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Epilogue: UC Law Journal – RICE Symposium

MING H. CHEN[†]

The theme for this symposium, “We the People: Citizenship, Race, and Equality,” grew out of my concern for unequal citizenship for immigrants and non-white marginalized persons in their enduring quest to obtain fuller citizenship and belonging. More specifically, the theme furthers a dialogue sparked by my past writing on the structural limits on equal citizenship.¹ In *Pursuing Citizenship*, I argued that citizenship entails both substantive and formal citizenship and that people cannot fully belong without formal citizenship. Uncovering the importance of formal citizenship led to some important policy reforms, including a reduction in the naturalization backlog under the Biden administration.² While I did not discount the importance of substantive citizenship, my emphasis responded to a turn away from formal citizenship among scholars, some of whom felt institutionalist assumptions around citizenship insufficiently acknowledged the persistent structural obstacles and the resulting creative responses in communities that do not rely on citizenship. In response to my book, those scholars expressed a desire to know more about the role that race played in my findings. There were threads of the race story—for example, in the contrast between the white, Canadian green card holder who delayed naturalization, the Latinx green card holders who leaped to the polls, and the ambivalence that Chinese high-skilled workers and international students felt about remaining in a country that did not want them—but the role of race in the marginalization of noncitizens was not central to the story I told.

[†] Professor and Harry & Lillian Hastings Research Chair, UC Law San Francisco; Faculty-Director, Center for Race, Immigration, Citizenship, and Equality (RICE). My gratitude begins with Dashiell Tucker and Safina Motiwala for entrusting their 75th anniversary symposium to the theme “We the People” and extends to the symposium editors (Oliver Cheng, Jessica Harris, Madeline Scher) and RICE fellows (Miquela Kallenberger and Haley Meyer) whose tireless dedication turned that vision into a reality. The convening of extraordinary thinkers and doers enriched the scholarly community at UC Law SF for one special day that endures in this special issue. The American Association for Justice (AAJ) Robert L. Habush Endowment provided financial support for this endeavor, alongside RICE and *UC Law Journal*.

1. See generally MING H. CHEN, *PURSUING CITIZENSHIP IN THE ENFORCEMENT ERA* (2020) (describing the implications of varying inequalities suffered by immigrants based on citizenship status).

2. Adriel Orozco, *USCIS Reduces Its Backlog for the First Time in Years*, IMMIGR. IMPACT (Feb. 16, 2024), <https://immigrationimpact.com/2024/02/16/uscis-reduces-backlog-for-first-time-in-years>.

To center race, I commenced a series of research projects that focus on the experiences of non-white persons—Asian, Latinx, and Muslim persons especially—who are racialized as foreign, notwithstanding their formal citizenship. *Colorblind Nationalism and Limits of Citizenship* begins by noting the paradox of citizenship being a vital avenue of inclusion.³ The necessity of formal citizenship is seen in the reconstruction of America post-slavery and continues in contemporary calls for immigration reform, including legalization. Yet *Colorblind Nationalism* also notes that calls to extend pathways to citizenship may not be enough to integrate immigrants or to foster substantive equality for racial minorities who are racialized as foreigners.⁴ For Asian, Latinx, and Muslim Americans, formal citizenship status is insufficient to ensure belonging. How do we understand the limitations of formal citizenship in America? My answer, in a nutshell, was “colorblind nationalism”: that liberal national governments justify policies as race neutral (colorblind), when they support national goals (nationalism), without regard to the racialized inequality suffered by non-white Americans.⁵ A second co-authored article compares immigrant racialization of Asian, Latinx, and Black migrants in various temporary legal statuses: from ex post statues such as Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS) to ex ante visas such as the F-1 foreign student and H-1B foreign worker visas.⁶ The shared experience of these migrant groups, despite their variety, is one where their temporary status is used to justify racial marginalization, and their race is used to sort them into the United States’ racial hierarchy. Putting the two studies together, I find that for non-white immigrants in America, race is indeed predominant at every point on the citizenship spectrum.

My research identifies the problems associated with racialized citizenship and how this marginalization evades legal sanctions. Solving these vexing problems is a challenge, so I sought to enlarge the conversation by enlisting the perspectives of leading citizenship scholars, including many of the scholars in this symposium event and special issue.

Foremost among these citizenship scholars, Professor Leti Volpp began her keynote address (“Weep the People”) with the same paradox contained in the symposium title.⁷ She invoked the Roman god Janus, who was known for

3. Ming H. Chen, *Colorblind Nationalism and Limits of Formal Citizenship*, 44 CARDOZO L. REV. 945, 946–48 (2023).

4. *Id.* at 950–53.

5. *Id.* at 961–68.

6. Ming H. Chen, Jennifer Chacón & Shannon Gleeson, *Immigrant Racialization and Legal Liminality* (2024) (unpublished manuscript) (on file with author).

7. Leti Volpp, Keynote Address: Weep the People at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024).

looking in two directions with his two faces, to capture the duality of citizenship as a vehicle of inclusion that is limited and even weaponized by race.⁸ As Volpp notes in her essay:

We see citizenship’s two-faced or divided nature in the very title of this symposium. While the first half of the title, “We the People,” rhetorically suggests that citizenship might guarantee universal inclusivity, the second half of the title, “Citizenship, Race and Equality,” warns that “We the People” is an unfulfilled promise, with race, in particular, threatening the equality associated with the idea of citizenship.⁹

Volpp recalls Linda Bosniak’s description of citizenship as a soft-boiled egg as a visual depiction of the duality: it is hard on the outside and soft on the inside. In this way, citizenship describes “relations among ‘presumed members of an already established society[.]’”¹⁰ Bosniak’s existing society aspires to be internally inclusive until it bumps up against the structural limits of citizenship as boundary-keeping—the hard shell of the border, pockmarked by stains of race. drains the yolk of her soft-boiled egg.¹¹ Legal scholars recognize the hard shell as the split between the foundational cases in immigration law (*Chae Chan Ping*, *Fong Yue Ting*, and *Eiku Nishimura*)¹² and Constitutional guarantees of equal protection for all persons, including noncitizens (*Yick Wo*).¹³ Not surprisingly, all the plaintiffs in these cases are non-white immigrants. They are marked by their race in a nation that sees them as “other.” They are perpetually foreign, elaborating on Claire Jean Kim, Robert Chang, and Vinay Harpalani’s writings on Asian Americans,¹⁴ and Jennifer Chacón and other LatCrit scholars’

8. *Id.*

9. Leti Volpp, *Weep the People*, 75 U.C. L.J. 1705, 1707 (2024).

10. *Id.* (quoting LINDA BOSNIAK, *THE CITIZEN AND ALIEN* 1–2 (2006)). Linda Bosniak and Natsu Saito have noted similar splits. See Linda Bosniak, *Status Noncitizens*, in OXFORD HANDBOOK OF CITIZENSHIP 314, 316 (Ayelet Shachar ed., 1997); Natsu Saito, *Interning the Non-Alien Other*, 68 LAW & CONTEMP. PROBS. 173, 183–94 (2004) (on Native Americans). See generally Anna Law, *The Historical Amnesia of Contemporary Immigration Federalism*, 47 POLITY 302 (2015) (describing the expansion of Federal authority over immigration policy); Evelyn Rangel-Medina, *Citizenism: Racialized Discrimination by Design*, 104 B.U. L. REV. (forthcoming 2024) (on citizenism and Latinx population).

11. LINDA BOSNIAK, *THE CITIZEN AND ALIEN* 124–26 (2006).

12. *Chae Chan Ping v. United States*, 130 U.S. 581, 606–07 (1889); *Fong Yue Ting v. United States*, 149 U.S. 698, 707 (1893); *Nishimura Eiku v. United States*, 142 U.S. 651, 660 (1892).

13. *Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886).

14. See, e.g., Claire Jean Kim, *The Racial Triangulation of Asian Americans*, 27 POL. & SOC’Y 105 (1999) (describing the perceptions of White Americans towards Asian Americans); Robert S. Chang, *The Invention of Asian Americans*, 3 U.C. IRVINE L. REV. 947 (2013) (describing the construction and promulgation of the Asian American identity); Vinay Harpalani, *Asian Americans, Racial Stereotypes, and Elite University Admissions*, 102 B.U. L. REV. 233 (2022) (describing the impacts SFFA v. Harvard had on the Asian American identity).

reports on Latinx Americans, who are often presumed to be illegal immigrants.¹⁵ Their experiences are reinforced by Devon Carbado's¹⁶ writings on the opposite experience of Black Americans, who are presumed to be African American descendants of slaves, even if Mr. Carbado himself is an immigrant who became a naturalized citizen.¹⁷ These are the shadow theorists of the symposium.

Volpp notes the commonalities across these non-white Americans who "possess citizenship as a matter of formal legal status, but not possess all the rights citizenship is meant to protect."¹⁸ She expands the list of people who experience partial belonging beyond race: "Conventionally, this has been characterized as second-class citizenship, a term used to describe the condition for a myriad of groups: those experiencing felony disenfranchisement, residents of the District of Columbia or Puerto Rico, Black people, non-normative sexual subjects, people with disabilities, children, and women."¹⁹

Volpp cautions against using the term second-class citizens for these marginalized groups for a number of reasons.²⁰ First, she says "the concept assumes that one can move between first- and second-class citizenship, which obscures the fact that these forms of citizenship are co-constitutive."²¹ Carbado and Kim direct attention to the process of racial naturalization that produces "inclusionary forms of exclusion."²² Carbado's example is that Black people in the United States have been included in the category of formal citizenship, but that has not meant exclusion from racial inequality.²³ One's "social intelligibility as American for a Black person remains directly linked to racial subordination" that flows from the slavery experience; "Black people [. . .] become Americans through, not in spite of, racism."²⁴ Claire Jean Kim and Vinay Harpalani (in this

15. See Tomás R. Jiménez, *Mexican Immigrant Replenishment and the Continuing Significance of Ethnicity and Race*, 113 AM. J. SOC. 1527, 1545 (2008). See generally Jennifer Chacón, *Immigration and Race*, in OXFORD HANDBOOK OF RACE AND LAW IN THE U.S. (Devon Carbado, Emily Houh & Khiara M. Bridges eds., 2022) (describing how racism has been essentially legalized through our institutions); CONSTRUCTING IMMIGRANT "ILLEGALITY": CRITIQUES, EXPERIENCES, AND RESPONSES (Cecilia Menjivar & Dan Kanstroom eds., 2013) (describing how a narrative of "immigrant illegality" is created and how "immigrant illegality" is understood).

16. See generally Devon W. Carbado, *Racial Naturalization*, 57 AM. Q. 633 (2005) (reflecting on *Dred Scott v. Sandford*, 60 U.S. 393 (1957), and his own autobiographical experience).

17. *Id.*

18. Volpp, *supra* note 9, at 1715.

19. *Id.*

20. *Id.* (citing Carbado, *supra* note 16, at 638–39).

21. *Id.* at 1715.

22. Carbado, *supra* note 16, at 638.

23. *Id.* at 639.

24. Volpp, *supra* note 9, at 1715 ("At the same time, without acknowledging the limitations of the term second-class citizenship, we might decide that the term does usefully capture dimensions of a phenomenon" in describing a person with formal legal status who does not enjoy the rights that are supposed to correlate with that status.). *Id.*

Issue) offer examples of racialization for Asian Americans.²⁵ Kim and Harpalani extrapolate a theory of racial triangulation that positions Asian Americans as superior in cultural valuation and yet inferior in terms of legal belonging.²⁶ The modern equivalent is evident in the contemporary struggles with affirmative action, which position Asian American applicants as a “peril of the mind”: combining seemingly positive “model minority” stereotypes with perceived threats as a “yellow peril” that invades colleges and universities.²⁷ The complex racial positioning extends to Latinx and other immigrants who experience membership and inclusion in universities as beneficiaries of DACA and state DREAM Acts and yet lose the benefit of those protections as they exit the university and enter the workforce. Shannon Gleeson and Els de Graauw study the experience of these in-betweeners who are buoyed by educational opportunity only to discover that they are not fully citizens in larger society where the federal government overshadows localized communities.²⁸

This duality of citizenship inclusion and racial exclusion, or its inverse for Asian Americans deemed perpetual foreigners, also plays out in other policy spheres. The starkest combination or conflagration of race and citizenship may be at the border, as noted by speakers at the symposium.²⁹ Jennifer Chacón and Kevin Johnson, foremost LatCrit and crimmigration scholars, call the situation at the border a “racialized panic.”³⁰ Karen Musalo sees similar treatment of

25. See generally Kim, *supra* note 14 (arguing that Asian Americans have been “racially triangulated” between white people and Black people); Vinay Harpalani, *The Racial Triangulation of Asian American Achievement*, 75 U.C. L.J. 1625 (2024) (using Kim’s framework to examine the racialization of Asian Americans “via academic achievement”).

26. See Kim, *supra* note 14, at 107; Harpalani, *supra* note 25, at 1627–30.

27. Harpalani, *supra* note 25, at 1628–30; Kim, *supra* note 14, at 116–17.

28. See generally Els de Graauw & Shannon Gleeson, *DACA’s Stratified Tracks for Economic Mobility and Lessons for Addressing Immigrants’ Long-Term Inequality*, 75 U.C. L.J. 1601 (2024) (describing the ostracization of DACA recipients in American society); see also Ahilan Arulanantham, Panel Discussion: Limits on Citizenship from Schools to the Workplace at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024) (describing how undocumented student’s ineligible for campus employment).

29. Volpp artfully evokes John Lennon’s attorney, Leon Wildes, who passed at the start of 2024. Volpp, *supra* note 9, at 1727. “At a press conference in 1973, two years after Lennon released the song Imagine, ‘imagine there’s no countries, it isn’t hard to do . . . [I hope someday you’ll join us, and the world will be as one],’ Lennon and Yoko Ono announced the creation of a conceptual country they called NUTOPIA. In announcing NUTOPIA, Lennon and Ono said, ‘Citizenship of the country can be obtained by declaration of your awareness of NUTOPIA. NUTOPIA has no land, no boundaries, no passports, only people. NUTOPIA has no laws other than cosmic. All people of NUTOPIA are ambassadors of the country. As two ambassadors of NUTOPIA, we ask for diplomatic immunity and recognition in the United Nations of our country and its people.’” *Id.* (quoting Mostly Oldies, *John Lennon & Yoko Ono Announced the Birth of a Conceptual Country, Nutopia (1 April 1973)*, YOUTUBE (Aug. 12, 2023), https://www.youtube.com/watch?app=desktop&v=ci_cIUCddHg).

30. Jennifer Chacón & Kevin Johnson, Panel Discussion: Racial Citizenship as a Weapon in Crime and National Security at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024).

Central American and Haitian asylum-seekers.³¹ She wants the border to be more porous: bringing back the eggshell imagery from Linda Bosniak. Chacón notes that the border is not only impenetrable at the periphery of the nation, but that it follows Latinx persons into the interior, in the secure communities program that is directed at so-called criminal aliens: “secure from whom?” she asks provocatively.³² Kevin Johnson’s essay for this Issue explores deep connections between racism and xenophobia with his novel reconstruction of the Ku Klux Klan’s (KKK) complex motivations: they are the Nazis in the American history of racial inequality, seeking to strip the citizenship and personhood of their racialized Black and Brown targets.³³

What role, if any, can legal institutions play in rectifying racial inequality when they have participated in its production—at least in part—by relying on the formal instantiation of citizenship as rights and legal status? Matt Barreto, Jack Chin, and Allison Brownell Tirres addressed the possibilities for inclusion presented in institutional politics.³⁴ The initiation of outsiders into the polity through naturalization—the gateway to legal citizenship, per Jack Chin—has historically been a process of racial selection.³⁵ The integration of outsiders into communities through landowning and employment has also been a story of racial sorting and boundary-keeping for the polity, per Brownell Tirres.³⁶ Voting—the defining right of citizens and the inner sanctum of citizenship—presents a window of possibility for racial minorities to exercise agency in their advocacy for change. Noncitizen voting emerged as a tantalizing mechanism for the political participation of immigrants, but it was foreclosed when courts ruled noncitizens ineligible to participate in national elections.³⁷ Courts also limited noncitizens’ political representation by narrowing the count of noncitizens in census data used for apportionment and redistricting.³⁸

31. Karen Musalo, Panel Discussion: Racial Citizenship as a Weapon in Crime and National Security at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024).

32. Jennifer Chacón, Panel Discussion: Racial Citizenship as a Weapon in Crime and National Security at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024).

33. See generally Kevin R. Johnson, *The KKK, Immigration Law and Policy, and Donald Trump*, 75 U.C. L.J. 1645 (2024) (examining the KKK’s immigration philosophy and its similarities to the policies of modern anti-immigrant advocates).

34. Matt Barreto, Jack Chin & Allison Brownell Tirres, Panel Discussion: Multiracial Democracy and Political Incorporation at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024).

35. Gabriel J. Chin & Paul Finkelman, *The “Free White Persons Clause” of the Naturalization Act of 1790 as Super-Statute*, 65 WM. & MARY L. REV. (forthcoming 2024) (manuscript at 7, 12 & 28) (on file with authors).

36. See Allison Brownell Tirres, *Political Representation and Economic Rights in the Shadows of Citizenship*, 75 U.C. L.J. 1693, 1696 (2024).

37. *Id.* at 1699.

38. See Tye Rush, Samuel Hall & Matt A. Barreto, *The Importance of Counting All Immigrants for Apportionment and Redistricting*, 75 U.C. L.J. 1667, 1677–80 (2024).

However, Volpp reinterprets citizenship as a verb—as “acts of citizenship”—instead of “the citizen who acts” or is acted upon.³⁹ She quotes Engin Isin and Greg Nielsen for this active definition in her exhortation to think beyond those who are already “produced as citizens” by the federal government, to think not about the “doer” but about the “deed.”⁴⁰ In this creative space, noncitizens constitute themselves as those to whom the right to have rights is due, allowing citizenship to be an incipient project.⁴¹

This was the second touchpoint of the conference: reparations for racial injustice. Don Tamaki and Lisa Holder gave a rousing presentation on government reparations for Japanese internment (a rare and singular success) and slavery (an unfinished business in both Congress and the California State Legislature, despite the five hundred pages of findings in the report for the California Task Force on Slavery Reparations and the forty years that federal legislation has idled in Congress).⁴² Tamaki’s remarkable representation of Japanese internees in their obtainment of government reparations motivated his service as the only non-Black person on the slavery reparations task force. Tamaki’s parents interned at horse stables of Tanforan in San Bruno, worked on coram nobis to overturn Frank Korematsu’s conviction, and participated in the campaign for Japanese redress.⁴³ The Japanese story is a universal story. It touches on property taken from Japanese and Chinese persons through Alien Land laws that have recently been revived.⁴⁴ It touches on zoning and redlining

39. Volpp, *supra* note 9, at 1722.

40. *Id.*; ENGIN ISIN & GREG M. NIELSEN, ACTS OF CITIZENSHIP 2 (2008).

41. Volpp, *supra* note 9, at 1723.

42. Don Tamaki & Lisa Holder, Keynote Lunch Panel: Reparations as Remedy for Racial Injustice at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024). CAL. TASK FORCE STUD. & DEV. REPARATION PROPOSALS AFR. AMS., THE CALIFORNIA REPARATIONS REPORT (June 29, 2023), oag.ca.gov/system/files/media/full-ca-reparations.pdf. Since the issuance of the Report, numerous legislative proposals have been introduced but none include cash payments. Wendy Fry, ‘Just the Beginning’: California Reparations Backers Applaud Bills, Even Without Big Cash Payouts, CALMATTERS (Jan. 31, 2024), <https://calmatters.org/california-divide/2024/01/reparations-california-2/>; Soumya Karlamangla, California Lawmakers Propose Reparations, but Not Cash Payments, N.Y. TIMES (Mar. 18, 2024), <https://www.nytimes.com/2024/03/18/us/california-reparations-bills-cash-payments.html>.

43. Don Tamaki, Keynote Lunch Panel: Reparations as Remedy for Racial Injustice at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024).

44. Alien Land Laws were originally enacted in 1913 and 1920 in California. Bruce A. Castleman, *California’s Alien Land Laws*, 7 W. LEGAL HIST. 25, 25, 37–38 (1994). More recently they have been proposed or enacted in Congress and numerous state legislatures in Florida, New York, Texas, Louisiana, South Carolina, and Alabama. *See, e.g.*, Edgar Chen, *With New “Alien Land Laws” Asian Immigrants Are Once Again Targeted by Real Estate Bans*, JUST SECURITY (May 26, 2023), <https://www.justsecurity.org/86722/with-new-alien-land-laws-asian-immigrants-are-once-again-targeted-by-real-estate-bans>. Asian Americans Advancing Justice publishes a database of pending discriminatory land bills at the state and federal levels. *Discriminatory Land Bills 2023 (States)*, ASIAN AM. ADVANCING JUST., <https://www.quorum.us/spreadsheet/external/KscrjHCRzvqUdRtMcpX> (last visited June 9, 2024);

to reduce the middle-class Black population from 16 percent to 6 percent in California.⁴⁵ Noting the shared struggle, Lisa Holder asks, “[h]ow do we walk forward together?”⁴⁶

Tamaki and Holder’s remarks on reparations, recorded but not published in this Issue,⁴⁷ reflect my personal struggle as an Asian American to fit into the master narrative of Black freedom that characterizes civil rights and racial equality in America. More than one person noted that this Symposium Issue is coming out during the 70th anniversary of *Brown v. Board of Education*.⁴⁸ That seminal case is why I went to law school and why I spent my summers working at the NAACP Legal Defense Fund (LDF) (where Thurgood Marshall litigated the cases that paved the way for *Brown*) and National Asian Pacific American Legal Consortium (inspired by the impact litigation model forged by NAACP LDF). The dream of multiracial coalition is stymied by two present realities: (1) the positioning of Asians against Black and Latino students in the competition for scarce resources in affirmative action, and (2) nonrecognition of the shared experience of struggle against dominant forces.

The racial positioning of Black Americans against other racial minorities is complex. Attaining formal citizenship after the passage of the Reconstruction Amendments did not eradicate inequality for Black Americans.⁴⁹ Nor did the Civil Rights Act of 1964.⁵⁰ The obstacles they faced are sometimes juxtaposed with the distinctive trajectory of Asian Americans. But many of the latter started off as Asian immigrants who entered the United States after a 1965 Immigration

Discriminatory Land Bills 2023 (Congress), ASIAN AM. ADVANCING JUST., <https://www.quorum.us/spreadsheet/external/ZolpjTsVILFmjRpCYNQo> (last visited June 9, 2024).

45. RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 8 (2017).

46. Lisa Holder, Keynote Lunch Panel: Reparations as Remedy for Racial Injustice at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024).

47. See generally Don Tamaki & Lisa Holder, Keynote Lunch Panel: Reparations as Remedy for Racial Injustice at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024).

48. 347 U.S. 483 (1954).

49. Among others at the Symposium, Thalia González spoke about how school discipline resulting in exclusion from classrooms is a denial of citizenship, and Shauna Marshall and Lisa Holder described the persistence of slavery in residential discrimination as a barrier to the middle class. Thalia González, Panel Discussion: Limits on Citizenship from Schools to the Workplace at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024); Shauna Marshall & Lisa Holder, Keynote Lunch Panel: Reparations as Remedy for Racial Injustice at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024). Vinay Harpalani spoke about Asian Americans in affirmative action. Vinay Harpalani, Panel Discussion: Limits on Citizenship from Schools to the Workplace at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024). Karen Musalo spoke about asylum seekers at the border. Karen Musalo, Panel Discussion: Racial Citizenship as a Weapon in Crime at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024).

50. The Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* (1964).

and Naturalization Law reform favored their skills and education.⁵¹ Many of these highly educated Asian immigrants naturalized or gave birth to high-achieving Asian American children, whose presence on college campuses increased in the 1980s and 1990s. The academic achievements of these self-selecting Asian Americans, while lauded as a model for other races, posed a threat that fed fears that campuses were being invaded by unwelcome foreigners. The effort to include racial minorities in college through affirmative action was not seen as a rebalancing of the majority and underrepresented minority: slicing the proverbial pie. Instead, competition emerged for the smaller share of seats receiving positive consideration based on race: fighting for crumbs. No wonder those still hungry for educational opportunity coveted those with more to eat. A similar story is evident in the conflation of African and African American immigrants as Black students with equivalent experiences and perspectives to share in schools and campuses. This conflation is often to the detriment of both groups in light of the history of anti-Black discrimination and negative stereotypes manifested in school discipline and incarceration.

The shared struggles across these groups have been documented by socio-legal scholars. Many of them have used empirical research to illustrate the precariousness of living as an unequal citizen in a world comprised of nation-states.⁵² This lived experience reflects the law's positioning of noncitizens as outsiders, making formal citizenship necessary for basic rights and flourishing. The history of slavery, Jim Crow, and the KKK sustained racial hierarchy once the formal barriers came down. The reinforcement of hierarchy persists during cycles of intensive immigration enforcement and racial antagonism in surveillance, as exemplified by Islamophobia toward Arab immigrants as terrorists post-September 11, 2001, the Muslim travel ban, the exclusion of Chinese immigrants as carriers of illness and possibly spies due to racial caricatures during COVID-19 lockdowns, and the rejection of Central American asylum seekers as presumptively illegal during the post-pandemic hardening of borders. The federal government's failures to rationalize the border or reform the visa system, and the unreliability of stopgap measures like DACA, TPS, and parole let these racial and xenophobic panics fester. Even once non-white immigrants attain citizenship, equality remains elusive to raise their voice—in

51. Immigration and Nationality Act of 1965, 8 U.S.C. §§ 1104-1401 (1965).

52. Among others present at the Symposium, Shannon Gleeson, Ahilan Arulanantham, and Jennifer Chacón have written about worker precarity for immigrants with TPS and DACA respectively. de Graauw & Gleeson, *DACA's Stratified Tracks*, supra note 28. Kevin Johnson writes about the racial intimidation of the KKK toward immigrants and freed slaves alike. Johnson, supra note 33. Allison Brownell Tirres and Matt Barreto describe formal and functional political exclusion through denial and dilution of voting rights. Allison Brownell Tirres & Matt Barreto, Panel Discussion: Multiracial Democracy and Political Incorporation at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024).

voting, policing, politics, reparations—in the quest to forge a broader sense of “we the people” for democracy.

Toward the end of the symposium, Osagie Obasogie used his moderator’s prerogative to ask the room a question: Can the institution of citizenship be reformed, given all the ways it has been weaponized against people of color, and given that racial minorities have begun to shoot against each other and at immigrants?⁵³ This inquiry sparked a hopeful moment of reflection about how to proactively rethink belonging and inclusion. Jennifer Chacón said citizenship can “create space, institutions, [and] structures for belonging.”⁵⁴ Kevin Johnson put it more simply: equal citizenship means “being your best as a community.”⁵⁵

I count myself among the community of legal scholars, legal advocates, and policymakers seeking to expand access to citizenship to shore up inclusion. It is humbling to view slavery, internment, and segregation not as a forgone history but as an unrelenting cycle that remains unresolved. Some of these thinkers issued calls for action during the symposium, including federal action on DACA, legalization, border reform, and race reparations.⁵⁶ But past federal wrongdoing and decades of institutional neglect were recalled to be impediments to racial progress.

Given the federal failures, what other institutions can serve citizenship? Volpp points to personhood and a *nutopia*.⁵⁷ Ahilan Arulanantham points to state and local government in his recounting of the legal theory animating a campaign to extend campus work opportunities to undocumented students.⁵⁸ He described ongoing student activism on University of California (UC) campuses, faculty and administrative efforts to extend practical support such as increased financial aid and fellowships with stipends, and proposed California legislation.⁵⁹ His call recognizes that: “California has never waited for feds.”⁶⁰ I share this sentiment in an opinion essay I authored, inspired by Arulanantham’s remarks.

53. Osagie Obasogie, Panel Discussion: Racial Citizenship as a Weapon in Crime and National Security at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024).

54. Jennifer Chacón, Panel Discussion: Racial Citizenship as a Weapon in Crime and National Security at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024).

55. Kevin Johnson, Panel Discussion: Racial Citizenship as a Weapon in Crime and National Security at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024).

56. Ahilan Arulanantham, Panel Discussion: Limits on Citizenship from Schools to the Workplace at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024); Lisa Holder, Keynote Lunch Panel: Reparations as Remedy for Racial Injustice at U.C. L.J. - RICE Symposium: We the People: Citizenship, Race, and Equality (Feb. 2, 2024).

57. Volpp, *supra* note 9, at 1721, 1727.

58. Arulanantham, *supra* note 28.

59. *Id.*

60. *Id.*

California must distinguish itself from [other states], holding firm to values of inclusion in its advocacy for undocumented students. The need for the UC to do what is right in the face of political and legal headwinds has not lessened just because there is a different UC and U.S. president. If anything, the urgency has increased as DACA has withered away. The UC should continue to lead the way on educational opportunities for undocumented students by thinking creatively and fighting fiercely for its students If change will not come from the top, then campuses need to identify and implement their own solutions from the bottom up.⁶¹

A closing reflection for the closing essay in this symposium issue: While he was not registered for the symposium, a community member from the streets of San Francisco wandered into the lively conversation taking place in the public space where the symposium was being held. He listened quietly and then asked the illustrious immigration experts speaking on a panel about borders forcefully: “Why don’t we take care of our own first?” Presumably, he meant the overlooked poor and Black persons languishing outside UC Law SF in the grittiness of downtown San Francisco. The interloper’s question is pertinent. Cross-racial and cross-national coalitions that challenge the status quo must reckon with disagreement about who is “our” own when we think about “we the people.” Forging agreement will be an integral part of creating the spaces that will allow us to “be our own best community” and let citizenship flourish.

61. Ming H. Chen, *California Cannot Abandon Undocumented Students After Caving to Politics*, SACRAMENTO BEE (Feb. 24, 2024, 5:00 AM), <https://www.sacbee.com/opinion/op-ed/article285726311.html>.
