**Resolved: Immigration ought to be a Human Right**

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# Immigration ought to be recognized as a human right.

## Topic Analysis

This topic asks debaters to explore questions of Immigration in relation to issues of human rights. Unsurprisingly, this topic has quite a bit of literature surrounding it, and provides a really deep base for argumentation, both from a practical perspective, and a philosophical one. Initially, discussions about immigration have a great deal of contemporary cultural cache. Almost nothing inspires more discussion than immigration issues, both in the United States, and outside. Often, immigrants are used as a way to coalesce a nation that is suffering from a variety of ills, in order to place the blame for internal problems on an external threat. This dynamic is one of the major driving forces behind the explosion of literature on this topic.

From a policy perspective, Immigration debates generally assume that nations have a right to control the movement of individuals across their borders. Much of the literature focuses on how to balance the interests of an individual nation-state, with the concerns about human rights for those seeking entry into a nation. These debates are often related to different statuses of immigrants, and ask pretty specific questions. For example, policy based literature on questions of immigration (which almost always include a philosophical component), are interested in different types of immigrants: Asylum seekers, undocumented migrants, temporary workers, highly skilled workers, etc. From a consequentialist, more policy focused angle, a debater would probably want to select a particular group, and explore why their movement being linked to human rights is an acceptable and provocative parametric approach to the resolution. Asylum seekers, in particular, are a ripe area for exploration. Their reasons for seeking the ability to move between nation-states is always connected with questions of human rights—and the questions they raise place the tension between a smoothly functioning nation-state and human rights issues in a particularly clear focus.

From a more broad philosophical perspective, there is also quite a bit of literature about immigration and human rights. Communitarians, for example, strongly believe in the decisive and universal right for a community to defend and enforce its borders. From this perspective, immigration as a human right is in direct conflict with a stronger form of sovereignty—that of the nation state. “Open borders” and “freedom of movement” philosophical perspectives, on the other hand, strongly advocate for the right of individuals to move across borders, and some interesting work is being done to delink “freedom of movement” from “open borders” which could be incorporated into either affirmative or negative strategies—depending on your level of comfort with controlling framing issues in a debate round. Furthermore, some radical perspectives quite thoroughly question the importance of discourses of human rights, and how they are incorporated into our current system, providing an interesting route into objecting to human rights as a method of securing the guarantees of citizenship.

For the purposes of this file, you will find arguments that approach this topic primarily from radical perspectives. The affirmative is a more traditional defense of dignity and freedom of movement, linked into philosophical and practical readings of the immigration debate ultimately arguing for the opening of borders. There is a lot more research to be done on these questions, and developing this into a full, competitive strategy will involve additional research. Similarly, the negative argument approaches the question of immigration and human rights by focusing on the general end goal of human rights discourse—inclusion into citizenship—and presents this as a problematic goal. Through questioning logics of inclusion, the negative stages a defense of defenses, and objects to the individualizing role that human rights discourses play as part of a global strategy of incorporation.

From a more traditional, policy based analysis, Immigration raises questions about who gets to move from country to country, and under what circumstances. This means that questions of terrorism, organized crime, and the spread of disease are probably going to be discussed. From the economic perspective, anti-immigration advocates argue that immigration is likely to reduce the minimum wage as workers who are willing to take less for their labor come into developed economies. Advocates for the freedom of movement are likely to argue that this is a temporary situation that is caused by arbitrary restrictions on movement that are caused by borders. They will argue that with time, the economy throughout the world will become more standardized, and people will begin to drive wages up as borders no longer restrict people’s ability to demand what their labor is worth. Questions of terrorism or organized crime will be more difficult for both sides of the debate. Anti-immigration advocates will argue that loosening restrictions will increase the likelihood that people will cross borders for nefarious purposes. Immigration advocates will argue that screening processes are likely to deal with the worst case scenarios, and that through creating stronger communities, people are likely to self-police and restrict those who use this freedom for nefarious purposes.

There is plenty of research that is relatively easy to locate about these more traditional policy perspectives, and I believe this file is an interesting starting point for folks. Good luck, and enjoy the debates!

## Additional Readings

Barry, Brian and Robert E. Goodin (Eds). *Free Movement: Ethical Issues in the Transnational Migration of People and Money.* University Park, PA: The Pennsylvania State Press, 1992.

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## Affirmative

### Top of Case

In light of our journey from our home countries to Moscow and back from Beijing, as well as the collective trip taken by all those involved in the ‘Capturing the Moving Mind’ project across the Russian/Mongolian and Mongolian/Chinese border, we wish to articulate a similar demand with a similar aim: unfettered mobility for individuals and collectives, the dissolution of all borders that separate, isolate, contain, limit, enable violent forms of extraction and injustice, and impede political imaginings and futures. In an era dominated by the discourse of mobility, the organization of movement and space through an older technology – that of border line, an entity as abstract and full of metaphysical subtleties as any other in the lexicon of human thought – remains essential to the smooth operations of capital. Without the border, there would be no differential zones of labour, no spaces to realize surplus capital through the dumping of overproduction, no way of patrolling surly populations that might want to resist proletarianization, no release valve for speculative access. The demand for free movement challenges not only the logics of contemporary economics, but also the operations of the political, which have long been premised on the establishment of zones of inclusion and exclusion, control over the legal status of citizen-subjects, practices of demographic accounting and management, and the mobilization of bodies for use in territorial expansion and war. No borders! Or just as well: free movement! What insights does such a demand produce with respect to the key forms through which power and social control are exerted today? And what kind of political possibilities do these insights generate in turn? It is clear enough that the possibility of unfettered movement – a world without border controls, identity papers, fictions of national belonging, death and destruction over abstract geographies – would necessitate a social order radically different from every one hitherto imagined. The physical remnants of what we call ‘history’ are marked by the long human drama of the production and patrol of borders: cathedrals, castles, city walls and gates, districts, patrol towers, checkpoints – even the physical geography of rivers, bodies of water, and mountain ranges, transformed by their role as dividing markers. The streetscapes of modernity, pathways for the dreamy wanderings of the flâneur, are also designed with the aim of enabling the quick and efficient deployment of men and military equipment, both to manage unruly internationalists at home (communists, postcolonials, and the like) and to face the incursion of foreign armies across the sacred line dividing one nation-state from another. So we would also need new vernacular architectures, new cities, new modes of labouring, new economies, new cultures – a great many new things, and this just to begin with. One way forward might be to try to put everything on the table all at once and so participate in the kind of utopian constructions that Jameson suggests emerge whenever political energies are blocked. We propose a more politically efficacious way forward, testing the power of the demand ‘No borders!’ by looking at a few key ways borders demarcate mobility and immobility today: in relation to the operations of contemporary capital; the control over migration and nation-state sovereignty; the patrolling of cultural borderlines; and the collapse of the labour and leisure into a time of perpetual production.

#### It is because I agree with the words of Carlos Fernandez, Meredith Gill, Imre Szeman, and Jessica White that I affirm the RESOLUTION:

Whyte et al. ‘6 (Jessica, PhD candidate in the Centre for Comparative Literature and Cultural Studies at Monash U., Australia, Carlos Fernandez, Doctor in Sociology and works as a precarious researcher @ Universidad Autónoma de Madrid, Spain, Meredith Gill, PhD candidate in the Program in Comparative Studies in Discourse and Society @ U. of Minnesota, Imre Szeman, Associate Professor of English and Cultural Studies and an Adjunct Member of the Institute for American Studies @ Humboldt U. in Berlin, “Erasing the Line, or, the Politics of the Border” ephemera 6(4) pg. 466)

#### Immigration ought to be recognized as a human right.

In order to add clarity to this debate, I offer the following definitions:

#### Immigration

Oxford English Dictionary, 2015 (Online)

The action of immigrating; entrance into a country for the purposes of settling there

According to the same source, immigrating means:

To come and settle in a country (which is not ones own); to pass into a new habitat or place of residence.

#### **Human Rights**

Oxford English Dictionary, 2015 (Online)

Rights possessed by humans; the set of entitlements held to belong to every person as a condition of being human

#### **For the purposes of today’s debate, I offer the value of Dignity, which**

Peter Shaber explained in 2013 means, (“Human Rights and Human Dignity: A Reply to Doris Schroeder” *Ethical Theory, Moral Practice* 17:155-171; DOI 10.1007/s10677-013-9427-2)

Dignity is a normative concept. Whatever dignity precisely means, it refers to a property that has moral importance. The dignity of humans is not something that must merely be accepted; rather it is something that calls forth certain attitudes and reactions. Dignity must be respected or protected or promoted. The violation of the inherent dignity of humans is a form of severe wrongdoing and is not just the violation of a particular right human beings have. It is rather related to the moral status of human beings.1 Acts of degradation or humiliation are paradigm violations of dignity.2 As Waldron puts it. “A good account of human dignity will … generate an account of the ban on humiliating and degrading treatment.” 3 Acts of degradation and humiliation do not just impair the interests or the autonomy of the victims: they strike at the moral status itself. By acts of degradation we treat others as if they had no say, as if we had the right to treat them in whatever ways we please. The violation of dignity consists in treating others as if they had no normative authority over themselves and over how they are treated. I think that it is this normative authority which is meant by dignity and which is paradigmatically disrespected by acts of degradation and humiliation.4 By treating individuals in this way one denies the existence of any normative authority on their part.5 It seems to me that this idea of normative authority is more central to the understanding of human rights than other things such as basic needs or interests. “Normative authority”, in the sense relevant to the present discussion, is the authority to do what one wants with regard to whatever falls within the purview of one’s authority. It is not simply the capacity to do what one wants, but the right to do so, and so encompasses the right not to be obstructed in one’s actions as carried out within the sphere of one’s authority. What is it that falls under our normative authority? The obvious answer is: anything that is important in my life—for example, who I live with, who I marry, what profession I choose, what projects I take up, etc. That human beings have normative authority over these things means that they have the right to determine who they live with, who they marry, etc., and that they may not be hindered in their enjoyment of these rights. Various rights included in the Universal Declaration of Human Rights protect exactly this normative authority: the right to freedom and security of the person (Art. 3), the right not to be held in slavery or serfdom (Art. 4), the right not to be subjected to cruel, inhuman or degrading treatment (Art. 5), the right to be recognized as a person before the law (Art. 6), the right to marry and to form a family (Art. 16), the right to religious freedom and the freedom of opinion (Art. 18), to name just a few. Upon closer examination it becomes clear that it is not just liberty rights which protect the normative authority of human beings, but also social and cultural human rights such as the right to an adequate standard of living (Art. 25), the right to a basic education (Art. 26), and the right to freely participate in the cultural life of the community (Art. 27). Take, for example, the right to adequate living conditions, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, invalidity and widowhood (Art. 25.1): These rights protect basic needs in the absence of which one cannot lead a minimally good life, but the attribution of these rights is not justified simply on the grounds that these are needs that must be accommodated. Rather, human beings have the right to adequate living conditions in order to be able to exert their normative authority: human beings should be able to live a life as they please, in so far as this is possible, but this requires that they possess certain goods in the absence of which their scope for expressing their authority would be severely curtailed. For example, someone with no access to nutrition or water would be unable to exert her normative authority. Normative authority can only be exerted when there are acceptable options from which to choose. If this is true, it could be the exercise of our normative authority that is protected by certain rights such as the right to liberty and security, the right not be held in slavery or servitude, the right not to be tortured and degraded, the right to an adequate standard of living and the other rights mentioned above.

#### **In order to uphold Dignity, I propose a criterion of freedom of movement, which philosopher Shelly Wilcox links to the right to move across borders, explaining:**

More recently, Carens has developed two additional arguments in support of openborders.9These arguments forego specifically Rawlsian concepts, drawing instead on general liberal egalitarian ideals. The first contends that the liberal commitment to freedom implies a basic human right to free international movement. The argument rests on an analogy between free mobility within a nation-state and free international mobility. Carens begins by acknowledging that free internal mobility is an important liberal free-dom. Liberals believe that ‘people should be free to pursue their own projects and to make their own choices about how to live their lives so long as this does not interfere with the legitimate claims of other individuals to do likewise’ (‘Migration and Morality’26). Thus, since restrictions on internal movement would unjustly curtail such freedom, free internal mobility is widely recognized as a basic right of liberal citizenship. Carens then argues that the ability to move across state borders is an equally important freedom because, in his view, every reason an individual might have for moving within a country could also apply to moving across state borders. To name just a few: one might want a job; one might fall in love with someone from another country; one might belong to a religion that has few adherents in one’s native state and many in another; one may wish to pursue cultural opportunities that are only available in another land (‘Migration and Morality’ 28).

### Contention One: Discussions of Immigration Policy misdirect the public’s attention, ignoring questions of human dignity.

#### A. Traditional immigration discussions are mired in euro-centric policy discussions.

Ghoshray, 2007 (Saby, [specializes in Constitutional Law, International Law, Capital Jurisprudence, Military Tribunals, and Cyberspace Law] “Immigration: Both Sides of the Fence: Is there a Human-Rights Dimension to Immigration? Seeking Clarity through the Prism of Morality and Human Survival.” *Denver University Law Review,* 84 Denv. U.L. Rev. 1151)

I suggest in this review that the current debate or the existing literature surrounding immigration is missing the human-rights factor. While the immigration debate gets mired in the political quagmire of Euro-centric policy debate, n8 and stays within the narrow trajectory centered on economic preservation of the native-born Americans, n9 I want to introduce the hitherto uncovered dimension of human rights into this immigration debate. This new perspective of immigration centers on asking the profound question: Is there a human right to immigration? What moral obligations does the target country or the destination point have? The issue of the human right to migrate is indeed complex, and, in my view, it resides within an implicit understanding of inherent dignity of humanity. This recognition of human dignity comes from a viewpoint that understands immigrants not as threats, but part and parcel of a mosaic of color, rhythms, and dreams that define the United States of America. I embark on a step-by-step analysis in this Article to arrive at my conclusion. Therefore, I ask a series of questions. Analyzing these questions will help develop a framework to understand the broad issue of immigration's human-rights dimension.

#### B. The ability for global capital to move across borders has resulted in a growing disparity in the distribution of resources.

Ghoshray, 2007 (Saby, [specializes in Constitutional Law, International Law, Capital Jurisprudence, Military Tribunals, and Cyberspace Law] “Immigration: Both Sides of the Fence: Is there a Human-Rights Dimension to Immigration? Seeking Clarity through the Prism of Morality and Human Survival.” *Denver University Law Review,* 84 Denv. U.L. Rev. 1151)

From the days of yore, human migration has centered on economic grounds, as humanity's primal instinct for survival has caused artificial, geographical barriers to crumble under the willingness of human desire. From a purely economic point of view, the drive for immigration comes from the multitude of factors which include persisting poverty, n59 growing unemployment, n60 loss of an agrarian way of life, n61 and loss of income as a result of global trading realignment. n62 Under no circumstances do these constitute an exhaustive list of factors that drive people to the unforgiving desert highway along the U.S.-Mexican border in search of a better life; or that drives a desperate mother and children to stack themselves like sardines into the back of a truck with no ventilation which ultimately becomes the tomb of many of its occupants. This drive is not so difficult to comprehend when you consider that increasing globalization of labor may have brought efficiencies and economies of scale from a corporate point of view, but from the human point of view, it has caused a severe and disproportionate distribution of resources. n63 This has resulted in significant inequity among the masses of this world, and I would argue that we must recognize the issue of immigration from this broader human-rights dimension.

### Contention Two: Fighting against immigration has proved itself to be a costly, and counterproductive enterprise.

#### **Argentina has passed constitutional legislation declaring immigration a basic human right, while the US has continued to fight immigration. Unsurprisingly, US policy has been an expensive, and dismal, failure.**

Hines, 2010 (Barbara, [Clinical professor of law at the University of Texas School of Law and directs the immigration clinic] “The Right to Migrate as Human Right: The Current Argentine Immigration Law.” *Cornell International Law Journal* 43 Cornell Int’l L.J. 471)

Human rights groups, immigrant communities, and constitutional scholars enthusiastically greeted the new law whose fundamental principles support the right to immigrate as a human right and provide protections for additional human rights and basic equality. n89 Senator Ruben Giustiniani, the author of the legislation, declared that the law "goes in a real direction of social progress, based on integration and not exclusion, multilateralism in the region and not unilateralism, tolerance and not xenophobia. The current immigration law is based on a new focus that enriches democracy." n90 Eugenio Zaffaroni, a noted constitutional scholar and member of the Argentine Supreme Court, declared that the passage of the new law represents a landmark and "signifies the reestablishment of legal compatibility with constitutional directives." n91 Similarly, a sociologist specializing in immigration issues stated that: In contrast to the law enacted by the military government that reflected a disciplined, rigid and controlled society and discriminated based on the country of origin of immigrants, the new model projects a multicultural inclusive society with regional integration that respects the rights of foreigners and values their cultural and social contributions. n92 Argentine Ambassador Leonardo Franco declared before the United Nations that: The search for better conditions of life in other countries must not be reproachable and [must be] much less criminalized ... . Argentina sealed this new spirit in its migrations policies through the National Law of Migrations in 2004. This new law reflects the commitment of our country to guarantee the full respect of human rights of the migrants and their families and at the sams [sic] time establishes mechanisms of easy access to regulate migration, thus contributing to the elimination of any form of discrimination, xenophobia or racism. n93 These provisions are exceptional in a global climate in which national security concerns and exclusionary and restrictive policies dominate the immigration debate. [\*486] As Argentine advocates pushed for a more generous immigration regime, attempts to liberalize the current immigration laws in the United States have repeatedly failed. One possible explanation is that human rights norms are not part of the U.S. Constitution and thus do not serve as a foundation for legislative proposals or legal challenges. In addition, U.S. immigration policy is a more highly politicized and divisive issue than it is in Argentina, which hinders the prospects for reaching a consensus. Although the immigrant advocates in the United States are superior in numbers, organization, and financial resources to their counterparts in Argentina, U.S. anti-immigrant forces are equally numerous, well-funded and well-organized in their efforts to defeat immigration reform. n94 In contrast, Argentina has no organized anti-immigrant movement nor is immigration policy an important political issue for the electorate; these factors made passage of the liberal law more achievable. n95 Thus, instead of liberalizing its immigration norms, the United States has enacted a series of increasingly restrictive laws. Both the 1996 Illegal Immigration Reform and Immigrant Responsibility Act and the 2001 USA PATRIOT Act severely limit immigrants' rights and determine deportation and inadmissibility based on expanded definitions of criminal conduct and overly broad terrorism definitions. n96 In addition, in 2006 the U.S. Congress authorized the Secure Fence Act of 2006, an exorbitantly expensive boondoggle, to build a wall across the southern border of the United States intended "to establish operational control over the international land and maritime borders of the United States." n97 The estimated cost of the wall ranged from between two and four million dollars per mile. n98 [\*487] Although immigration reform focusing on a legalization program for the eleven to twelve million undocumented aliens in the United States has been introduced each year in Congress since 2005, no law has ever passed. n99 In addition, all legislative proposals include stricter border enforcement and security as a quid pro quo for reform. n100 Some proposals have been even more draconian. In December 2005, the House of Representatives passed H.B. 4437, which, for the first time, criminalized undocumented immigrant status in the United States and broadened the definition of alien smuggling to include any assistance given to an undocumented immigrant; at the same time, the law provided no avenue for regularization of the undocumented population. n101 In reaction to H.B. 4437, in the spring of 2006, hundreds of thousands of immigrants and advocates in the United States took to the streets to protest the legislation and to demand immigration reform. n102 Although comprehensive immigration legislation was introduced in both 2006 and 2007, n103 it was defeated and immigration reform again failed. n104 Some opine that the protests in 2006 generated more energy for opposition within the anti-immigrant groups and led to increased enforcement policies. n105 Under the expanded grounds of deportation under the 1996 and 2001 immigration laws, Immigration and Customs Enforcement (ICE) [\*488] arrests of non-citizens between 2003 and 2008 climbed over 1,500%. n106 In fiscal year 2008 (FY08), ICE removed 356,739 immigrants from the United States, a 23.5% increase over the total in the prior year. n107 ICE worksite raids resulted in 6,287 arrests in FY08, an increase of 27% over the prior year. n108 Thus, in contrast to U.S. policies, the Argentine immigration law is a welcome change and, reflecting different realities, demonstrates a markedly distinct approach to immigration policy.

### Contention Three: Historical Analysis of Immigration Debates reveal that continued enforcement of immigration policy, without a dedication to human rights results in systematic oppression, destroying dignity.

#### A. Historical analysis of immigration policy reveals that racist attitudes have historically driven immigration policy, ignoring the connection between immigration and human rights.

Ghoshray, 2007 (Saby, [specializes in Constitutional Law, International Law, Capital Jurisprudence, Military Tribunals, and Cyberspace Law] “Immigration: Both Sides of the Fence: Is there a Human-Rights Dimension to Immigration? Seeking Clarity through the Prism of Morality and Human Survival.” *Denver University Law Review,* 84 Denv. U.L. Rev. 1151)

Exploring the archives of the recorded history of America, we are painfully constrained to find that the focus of immigration restriction of the nineteenth century centered on the stated objective to keep the "poor" and the "huddled masses" out of America's shores using the public-charge criteria and personal-wealth factor. n43 Beginning with the 1882 Chinese Exclusion Act, n44 the exclusionary immigration enforcement continued [\*1159] unabated until the 1924 National Origins Quota System. n45 Implicit within these legislations was race-based discrimination designed to stymie the rise of immigration from southern and eastern European countries, which made it increasingly difficult for nordic and northern Europeans to retain their racial majority. n46 In addition, the National Quota System did not have any provision for immigrants from Asian and African countries at all. n47 This racially-asymmetric balance was captured by Harvard Professor, Charles Ogletree Jr., who noted that although the origins-based quota system gave way to the more liberalized immigration policy under the Immigration and National Act Amendments of 1965, n48 the discriminatory effect remained. According to Professor Ogletree, "implicit and explicit racial biases still pervade all four major avenues of legal immigration: family-sponsored, employment-based, diversity and refugee. The family-sponsored and employment-based immigration rules appear to be facially neutral, but per-country ceilings and racial biases in determining eligibility have resulted in fewer immigration visas for people of color." n49 These exclusionary policies were at odds with the United Nations Declaration of Human Rights which categorically states: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. n50 Race-based discrimination in processing immigrants' entry to the United States has been a constant theme within a broader U.S. immigration [\*1160] policy. n51 In sharp contrast to the human-rights ideals of the United Nations Charters, race-based selective enforcement of immigrants has been the predominant norm, as seen in countless illegal raids against legal residents and harassing them for legal documents, n52 selective race-based confiscation of immigrants at checkpoints, n53 unwarranted entry into resident homes n54 in direct violation of the Fourth Amendment's illegal search and seizure provisions, n55 and discriminatory enforcement of the identification requirement of ethnic minorities. n56 Not only do these practices of arbitrary and selective enforcement of federal immigration laws create questions regarding civil rights protection deficiencies, but they begin to develop a total annihilation of a human-rights framework within the American immigration system. While human-rights standards could provide a tool to manage the tension discussed earlier, U.S. policies of raced-based profiling have not only been restricted to law-enforcement officers in charge of federal immigration laws, but they have also developed into a predominant pattern among the consular officials as documented in Olsen v. Albright. n57 Clear consular instructions further corroborate the explicit racial overtones of an existing policy, as it categorically states: "Filipinos and Nigerians have high fraud rates, and their applications should be viewed with extreme suspicion, while British and Japanese citizens rarely overstay, and generally require less scrutiny."

#### B. Society must be able to establish certain elements as fundamental rights, that are critical the concept of a human, and these rights must be able to evolve over time.

Ghoshray, 2007 (Saby, [specializes in Constitutional Law, International Law, Capital Jurisprudence, Military Tribunals, and Cyberspace Law] “Immigration: Both Sides of the Fence: Is there a Human-Rights Dimension to Immigration? Seeking Clarity through the Prism of Morality and Human Survival.” *Denver University Law Review,* 84 Denv. U.L. Rev. 1151)

In this section, I will argue that the concept of the right to immigration as a human right emanates from an expanded conception of an individual right enshrined in the constitutional jurisprudence of the developed countries. In this way, the concept of immigration as a human right goes to the very core of fundamental rights bestowed upon humanity. In my view, this second thread of rights to migration as a human right is based on the fundamental-right doctrine developed contemporaneously both in common and civil-law jurisprudence. Earlier, I suggested that the right to migration as a human right comes from a broader interpretation [\*1173] of the right to the highest attainable status for an individual. The question, then, is whether there is a fundamental right to migration, and what is the test we can employ to determine if this is indeed a fundamental human right? First and foremost, let us begin with the concept of rights, and how they are created. Most countries' constitutions contain a set of rights, just like the U.S. Constitution has certain enumerated rights. On the surface, it seems that the government should support certain rights, but not all of them may be necessarily protected by the Constitution. A strictly originalist point of view would support the constitutional interpretation that we must only protect those rights which are actually located in the Constitution, and support legislation to protect other rights. n104 A more dynamic constitutional interpretation, n105 however, would suggest a different conclusion where rights could emanate from various sociological, doctrinal, and environmental developments. There should be certain rights that could be created as a result of the evolution of human understanding. For example, as our understanding of the limitation of natural resources matures, and as our ability to gauge the adverse impact of environmental degradation on the sustainability of our human civilization grows, primacy ought to be given to certain rights. These rights could include the right to pollution-free air, or right to flowing water, or right to choose protection of environment over excessive water commodification. There should be binding legal instruments that could protect these rights from the corrosive impact of any governmental regulation, corporate [\*1174] privatization, or any combination of the two. These rights strictly belong to human persons or natural entities as they predominantly emerge from humanity's interaction with nature. These rights do not accrue to a legally-created entity, such as a corporation. Implicit in this expanded conception of rights, I will argue, resides the guarantee that there are some rights so fundamental that can never be regulated by either the government or the legislature. Therefore, no majority, no matter how large, could violate the rights of individuals. These are indeed the fundamental rights that could emanate either via humanistic jurisprudence or from natural-rights doctrine. The discussion above points to certain rights, which are fundamental, yet may not have been properly enumerated within the Constitution because the historical development of civilization did not recognize them at the time of the Constitution's writing. These rights could very well not have been protected by the litany of international laws, developments, and treaties that form the broad spectrum of international law. For example, these rights may not have found explicit invocation in the development of The Hague or Geneva stream of laws, or other U.N. Declarations. On the other hand, these rights are so fundamental, that without them, the very existence of a human being becomes unconscionable. How could this happen?

#### C. The threats of terror on the border are merely the flip side of the global imperial mission to eliminate all non-American evil from the globe – it inevitably creates violent backlash and fails. You must vote for the affirmative to challenge these regimes of domination through asserting the fundamental rights of all.

Shapiro ‘7 (Michael J., Department of Political Science, University of Hawai’I, “The New Violent Cartography” Security Dialogue 38, p. 305- 306)

As Virilio (2002: 8) points out in an analysis he undertook during the first Gulf War, the militarized state looks inward as well as outward, manifesting a ‘panicked anticipation of internal war’. In the case of the post-9/11 ‘war on terror’, the same preemption involved in assaults on states has been turned inward. A state of siege mentality is effacing the inside/outside boundary of the war. Achille Mbembe (2003: 30) puts it succinctly: ‘The state of siege is itself a military institution.’ In contrast with the firefights deployed on distanced terrains, the weapons used internally are surveillance technologies and extra- juridical modes of detention. For example, as an instance of hysterical perception, an FBI fingerprinting laboratory identified a lawyer in Oregon as one whose fingerprints were found among the detritus of the train bombings in Madrid in 2004. Furthermore, FBI agents pressed their perceptions for some time, despite a rejection of their fingerprint data by their counterparts in Madrid. The technologies deployed in the ‘war on terror’ have operated on two fronts, the distant and the home. For example, the drone, which was ‘weaponized’ for use on a distant battlefield, is being employed in its spare, observational version in US–Mexico border areas to help prevent illegal entry of immigrants. According to a report in the New York Times, on 25 June 2004, unmanned planes known as drones, which use thermal and night-vision equipment, were used in the US southwest to catch illegal immigrants attempting to cross into the USA from Mexico. The drones form part of the domestic front in the USA’s ‘war on terror’; specifically, they are part of ‘the Department of Homeland Security’s “operational control” of the border in Arizona’ (Myers, 2004). However, while one agency involved in the ‘war on terror’ is diverting its technology to help exclude Hispanic bodies, another is actively recruiting them for duty on the external war fronts. As shown in Michael Moore’s documentary Fahrenheit 9/11, military recruiters are most in evidence in poorer and disproportionately ‘ethnic’ neighborhoods and venues – for example, the parking lots of discount department stores. Ironically, given the participation of southwestern border patrol agencies within the Homeland Security network, much of the recruiting is aimed at those Hispanics that live on the margins of the national economy. An item about recruitment in the Denver area tells much of the story: In Denver and other cities where the Hispanic population is growing, recruiting Latinos has become one of the Army’s top priorities. From 2001 to 2005, the number of Latino enlistments in the Army rose 26 percent, and in the military as a whole, the increase was 18 percent. The increase comes at a time when the Army is struggling to recruit new soldiers and when the enlistment of African-Americans, a group particularly disillusioned with the war in Iraq, has dropped off sharply, to 14.5 percent from 22.3 percent over the past four years (Alvarez, 2006). Where are the recruiters searching? The story continues: Sgt. First Class Gavino Barron, dressed in a crisp Army uniform, trawls the Wal-Mart here for recruits, past stacks of pillows and towers of detergent, he is zeroing-in on one of the Army’s ‘special missions’: to increase the number of Hispanic enlisted soldiers. But the military’s domestic initiatives go beyond collecting bodies. It is also militarizing other agencies, assembling them within what I have called the ‘tertiary spatialization of terrorism’. As the author of The Pentagon’s New Map points out, ‘a whole lot more than just the Defense Department’ is actively pursuing the ‘war on terror’ (Barnett, 2004: 95). One aspect of that broadened participation is evident in a recent collaboration between three kinds of institutions: Hollywood film-making, the military, and the university, all of whom share participation in the University of Southern California’s Institute for Creative Technologies. The collaboration exemplifies ‘the tertiary spatialization of terrorism’ inasmuch as it is located in the sector of the institutional ecologies of militarization that involve relations among military, entertainment, and university agencies. Leaving aside the historical development of the film industry (which, like the Internet, has borrowed much of its tech- nology from innovations in the military’s information technologies), USC’s involvement can be located in a long history of the university’s role in national policy. The modern university began, at least in part, as an ideological agency of the state. It was intellectually shaped as a cultural institution whose task was to aid and abet the production of the ‘nation-state’, a coherent, homogenous cultural nation contained by the state. Bill Readings describes a paradigmatic example, the University of Berlin, for which Alexander von Humboldt was primarily responsible: ‘Humboldt’s project for the foundation of the University of Berlin is decisive for the centering of the University around the idea of culture, which ties the University to the nation-state.’ And, he adds, the project is developed at the moment of the emergence of the German nation-state. In addition to being ‘assigned the dual ask of research and teaching’, the university is also involved in ‘the production and inculcation of national knowledge’ (Readings, 1995: 12).

### A2: Negative Propaganda

#### Be skeptical of anti-immigration claims, they are based on political propaganda with a loose relationship to reality.

Ghoshray, 2007 (Saby, [specializes in Constitutional Law, International Law, Capital Jurisprudence, Military Tribunals, and Cyberspace Law] “Immigration: Both Sides of the Fence: Is there a Human-Rights Dimension to Immigration? Seeking Clarity through the Prism of Morality and Human Survival.” *Denver University Law Review,* 84 Denv. U.L. Rev. 1151)

The public opinion and dividing lines on U.S. immigration, whether legal or illegal is obvious. n10 Print media, television media, and even radio [\*1155] media are quick to blame immigrants for terrorism, n11 crime rate hike, n12 socio-cultural change, n13 and draining the public welfare system, n14 just to name a few. Native-born Americans have not always lent a welcoming hand to new immigrants, n15 and the feeling of resentment towards immigration has reached a new peak. n16 The extreme feelings of anti-immigration have been fueled by the domestic concerns about terrorism and the economy. n17 The anti-immigrant feeling as a result of a heightened fear of terrorism is a more recent phenomenon. Consider the terrorism factor. Since 9/11 U.S. citizens are bombarded with elevated security alerts, stricter body searches at public events, and are being persuaded about the need to build a fence along the Mexican-U.S. border. Consider the economy factor. The threat of losing jobs and lowering the hourly wage has been the rallying cry on the issue of losing economic advantage. The increase in unemployment among U.S.-born citizens, n18 and downward pressure on wages at all levels n19 have been blamed on immigrants. Existing economic literature and empirical economic studies suggest that the public cries about losing economic advantage to immigration is without merit. Yet, the perception persists that illegal aliens or foreigners are taking all the jobs from native citizens, n20 and that these same immigrants are overburdening the welfare system. n21 These perceptions have grown in intensity as numerous vested interest groups politicize the immigration issue. n22 Also, the many news-media channels rely on the immigration debate to boost their ratings by constantly propagating an alarmist viewpoint among viewers. n23 The issue of immigration acts as fodder for those wanting to dramatize and abuse this emotionally-riddled issue for their vested gain. Respected research on the labor market [\*1156] impact of immigration, however, supports the fact that immigrants do not displace native workers.

#### Anti-Immigration activists cast immigration as a privilege, which results in the abrogation of human rights and the inability to discuss immigration’s connections to human rights.

Ghoshray, 2007 (Saby, [specializes in Constitutional Law, International Law, Capital Jurisprudence, Military Tribunals, and Cyberspace Law] “Immigration: Both Sides of the Fence: Is there a Human-Rights Dimension to Immigration? Seeking Clarity through the Prism of Morality and Human Survival.” *Denver University Law Review,* 84 Denv. U.L. Rev. 1151)

By carefully viewing immigration as a privilege, as opposed to a right, the Euro-centric political entities have been immensely successful in advancing the rationale of discretionary implementation. I would argue, whenever there is discretionary scope, exclusionary elements exist, which I have examined in detail in the previous section. How does this happen? In my view, the exclusionary bias of immigration is borne out of both a misguided perception of the economic impact of immigration and a fearful fight for self-preservation. n80 While literature is replete with economic issues surrounding immigration, n81 the interplay of race, symmetry, and the economy has not been studied thoroughly. n82 Economic impacts shape policy, but when countless lives are at stake, it is paramount that we take the blinders off from our collective consciousness and take an introspective look at the human-rights issues surrounding immigration. As history dictates, by eliminating the moral and human-rights dimension from immigration, the anti-immigration lobby is able to place the issue of privilege in a direct collision course with the issue of human rights. n83 Why must we establish whether immigration is a privilege or a right? Because where the privilege becomes a matter of discretion and rights become a matter of absolute entitlement, abuses do arise. When it is a privilege, the administrative enforcement becomes far more aggressive as it no longer requires satisfying the human-rights dimension, as has been witnessed in the obvious U.S. policy changes since 9/11. As the government responded with vengeance, hundreds of thousands of legal resident non-citizens became subject to the full fury of the U.S. Justice Department. By focusing suspicion on groups of individuals, based on religion or national origin alone, n84 the USA Patriot Act n85 unleashed its expanded power to invade people's privacy and imprisoned them without due process. For example, the Patriot Act allows law enforcement agencies to search a person's dwelling or workplace with a search warrant when the occupant is away, take photographs and physical [\*1167] property, including communications equipment, and not inform the owner or occupant until later. n86 Such intrusiveness of basic freedom comes from the provisions within the Patriot Act which approve the delayed notice to occupants after the search has already been conducted. n87 What most Americans do not recognize as implicit within these new policies and practices, is that within them there resides an absolute abrogation of human-rights ideals that has been the heartbeat of American democracy.

### Extension: Human Rights Connections

#### 3 broad human-rights based justifications for immigration.

Ghoshray, 2007 (Saby, [specializes in Constitutional Law, International Law, Capital Jurisprudence, Military Tribunals, and Cyberspace Law] “Immigration: Both Sides of the Fence: Is there a Human-Rights Dimension to Immigration? Seeking Clarity through the Prism of Morality and Human Survival.” *Denver University Law Review,* 84 Denv. U.L. Rev. 1151)

These systematic violations of human rights and routine denials of the legal rights of immigrants compel us to engage in an inquiry that begins with the profound question we asked earlier: Is there a human-rights dimension to immigration? Where does the human-rights element reside within a broader discourse on immigration? How does it come into play in a broader immigration discourse? I will first attempt to understand [\*1161] the human-rights viewpoint for economic and human welfare concepts, and then examine the global-justice viewpoint.

#### The status of immigration as a fundamental human right emerges from the “shock the conscious” test.

Ghoshray, 2007 (Saby, [specializes in Constitutional Law, International Law, Capital Jurisprudence, Military Tribunals, and Cyberspace Law] “Immigration: Both Sides of the Fence: Is there a Human-Rights Dimension to Immigration? Seeking Clarity through the Prism of Morality and Human Survival.” *Denver University Law Review,* 84 Denv. U.L. Rev. 1151)

Not all rights are automatically incorporated in the human-rights doctrine, nor do they become enshrined in the relevant constitution of the nation state. Along the journey of our civilization, historical developments take place which determine humanity's need for certain protection or expansion of certain liberties. Rights are created in such opportune moments of time, but when they are recognized is a different story. The legitimate question comes to the mind then, what is a true test, a test that can be employed to identify whether a right truly belongs to the category of human rights or fundamental rights? Allow me to bring to focus the "shock the conscience test." n106 By performing this test, we are able to determine whether an action or behavior falls outside the standards of civilized decency. Does the human right to migration require the creation of new enumerated rights, such that the fundamental nature of that right is so profound that denial of such right will pass the shock-the-conscience test of constitutional adjudication? The basic premise of the shock-the-conscience test of certain rights resides in the premise that follows. Certain rights are so inherent, so [\*1175] fundamental in the current conception of our human existence, that any abrogation of such right or explicit denial of it must be viewed as shocking the conscience. Not all rights are fundamental rights nor are they all human rights, as rights could be envisioned, rights could be structured, rights could even be derivative of existing rights. In order for them to qualify as analogous to basic fundamental human rights, the rights must pass the shock-the-conscience test. From this discussion, it is natural to see that the right to migration would be within the premise of a human right, but does not pass the shock-the-conscience test unless a gross and egregious violation of humanity is taking place. Simply invoking the economic rationale is not the way to cross the threshold for establishing a fundamental right to migration. Next, I examine whether there is a basis to identify migration as a human right that is derived from the natural-law conception of basic rights. n107 Why natural law? The right to migration has to be seen through the prism of human existence, a broader meaning of human existence, and its interrelationship within the common property ownership doctrine discussed earlier. If fundamental economic rationales are so compelling that the very sustenance of humanity is at stake, we must exert extreme prudence in adjudicating our administrative decisions regarding immigration. This is also the essence of right creation with the fundamental relationship between earth and human as the humans try to control its own destiny. Therefore, the dual paradigm based on the basic premise of natural-law doctrine to establish the right to migration as human right and the economic reason for sustenance of humans brings us to a poignant issue. Which do we choose, the unbridled right to economic sufficiency and material comfort to the first occupants, or the basic necessities for all humans within a shared-resource paradigm? The final answer must come from the deeper meaning of life, the meaning enshrined in the perpetuation of natural tendencies of humanity. It is a very difficult paradigm. Primacy must be given to the possibility of a scenario where countless millions of individuals could be deprived of the basic necessity of life, as they cannot afford to sustain themselves. Are we bold enough to choose life over luxury? [\*1176] Right to migration as a human right is based on a conflict between a State's natural impulses to maximize the potential for those who reside within its border over the fundamental right of preserving basic necessity for all of humanity. How does natural law define this? These are the questions we must answer. My natural-law analysis would assert that, the compelling national interests of the more advanced, richer countries must not supersede the fundamental right to survival of people from other parts of the world. As neocolonialism rears its all-encroaching tentacles to grab every natural resource it finds in its wake, the more powerful countries owe it to the rest of the world to share in the bounty, the natural right and the human right doctrine should surface in order to protect that right of all humanity. Indeed, this right may not be enshrined within the established jurisprudence in the developing world, but must be recognized by the more advanced States within a broader humanistic viewpoint.

#### Understanding the relationship between immigration and asylum policy is of vital importance for human rights discourses.

Kjaerum, 2002 (Morten, [Director for the Danish Center of Human Rights] “Refugee Protection Between State Interests and Human Rights: Where is Europe Heading?” *Human Rights Quarterly* 24:2 DOI 10.1353/hrq.2002.0024)

In 1948, profoundly influenced by the atrocities of World War II, the right to seek and enjoy asylum from persecution became human right number 14 of the Universal Declaration of Human Rights (UDHR).3 In particular, the non- admission policy, which had been adopted by many states in relation to German Jews, Roma and others in the 1930s, had catastrophic consequences because Jews and others found nowhere to seek asylum.4 Any individual should be granted the right to enter the territory of another state to apply for protection. Moreover, it followed logically from several of the other principles embodied in the UDHR that the international community should request countries to afford the right to seek asylum to individuals who were subject to violations of the human rights listed in the UDHR. Otherwise people would, in some cases, be less inclined to stand up for heir rights and to further develop the international respect for human rights norms.5 The right to seek asylum was reaffirmed at the 1993 UN World Conference on Human Rights in Vienna,6 and it is part of the draft EU Charter on Fundamental Rights.

### A2: It’s Good for the Economy

#### Economic conditions in many nations are a result of exploitative economic policy from developed nations, creating a moral obligation for developed nations.

Ghoshray, 2007 (Saby, [specializes in Constitutional Law, International Law, Capital Jurisprudence, Military Tribunals, and Cyberspace Law] “Immigration: Both Sides of the Fence: Is there a Human-Rights Dimension to Immigration? Seeking Clarity through the Prism of Morality and Human Survival.” *Denver University Law Review,* 84 Denv. U.L. Rev. 1151)

Let us try to understand how the issues of unemployment, poverty, loss of agriculture, and trading patterns impact the human-rights dimension of immigration. If we look at the immigration pattern, especially when it comes to analyzing the immigration that is based on economic necessity, we must take a detailed look at the countries from where people are trying to immigrate. Beyond the geographical categorization, these countries form several broad categories. The first category contains the countries, in which economic resources are asymmetrically allocated. n71 These are predominantly countries, which are ruled by autocratic dictators n72 or oligopolies. n73 I would assert that the United States is responsible, in a significant way, for allowing these regimes to continue to thrive and survive politically, despite plundering the wealth of these countries, thereby perpetuating an uneven distribution system. This framework leaves countless millions of hapless humanity under persistent poverty with no hope for resurrection. Take an example of some Latin American countries where, between the 1950s and the 1980s, the United States has been largely responsible for promoting either a civil war, n74 or supporting the regime for fear of spreading communism, n75 while giving scant respect to humanity's need for equalization of resources. Therefore, having been at least implicitly responsible in impacting these countries' poor economic conditions, the responsibility and obligation lie with the United States to allow reasonable immigration to its countries. The next set of countries I want to examine are those where significant world-trade-related pacts have been entered into and resulted in severe degradation to the traditional way of life. n76 Particular segments of the population in those countries find themselves under sustained and growing unemployment. I would argue that the United States bears responsibility for providing equitable rehabilitative measures in economic parity for these people. The North American Free Trade Agreement's (NAFTA's) impact on the agriculture sections of Mexico would bear [\*1165] testimony to this. n77 Evidence has been uncovered that across the southern and southwestern lands of Mexico, NAFTA's impact has been severely felt as the farmers can no longer compete with the subsidies that are given to the farmers in the United States and the rich heritage of agriculture mechanisms to which U.S. farmers are privy. Therefore, in terms of both the quality of production and the quantity of production, Mexican farmers are falling behind, and resorting to the abandonment of their crops and farm lands. n78 These landless farmers, are the very immigrants that put their fate in coyotes and cross the border the borders into America in search of a better life. Let us examine why NAFTA was created. Though equality and equity was the premise for creating NAFTA, it was designed to dominate the North American agricultural sector and to give an upper hand to the American farmers. While this agenda was successful, it had an adverse impact on the farmers in Mexico, who cannot compete with their U.S. counterparts. A simple example makes this point abundantly clear. The Mexican farmers are lucky to have 5-7 acres of land to work, whereas their American and Canadian counterparts enjoy the blessings of 250 acres on average. n79 This simple fact alone issues a death sentence to the Mexican farmer. Should we now close the border and let these people die of starvation and malnutrition? Herein rests the human-rights dimension, hitherto missing from today's scholarly debate.

#### From a purely economic perspective, the United States has a moral obligation to recognize the human rights dimensions of immigration. Three reasons:

Ghoshray, 2007 (Saby, [specializes in Constitutional Law, International Law, Capital Jurisprudence, Military Tribunals, and Cyberspace Law] “Immigration: Both Sides of the Fence: Is there a Human-Rights Dimension to Immigration? Seeking Clarity through the Prism of Morality and Human Survival.” *Denver University Law Review,* 84 Denv. U.L. Rev. 1151)

First, the United States, by virtue of its economic dominance in the world, has been somewhat responsible in shaping a world economy that is impacted by uneven distribution of wealth in various parts of the world. Therefore, it is morally obligated to provide economic parity to these people. Second, I would argue, that the United States has a checkered history of colonization, where it has either been in the forefront of colonization or has supported countries that have colonized others. This process of colonization is still continuing by means of economic colonization of rest of the world. Therefore, the United States has inherited the moral obligation to provide a semblance of economic parity to those people it has colonized in the past or where it is still in the process of colonization in some form. The most efficient way to impart economic parity, I would argue, could come by means of extending the economic fruits of immigration to its shores. Third, I argue that because of America's dominance in the world-trade market, it has been the intellectual leader to implement different treaties like NAFTA, and the World Trade Organization ("WTO") movements. Economic reverses confronted by other countries as a result of economic treaties that have historically benefited the United States should require at least a moral obligation on the part of the United States to open its doors for a more liberalized immigration policy. The examples above provide ample basis to assert that the United States has a moral obligation to develop an expansive immigration policy that is more inclusive than exclusive. Clearly, this moral obligation emanates from economic rationales. Let us revisit one scenario here. As discussed earlier, NAFTA resulted in the destruction of agrarian infrastructure in some places in Mexico, n102 so much that thousands of people were left with no alternative for their financial future. n103 Do these people have legitimate rights to immigration to the United States, as they have [\*1172] been directly affected by the aggressive U.S. fiscal policy? Or, stated differently, does the United States have a moral obligation to provide economic sustenance to those affected by NAFTA? Suppose we agree that because of America's undue influence, situations were created in other countries that have a derogatory impact on their citizens. How could we measure the true economic impact and how that impact could be used to develop an immigration policy? The question becomes more complex when we have to identify eligible candidates for immigration. This is a complex set of issues that must be considered.

### A2: Communitarianism

#### Immigration debates prove flaws in communitarian ideals.

Gordon & Lenhardt, 2007 (Jennifer & R. A., [Associate Professors of Law at Fordham State University] “Citizenship Talk: Bridging the Gap Between Immigration and Race Perspectives.” *Fordham Law Review*, 75 Fordham L. Rev. 2493]

One element of this critique, as we note in the Introduction, is the recognition that the term "citizenship" is not a unitary concept. n19 "Citizenship" is used to refer to such disparate ideas as immigration status or nationality, forms of political participation, entitlement to substantive benefits, and elements of individual or group identity. n20 Linda Bosniak and other scholars have further noted that these strands of citizenship - often assumed to be fully congruent - do not map neatly on each other. For example, in a context where many immigrants become politically involved in their new country before they are legal residents, and may maintain political involvement with their old country long after they have left, political participation does not correspond to citizenship as nationality. n21 [\*2501] Likewise, many of the elements generally understood to make up "substantive citizenship," such as public education and public benefits, are available to noncitizens as well. n22 Beyond their descriptive value, these observations challenge the bedrock assumptions of theories such as communitarianism, which focuses on the need for hard borders in preserving and distributing benefits, in creating community, and in ensuring the legitimacy of community rules. n23 Immigration scholars have critiqued the communitarian argument on the grounds that it derives its legitimacy from the inaccurate assumption that all those who are present within the community are equal participants in its democracy, and that all those affected by the decisions made through its deliberations are likewise represented in them. n24 Neither holds true in the United States today, if indeed they do in any society. As immigration scholars note, millions of immigrants are physically present within our borders and governed by our laws but are ineligible for citizenship because they are undocumented or, if legally present, because they do not meet the requirements to apply. n25 Furthermore, literally billions of people outside of the community are deeply affected by the decisions made within it.

## Negative

Human rights are not transcendent. They are situated squarely within specific social and political contexts through which they are constructed and enforced. The very real danger of a universal individualist approach is that human rights can appear to reside beyond the political fray while masking deep inequalities that exist within the societies and polities in which they reside. If we are to be serious about alleviating vulnerability, we must constantly be vigilant of this danger and critical of the political and structural roots of human rights.

#### It is because I agree with this quotation from Jaya Ramji-Nogales that I negate today’s resolution:

Ramji-Nogales, 2014 (Jaya [Associate Professor of Law and Co-Director of the Institute for International Law and Public Policy], “Undocumented Migrants and the Failures of Universal Individualism,” Vanderbilt Journal of Transnational Law, 47 Vand. J. Transnat’l L. 699)

#### Immigration ought to be recognized as a human right.

In order to add clarity to this debate, I offer the following definitions: (Or agree with the Affirmative’s definitions)

#### Immigration

Oxford English Dictionary, 2015 (Online)

The action of immigrating; entrance into a country for the purposes of settling there

According to the same source, immigrating means:

To come and settle in a country (which is not ones own); to pass into a new habitat or place of residence.

#### **Human Rights**

Oxford English Dictionary, 2015 (Online)

Rights possessed by humans; the set of entitlements held to belong to every person as a condition of being human

#### **In order to negate today’s resolution, I offer a value of difference, which John T. Warren explained as:**

([Professor of Communication, Southern Illinois University] “Performing Difference: Repetition in Context” *Journal of International and Intercultural Communication* 1.4 (2008): 290-308. DOI 10.1080/17513050802344654)

The major problem with current discussions of difference in communication is that we do not have the same sophistication in talking about difference conceptually as we do talking about aspects of culture (race, gender, sexuality, etc.). When talking conceptually about difference, we often either conflate all differences as the same of a kind or we tend to build on the notion of differences, separating out the sites of difference actualized (race, gender, etc.). Both ignore difference as a concept, both erase the heuristic nature of how power is produced in social interaction. That is, if we consider difference as proposed by Deleuze (1968/1994), we can see a more complicated way of seeing how power is at play. First, arbitrary separations of racism, sexism, heterosexism, and so forth only work to erase the points of difference that exist within the groups themselves. Indeed, given that each act is new, the reduction leaves the very concepts (race, gender, etc.) distant from each other, erasing the potential of seeing them in concert (Allen, 2004; Johnson, 2000). That is, without a careful analysis of how difference is generated and how it sustains itself across various enactments of power, we only talk around the issue. This is also true for those who wish to avoid the trappings of race and gender (and class, sexuality, etc.) and discuss difference itself. Often, such conversations fail to account for the phenomena in complex enough ways (Fenstermaker & West, 2002). Fenstermaker and West’s book does attempt to draw the conclusion that difference is a social accomplishment (and they do provide some tempting examples), but ultimately draw a less-convincing case for difference outside of the markers of difference. Indeed, in their efforts to locate the patterns of difference in production, they conflate each act as one of the same, one act within the pattern of acts. In this moment, the divisions they might seek to frustrate (i.e., class and gender and race) are reconsolidated even as difference, as Deleuze (1968/1994) might say, is effectively reduced to its simplest similarities. What I propose is needed in communication studies research, specifically the research in the site of culture, identity, and difference, is a more careful and nuanced point of analysis. That is, we need to change the way we talk about difference. One way to do so is the Deleuzian approach I offer here. We can respecify how, in communicative interaction, difference is produced and conceptualized. By embracing difference and understanding the repetition of difference as the ontological status of humanity, we might be able to refigure what we mean when we discuss who we are and how we understand our relationships with each other. In May’s (2005) excellent summary of Deleuze and his impact on Western thought, he notes the following about Deleuze’s project: [L]anguage overspills itself, always doing more than it can say. And we have begun to think of this world as well, moving beyond the dogmatic image of thought we have inherited toward a new, more agile, thought that palpates what it cannot conceive and gestures at what it cannot grasp. (pp. 114􏰀115) What Deleuze brings (and what I’m attracted to and, perhaps, not yet able to say with eloquence) is the hope embedded in reconceiving of who we are to such a degree that in order to live as he would have us live, we would be able to make connections in much more productive and hopeful ways. What that looks like is, as of yet, perhaps unthinkable, beyond the edge of our current thinking. It is what Britzman (1995) might describe beyond the limits of thinkability, the place where our imagination is constrained by our current mode of thinking. Indeed, Deleuze does not prescribe a way to live, but makes it clear that we might do it in more hopeful ways.

#### **To provide an understanding of how to achieve difference, I offer the CRITERIA of PROCESSCUAL AGENCY which**

Connolly explained in 2011 (William E. [Professor of Political Science at John Hopkins University] *A World of Becoming.* Durham, NC: Duke University Press, 2011.25-6)

Perhaps we can now turn to human agency. Human agency involves much more than proto-agency, but it is equally important to bear in mind that limits to human agency flow from the proto-agency of other systems and the strains and limits built into the jerry-built character of human agency itself. There is no consummate agency anywhere, partly because each mode of agency is compromised by limitations attached to its happenstance evolution and partly because each periodically encounters nodes and levels of agency from elsewhere. With such considerations we both curtail the hubris expressed in the “anthropic exception” and explain by other means some of the limits and ambivalences Augustine housed in the inheritance of original sin. What, though, are these other attributes of human agency? Well, a human agent not only has feelings, intentions, and susceptibility to satisfaction and dissatisfaction. Unlike the bacterium, consciousness is the crowning point of its expressive tendencies to action. To identify consciousness as the end point of activity already underway (rather than its starting point) is both to appreciate its importance and to challenge the theories of consciousness that make the link between consciousness and agency definitional. Additional capacities are also discernible. You can forge alternative possibilities of action and decide between them. You can also reflect on previous patterns of action and try to alter it in the light of this second order reflection. If the attempt to alter the settled disposition falters—think of the micro-agentic powers of the desire to smoke, to engage in illicit sex, to brag, or to remain innocent of the complexity of the world—you can apply tactics to yourself self-consciously to loosen up some of the lower order drives (I will discuss what some of these tactics are in chapter 5). You can also invoke ethical considerations to inform your second order deliberations, and so on, almost endlessly.

### Contention One: The logic of human rights claims are based on a flawed understanding of the world according to Universal Individualism, hampering effective action.

#### **A. Human rights discourse places the individual as the primary unit of analysis, making it impossible to explore effective group action.**

Ramji-Nogales, 2014 (Jaya [Associate Professor of Law and Co-Director of the Institute for International Law and Public Policy], “Undocumented Migrants and the Failures of Universal Individualism,” Vanderbilt Journal of Transnational Law, 47 Vand. J. Transnat’l L. 699)

The individualist approach to human rights conceptualizes the individual as the primary unit in society. This depiction of social relations is at odds with the organizational norms of many societies and offers an incomplete representation of other societies. Individualism overlooks the importance of group identity and solidarity in resolving social problems. It also focuses attention on harm to specific individuals, obscuring the broader societal ramifications of vulnerability. As a result, human rights approaches may impede alternative emancipatory strategies that may be more effective. n43 Ongoing debates over cultural relativism and human rights suggest that in many societies, people are conceptualized primarily as members of groups rather than as autonomous individuals. n44 Though some of these arguments have been crudely framed and controversial, they offer a deeper truth that the individualist focus of human rights law ignores. This is the social constructionist perspective - the idea that individuals are autonomous but exist within concrete social [\*713] relations that develop through continual interaction. n45 This conception of society, which moves us beyond viewing individual human beings as rights bearers and economic actors, creates expectations of mutual interaction and mutual sustenance. n46 An individualist approach to human rights overlooks the importance and mutually beneficial nature of such relationships. For many people, group identification is an important component of identity. For example, an undocumented migrant might view herself as a congregant of an Evangelical church, as a caretaker to her elderly parents or grandchildren, and as a member of a community group that seeks to improve the situation of immigrants. These group identities may be more important to her than her individual identity, and the relative importance of those identities may, of course, shift over time. Yet the atomistic nature of human rights law prioritizes her individual attributes, in particular her lack of lawful immigration status, in determining the level of protection she should receive. Legal conceptions that do not match up with an individual's self-conception risk undermining the legitimacy of the law. Moreover, such groups are important to society in numerous ways, and human rights law's failure to recognize these social ties may damage both the groups and society more broadly. Grouping is a vital component of civil society. As individuals cohere around common beliefs or needs, they form movements that are important in ameliorating their condition, the condition of others, and society as a whole. n47 For vulnerable individuals, group identity and solidarity may be crucial tools in improving their situation. n48 As one person, it may be difficult to make one's voice heard, but as a member of a broader coalition, it may be possible to express common concerns in the political sphere. The public presentation of these concerns may bring forward yet more individuals impacted by them or may help to raise awareness on behalf of those who are unable to do so themselves. Broader society benefits from a robust exchange of ideas and from ensuring that marginalized groups are incorporated into the political process rather than being permanently sidelined. Human rights law depicts people as autonomous individuals rather than members of groups ("undocumented migrant" rather than "church-goer, caretaker, and community activist"), failing to account for social ties in legal decisions that in turn narrow the public discourse.

#### B. Human rights discourse is based on an assumption of individual ability, which is based on faulty assumption about movement.

Ramji-Nogales, 2014 (Jaya [Associate Professor of Law and Co-Director of the Institute for International Law and Public Policy], “Undocumented Migrants and the Failures of Universal Individualism,” Vanderbilt Journal of Transnational Law, 47 Vand. J. Transnat’l L. 699)

The universal individualist approach to human rights focuses on individuals rather than political and economic systems, offering rights instead of structural solutions. This orientation presupposes autonomous and freely functioning individuals existing on a level playing field. Yet the global economic system is marked by dramatic inequality. Human rights law's emphasis on the individual diverts attention away from distributive inequities, thereby increasing the vulnerability of economically marginalized populations. This prioritization of the individual also masks the political choices that underlie both the current human rights system and the current economic structure. It narrows the debate to focus on particular individual rights rather than critically examining larger power structures and their beneficiaries. The case study of undocumented migrants illustrates the ways in which universal individualism furthers global economic inequity and begins to suggest alternate approaches to protecting vulnerable populations. Migration, particularly economic migration, is typically conceived of as a choice made by an autonomous individual actor. This is a misconception. n199 Undocumented migrants are often trapped in systems of economic disadvantage that are almost impossible to transcend, with few options but to migrate in order to provide basic sustenance for themselves and their families. n200 But the global structural economic conditions producing the migrant and their status as undocumented are rarely discussed; both in human rights law and in the public sphere, the focus in determining the validity of rights claims is on whether the migrant is lawfully present. n201 Globalization, or the "closer integration of the countries and peoples of the world," can be attributed to decreasing costs of communication and transportation and the dismantling of obstacles to cross-border flows of capital, goods, information, and services. n202 [\*745] Though its precise commencement date is difficult to pinpoint, the pace of economic globalization increased with the advent of neoliberal economic policies in the 1980s. While cross-border movement has become cheaper and faster in the globalized economy, most of the world's population does not benefit from the same principles of free movement accorded to capital, goods, information, and services.

### Contention Two: Immigration relies on the logic of citizenship, which ultimately reifies the harms it attempts to alleviate.

#### A. Citizenship as a category is produced through the enforcement of immigration policies.

Rosenbloom, 2013 (Rachel E. [Associate Prof. Northeastern University School of Law) “The Citizenship Line: Rethinking Immigration Exceptionalism” *Boston College Law Review* 54 B. C. L. Rev 1965)

Citizenship, then, is not just a category that precedes immigration enforcement and determines the path that an enforcement action will follow. It is also a status that is produced by the administrative and judicial procedures associated with immigration enforcement. Moreover, as Mario Guerrero's description of his immigration and criminal proceedings vividly conveys, citizenship status is not just produced by the enforcement process; it is produced differently by different enforcement processes. A person apprehended by immigration officers and charged with being a "removable alien" emerges from such a process categorized as either a citizen or noncitizen. A person who is criminally charged in a federal district court with illegally entering or reentering the United States emerges from the resulting judicial proceeding deemed either a citizen or noncitizen. Crucially, the citizenship determinations that emerge from such processes are often different due to differences in the procedures themselves, most notably the right to appointed counsel. n294 The results of such proceedings are determined not only by the existence of documents and other forms of evidence--i.e., by "paper"--but also by the nature of the procedures themselves.

#### B. Calls for inclusion in regimes of citizenship are based on a logic of inclusion which ultimately reify oppressive structures.

Chavez, 2015 (Karma R. [Associate Professor of Communication Arts at the University of Wisconsin, Madison] “Beyond Inclusion: Rethinking Rhetoric’s Historical Narrative” *Quarterly Journal of Speech* 101:1; DOI 10.1080/00335630.2015.994908)

Citizenship is the quintessential example of this kind of inclusionary process that serves not to transform structures, but to enhance them.19 In discussing the specific instances of amnesty and other expansions of citizenship’s parameters, Patchen Markell argues that such expansions are often viewed from a universalist perspective that emphasizes only their emancipatory potential. Such expansions are often restrictive for the newly included, even as they bolster the idea of a benign and sovereign state. Of course, disciplinary inclusion is not the same as national inclusion, yet all inclusionary logics seem to share the fact that they reinforce the existing structures and tend to obscure those structures’ flaws. Furthermore, inclusion also reinscribes the system in a way that makes posing alternatives to it or offering critiques of it much harder. But alternatives and critique are precisely what are necessary to counter the persistent reinscription of this narrative in Rhetoric.

#### C. Discussions of history often function as propaganda for citizenship, promoting inclusion at serious cost to difference.

Chavez, 2015 (Karma R. [Associate Professor of Communication Arts at the University of Wisconsin, Madison] “Beyond Inclusion: Rethinking Rhetoric’s Historical Narrative” *Quarterly Journal of Speech* 101:1; DOI 10.1080/00335630.2015.994908)

As McKerrow argues in an earlier essay, rhetoric “constitutes an administrative rhetoric— it concerns itself with the distribution of resources necessary for the maintenance or alteration of power.”1 These deeply entrenched biases already have been highlighted by feminist, queer, critical race, postcolonial and decolonial scholars, among others;2 that our field is constituted through the dominant norms that McKerrow and others have identified certainly deserves further attention. However, I want to offer another way to understand Rhetoric’s intellectual history: as a citizenship narrative. In an astute essay, Amy L. Brandzel maintains that history has been used to discipline the field of Women’s Studies by suggesting that there is a single subject of feminist history at its center: “the whitenormative citizen-woman.”3 In my view, we make less bones about this in Rhetoric: the many white men and the handful of women who have taken it upon themselves to tell our history are more or less unabashed about the fact that a primary concern in rhetoric is to examine and enhance citizens’ discourses. From traditional studies of public address, to an array of social movement studies, to analyses of democratic deliberation and the public sphere, Rhetoric scholars are concerned almost exclusively with citizen discourses, mostly from white men in public. Of course, some of us have written of women, people of color, indigenous folks, and immigrants, too. But even in those cases, many of which explore how the marginalized petition the State for recognition or redress, the study of rhetoric in the main is the study of people appealing to/for citizenship. Consequently, most of the rhetorical theory and criticism published in the field takes the value and ideal of citizenship for granted, ignoring altogether or, at best, reframing appeals that challenge the very bases of citizenship and the nation-state. In my view, it is imperative that we break from that history, not in order that Rhetoric may become a more inclusive discipline but so that it may become something entirely different: a discipline constituted through non-normative, non-citizen, non-Western perspectives and ways of knowing and being. This is not another essay about Rhetoric’s history of exclusions. This is an essay about our field’s long standing investment in the normative formation of citizenship, and how even the postmodern turn has not shifted that master narrative. Therefore, over its course I explain why widening the scope or including more voices in our history is not the answer, and I instead identify three key pieces of scholarship that may serve as important touchstones as we imagine alternatives to the citizenship discourses that to this point has oriented our discipline’s history.

### On-Case Cards

#### CASE CARD: A human rights based approach to systems of inequity ends up making inequity worse.

Ramji-Nogales, 2014 (Jaya [Associate Professor of Law and Co-Director of the Institute for International Law and Public Policy], “Undocumented Migrants and the Failures of Universal Individualism,” Vanderbilt Journal of Transnational Law, 47 Vand. J. Transnat’l L. 699)

Human rights law's narrow focus on individual rights prevents inquiry into the root causes of migration as well as the benefits that developed nations receive from both the labor of undocumented migrants and the economic policies that push undocumented migrants to leave home. This myopia stifles not only legal decisions concerning the rights of undocumented migrants but also broader debate about the situation of the undocumented. Universal individualism pushes out of view questions about distributive inequality and the political choices that determine current economic structures. Instead of protecting the vulnerable from the harmful effects of globalization, universal individualism enables global inequity.

####  (Enforcement Specification) Without specific regulations, declaring Immigration a Human Right has little effect.

Hines, 2010 (Barbara, [Clinical professor of law at the University of Texas School of Law and directs the immigration clinic] “The Right to Migrate as Human Right: The Current Argentine Immigration Law.” *Cornell International Law Journal* 43 Cornell Int’l L.J. 471)

The importance of Law 25.871 in advancing a human rights-based model for immigration cannot be overstated. Yet despite its importance, the government has not, after almost five years, issued any regulations pertaining [\*507] to the law. As shown throughout this article, regulations will serve to clarify, reconcile, or expand provisions of the law; the lack of regulations impedes the full implementation of the law's human rights goals. n264 Regulations also serve an important function for the government officials who administer the law. While a statute sets out broad parameters and legal principles, regulations provide clear and objective criteria for government officials to apply the law. As one scholar has noted: In the absence of rules, agencies and their employees usually have wide discretion with respect to the manner in which they interpret and apply typical broadly worded ... statutes. As a result, similarly situated individuals may be the subject of widely disparate agency actions ... . Rules can serve the valuable purposes of reducing the discretion of agency per-sonnel and reducing the incidence and magnitude of inter-decisional inconsistencies. n265 It is unclear why the Argentine government has neglected to enact regulations for Law 25.871. In September 2004, Dr. Adriana Alonso, representing Argentina before the Organization of American States, asserted that the government was in the process of issuing regulations with the input of government agencies and non-governmental organizations. n266 Dr. Alonso stated that the development of regulations was difficult because of the substantial differences between the new law and the old law, which had been in effect for more than twenty years. n267 She noted that it was not the best time to promulgate regulations for Law 25.871 because of the unfavorable economic situation and high unemployment rate. n268 Curiously, she declared that the regulatory process was based on principles of equality and thus "they were attempting to be careful so as to avoid reverse discrimination, that is, not to create unequal treatment in which those harmed are [Argentine] nationals." n269 This explanation is specious because the law's principles provide immigrants with the same rights, regardless of the economic or political situation of the country, and thus the current situation does not excuse the delay in the passage of regulations. Other experts have varying theories for the lack of political will to undertake the regulatory process. One opined that the promulgation of regulations would limit the authority of the Immigration Department and, for that reason, government officials within the department are resisting their issuance. n270 A human rights attorney stated that it is not uncommon [\*508] for lengthy delays in regulations after the passage of a statute. n271 Finally, one commentator ex-plained that, at least in 2009, the current government was preoccupied with mid-term Senate and Deputy elections and wanted to avoid tackling any potentially controversial issue. n272 The lack of regulations impedes the law's ambitious and broad principles of immigrants' integration, education, par-ticipation, and equality, all of which require regulatory authority, detail, and funding. Regulations would also provide government officials with the necessary objective standards to ensure fair and impartial decision-making. Attorneys report that Argentine immigration authorities, particularly border personnel, currently lack the requisite training and knowledge to apply the law correctly in all situations.

### Extension: Universal Individualism

#### Human Rights discourses establish a problematic view of universal individualism, hampering effective changes.

Ramji-Nogales, 2014 (Jaya [Associate Professor of Law and Co-Director of the Institute for International Law and Public Policy], “Undocumented Migrants and the Failures of Universal Individualism,” *Vanderbilt Journal of Transnational Law*, 47 Vand. J. Transnat’l L. 699)

These were noble and ambitious claims. But has human rights law lived up to its promises? This Article takes universal individualism on its own terms, measuring its success by the standards of universal content and coverage and individual applicability that this approach to human rights sets forth. In other words, this Article uses the case study of undocumented migrants to determine whether the story that universal individualism tells about itself is accurate. On paper, many human rights protections apply to all humans, whether or not they have lawful immigration status. But it is extremely difficult for migrants to exercise these substantive rights when they can be discriminated against based on their immigration status and deported at any time. These vulnerabilities must first be addressed so that undocumented migrants have the ability to claim other rights. n9 International human rights law offers undocumented migrants insufficient protection against deportation and discrimination, safeguarding instead sovereign interests in territorial control. Rather than protecting the vulnerable against sovereign abuses, universal individualism has entrenched existing power imbalances. The perspective of undocumented migrants is not adequately reflected in the ostensibly shared universal values manifested in current human rights law. These failures of protection raise larger questions about the universal individualist approach to human rights. This Article begins with a systematic critique of the failures of universal individualism. The current human rights project presents a false universalism that erases certain forms of suffering from popular discourse. These claims to transcendent universalism imply that human rights law is apolitical thereby disguising the political choices that determine its content. Human rights law's narrow focus on the individual obscures larger questions of structural inequality. The individualist approach presents an atomistic conception of society that overlooks the importance of social ties and group-based identities. After setting out this critical framework, the Article describes who undocumented migrants are and which rights and values they might prioritize if the universalist approach were to include their voices. It next explores the contested content of four such rights: the right to territorial security, the right to procedural due process in deportation proceedings, the right to nondiscrimination based on immigration status, and the right to family unity. The latter right is the most widely available to undocumented migrants, though still limited; the first is unavailable in any forum. The absence of a right to territorial security is particularly problematic because it renders [\*704] undocumented migrants vulnerable and unable to protect themselves against exploitation and abuse. This Article next briefly discusses why the universal individualist approach to human rights has failed to protect undocumented migrants. It suggests that, contrary to common perception, human rights law may actually reinforce sovereign interests and exacerbate the harmful effects of globalization on vulnerable populations. This Part begins with a critical history of the relationship between human rights and sovereignty, highlighting the evolution of the universal individualist approach over time. It then focuses on the interaction of globalization and human rights, illustrating the role of global economic inequity in creating migration flows and explaining how the universal individualist approach furthers this distributive inequality. In the world of social justice, universal individualism in the form of international human rights law has become the hegemon. Efforts to protect vulnerable populations begin and end with human rights. Particularly in legal scholarship, strategies to ameliorate the situation of vulnerable groups outside the scope of human rights law focus on how that law might be extended to cover these groups. Given the failures of universal individualism, this Article suggests instead other approaches outside of or alongside international human rights law that might more effectively protect undocumented migrants and other vulnerable populations.

#### **Appeals to Human Rights set up a hierarchy of suffering, and evaluate worthiness through frameworks of legibility.**

Ramji-Nogales, 2014 (Jaya [Associate Professor of Law and Co-Director of the Institute for International Law and Public Policy], “Undocumented Migrants and the Failures of Universal Individualism,” Vanderbilt Journal of Transnational Law, 47 Vand. J. Transnat’l L. 699)

Several scholars have noted that reliance on a rights-based framework creates a hierarchy of suffering that prioritizes the "supposedly unjust suffering" of certain "innocent" victims at the expense of others who suffer in different ways or are less able to meet increasingly strict and unrealistic standards of morality. n13 Rights necessarily establish categories and must by definition rank members of some categories above members of other categories. These stigmatized categories are the basis for exclusion of certain groups from protection. In this way, rights accommodate subordination through law. n14 Rights can be viewed as "trump cards" that allow some subsets of migrants to attain fundamental rights, while others become vulnerable to exploitation and abuse because they cannot squeeze themselves into the appropriate category laid out by the rights framework. n15 The hierarchies created by these legal categories also influence moral values and social norms. The prioritizing of certain rights in international human rights law erases other rights from the discourse and from popular imagination. In the realm of international [\*707] human rights law, individuals fleeing persecution and torture are granted certain rights to nondiscrimination based on immigration status, procedural due process rights in deportation proceedings, and, if they win their claim, the right to territorial security. n16 Undocumented migrants fleeing poverty and starvation are awarded few, if any, of these rights, in the text of international human rights treaties or otherwise. n17 They are instead branded "economic migrants" who have entered their host country in violation of the law, and who should therefore be accorded only a limited set of human rights. n18 Undocumented migrants are thus depicted by human rights law itself as somehow less than human. The expressive dimension of these hierarchies should not be underestimated. n19 States understand that they need not expend effort protecting those outside the scope of human rights law and can instead focus their limited resources on the rights of those who fall within the human rights framework. The legal categories also circumscribe the scope of the debate, focusing public discussion around migrants on questions of immigration status rather than inequality and need. The categorical hierarchies created by human rights law impoverish the imagination even of those who seek to uphold migrants' rights. This critique does not necessarily lead to an outright rejection of human rights as a method of social change. The inherent limitations of a rights framework might be moderated through closer attention to concealed categories and their expressive dimension. In some cases, the power of the law may be so valuable in achieving certain ends that it outweighs the problems of the method. But those seeking to ameliorate vulnerability should approach human rights law in a measured fashion, with awareness of its flaws and hidden consequences.

#### **Human rights based approaches to problems ultimately strengthen structures of domination.**

Ramji-Nogales, 2014 (Jaya [Associate Professor of Law and Co-Director of the Institute for International Law and Public Policy], “Undocumented Migrants and the Failures of Universal Individualism,” Vanderbilt Journal of Transnational Law, 47 Vand. J. Transnat’l L. 699)

An individualist approach to human rights assumes a world of autonomous individual actors able to access and exercise rights on an equal footing. n32 This assumption of autonomy fails to recognize inequities in the global distribution of wealth, power, opportunity, and social goods that render the playing field uneven. n33 In fact, the focus on "discrete and specific social injustices" against individuals may serve to obscure political and economic inequality on a global scale. n34 From a more radical perspective, the individualist focus of human rights has been equated with empire, containing as it does declarations of equality within a differentiated and hierarchical structure. n35 The individualist approach of human rights treaties and their interpretive bodies diverts attention from their development and operation "in a global context with large inequalities of political power." n36 The structure of the individual-rights-based regime emphasizes legal sources and avenues for implementation; larger questions about the political and economic roots of inequality have no [\*711] place in the analysis. n37 The individualist focus of human rights law is also manifested in its prioritizing of negative rights, or rights that require people to refrain from acting in certain ways, over positive rights, or rights that require people to take action. n38 Efforts to ameliorate structural inequality would require concerted action, while an individualist approach to rights is content with preventing interference with individual autonomy. Finally, individualism elevates civil and political rights, which can be exercised by the autonomous actor, over economic and social rights, which might open the door to concerns about distributive inequality. The situation of undocumented migrants helps to illustrate how the individualist focus of the human rights system distracts the attention and resources of the international community, including human rights treaty bodies and NGOs tasked with enforcing these rights, away from systemic global injustice. International human rights treaties and their interpretive bodies have limited the individual rights available to undocumented migrants. It is hardly an acceptable response within the human rights regime to argue that developed countries both help to create the conditions that force these migrants to leave their countries in search of work and benefit economically from their labor. Such arguments fall well outside the scope of human rights treaties. The focus narrows to the question of whether specific human rights obligations attach to migrants seeking jobs in the developed world, entirely avoiding the structural inequality in the international order that leaves these migrants with little other choice. Through its individualist focus, the human rights regime may thus protect the geopolitical order and the interests of powerful global actors at the expense of vulnerable populations. n39 The individual human rights regime helps powerful nations evade discussions of the economic relationships between developing and developed nations that create and perpetuate inequality. n40 Moreover, the individualist nature of human rights discourse, unmoored from concerns of global inequity, enables citizens of prosperous nations to perceive and portray their right to territorial security as a moral entitlement while denying that right to noncitizens, particularly the undocumented.

#### Human rights discourses function through obfuscation, and making claims that will never be achieved.

Ramji-Nogales, 2014 (Jaya [Associate Professor of Law and Co-Director of the Institute for International Law and Public Policy], “Undocumented Migrants and the Failures of Universal Individualism,” Vanderbilt Journal of Transnational Law, 47 Vand. J. Transnat’l L. 699)

The twin phenomena of universal and individual rights have a complicated historical record. These ideas radically revolutionized the relationship between individuals and the state. Yet they also entrenched a particular approach to social change - an approach susceptible to co-optation by powerful interests anathema to the emancipatory goals of rights regimes. n198 This subpart explored the historical origins of the flaws of universal individualism. As described in greater detail above, the assumption of universality is rarely borne out in practice; cultural differences exist and cannot easily be papered over. The scope of universal rights is often overstated; in the very instruments claiming universal applicability, individuals and groups are accorded differing levels of protection. The prioritization of individual and political rights fails to address systematically structural and economic harms. Perhaps of greatest concern, the transcendent language of universal individualism disguises its limitations and perpetuation of extant power structures. The next subpart examines further the economic imbalances created by globalization, focusing in particular on the ways in which universal [\*744] individualism entrenches the vulnerability of undocumented migrants.

### Alternatives to Human Rights

#### Social movements can mobilize resistance to structures of oppression in an effective political manner.

Ramji-Nogales, 2014 (Jaya [Associate Professor of Law and Co-Director of the Institute for International Law and Public Policy], “Undocumented Migrants and the Failures of Universal Individualism,” Vanderbilt Journal of Transnational Law, 47 Vand. J. Transnat’l L. 699)

Social movements are generally characterized by the recognition and integration of social ties in their advocacy approach. This form of mobilization begins with the idea that "political struggles are relational; they are not individual," just as identities are enmeshed in social context. n261 This tenet is, of course, what gives social movements their power. An individual undocumented migrant has little political voice on the world stage, but a broad-based transnational network of migrants might be able to make its perspective heard. A social connection framework has other advantages as well. Rather than creating a discourse that focuses on the rights of individuals, social movements can discuss the social ties that are damaged through deportation of undocumented migrants and underscore the resulting harm to societies of migrant-receiving states. Social movements can also ensure that group-based identities map onto lived experience. For example, the right to family unity under international human rights law focuses on a narrow, Western definition of family as spouse and children. Social movements are not limited by the law and might highlight the harm that results from the rupture of ties to grandparents or aunts and uncles. Social movements can also gain strength by drawing on other group identities, such as national origin or language, to broaden movements for social change. Social movements step away from primarily legal or institutional approaches to problems, mobilizing instead in the political sphere. Participants in transnational social movements can take advantage of technology to exchange information, build networks, and publicize issues. n262 Such movements can be nimble, as they are able to determine and avail themselves of the most effective venue and points of leverage for their political strategy; they are not constrained by the human rights legal framework or institutional structure. n263 Social movements can, for example, present compelling stories of harm to undocumented migrants that might be limited or neutralized in court. In contrast to international human rights law, such an approach can also foreground the broader structural reasons for the situation of undocumented migrants. A social movement for undocumented migrants could try to change public opinion through media strategies highlighted in the discussion of bilateral state-based approaches. It might up the ante by organizing transnational protests [\*760] that can turn moral leverage into foreign pressure on American policy elites. n264 A sustained protest effort might create enough concern about political instability to prod political elites in migrant-receiving states to change their migration laws and policies.

#### Discussions about immigration are centrally rooted in racism, and the construction of a terrifying “other.”

Chavez, 2009 (Karma R. [Professor of Communication and Journalism at the University of New Mexico] “Embodied Translation: Dominant Discourse and Communication with Migrant Bodies-as-Text” *Howard Journal of Communication* DOI: 10.1080/10646170802664912)

The migrant as ‘‘illegal alien’’ is a legal description that gained cultural prominence in the United States with the passing of the Immigration Act of 1924. Restrictive immigration laws have always assumed ‘‘that the national body had to be protected from the contaminants of social degeneracy’’ (Ngai, 2003, p. 74). Historically, this parasitic logic meant that in the United States all immigrants were suspect to intense inspection to ensure that they were ‘‘desirable.’’ Yet the difference between ‘‘illegal’’ and ‘‘legal’’ status ‘‘became, in effect, abstract constructions, having less to do with experience than with numbers and papers’’ (p. 78). Racism largely influenced who was considered illegal. Those who were deemed ‘‘illegal aliens’’ were ‘‘something of a specter, a body stripped of individual personage, whose very presence is troubling, wrong’’ (p. 79). Those considered illegal were automatically figured as criminals and positioned as ‘‘an invisible enemy in America’s midst’’ (p. 81). Flores (2003) noted that in contemporary discourse, this connection remains: ‘‘immigrant and criminality are so closely connected rhetorically that the slippage from immigrant to criminal seems almost natural’’ (p. 363). Ngai also suggested however, that in constructing the early immigration laws, the solutions proposed to the ‘‘illegal alien problem . . . were problematic exactly because undocumented immigrants were so like other Americans’’ (p. 81). In this way, there had to be a distinction between desirables and undesirables, ‘‘us’’ and ‘‘them,’’ so that the connection between migrant and criminality was consistent. Thus, race had to become a determining factor in the categorizing of undocumented immigrants, to ensure that the ‘‘enemy’’ was not so much like ‘‘us.’’

### Extension: Citizenship Logics Bad

#### The idea of citizenship is intimately connected to the formation of the nation-state, and seriously limits our ability to understand the world.

Chavez, 2015 (Karma R. [Associate Professor of Communication Arts at the University of Wisconsin, Madison] “Beyond Inclusion: Rethinking Rhetoric’s Historical Narrative” *Quarterly Journal of Speech* 101:1; DOI 10.1080/00335630.2015.994908)

I don’t wish to debate Rufo’s and Atchison’s bounded conception of the political, but I do share their concern about the excessive use of and reliance upon citizenship in Rhetoric for what it obscures and implies about whose rhetorical practices are worthy of engagement, whose rhetorical practices can serve as the material basis for our rhetorical theory, and what modes of rhetorical practice as well as rhetorical theory and criticism matter. As I argue in my monograph Queer Migration Politics, for nearly three decades outside of Rhetoric and for roughly two decades within, scholars have identified numerous kinds of citizens that, in some instances, have very little relation to citizenship as a legal designation.9 A decade earlier, anthropologist Aihwa Ong wrote about “cultural citizenship,”10 a term that, something akin to Asen’s discourse theory, has become popular shorthand for civic, community, and activist practices that may or may not have anything to do with a legal and administrative designation.11 Others like Toby Miller and Renato Rosaldo have named sexual citizenship, social citizenship, consumer citizenship, and cosmopolitan citizenship, among others. The concern in my book and here is with what happens when we situate all subject formation and civic, community and activist practices within the framework of citizenship, a framework that cannot be divorced from its connection to state surveillance and control more generally, and its relation with the modern nation-state specifically. Since the thirteenth century, “citizenship” has referred to many practices and types of belonging, but in modern times it has referred almost entirely to those connected to governing polities, particularly nation-states. The OED tells us that, foremost, citizenship is “the position or status of being a citizen,”12 and the sense in which citizen is meant is as “a legally recognized subject or national of a state, commonwealth, or other polity, either native or naturalized, having certain rights, privileges, or duties.”13 My argument is not that this is the only definition of citizenship or that we cannot imagine terms as more pliable than their dictionary definitions suggest. But we cannot deny that this is the predominant understanding of citizenship, and we further cannot deny that this kind of citizenship is a product of modern state development and also of the colonial creation of national borders.14 Further, I dare say that even when we might be imagining discursive or cultural practices of citizenship or expressing concern about who is participating in the political, those holding legal status or seeking it are the ones to whom reference is primarily being made. If we both delimit the political as the realm of (various kinds of) citizens and also only imagine activist and civic practices as those of citizens, do we not preclude the lives, experiences, and practices of numerous collectives and individuals who have always engaged in practices that are justifiably called rhetorical and political, but that don’t conform to this norm?