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TEACHING INTERDISCIPLINARY PERSPECTIVES ON CITIZENSHIP AND IMMIGRATION

MING HSU CHEN*

ABSTRACT

This essay reflects on the use of interdisciplinary perspectives in teaching survey and seminar classes on immigration and citizenship. It focuses on three benefits. First, empirical research gives the doctrine a reality check. Second, normative inquiry evaluates the doctrine against desired values. Third, policy analysis opens up possibilities for reforming and improving on doctrine.

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INTRODUCTION

I begin my immigration and citizenship law classes asking for the meaning of "immigrant." Usually students will say something about legal status. Sometimes they will suggest a foreigner or someone who is not from America. Sometimes they will suggest a noncitizen. The last response is closest, but it opens the next question about what is a citizen. That leads me to distinguish between "law school immigration law" and my socio-legal way of understanding these concepts. I will explain that legal status is not a binary status: a person is not only an immigrant or a citizen, as the statutory definition of immigrant leaves out international students, guest workers, and anyone without an intention to abandon their foreign residence. Those individuals are "nonimmigrants." It is also insufficiently imprecise about those living in the U.S. territories to be considered as "nationals." Most importantly, it does not distinguish between formal and substantive citizenship or account for the lived experience of belonging or national identity.

Spotlighting the lived experience—what socio-legal scholars call "the law in action"—is why I incorporate first person immigrant histories into the first week of my immigration law course.⁴ It is also why I require my citizenship seminar students to conduct field work by interviewing an immigrant, often while assisting at a naturalization workshop, about their motivations for pursuing citizenship.⁵ I also assign sociological studies of why people move,

- 1. Immigration and Nationality Act (INA) § 101(a)(15), 8 U.S.C. § 1101(a)(15) contains the statutory definition of immigrant.
- 2. See id. The statutory definition of immigrant lists twenty-one exclusions, including INA § 101(a)(15)(F) that describes international students as one of several types of "nonimmigrant" temporary visa holders "having a residence in a foreign country which he has no intention of abandoning"
- 3. INA § 101(a)(22), 8 U.S.C. § 1101(a)(22) ("The term 'national of the United States' means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.").
- 4. The assignment is simple. I ask students to write 500 words about their personal experience with migration, whether in their own families or the life of a close family or friend. I add that they may instead describe the migration history of an immigrant they admire, for those who prefer not to disclose private or sensitive information about their migration experience.
- 5. This exercise was the impetus for my book, *Pursuing Citizenship in the Enforcement Era*. Government data shows that, historically, fewer than half of immigrants who are eligible to naturalize pursue citizenship. My interviews taught me that, among those who seek to naturalize, they do not always choose this for affirmative reasons such as gaining the right to vote or because they identify as American; instead, some naturalize out of fear that being a noncitizen leaves them at risk of arbitrary government actions and seek protection against deportation or discrimination. A variation is to ask why they are pursuing citizenship now given that many people wait longer after the statutory time requirement and there was a spike during the Trump era of intensive immigration enforcement. *See* MING HSU CHEN, PURSUING CITIZENSHIP IN THE ENFORCEMENT ERA, 66–73 (2020); *Estimates of the Lawful Permanent Resident Population in the United States*, U.S. DEP'T HOMELAND SEC., https://www.dhs.gov/immigration-statistics/population-estimates/LPR

selecting from the essays at the front of the *Immigration and Citizenship Process* and *Policy* casebook.⁶

The value of interdisciplinary perspectives is to bring an external lens to the law. This has several virtues detailed below.

I. REALITY CHECK: EMPIRICAL TESTING OF LEGAL PRESUMPTIONS

First, at its simplest, empirical work reveals whether the government's immigration laws and policies are working as intended. Many immigration laws are based on unexamined assumptions about human behavior. For example, many of the immigration statutes presume that immigrants primarily come to the U.S. to seek jobs and behave as rational-actors, feeling pulled to where the wages are highest or feeling pushed from countries with a lesser quality of life. That is the root assumption of the Immigration Reform and Control Act of 1986 ("IRCA"), which makes it unlawful for an employer to hire an immigrant worker who lacks proper documentation. If the sociologists of migration are taken seriously, though, immigrants make decisions in the context of their families and societies. This means that immigrants will often do what is best for their children's future, even if their own wages and skills may be restricted. They will migrate to cities where they have a social network, even if their skills are better suited to working in a different industry or part of the country. Immigrants facing persecution will not be deterred by sanctions for unauthorized work, since safety is a strong motivator for migration.

To provide a more extended illustration, sociologist Douglas Massey hypothesizes that the circular migration between the U.S.-Mexico border halted with the passage of the 1986 IRCA reforms and the federal government's intensified immigration enforcement.⁸ This led to increased numbers of immigrants working in the informal economy since they could not obtain regular work without authorization. It also meant that their family members moved to join them in the U.S. Since the worker could not come for seasonal work and return safely home to families with intensified enforcement, the worker tended to settle on the U.S. side of the border and bring over their family to join them

[https://perma.cc/FN6U-JY59] (last updated Oct. 6, 2022); *Naturalization Statistics*, U.S. CITIZENSHIP & IMMIGR. SERVS., https://www.uscis.gov/citizenship-resource-center/naturalization-statistics [https://perma.cc/WWP6-PR9Q] (last updated Sept. 21, 2022).

^{6.} See, e.g., T. ALEXANDER ALEINIKOFF ET AL., IMMIGRATION AND CITIZENSHIP PROCESS AND POLICY (9th ed. 2021). Economists tend to focus on push-pull factors. See, e.g., GEORGE J. BORJAS, HEAVEN'S DOOR (2011). Others focus more on social networks and world systems. See, e.g., DOUGLAS S. MASSEY ET AL., WORLDS IN MOTION: UNDERSTANDING INTERNATIONAL MIGRATION AT THE END OF THE MILLENIUM (1998).

See Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99–603, 100 Stat. 3359 (1986).

^{8.} See Douglas S. Massey, Jorge Durand & Nolan J. Malone, Beyond Smoke and Mirrors: Mexican Migration in an Era of Economic Incorporation 71–72 (2002).

for a permanent time rather than risk a confrontation with Immigration and Customs Enforcement ("ICE") or Customs and Border Protection ("CBP") every time they cross the border. As an aside, quantitative data shows that the relative improvement of the Mexican economy—relative to the U.S.—led to a decrease in migration. Yet immigration enforcement remains high, and energy is misdirected toward policies designed for a moving target since the larger number of migrants across the southern border are Central American asylum-seekers, not economic migrants.

Clinical faculty already know the importance of uniting theory and practice. For a doctrinal law professor like me, empirical research is a way to get out of the building and keep my ideas grounded. An additional salutary benefit of field work is that it lets you get into the communities to hear the stories and to meet the persons who can tell you stories that help you understand the problems you seek to solve. A core insight from *Pursuing Citizenship* interviews is that immigrants do not always want US citizenship. Some immigrants choose US citizenship as a last resort, out of fear rather than as the living out of their American dream, with consequences for social cohesion.¹⁰

II. A WAY FORWARD: NORMATIVE INSIGHT INTO LEGAL PROBLEMS

Empirical examination of legal presumptions not only exposes the way the law operates in practice—a sort of reality check or confirmation of hypothesis, as an empirical researcher may say—it also suggests possible reforms. The immigration enforcement system is woefully out of touch with the harsh realities it inflicts on its subjects. Seeing empirical evidence of those deficits pushes my students to see beyond the law as-it-is—which as Bill Ong Hing notes in a prior essay for this Teaching Issue, is not very good 11—and to imagine what it could be and how it should be instead. So that is the second value of an interdisciplinary approach: figure out how to improve the law. In the context of IRCA, I will ask students during discussion of the sociological essays how they would change the law in light of what they have learned about how it operates. Some will suggest that the border should be more porous or that worker rights should not be conditioned on legal status, so that workers are not pushed into an informal economy where they are prone to exploitation by employers. These employers know they can get away with substandard wages and poor working conditions if their workers fear being reported to ICE once they mobilize their workplace rights. Other students will suggest that immigrants should be able to

^{9.} See Filiz Garip, On the Move: Changing Mechanisms of Mexico-U.S. Migration 65 (2017).

^{10.} See CHEN, supra note 5, at 129–30.

^{11.} See Bill Ong Hing, Teaching Immigration Law and Immigrant Rights From Your Own Caseload, 54 St. Louis U. L.J. 877, 880 (2010).

more easily sponsor family members because family reunification is a normatively desirable value.

A second example emerges from my collaborations with student research. After a conservative majority began to flex its muscles on the U.S. Supreme Court, showing its willingness to overturn precedent, there have been rumors that litigation is being contemplated to challenge Plyler v. Doe. 12 Plyer v. Doe is taught in constitutional law, education law, and immigration law. It is celebrated for using the Equal Protection Clause to keep educational access open to immigrant children regardless of their documentation status. Yet it is a curiously argued decision and rests on fragile legal ground. At the time, Mexican American Legal Defense and Education Fund ("MALDEF") attorneys wished the decision had applied strict scrutiny to find that undocumented immigrants are a suspect group, but the Court would not make this declaration. 13 Other civil rights groups, steeped in the traditions of Brown vs. Board of Education, 14 wished the Court to apply strict scrutiny on the basis of education being a fundamental right. 15 The Court demurred, saying that a basic level of education is not constitutionally guaranteed, but a complete deprivation of education would be problematic. 16 Their decision was based on the lowest tier of the Equal Protection Clause. As Michael Olivas and others have stated, preemption could have been a different way to decide the case. 17 Still other legal experts have said they would rewrite the decision by recognizing the demonization of immigrant parents for migrating without proper documents—in contrast to their innocent children—which makes them a suspect class and triggers strict scrutiny analysis. 18

Deeper within the opinion, footnote 24 contains an untested empirical assertion: that if the government permits undocumented children to enroll in public schools, permitting equal access to education to all school-aged children, regardless of immigration status, it will not become a pull factor for future undocumented migration.

^{12. 457} U.S. 202, 230 (1982).

^{13.} MICHAEL A. OLIVAS, NO UNDOCUMENTED CHILD LEFT BEHIND: *PLYLER V. DOE* AND THE EDUCATION OF UNDOCUMENTED SCHOOLCHILDREN (2012). The *Plyler* Court instead acknowledged that animus resulting in a total deprivation of education would not be permitted under rational review. *Plyler*, 457 U.S. at 208–09. Even though the Supreme Court struck the Texas fee for public education as a violation of Equal Protection on this basis, the lower tier of scrutiny provided weaker protection in future cases.

^{14. 347} U.S. 483 (1954).

^{15.} See OLIVAS, supra note 13, at 10–13.

^{16.} See San Antonio v. Rodriguez, 411 U.S. 1, 2 (1973) (declaring education not a fundamental right under the U.S. Constitution).

^{17.} See Michael A. Olivas, Immigration-Related State and Local Ordinances: Preemption, Prejudice, and the Proper Role for Enforcement, 2007 U. CHI. L.F. 27, 54 (2007).

^{18.} See Michael A. Olivas, Chapter 6: Plyer v. Doe, in FEMINIST JUDGMENTS: REWRITTEN IMMIGRATION LAW OPINIONS (Kathleen Kim et al., eds.) (forthcoming 2023).

The courts below noted the ineffectiveness of the Texas provision as a means of controlling the influx of illegal entrants into the State. *See* 628 F.2d at 460–461; 458 F. Supp., at 585; 501 F. Supp., at 578 ("The evidence demonstrates that undocumented persons do not immigrate in search for a free public education. Virtually all of the undocumented persons who come into this country seek employment opportunities and not educational benefits.... There was overwhelming evidence ... of the unimportance of public education as a stimulus for immigration") (footnote omitted). ¹⁹

The assertion is not necessary for the holding of the decision. The significance of the assertion is practical and political: it suggests migration will not be a drain on public resources, as the dissenters feared.²⁰ But is it true?

Research shows that jobs are a primary pull factor in immigration.²¹ But the Court does not cite to any evidence for its assertion, nor does it provide a theory for why immigrants migrate without papers. I set out to examine this empirical assumption more closely in a quantitative study. My research question was framed more broadly: "fostering a richer understanding of the migration decision, including the factors that influence its manner (i.e. documented or undocumented migration), and developing a theoretical framework and preliminary findings to critically evaluate other research on the dichotomous question of education v. employment as pull factors."^{22*} To answer this question, I partnered with a Spanish-speaking immigration attorney and conducted in-

- 19. Plyler v. Doe, 457 U.S. 202, 228 n.24 (1982).
- 20. The Court cited to the lower court record, stating:

The evidence demonstrates that undocumented persons do not immigrate in search of a free public education. Virtually all of the undocumented persons who come into this country seek employment opportunities and not educational benefits. . . . There was overwhelming evidence . . . of the unimportance of public education as a stimulus for immigration.

Id.

- 21. See Natasha C. Parkins, Push and Pull Factors of Migration, 8 AM. REV. POLIT. ECON. 6, 17 (2010) and BORJAS, supra note 6.
 - 22. The Warren Institute Call for Proposals for the Roundtable stated:

In *Plyler*, the court discounted education as a pull factor for immigrants – that is, as a factor in immigrants' decision to enter illegally. Is that still a reasonable assumption? To what extent is education a significant pull factor? Does the pull factor differ with regard to different national origin groups?

My resulting study found that immigrants often do not know about the availability of public education or other public benefits believed to attract undocumented migration at the time of migration. To the extent they learn about these benefits after arriving, education becomes one of many factors in their decision to stay: "motivations for migrating are more complex than the Court assumed – inchoate, multi-faceted, and shifting over time." Consequently, the court's "jobs v. education" framing reveals an unproven assumption about an empirical fact, even if it is probably true that offering education will not attract migration any more than denying it will deter undocumented migration from a country that offers even less public education to its children. See Ming H. Chen with Nicholas Espiritu, Who Migrates and Why: Plyler v. Doe in the Modern Era (May 7, 2007) (draft manuscript prepared for the Warren Institute Roundtable Commemorating the 25th Anniversary of Plyler) (*on file with author).

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depth interviews with Latino immigrants about their motivations for migration. We interviewed immigrant mothers in addition to the single male immigrants who dominate many migration studies.²³

We found that most families do not know about K-12 public education in the U.S. and do not seek it out at the time of migration. This means schools could not motivate immigrants to come—providing evidence to strengthen the court and MALDEF's assertion. This also means that denying school would not deter migration—contrary to the school district's assumption. As it turns out, immigrants' rights advocates were then and still are nervous that *Plyler* could be reopened for litigation and that this empirical assumption could be challenged by social scientists and lawyers with their own mixed motivations and vested interest in proving otherwise. Even though my research findings would have supported their desired outcome and would have been strategically favorable, their anxiousness about the findings for future litigation shows the power of empirical research to illuminate the soundness of a legal holding.

This research proposal from my graduate studies is provided to my citizenship seminar students as they embark on their own empirical studies as part of the papers they write for completion of their law school writing requirements. When I have the luxury of a full-year course, students will be tasked with reading about the theories and laws of migration and submitting a detailed research proposal with a testable hypothesis in the fall semester. They conduct research that speaks to it during the winter break. They write up their results in the spring semester, which are then workshopped with the class and with me. Sometimes, we will bring in guest speakers engaged in more extensive research on related questions and students can see where their studies fit into a shared body of knowledge and how they are making a "contribution"—the ultimate goal of many methods of research.

The students enrolled in my one-semester survey immigration law course do not usually have time to design and execute original empirical research as they set out to learn immigration law, from the soup of admission to the nuts of removal. Yet they run through a similar thought exercise when we discuss restrictive state immigration policies designed to discourage undocumented migration, such as aggressive law enforcement or rigorous documentation requirements to secure legal rights. Although the policymakers do not usually offer evidence for the proposition, students can discern that their implicit theory

^{23.} Douglas Massey elaborates on his methodological choices in: William Kandel & Douglas S. Massey, Culture of Mexican Migration: A Theoretical and Empirical Analysis, 80 SOC. FORCES 981, 985 (2002) and Douglas S. Massey & René Zenteno, A Validation of the Ethnosurvey: The Case of Mexico-US Migration, 34 INT'L MIGRATION REV. 766, 779 (2000). Irene Bloemraad provides an excellent discussion of the promise and perils of comparative study to deal with "small n" problems. See Irene Bloemraad, Of Puzzles and Serendipity: Doing Research with Cross-National Comparisons and Mixed Methods, in RESEARCHING MIGRATION: STORIES FROM THE FIELD 43 (Louis DeSipio, Manuel Garcia y Griego & Sherrie Kassoudji eds. 2007).

is "attrition by enforcement" or "self-deportation." If the assumptions do not match the empirical reality—say, these state policies do not deter migration into the U.S. and rarely cause immigrants to move across state lines—they can conclude that the draconian state immigration policies increase the misery of immigrants living in communities, without providing a discernible benefit to the state.

III. PROMPTS FOR IMMIGRATION REFORM

This type of empirical thinking can improve immigration policy, not only upend it. Comprehensive immigration reform has eluded Congress for decades. Yet policymakers, advocates, citizens, and immigrants across the political spectrum agree the immigration system is broken. The brokenness is conspicuously evident at the U.S.-Mexico border, where Central American asylum-seekers escaping violence have surpassed the number of economic migrants from Mexico. ²⁴ The federal government has not offered a solution for forced migration, despite international human rights and humanitarian obligations that require it do so. ²⁵ Instead, they have allowed the immigration system to be so overwhelmed that it can take two or more years to see an immigration judge before permission to stay can be granted. ²⁶ In the national media, images of the influx of asylum seekers make political promises and legislative bargains to enact immigration reform that includes legalization difficult. ²⁷ Restrictionists gleefully point to the surging demand and chaotic case

^{24.} See Ana Gonzalez-Barrera, More Mexicans Leaving Than Coming to the U.S., PEW RSCH. CTR. (Nov. 19, 2015), https://www.pewresearch.org/hispanic/2015/11/19/more-mexicans-leaving-than-coming-to-the-u-s/ [https://perma.cc/Y2FN-NS8C]. The outward flow of migration reversed for a few years leading into the coronavirus pandemic and has since returned. See Ana Gonzalez-Barrera, Before COVID-19, More Mexicans Came to the U.S. Than Left for Mexico for the First Time in Years, PEW RSCH. CTR. (July 9, 2021), https://www.pewresearch.org/hispanic/2015/11/19/more-mexicans-leaving-than-coming-to-the-u-s/ [https://perma.cc/N69S-62PP].

^{25.} Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980) (codified as amended at 8 U.S.C. § 1101).

^{26.} Muzaffar Chishti & Julia Gelatt, Mounting Backlogs Undermine U.S. Immigration System and Impede Biden Policy Changes, MIGRATION POL'Y INST. (Feb. 23, 2022), https://www.migrationpolicy.org/article/us-immigration-backlogs-mounting-undermine-biden [https://perma.cc/RHD2-NT85]. The Immigration Court Backlog can be traced at Immigration Court Backlog Tool: Pending Cases and Length of Wait in Immigration Courts, TRAC IMMIGR., https://trac.syr.edu/phptools/immigration/court backlog/ [https://perma.cc/CU5D-SJ4F] (last visited Nov. 19, 2022).

^{27.} These images precede passage of President Trump's Remain in Mexico Policy (a.k.a. Migration Protection Protocols, which requires that asylum-seekers remain on the Mexico side of the Southern border while waiting for case determinations) and Title 42 (a public health measure that closes the border to entry to prevent contagion—a strategy that is itself contested by epidemiologists—until the Center for Disease Control director says the emergency is over). While they are separate policies, the combined measures mean that migrants have not been able to seek asylum defensively. The build up of asylum seekers at the closed border has contributed to the sense that immigration is out of control and the border needs tighter management.

processing and say that the border is mismanaged. Sympathetic policymakers worry about offering relief to *any* immigrants for fear that granting permission to stay in the U.S. will serve as invitation for more immigrants to come. The result is that Congress cannot even pass a DREAM Act to legalize highly-sympathetic immigrants such as the school children from *Plyler* who graduate from K-12 schools and need legal status to remain in the country and secure lawful employment.²⁸ Nor can it unclog the removal system or help refugees.

How can the political conditions for immigration reform be built? Data can help there as well. Attorney General Jeff Sessions infamously criticized the asylum law system, saying that "dirty immigration lawyers" will coach immigrants to circumvent immigration laws and engage in asylum fraud by saying the "magic words" needed to trigger an asylum case. His assertion that immigration lawyers will induce immigration fraud overlooks the complex system of assessing the credibility of immigrants and reviewing their claims that country conditions are not safe during asylum hearings. It also overlooks strong evidence that immigration proceedings are quicker and immigrant compliance with orders to appear in court increase when an immigrant is represented by counsel. Direct observation confirms this impression. In a typical year, I bring my immigration law students to immigration court to observe master calendar and merits hearings. Without needing to comb through

^{28.} DREAM Act of 2021, S. 264, 117th Cong. (2021). The New York Times chronicled the decades-long failure of Congress to enact a DREAM Act in 2017, sixteen years after a bill was first introduced. As of 2022, the bill still has not passed. See Yamiche Alcindor & Sheryl Gay Stolberg, After 16 Futile Years, Congress Will Try Again to Legalize "Dreamers," N.Y. TIMES (Sept. 5, 2017), https://www.nytimes.com/2017/09/05/us/politics/dream-act-daca-trump-congress-dream ers.html [https://perma.cc/V5RP-LCAJ]. Similar calls for action came with the formalization of the Deferred Action for Childhood Arrivals ("DACA") program in 2022, an agency regulation that began as a temporary measure during the Obama administration. See Press Release, Statement by President Joe Biden on Strengthening Protections for Dreamers, WHITE HOUSE (Aug. 24, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/statement-by-president-joe-biden-on-strengthening-protections-for-dreamers/ [https://perma.cc/G5JG-QH7X].

^{29.} Jeff Sessions, U.S. Att'y Gen., *Remarks to the Executive Office for Immigration Review*, U.S. DEP'T JUST. (Oct. 12, 2017) (remarks as prepared for delivery), https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review [https://perma.cc/P7H9-NVJ2].

^{30.} *Id.* The legal standard for asylum is set forth in the 1951 Refugee Convention, which defines a refugee as someone who is unable or unwilling to return to their country of origin "owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion." Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137, art. 1, \P A(2).

^{31.} For a more detailed description of how asylum works in the U.S. immigration courts, see Alexander Aleinikoff et al., Forced Migration (2013) and Karen Musalo et al., Refugee Law and Policy: A Comparative and International Approach (2018).

^{32.} Rigorous, multi-variate statistical studies have borne out these empirical findings. *See, e.g.*, Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 76–77 (2015).

piles of documents or analyze statistical studies, my law students report that it takes only a single immigration court observation to recognize that the immigration system is beset by delay and that the complex proceedings require a lawyer for due process to be served. Knowing more about how the immigration law system works on the ground and about the positive impact of counsel for immigrants facing removal could broaden the basis for providing government funded counsel in removal proceedings. It could also reduce the fear that providing avenues to legal status will unleash yet more immigration problems.

IV. CENTERING THE HUMAN EXPERIENCE OF CITIZENSHIP AND MIGRATION

Within the university, the teaching of immigration and citizenship is too often split into separate disciplines for law, sociology, economics, and history. Within law schools, immigration law is further separated into lectures focusing on statutes and doctrine, seminars on citizenship or immigrant workers, and clinics on criminal defense and asylum. Teaching immigration and citizenship in an interdisciplinary manner bridges these disciplinary divides. Incorporating field work and empirical studies provide a reality check about the effectiveness of immigration policies on-the-ground. This type of external confirmation can prompt normative insight into legal problems and spur policy reform. Most importantly, teaching immigration and citizenship in ways that center the human experience—the individual persons, why they move, how they are received by institutions and within societies—provides a more holistic and humane way of learning about migrants and migration.