

MOVING FORWARD

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We live in a world of permeable borders. Money, goods, information, and the global elite move across borders almost effortlessly. Corporate entities straddle borders, and governmental policies have transnational effect.

But not everyone moves easily across borders. In the United States, federal laws permit the expulsion and the permanent exclusion of long-term residents. This includes people who never had, or at the time of expulsion lack, authorization to be in the country.¹ It also includes individuals who are lawfully present but whose past conduct renders them deportable.² Unlike many legal systems around the world that accord significant weight to equitable considerations, such as a noncitizen's family and community ties when weighing the question of deportability,³ the U.S. legal system often gives little weight, and sometimes completely precludes, such considerations in removal proceedings.⁴ And once individuals are removed from the country, practical and legal barriers to return are often insurmountable, even in the cases of individuals with strong ties to the United States.⁵

* Professor of Law, UCLA School of Law. Professor Chacón would like to thank Professor Caldwell for her thought-provoking and insightful book, as well as the contributors to this symposium for sharing their thoughts and ideas. Special thanks to the symposium editors who brought us all together.

1. See BETH C. CALDWELL, *DEPORTED AMERICANS: LIFE AFTER DEPORTATION TO MEXICO* 45 (2019).

2. See *id.* at 27.

3. See, e.g., *C. v. Belgium*, App. No. 21794/93, ¶¶ 25-33-34 (Aug. 7, 1996), <http://hudoc.echr.coe.int/eng?i=001-57992> (taking into account individual's family interests). For a further discussion of how familial and community ties are considered when deciding on deportation, as well as other examples, see David B. Thronson, *Closing the Gap: DACA, DAPA, and U.S. Compliance with International Human Rights Law*, 48 CASE W. RES. J. INT'L L. 127 (2016).

4. See CALDWELL, *supra* note 1, at 38-39 (discussing relevant changes to U.S. law); see also *Smith v. United States*, Case 12,562, Inter-Am. Comm'n H.R., Report No. 81/10, OEA/Ser. L./V/II.39, doc.21 ¶¶ 60, 64 (2010) (faulting U.S. courts for failing to take into account familial interests protected by international law).

5. Professor Caldwell's book is full of examples of this phenomenon. See CALDWELL, *supra* note 1, at 18, 41-42.

The result is a diasporic community in exile: people around the world—but disproportionately in Mexico and Central America⁶—who think about themselves as “American”⁷ but have no legal right to return to their affective home. Once expelled, these individuals are placed outside of the frame of this country’s perennial discussion of “comprehensive immigration reform.” No reform plan on the table in recent years has made room for the globally-exiled victims of an unforgiving system of immigration laws. The impact of the immigration law on the lives of these deportees—and on their families, workplaces, and communities they leave behind—is generally lost to U.S. residents in a fog of motivated forgetting.

The people of the United States of America have always been peculiarly adept at constructing national myths that fail to grapple with, or even account for, past harm.⁸ From their erasure of the dispossession and genocide of indigenous people,⁹ to their string of broken treaties with native nations,¹⁰ to their failure to make reparations for centuries of slavery,¹¹ to their seldom discussed, ongoing colonial occupation of various island territories,¹² U.S.

6. See, e.g., Kevin R. Johnson, *Immigration Law Lessons from Deported Americans: Life After Deportation to Mexico*, 50 SW. L. REV. 305, 312-13 (2021) (observing that about ninety percent of individuals removed from the United States are from Mexico and Central America).

7. Caldwell and many of the people that she interviewed use the term “American” to refer to their self-identification as someone from and of the United States, and it is used that way in the title of the book, so I use it that way here. CALDWELL, *supra* note 1, at 5-8 (“I am an American at heart and in many other aspects. It’s the paperwork stating that I am an American that I regretfully lack.”); see also Beth C. Caldwell, Webinar at Southwestern Law School Law Review Symposium: A Conversation About Deported Americans (Oct. 16, 2020). People throughout the North and South American continent think of themselves as “American” and the use of the term “American” to define and describe people of the United States is sometimes perceived as carrying a whiff of imperialism, or at least insensitivity, toward others in the hemisphere. See, e.g., Karina Martinez-Carter, *What Does ‘American’ Actually Mean?*, THE ATLANTIC, (June 19, 2013), <https://www.theatlantic.com/national/archive/2013/06/what-does-american-actually-mean/276999/>.

8. See K-Sue Park, Book Review, 87 U. CHI. L. REV. 1977, 1992, 2028 (2020) (reviewing JEDEDIAH PURDY, *THIS LAND IS OUR LAND: THE STRUGGLE FOR A NEW COMMONWEALTH* (2019)) (noting the “growing body of legal scholarship suggest[ing] that erasure of the histories of conquest, slavery, and race is widespread across doctrinal areas,” and offering examples of how to treat this erasure as an “object of scholarly inquiry”).

9. See, e.g., Lisa Kahaleole Hall, *Strategies of Erasure: U.S. Colonialism and Native Hawaiian Feminism*, 60 AM. Q. 273, 275 (2008).

10. See, e.g., *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2480 (2020) (“When Congress adopted the MCA, it broke many treaty promises that had once allowed tribes like the Creek to try their own members.”).

11. Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>.

12. See, e.g., DANIEL INNERWAHR, *HOW TO HIDE AN EMPIRE: A SHORT HISTORY OF THE GREATER UNITED STATES* (2019) (elaborating on the “American empire” and its history of

atrocities and anti-democratic efforts have been shrouded in a majoritarian silence. Periodic waves of xenophobic expulsion efforts—from the massacre of Chinese immigrants during the Chinese Exclusion era,¹³ to the mass deportations of Mexicans residing in the United States in the 1930s¹⁴ and again in the 1950s,¹⁵ to the great expulsion of the last three decades¹⁶—also weigh lightly on the nation’s collective memory.

Beth Caldwell has declined to participate in this exercise of motivated forgetting. In her book, *Deported Americans*, she bears witness to the stories of the exiled. She recounts what they have lost in the expulsion process: the lives they left behind, and the emotional and material suffering they endured. She tells us how they coped, or failed to cope. She recounts stories of addiction and decline, as well as stories of remarkable resilience and creativity. She explains how long-term U.S. residence permanently marks and disadvantages people, but also how some have turned their experiences as long-time U.S. residents into strengths as they navigate the foreign cultural and economic terrain of their countries of nationality.

Those who care enough about the truth to read Caldwell’s book cannot help but be moved by it. Unsurprisingly, her book has provoked a diverse collection of thoughtful responses from some of the best-known scholars working in the immigration field. Their responses are captured in the pages that follow, and I have broadly grouped them here under the rubrics of history, storytelling, and law reform.

occupation in various overseas and mainland territories); Juan R. Tornuella, *Why Puerto Rico Does Not Need Further Experimentation with Its Future: A Reply to the Notion of “Territorial Federalism”*, 131 HARV. L. REV. F. 65 (2018) (unpacking “Puerto Rico’s colonial relationship to the United States” and attributing an inequality in citizenship as well as economic hardship to this relationship).

13. See KELLY LYTLE HERNÁNDEZ, *CITY OF INMATES: CONQUEST, REBELLION, AND THE RISE OF HUMAN CAGING IN LOS ANGELES, 1771-1965*, at 236 nn.12-15 (2016).

14. See generally FRANCISCO E. BALDERRAMA & RAYMOND RODRÍGUEZ, *DECADE OF BETRAYAL: MEXICAN REPATRIATION IN THE 1930S* (2006).

15. See KITTY CALAVITA, *INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE I.N.S.* 46-61 (Quid Pro Books 2010); JUAN RAMON GARCÍA, *OPERATION WETBACK: THE MASS DEPORTATION OF MEXICAN UNDOCUMENTED WORKERS IN 1954*, at 183-223 (1980); KELLY LYTLE HERNÁNDEZ, *MIGRA!: A HISTORY OF THE U.S. BORDER PATROL* (2010).

16. DANIEL KANSTROOM, *AFTERMATH: DEPORTATION LAW AND THE NEW AMERICAN DIASPORA* 7 (2012) [hereinafter KANSTROOM, *AFTERMATH*] (“Since its reinvigoration in the late 1990s, deportation has torn through many communities like a capricious tornado: touching down suddenly from dark clouds and leaving a trail of devastation in its wake, while sweeping away tens of millions of people from our midst.”). Professor Caldwell’s book provides many detailed examples of this devastation.

HISTORY

Some of these pieces use Caldwell's work as a jumping off point for exploring the ways that history rhymes. In his article, *Relief and Statutes of Limitations for Deportable Noncitizens Under Asian Exclusion, 1882-1948*, U.C. Davis Law Professor Jack Chin hones in on the recurring motif of "families . . . torn apart, careers ruined, children crushed, sometimes in ways not foreseen by the drafters of the laws, and often for no tangible benefit to the United States except the grim satisfaction of seeing laws enforced without reflection or judgment."¹⁷ Chin sees patterns in these practices. They are not universal in their application, and they reflect distinct racial logics. Looking to the period of Asian exclusion, Chin notes that "periods of limitation and other forms of relief [from deportation] have been, like the substantive immigration laws themselves, tainted by race and biased toward Whites. That is, it appears that individual, case-by-case consideration has been historically granted preferentially to the White race and denied to others."¹⁸ His article reminds us of the ways that even facially neutral changes to mundane aspect of law—statutes of limitation, rules of evidence and the like—often have racial motives that are thinly veiled and easily uncovered.

Carrie Rosenbaum traces the evolution of the plenary power doctrine and the equal protection intent doctrine in cases involving immigration questions.¹⁹ Exploring recent history, she notes that the doctrine has evolved in ways that actually render the oft-critiqued plenary power doctrine²⁰ "redundant" in the context of equal protection challenges "because the intent doctrine already results in great deference to lawmakers [and disparate] impact is insufficient alone to invalidate a law on equal protection

17. Gabriel J. Chin, *Relief and Statutes of Limitation for Deportable Noncitizens Under Asian Exclusion, 1882-1948*, 50 SW. L. REV. 218, 218 (2021).

18. *Id.* at 222.

19. See Carrie L. Rosenbaum, *(Un)Equal Immigration Protection*, 50 SW. L. REV. 231, 243-53 (2021).

20. *Id.* at 252; see, e.g., Kevin R. Johnson, *Race and Immigration Law and Enforcement: A Response to Is There a Plenary Power Doctrine?*, 14 GEO. IMMIGR. L.J. 289, 296 (2000) (arguing that "there in fact is a divergence between modern immigration law and other bodies of domestic constitutional law," attributable to plenary power analysis). On the significance of this point, Johnson cautions:

We should pay heed to the fear of immigrants of color. Past and present history reveals that their concerns are founded in reality. And, if Congress enacted racially discriminatory immigration laws, I hope but am not confident that the courts will correct matters. The courts have done little to thwart, and much to encourage, racial discrimination in immigration enforcement.

Id. at 304; see also Stephen Legomsky, *Immigration Exceptionalism: Commentary on Is There a Plenary Power Doctrine?*, 14 GEO. IMMIGR. L.J. 307, 308 (2000) ("The doctrine is quite real and . . . it reflects a clumsy conflation of federalism issues with individual rights issues.").

grounds.”²¹ Fittingly, her analysis might be read in conversation with some of Professor Chin’s earlier observations on plenary power,²² and it sets the stage for some of the critiques raised by other contributors to the volume.

STORYTELLING

Some of these other contributors focus on Caldwell’s storytelling as a point of departure. Critical race theorists have long acknowledged the important role of storytelling in exposing the racialized power structure that undergirds purportedly neutral legal regimes.²³ Caldwell’s stories accordingly might be used to force a reckoning with the harms of U.S. laws and policies writ large. Three of the contributors to this volume note the rich possibilities for storytelling suggested by her work.

Leticia Saucedo points out that the stories of deported Americans might be useful in individual advocacy, as attorneys seek to assemble facts that substantiate the true costs of deportation. Exploring linkages between Professor Caldwell’s interviews and the U.C. Davis digital storytelling project “Humanizing Deportation,” Saucedo uses Professor Caldwell’s framework of the deported American to demonstrate how these individuals carry a “rights-bearing self-identity” with them “as they attempt to integrate in new surroundings as deportees” and to explore the litigation potential of these stories.²⁴

Julia Vázquez takes the storytelling in a different direction: examining the lives of those who engage in these litigation efforts, specifically, those lawyers who not only fight deportation battles for others, but who also live under the shadow of banishment themselves. She identifies “a new generation of immigration lawyers of color—*impacted immigration lawyers*—whose lives directly reflect the immigrant communities they

21. Rosenbaum, *supra* note 19, at 232, 252.

22. See Gabriel J. Chin, *Is There a Plenary Power Doctrine? A Tentative Apology and Prediction for Our Strange but Unexceptional Constitutional Immigration Law*, 14 GEO. IMMIGR. L.J. 257 (2000).

23. See Richard Delgado, *Rodrigo’s Final Chronicle: Cultural Power, the Law Reviews, and the Attack on Narrative Jurisprudence*, 68 S. CAL. L. REV. 545, 549 (1995) (“Stories are a great device for probing the dominant narrative.”); see also Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241, 1244 (1993); ROBIN WEST, *NARRATIVE, AUTHORITY, & LAW* 7 (1993); Charles R. Lawrence, III, *The Word and the River: Pedagogy as Scholarship as Struggle*, 65 S. CAL. L. REV. 2231, 2278-91 (1992).

24. Leticia M. Saucedo, *Activism, Identity, and Rights in Deportee Communities*, 50 SW. L. REV. 264, 264-65 (2021).

endeavor to serve.²⁵ These are lawyers who are immigrants themselves or who have immigrant family members, and who consequently bring new levels of cultural and linguistic competence to their work.²⁶ But they also bear unique costs, as the unending grind of the national deportation machine and the accompanying racist and xenophobic rhetoric emanating from the most powerful figures in the United States force upon them a unique and burdensome form of emotional labor.²⁷ Her stories highlight the persistent racial inequalities within the United States and the role of immigration law's exclusionary edge in maintaining these inequalities.²⁸

Finally, Diego Vigil's article points out how hard it is to do what Professor Caldwell has done: that is, to tell stories across borders. In his piece, he illustrates how the U.S. legal system sometimes fails to recognizing the nuances in the lives of the diverse residents of this country.²⁹ He writes about his own work testifying on behalf of individuals charged with crimes, noting the ways that those individuals are sometimes brought to trial against the backdrop of an inaccurate narrative of criminality that obscures their lived realities.³⁰ He also discusses the deep trauma that marks and mars the lives of many immigrants who have survived life in literal "war zones" and whose pain continues to shape their life trajectories.³¹ Read alongside Caldwell's book, his piece highlights the tragic loop of U.S. interventions in foreign countries, the forced migration that ensues, the failure to protect these refugees when they arrive in the U.S., the breadth of the carceral state that ensnares them here, the violence of their removal, and the continuation of

25. Julia Vázquez, *The Impacted Immigration Lawyer in the Era of Trump: Empathy, Wellbeing and Substantial Lawyering*, 50 SW. L. REV. 275, 275 (2021).

26. *Id.* at 284-85.

27. *Id.* at 277-78.

28. *Id.* at 278-84; see also Jennifer M. Chacón, *Citizenship Matters: Conceptualizing Belonging in an Era of Fragile Inclusions*, 52 U.C. DAVIS L. REV. 1, 8 (2018) (arguing that the experience of undocumented residents "challenge us to think about how immigration law's increasingly exclusive external edge can decrease the desirability and the protective capacities of the institution of citizenship, even as it generates and hardens internal stratifications of citizenship.").

29. Diego Vigil explains,

In court cases, where culture and place necessarily attract legal attention, it becomes more complicated when cultures switch places and places exchange cultures. Place provides the context for how culture plays out. This is why cultural competency in court deliberations is an even stickier process when you introduce this culture/place conundrum.

Diego Vigil, *Culture and Borders: Place and Self*, 50 SW. L. REV. 296, 297 (2021).

30. *Id.* at 300 ("[C]ultural competency helps [to] broaden the view of law-breaking incidents to include other explanations.").

31. *Id.* at 303.

their struggles upon return to countries that are still haunted by U.S. intervention—and now by the U.S. deportation machine.

LEGAL DEVELOPMENTS AND LAW REFORM

Kevin Johnson's work has long highlighted the racism of U.S. immigration law and the costs that this imposes not just upon new immigrants, but also upon long-time residents and citizens who are perpetually racialized as outsiders.³² In his contribution to this symposium, *Immigration Law Lessons from Deported Americans: Life After Deportation to Mexico*, Kevin Johnson sounds a hopeful note, observing that Professor Caldwell's work comes to us at a time when "a national public outcry has demanded the end to systemic racial injustice in law enforcement," opening up a "particularly opportune historical moment to focus the nation's attention on the enforcement of the immigration laws."³³ He reads the book as a "primer for Americans on the impact on Mexican lives of the U.S. government's enforcement of the immigration laws,"³⁴ one that offers "a touch of humanity and much-needed context to cold, opaque, and antiseptic terms as 'aliens,' 'removals,' and 'deportations,' which obscure the blunt-force trauma done to the lives of real human beings."³⁵ Johnson points to the ways that Caldwell's research exposes the routine family separations of our deportation regime, and suggests that her research may forge a path to the more humane and compassionate treatment of families.

Ragini Shah's piece picks up in a similar vein, contemplating doctrinal arguments crafted around a right to marriage and family unity that might serve as a legal backdrop for what Joseph Carens calls a "right to stay."³⁶ She urges a broad reading of family unity-based interventions—ones that include "protection against deportation" not just for citizens and their family

32. See, e.g., Kevin R. Johnson, *Race, the Immigration Laws, and Domestic Race Relations: A "Magic Mirror" into the Heart of Darkness*, 73 IND. L.J. 1111, 1112 (1998) (applying a critical race theory lens to immigration law, and arguing that "the treatment of 'aliens,' particularly noncitizens of color, under the U.S. immigration laws reveals volumes about domestic race relations in the nation. A deeply complicated, often volatile, relationship exists between racism directed toward citizens and that aimed at noncitizens.").

33. Johnson, *supra* note 6, at 306.

34. *Id.* at 307.

35. *Id.* at 309.

36. Ragini Shah, *Laying the Legal Foundation for a Right to Stay in Deported Americans*, 50 SW. L. REV. 319, 321 (2021) (citing Joseph H. Carens, *The Case for Amnesty: Time Erodes the State's Right to Deport*, BOS. REV. (May 1, 2009), <http://bostonreview.net/forum/case-amnesty-joseph-carens>; JOSEPH H. CARENS, IMMIGRANTS AND THE RIGHT TO STAY 21 (2010) [hereinafter CARENS, RIGHT TO STAY]; JOSEPH H. CARENS, THE ETHICS OF IMMIGRATION 151 (2013)).

members, but for all of those “with strong American identifications and family ties . . . who were granted temporary protected status [or] . . . have lived in the United States for years without status.”³⁷

While Johnson and Shah advocate for law reform based upon stronger and more inclusive understandings of family unity in immigration law, in *Learning from Deported Americans*, Professor Ingrid Eagly focuses on the ways that Caldwell’s book points toward other possible sites of reform. Using the accounts of individuals that Caldwell encounters in her research, Eagly offers insights into how Caldwell’s stories might inform better criminal defense lawyering in cases involving the prosecution of illegal entry and felony reentry crimes.³⁸ She also notes that the people in Caldwell’s book provide living examples of the inadequacies of the in absentia removal process³⁹ and other removal processes that bypass the courts.⁴⁰ Significantly, Eagly highlights Caldwell’s advocacy for the inclusion of individuals convicted of crime in immigration reform legislation. Eagly notes that such a shift in thinking “would require policymakers to move away from a zero-tolerance removal system and instead recognize that persons with criminal convictions are ‘multidimensional people who are more similar to people without convictions than public discourse implies.’”⁴¹ For that task, Caldwell’s book, Vigil’s testimony,⁴² Saucedo’s “Humanizing Deportation” project,⁴³ and the insights of the system-impacted lawyers that Vázquez studies will all play an important,⁴⁴ humanizing role.

Finally, Professor Kanstroom reminds us of the heightened stakes of Professor Caldwell’s work in this moment. Kanstroom is one the nation’s

37. *Id.* at 323-24. “[T]here is a long history of literature supporting some protection from deportation for long term residents who lack any formal immigration status but have developed [an] American identity.” *Id.* at 329 (citing CARENS, RIGHT TO STAY, *supra* note 36; Stephen H. Legomsky, *Portraits of the Undocumented Immigrant: A Dialogue*, 44 GA. L. REV. 65, 153 (2009); RUTH RUBIO-MARIN, IMMIGRATION AS A DEMOCRATIC CHALLENGE: CITIZENSHIP AND INCLUSION IN GERMANY AND THE UNITED STATES (2000); Andrew Tae-Hyun Kim, *Deportation Deadline*, 95 WASH. U.L. REV. 531 (2017)).

38. Ingrid Eagly, *Learning from Deported Americans*, 50 SW. L. REV. 333 (2021) [hereinafter Eagly, *Learning from Deported Americans*]. Eagly’s own scholarly work includes numerous important contributions to our understanding of how the criminal legal system shapes and is shaped by immigration control objectives. *See, e.g.*, Ingrid V. Eagly, *Immigrant Protective Policies in Criminal Justice*, 95 TEX. L. REV. 245, 245-46 (2016); Ingrid V. Eagly, *Prosecuting Immigration*, 104 NW. U. L. REV. 1281, 1290 (2010).

39. Eagly, *Learning from Deported Americans*, *supra* note 38, at 336-38, 339-40.

40. *Id.* at 338.

41. *Id.* at 340 (citing CALDWELL, *supra* note 1, at 186).

42. Vigil, *supra* note 29.

43. Saucedo, *supra* note 24.

44. Vázquez, *supra* note 25.

leading scholars on the diaspora of deportees⁴⁵ and has spearheaded important advocacy efforts for individuals who have been deported as those people continue to seek justice in U.S. courts.⁴⁶ His contribution suggests that he is worried that the worst may be yet to come. Professor Kanstroom expands on Professor Caldwell's concern about the insufficient protections of the administrative removal system.⁴⁷ He describes "an ever-expanding array of fast-track, unreviewable, discretionary immigration enforcement mechanisms" directed against newcomers that raise compelling "concern[s] about the increasing deformatization of deportation proceedings and the concomitant depreciation of constitutional and human rights norms for the noncitizens among us."⁴⁸ Kanstroom's contribution focuses upon the recent U.S. Supreme Court decision in *Department of Homeland Security v. Thuraissigiam*,⁴⁹ which illustrates the Court's acquiescence to fast-track removals, potentially undermining "due process, *habeas corpus*, and the necessity of judicial review of agency action dangerously and corrosively."⁵⁰ Without the protection of the courts, we can anticipate many new members in the diaspora of the expelled.

CONCLUSION

The nine scholars whose articles are included here offer us deep insights not only into Professor Caldwell's important book, but also into the social and legal universe that her book occupies. In these works, we find evidence of the profound racism that lies at the heart of our immigration system and the ways that current legal doctrines not only fail to root out that racism, but also compound it. In this volume and in the book that inspired it, we can trace those impulses through history, and we can see their current manifestations.

But with Professor Caldwell's book and the collection of responses assembled here, we also see a path forward. This path is grounded in the recognition of the humanity of all of the members of our community—

45. See KANSTROOM, *AFTERMATH*, *supra* note 16.

46. See, e.g., DEPORTATION GLOB. INFO. PROJECT, <http://postdeportation.org/about/> (last visited Jan. 16, 2021).

47. See CALDWELL, *supra* note 1, at 32-36. As previously noted, Professor Eagly also picks up on this theme. See *supra* notes 39-41 and accompanying text.

48. Daniel Kanstroom, *Deportation in the "Shadows" of Due Process: The Dangerous Implications of DHS v. Thuraissigiam*, 50 SW. L. REV. 342, 342, 345 (2021).

49. 140 S. Ct. 1959, 1964 (2020).

50. Kanstroom, *supra* note 48, at 345.

whether they are formally “citizens” or not. This path is paved with a respect for rights, compounded by a robust understanding of what it means to be family, and what it means to belong. This path acknowledges the racism of our past policies and seeks not only to eliminate that racism in the present, but to make amends for it. This path requires a courage and an insight that we may not yet have collectively obtained. But the works assembled here provide us with some reason to hope that we may get there one day.