context as "irresponsible," I am alluding to other portions of Derrida's work in which he finds in critical legal studies an aspiration to "intervene in an efficient and responsible though always, of course, very mediated way" (1989–90, 931) in projects pursuing justice. The iterations of the signature and the state's documentations of identity, by contrast, lack any self-conscious reflexivity and are for this reason irresponsible, etymologically from the Greek "sponde, a drink-offering, hence libations being made on the occasion, a solemn truce, and its v spendein, to make a drink-offering, hence to make a treaty, and to [Hittite] sipand-, to pour a libation" (Partridge 1958, "Despond" entry, para. 3). My own engagements are less ambitious than those Derrida ascribes to his colleagues, interventions mobilized by a desire to avoid injustice.

28. See, e.g., *Sazar Dent v. Eric Holder Jr.*, 627 F.3d 365, 374; and *Miguel Noel Fierro v. Immigration and Naturalization Service*, 81 F. Supp. 2d 167 ("Imagine for the moment the agony of living one's life in exile, knowing that the decision to deport hinged, at least partially, on an error of basic arithmetic. Kafka himself would recoil at such a blunder" [168]).

29. Derrida here also explains that deconstruction and his texts in particular only "*seem*, I do say *seem*, not to foreground the theme of justice" when in fact Derrida notes that it "was normal, foreseeable, desirable that studies of deconstructive style should culminate in the problematic of law (*droit*), of law and justice. It is even the most proper place for them, if such a thing exists" (1989–90, 929).