THE BIRTHRIGHT
LOTTERY

Citizenship and Global Inequality

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Introduction:
The Puzzle of Birthright Citizenship

Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door!

EMMA LAZARUS, The New Colossus (1883)

In 2003, five men from the Dominican Republic hid themselves on a ship headed for Houston, Texas, in search of the “golden door.” When the ship was about half-way to Houston, one of the stowaways became ill. The five men decided to call upon the human compassion of the crew, and made their presence known. The vessel’s crew knew they were bound by the rules of the International Maritime Organization “to protect, feed, and repatriate stowaways.” But they also knew that they would receive special bonuses from the vessel’s owner if they reached the shores of the United States stowaway-free. America’s current immigration policy imposes significant monetary fines on vessels arriving with unwanted and undocumented migrants, like the five men in our story, who were from “the wrong side of the tracks” of prosperity and security. So the crew members acted swiftly. Showing no compassion at all, they threw two of the stowaways overboard and left the other three on a raft in the sea. After four hours of dangerous navigation, the three men were picked up by another vessel. The two others were less fortunate. Their shark-eaten bodies were found some time later.¹

The stowaways apparently believed that boarding a vessel bound for the United States, without any proper documentation or permission to enter, represented their only hope to fulfill the American dream. As the Texas court that heard the survivors’ legal claim against the vessel’s owner (the person responsible for issuing the bonus reward for stowaway-free arrival) sympathetically noted, the five men’s belief was in fact shared by “countless
immigrants who have—legally and illegally—entered our great country almost since it gained independence." The problem nowadays, for those who hold this belief, is that the golden door is not often left ajar. In fact, it is increasingly shut tight. This is true in the United States, as well as in most other prosperous nations. When we place the sad story of the stowaways in this broader context, we soon realize that despite jubilant predictions by post-nationalists of the imminent demise of citizenship, the legal distinction between member and stranger is, if anything, back with a vengeance. This distinction has gained a renewed, and at times draconian, significance in the post 9/11 years. It is this realization that informs my assertion in this book that we must step back and account for the persistent importance of citizenship, especially in our current era of globalization. This last point requires further elaboration. There is no doubt that growing transnational flows of people across borders have created a wealth of new levels of membership and affiliation, operating within and across territorial borders, as well as above and below the traditional organizational framework of the nation-state. Such multilayered and potentially overlapping sources of identity and authority provide meaningful rights and obligations that operate on a variety of levels, but they hardly correspond to, nor do they erase, the significance of citizenship as full membership in a political community of equals. As one author eloquently observes, we might use "the term citizen in other contexts, but only as a metaphor... Cities, provinces, and territories have residents... corporations and communes have stakeholders; the global village has its cosmopolitans and its humanists who dream of a day beyond territorial divisions. But only nation-states have citizens."

This situation may, of course, change in the future. But in today's world, as I will explain in the following pages, there are strong forces that explain not only the persistence of regulated membership (at the national or supranational level) but also the preservation of its archaic mechanism of conferring citizenship by virtue of birthright. Indeed, we cannot understand the resilience of bounded membership—which defies the vogue predictions of its demise—unless we revisit the legal and political institution of birthright citizenship. This institution provides a state-sponsored apparatus for handing down from generation to generation the invaluable security and opportunity that attach to membership in a stable, affluent, and rule-of-law society. It also allows members of well-off polities an enclave in which to preserve their accumulated wealth and power through time. If we focus on these transfer mechanisms, we soon realize with some surprise that today's birthright citizenship laws resemble ancient property regimes that shaped rigid and tightly regulated estate-transmission rules. Birthright cit-
latter notion serves to legitimize (and make invisible) the significant intergenerational transfers of wealth and power, as well as security and opportunity, which are currently maintained under the seal of the birthright regime of membership allocation. By highlighting the analogy to inherited property regimes, it becomes possible to call attention to the manifold ways in which reliance on birth in the assignment of citizenship regularizes, naturalizes, and legitimizes distinctions not only between jurisdictions, but also between vastly unequal bequests. Framed in this way, we can begin to acknowledge the massive estate-preserving implications of inherited citizenship regimes as they exist today. Drawing upon the rich body of democratic theory and property jurisprudence, this book sets out to expose—and challenge—the moral problem of unburdened intergenerational transmission of citizenship.

It seems unlikely that circumstances of birth would serve today as the core determinants of entitlement to full and equal membership in the citizenry body, given the extent to which it has been rejected in so many other domains of public life. And yet, reliance upon the accident of birth is inscribed in the laws of all modern states and applied everywhere. In fact, the vast majority of the global population has no way to acquire membership except by circumstances of birth. To the extent that citizenship is a valuable resource, it is currently secured on the basis of a morally arbitrary set of criteria. Birthright membership principles that sanction such distribution deserve the same critical analysis appropriate to any other social institution that stands in the way of the equal realization of opportunities. Such analysis is, however, conspicuous for its absence. The almost casual acceptance of ascription as a basis for assigning political membership is so prevalent that we tend to simply take it for granted. Even those who propose to tighten the circle of membership do not contest the basic principle of hereditary entitlement; instead, they quibble about the scope of its application. What remains unchallenged, and remarkably so, is the entrenched assumption that reliance on birth is somehow an unquestionable component of assigning political membership. This (misguided) assumption is, in part, to blame for the scant attention that has been paid to the puzzle of birthright citizenship even by progressive scholars interested in “rethinking” the political community.

This is a serious omission: the bulk of the world’s population acquires citizenship on the basis of transmission at birth based on parentage or territorial location at time of birth. The harsh facts on the ground are such that most people alive today, especially the huddled masses yearning to breathe free, remain largely “trapped” by the lottery of their birth. This acknowledgment motivates (in the book’s latter chapters) the uneasy task of envisioning viable and realistic possibilities for reforming the existent birthright-allocation system. These possibilities involve enlarging our scope of analysis beyond the standard accounts of political membership as a repository of legal status, rights, and collective identity. Although each of these aspects remains a vital part of citizenship’s domain, together they do not capture the full range of its purpose. Instead of dwelling on these familiar categories, my interest lies in expanding our understanding of citizenship by adding a thus-far missing aspect: thinking about birthright access to citizenship as a distributor, or denier, of security and opportunity on a global scale. To unearth the more complex and multidimensional functions of birthright citizenship, we need to take a hard look at the entrenched legal connection between birth and political membership.

A hypothetical illustration sets the stage for our inquiry. Imagine a world in which there are no significant political and wealth variations among bounded membership units. There are no resource scarcities of any kind, and there are also no conflicts based on social factors such as class, ethnicity, or nationality. In such a world, nothing is to be gained by tampering with the existing membership structures. In this imaginary and fully stable world system, there is no motivation for change or migration. Each political entity offers a safe and welcoming space in which people live, love, work, and eventually pass away. Assuming there are no natural or human-made disasters, children and grandchildren may well pursue the same membership path as their progenitors. More important still, the specific collective in which a child belongs does not matter; roughly equal opportunities attach to citizenship entitlement in whatever political community she happens to have been born.

When we relax these assumptions in order to fit them more closely to the reality of our own world, with its omnipresent struggles and conflicts—a world where political instability, human mobility, and material inequality continue to persist—things begin to look quite different. In our world, membership in a particular state (with its specific level of wealth, degree of stability, and human rights record) has a significant impact on our identity, security, well-being, and on the range of opportunities realistically available to us. When analyzed in this broader context, full membership in an affluent society emerges as a complex form of property inheritance: a valuable entitlement that is transmitted, by law, to a restricted group of recipients under conditions that perpetuate the transfer of this precious entitlement to “their body,” specifically, their heirs. This inheritance carries with it an immensely valuable bundle of rights, benefits, and opportunities.

Although they have a pernicious effect on distributing life prospects and human security, birthright entitlements still dominate our laws when it
comes to the allocation of political membership to a given state. In fact, material wealth and political membership (which are for many the two most important distributable goods) are the only meaningful resources whose intergenerational transfer is still largely governed by principles of heredity.\textsuperscript{16} Whereas the normative foundations of these principles have been thoroughly discussed in terms of the intergenerational transmission of property, they have seldom been considered in terms of citizenship. This omission is as surprising as it is disturbing: academics and policymakers pay a great deal of attention to questions of citizenship, immigration, the claims of minority groups, concerns about civic integration, and how to make political membership meaningful in a world of overlapping and competing affiliations. These vibrant debates engage primarily with the trilogy of status, rights, and identity. What remains conspicuously absent from these discussions, however, is a serious analysis of the global-distributive implications of the entrenched norm and legal practice of designating membership on account of pedigree or birthplace, and its accompanying protections and benefits.\textsuperscript{17} When it comes to any other legal entitlement generated and distributed by the state, reliance on birth status has been deeply discredited. To date, however, birthright citizenship laws have largely escaped similar scrutiny. It is my conviction that it is time to redress this imbalance: we must start to critically examine the connection between birth, the demos definition, and the unequal distribution of voice and opportunity on a global scale.

Although there have been many significant efforts to problematize citizenship and to counteract problems of global inequality and deficits of democratic legitimacy, the typical strategy has been to focus almost exclusively on the situation of nonmembers, pressing hard to expand their rights and to open up the regimes that make it possible for newcomers to join the circle of members.\textsuperscript{18} Undoubtedly, these are important objectives, which have become ever more urgent in recent times. The years following 9/11 have seen governments throughout the world expand and deepen their regulatory control over territorial access and membership admission as part of a larger strategy to regain control over borders.\textsuperscript{19} Yet, as an analytical matter, to frame the question of political membership in this way is to omit something important. It is not enough to focus only on the situation of those who do not belong; the basis for entitlement of those who “naturally” belong must also be examined. How is full membership acquired in the absence of migration? On what basis is the coveted entitlement to citizenship conferred upon some, while denied to others? Who benefits and who loses out when birthright principles are entrenched in citizenship laws? These are the fundamental questions that will concern me in the discussion that follows. To address them, we must shift our gaze from the immigrant to the citizen, and expand the discussion of membership beyond the familiar lens of identity and belonging to account for the transfer mechanism of citizenship by birthright with its pernicious effects on the distribution of voice and opportunity on a global scale.

Birthright Attribution: The Legal Frameworks of Citizenship and Property

When we talk about birth as a source of citizenship, we must distinguish between two principles that define membership in a state in the modern era: \textit{jus soli} (“the law of the soil”) and \textit{jus sanguinis} (“the law of blood”). While \textit{jus soli} and \textit{jus sanguinis} are typically presented as antipodes, it is important to note that both rely upon, and sustain, a conception of bounded membership. They share the basic assumption of scarcity: only a limited pool of individuals can automatically acquire citizenship in a given polity. Once the idea of scarcity is introduced, we are faced with the dilemma of allocation, or boundary making: put another way, how do we determine whether a person is to be included within the circle of members or left outside its parameters? Both principles resolve this dilemma in a similar fashion: by reliance on birthright transfer of entitlement. The distinction between them lies in the connecting factor used to demarcate a respective polity’s membership boundaries: \textit{jus soli} relies on birthplace; \textit{jus sanguinis} on parentage. It is tempting to think that a rule that makes citizenship “contingent upon the place of a child’s birth is somehow more egalitarian than a rule that would make birthright citizenship contingent upon the legal status of the child’s parents.”\textsuperscript{20} But this distinction can easily lead us astray. Both criteria for attributing membership at birth are arbitrary: one is based on the accident of birth within particular geographical borders while the other is based on the sheer luck of descent.

By focusing selectively on the event of birth as the sole criterion for allocating automatic membership, existing citizenship laws contribute to the conceit that this assignment is no more than an apolitical act of membership demarcation. It is in this way that the potential distributive implications are obscured from view.\textsuperscript{21} In practice, however, birthright-attribution rules do far more than demarcate who may be included in the polity. Like other property regimes, they also define access to certain resources, benefits, protections, decision-making processes, and opportunity-enhancing institutions which are reserved primarily to those defined as right-holders. In this respect, birthright citizenship exhibits the definitive features of prop-
Property regimes, which can broadly be characterized as a system of rules that govern access to, and control over, resources that are scarce relative to the human demands made upon them.22 As William Blackstone already observed more than two hundred years ago, "there is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property."23 Invoking a conceptual analogy to property and inheritance thus requires vigilance and clarification of the intended use of these charged concepts, a task that I undertake in the following chapter; at this point, suffice it to say that citizenship clearly differs from the narrow and atomistic (indeed, "Blackstonian") conception of property that has become synonymous with the values of tradability, alienability, or "sole and despotic" ownership.24 Rather, it is a competing vision of property, one which emphasizes stewardship and mutual responsibility, that I wish to bring to the fore in the context of citizenship. As a collectively generated good that creates a complex set of legal entitlements and obligations among various social actors, citizenship offers an excellent example of more contemporary interpretations of property as a web of social and political relations imbued with obligations to promote the public good and not just to satisfy individual preferences.25 This broader perspective permits us to see citizenship regimes not only as generating intricate rules that define the allocation of membership, but also as bearing considerable effects on the distribution of power, wealth, and opportunity. These latter implications are particularly disturbing given that access to the said social good is determined almost exclusively by circumstances beyond our control. To draw the analogy to inherited property and to acknowledge birthright entitlement to citizenship as a human construct not impervious to change is to open up the existing system of distribution to critical assessment. Once we categorize certain relationships under the rubric of property and inheritance, the classic questions of distributive justice—that is, of who owns what, and on what basis—cannot but follow.

Birthright Citizenship and Global Inequality

Birthright citizenship does more than define the formal boundaries of membership. It also closely corresponds to strikingly different prospects for the well-being, security, and freedom of individuals. For most legal scholars (as well as most political philosophers), however, the question of which state would guarantee membership to a particular individual has been seen as largely irrelevant. In this respect, notes Benedict Kingsbury, "the system of state sovereignty has hitherto had the effect of fragmenting and diverting demands that international law better address inequality."26 This may explain why theories of law and morality have too long been blind to the dramatically unequal voice and opportunity consequences of birthright citizenship; but it does little to justify it.

Even thinkers who defend a moral or basic human right to membership typically do so at a general, abstract level, while relegating "the specific content of the right to citizenship in a specific polity . . . [to the] specific citizenship legislation of this or that country."27 This division of labor may well be motivated by the idea of sovereign autonomy or democratic self-determination. Alas, it unwittingly strengthens the notion that all that matters is that one gain a right to access citizenship "in this or that country" rather than exploring the dramatically unequal life prospects that attach to membership in this or that country. It is this slippage between an abstract right to membership and its concrete materialization that demonstrates how the focus on *formal equality of status* makes invisible the *inequality of actual life chances* attached to citizenship in specific political communities.

The typical response of liberal and democratic theory to the inequality of opportunity caused by ascriptive factors is to work hard to ensure that "no child is left behind." While this slogan has never fully materialized in any country, it reflects an aspiration to overcome social hierarchies and economic barriers that are caused by morally arbitrary circumstances or structural patterns of disadvantage. It is therefore surprising that the global-distributive dimension of birthright membership has largely escaped critical assessment. This paucity of analysis is explained at least in part by the fact that the study of citizenship laws has traditionally been the province of domestic and often parochial scholarship, which tends to concern itself with the particular features of its own country's norms and procedures for defining membership and admission.28 International law, for its part, has focused primarily on attempts to resolve the problem of statelessness. This account calls our attention to the fact that it is better for the individual to enjoy a special attachment to a given polity than to remain with no state protection at all.29 This is clearly a potent argument. However, this formulation focuses only on formal equality of status. It says nothing about rectifying inequalities that correlate with the birthright assignment of membership in "this or that" particular country.

Moreover, the familiar focus on formal equality of status (requiring that all individuals belong to one state or another) itself relies on a schematic picture of an orderly world comprised of clearly delineated political communities. This conception of the world is described by Rainer Bauböck as having, "a quality of simplicity and clarity that almost resembles a Mondrian
painting. States are marked by different colors and separated from each other by black lines... [This] modern political map marks all places inhabited by people as belonging to mutually exclusive state territories.” In such a world, with its clear and exhaustive division of the global political landscape into mutually exclusive jurisdictions, it appears “axiomatic that every person ought to have citizenship, that everyone ought to belong to one state.” By focusing on the Mondrianesque picture of citizenship, it becomes possible to emphasize the artificial symmetry between states (represented as different color-coded areas on the world map) while ignoring inequalities in the actual life prospects of citizens who belong to radically different (yet formally equal) membership units.

On this score, the stowaways knew better. It must have required an acute awareness of the actual inequalities in life prospects to embark on their fatal trip, risking everything, including their very survival, for the goal of attaining a better future in a more affluent and stable country to which they did not legally belong. It is in this context that the relationship between birthright citizenship and inequality of opportunity comes to the fore. Although existing citizenship laws do not create these disparities, they perpetuate and reify dramatically differentiated life prospects by reliance on the morally arbitrary circumstance of birth. At the same time, they camouflage these crucial distributive consequences by appealing to the presumed “naturalness” of birth-based membership. There is, however, nothing apolitical or neutral about these birthright regimes. They are constructed and enforced by law, advantaging those who have access to the inherited privilege of membership, while disadvantaging those who do not—just like hereditary regimes of property transmission in the past preserved wealth and power in the hands of the few.

The Importance of Citizenship’s Global Distributive Dimension

We can now see membership boundaries in a more complex light: not only are these boundaries sustained for symbolic identity and belonging purposes (as the conventional argument holds), they also serve a crucial role in preserving restricted access to the community’s accumulated wealth and power. The latter is jealously guarded at the juncture of transfer of “ownership” from the present generation of citizens to its progeny. In other words, birthright citizenship mechanisms provide cover through their presumed naturalness for what is essentially a major (and currently untaxed) property/estate transmission from one generation to another. Ours is a world of scarcity; when an affluent community systemically restricts access to membership and its derivative benefits on the basis of a strict heredity system—akin to an entail structure of transmission—those who are excluded have reason to complain.

If we wish to revisit these automatic transmission principles and to consider how to better allocate across borders the social benefits that presently attach to citizenship in a bounded community (as I believe we should), the first order of business is to draw attention to the entrenched connection between birth and political membership. Despite its pervasive effects, this connection has largely escaped attention in both academic and public policy circles. Once subjected to scrutiny, this system of allocation can no longer be taken for granted, nor can it be ignored. This is so for at least three reasons.

First, the scope and scale of citizenship distribution is truly grand: it affects every single human being on this earth. Although the topic of immigration nowadays attracts considerable attention, it is still by means of ascriptive birthright that individuals attain their initial political membership in “this or that” particular country. And despite the public attention paid to those who go on to reside outside the polity in which they were born, they represent less than three percent of the global population. Everyone else—namely, ninety-seven percent of the global population, or more than six billion people—is assigned the life-long good of membership by the lottery of birth and either chooses, or is forced, to keep it that way.

Second, the consequences of this membership-transfer system are profound, going far beyond the familiar emphasis in citizenship studies on questions of identity, diversity, and civic virtue. In an unequal world like our own, birthright citizenship does more than demarcate a form of belonging. It also distributes voice and opportunity in a vastly unequal manner. By legally identifying birth, either in a certain territory, or to certain parents, as the decisive factor in the distribution of the precious property of membership, current citizenship principles render membership in well-off polities beyond the reach of the vast majority of the world’s population. It is in this way that citizenship may be thought of as the quintessential inherited entitlement of our time.

And what a significant inherited entitlement it is: in our world, the global disparities are so great that under the present regimes of birthright citizenship, “some are born to sweet delight” as William Blake memorably put it in the Auguries of Innocence, while others (through no fault or responsibility of their own) are “born to endless night.” The reality of our world is that the endless night is more prevalent that the sweet delight. More than a billion people live on less than a dollar a day; about 2.7 billion live with-
out access to adequate sanitation and more than 800 million are seriously malnourished. Add to this the almost incomprehensible fact that eight million will die each year, as one author piercingly remarks, "because they are simply too poor to live." Or think of the shocking atrocity that we casually permit to continue every day: more than ten million children under five years of age perish each year in the world's poorest nations—most from entirely preventable causes of death. To this we must add the stunning realization that—contrary to the conventional optimistic story of breaking down ascriptive barriers and replacing them with mechanisms of choice and fair distribution—under the current system of birthright, gaining access to citizenship's goods is clearly not open to anyone who voluntarily consents to membership or is in dire need of its associated benefits.

Once this more critical perspective is taken into account, with its profound emphasis on global disparities coupled with a sharp recognition of how tightly our membership boundaries are regulated, the existing correlation between inherited citizenship and general well-being is impossible to ignore. The quality of services, safety, and scope of freedoms and opportunities enjoyed by those born in affluent polities are far greater, ceteris paribus, than the opportunities of those born in poorer or less stable countries.

When our citizenship laws effectively become intertwined with distributing shares in human survival on a global scale—designating some to a life of relative comfort while condemning others to a constant struggle to overcome the basic threats of insecurity, hunger, and destitution—we can no longer silently accept this situation. These dramatically differentiated life prospects should disturb not only the expectant crowed of moral universalists but also free-marketers who believe in rewarding effort and distributing opportunity according to merit, rather than on the basis of station of birth. The problem of unequal allocation and transfer, which has gained plenty of attention in the realm of property, is, in fact, far more extreme in the realm of birthright entitlement to citizenship.

The third reason why we must pay careful attention to the puzzle of birthright citizenship is that, astonishingly, we continue to have no coherent theoretical explanation for the continued reliance on circumstances of birth in the assignment of political membership. This is despite the fact that the vast majority of the global population is assigned political membership by ascription (the scope of the studied phenomenon), and the dramatic global distributive implications that result from this entrenched system of allocation of unequal opportunity (birthright's consequences). If anything, the persistence of ascription in this most unlikely of social arenas—namely, the definition of who is included and who is excluded from the demos (the citizenry body), flies in the face of our standard liberal and democratic accounts of citizenship as reflecting the choice and consent of the governed. It also reveals serious cracks in the conventional argument that we can divide the world neatly into countries that fall into the "civic" or "ethnic" ends of the spectrum of conceptualization of membership. Similarly, the prevalence of birthright membership stands in tension with the conventional characterization of citizenship as reflecting a social contract between the individual and the political community, or what various French authors refer to as "le lien politique et juridique." This post-Enlightenment vision is often contrasted with the older, Roman law conception of citizenship as an assigned status, with rights and obligations following automatically as a consequence of birth, not choice. Many of the giants of social and political thought recount and reify this (largely fictitious) distinction, according to which the modern state's allocation of citizenship operates as a matter of choice and consent, marking an important improvement on the prior, status-based definition of one's standing in the community. These triumphant themes are perhaps most famously captured in John Locke's Second Treatise of Government and in Henry Maine's catch-phrase thesis in Ancient Law, which describes the transition from the ancient world to the modern one as law and society's development "from status to contract."

To recognize the surprising similarities in form and function between birthright citizenship and inherited property highlights a striking exception to the modern trend away from ascribed statuses in all other areas. The ascribed birthright-transmission mechanism, which is still exercised today, cannot be dismissed as a mere historical accident, given that the question of legitimizing political authority and property is central to the liberal, democratic, and civic-republican intellectual traditions. Such a startling observation only makes the persistent link between political membership and station of birth—a connection that has been both ignored and taken for granted—even more puzzling and in urgent need of a coherent explanation. Addressing this lacuna is the challenge I take on in this book.

Placing the New Framework of Analysis in Context

My discussion is informed by, and in turn seeks to enrich, three different bodies of literature: citizenship studies in contemporary political and legal scholarship, global inequality debates, and sociological accounts of the demise of borders in the context of post-national theorizing. This literature is set against the actual, restrictive policy changes undertaken by most advanced industrial nations in recent years in reformulating their citizenship
and immigration regimes in response to perceived threats of increased cross-
border mobility and global insecurity. In juxtaposing these different lines of
inquiry, I highlight the paucity of attention paid to birthright membership.
I further contend that we need to take into account these partly intersecting
discourses if we wish to find a justifiable balance that permits the preserva-
tion of the enabling properties of citizenship in a self-governing polity while
at the same time aggressively responding to the global injustices perpetu-
ated by the current system of entail-like transmission of membership by birth-
right. This mode of enquiry also illustrates the gaps and inconsistencies in
each body of literature.

Consider the following: most of the writings on citizenship in recent
years engages in a nuanced account of the rights of minorities in diverse soci-
esties, the civic virtues of citizenship, the ideals of deliberative democracy,
and the prospects of creating a world without borders, or at least with
more porous ones. This welcome renaissance-of-sorts in citizenship studies
has dramatically enriched the field, highlighting the manifold ways in which
political membership means much more than "the narrow passport-holding
sense of having a formal legal connection to a particular [state]." 45 Remark-
ably, however, sparse attention has been paid to analyzing the transfer
mechanism of membership by birthright and its pernicious effects on the
distribution of voice and opportunity on a global scale.

The literature on global inequality, in contrast, suffers from an opposite
shortcoming. Although encompassing tremendously rich debates about the
effects of globalization on both inter-country and intra-country inequali-
ties, the units of analysis themselves, that is, bounded membership com-
munities (in their present incarnation as sovereign political entities in the
interstate system), are often taken for granted. Therefore, no attention is
paid to the type of questions that concern me here: how the boundaries of
inclusion and exclusion are defined in the first place, what sustains them,
and why polities in the real world continue to rely upon morally arbitrary
circumstances of birth in deciding who falls on what side of the border of
prosperity and security. In spite of the academic fanfare of post- and trans-
nationalists, who happily predicted the demise of regulated borders and the
eventual devaluation of bounded membership, citizenship is enjoying an
unmistakable resurgence of authority at present. 46 This makes the study
of citizenship's birthright transfer mechanisms—the lost dimension of law's
construction of formidable walls that establish (and then protect) the mem-
bership boundaries they helped create—even more pressing.

Highlighting this tremendous gap between theory and practice is part of
my endeavor here, but it takes place as part of a larger project of merging
the critical account of existing citizenship laws with a constructive explo-
ration of the real possibilities for making our world a better place for all of
its inhabitants. I do this by reformulating the very birthright principles that
currently allocate political membership on the basis of an unrestricted form
of inherited entitlement. I argue throughout this book that we must consider
the two topics together—birthright citizenship and global inequality—in
order to better comprehend the former and tackle the latter.

Thematic Overview

My discussion proceeds in two major stages. In the book’s first part, I de-
velop the analogy between birthright citizenship and inherited property in
the context of a world of severe inequalities of wealth and opportunity.
This analogy permits deploying qualifications found in the realms of prop-
erty and inheritance theory in the membership context; in so doing I pro-
pose a model that has the potential to impose restrictions on the unlimited
and perpetual transmission of membership—with the aim of ameliorating
the most glaring inequalities of opportunity perpetuated by the system of
birthright citizenship. This goal informs the idea of a birthright privilege
levy as an obligation borne by windfall recipients of membership entitle-
ment in well-off polities to improve the life prospects of those allotted less
under the birthright lottery.

Since birthright citizenship involves the transfer of a lucrative entitle-
ment to resources and opportunities, it invites a legal response that miti-
gates these presently unburdened intergenerational transfers. If affluent
political communities wish to continue to bestow membership according to
birthright, thereby shaping the life prospects of recipients in a fashion that
conceptually resembles the inheritance of entailed fortunes, they must ac-
ccept a corresponding obligation. In this way, the imperative to provide
for those less fortunate in their citizenship assignment is not a matter of
charity but of legal duty. The basis for this obligation is rather strait
forward. Even avid defenders of property rights resist endorsing automatic
transmission of entitlement from one generation to another in perpetuity:
such inheritance regimes are treated as morally weak and objectionable.
Taking the existing constraints on the power to convey property through
inheritance as our model for taxing the birthright recipients of hereditary
citizenship in affluent polities, the privilege levy offers a creative way in
which to denaturalize the entail-like mechanisms that presently permit the
uncurtailed concentration of wealth and power in certain bodies politic.
Although many details need to be addressed in respect of the actual design
and administration of such a birthright levy on citizenship inheritance in