Immigration Law Teaching and Scholarship

In the Ivory Tower: A Response to "Race Matters"

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Immigration Law Teaching and Scholarship in the Ivory Tower: A Response to “Race Matters”

Michael A. Olivas*

Why does one write? Why does one respond to another’s writing? What sources does one consult and cite as influences? Professor Kevin Johnson, in Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique, offers an interesting and provocative response to these and other key questions, grounded in immigration and naturalization law scholarship, an evolving body of research and writing. In doing so, he thoughtfully makes several observations about this scholarship: he contends that mainstream law scholarship, perhaps trapped by an ivory-tower perspective about the law and its enforcement, fails to squarely confront the reality of the influence of race. For example, immersed in doctrine, the conventional wisdom does not seriously question the distinction between “aliens” and citizens, which is the bedrock of all analysis in the immigration law field. [He] further suggests that the addition of new theoretical lenses hold great promise in aiding our understanding. [He] outlines how minority scholars engaging in LatCrit (Critical Latina/o) Theory, Asian American, and Critical Race Theory legal scholarship have constructed novel analytical frameworks useful for studying the racial underpinnings and impacts of immigration law and, indeed, have commenced study in the area. [He also analyzes] how the two separate legal discourses on immigration -- ivory

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tower and race scholarship -- are ships passing in the night. This can be explained in part by the "imperial scholar" phenomenon identified in civil rights scholarship, with a small cadre of elite, predominantly white scholars engaging each other, while marginalizing the work of outsiders, which is alive and well in immigration law scholarship. At the same time, race scholars hoping to effectively challenge the ivory tower wisdom must unravel the intricacies of legal doctrine and the racial discrimination that it obscures. Rather than retreat to the safety of conferences of minority scholars, they must confront the traditionalists in the conventional immigration venues and help commence a true race and immigration dialogue. Mainstreaming the race critique of immigration law will assist in prodding scholars in the field to confront the issues and offer a better understanding of the law and its enforcement.¹

This is a tall order, and as I and others in this issue suggest, Professor Johnson hits some balls out of the park and fouls some off into the stands. As in baseball, whose metaphors I borrow here, the hits are more notable than are the misses. Only Roger Angell and a few fans remember the soaring parabolic foul balls of Mark MacGwire and Sammy Sosa -- most of us remember the exciting, towering homeruns of the 1998 and 1999 pennant seasons.

The most difficult task for many in getting a writing project underway is to define very clearly the audience, for whom the major message is intended, the crowd to whom the analysis is directed. Even though I have preached to many students over the nearly thirty years I have been teaching that they have to resolve this question before putting pen

to paper, this is often the cause of much unfocused writing, especially writing that weaves across various topics, offers confusing points of view, or never settles on an authoritative voice. Professor Johnson, however, has clear designs on the attention span of two discrete audiences, ones that glide past each other on different tectonic plates, in his view:

First, [he hopes] to convince mainstream immigration scholars focused on legal doctrine to consider racial critiques of the law, including Critical Race Theory, Critical Latina/o theory, and Asian American legal scholarship, in their analysis. Such consideration will lend power to their analysis and allow for a fuller understanding of immigration law. Second, [he aims] at persuading race scholars that immigration law doctrine must not be shunned but should be analyzed, explained, and dissembled through critical inquiry. This will not undermine, but in fact in all likelihood will bolster, their critique and allow them to unveil the racial privilege encoded [in] immigration law doctrine.²

This is a welcome opportunity for me, for several reasons. First, like most immigration law teachers, I feel beleaguered at the moment, both in keeping up with the massive sea-changes in the field, and in trying to convey these major revisions to my students, practitioners who attend my CLE presentations, and the many various publics that I address in my ongoing service capacity. This is not a field where old notes will stand pat. Rather, I regularly review dozens of research resources, journals, newsletters, commercial reporters, and listservs (particularly the estimable IMMPROF),³ in order to

² Id. at ____.

³ IMMPROF can be subscribed to by contacting <Mtaylor@law.wju.edu>.
prepare for my introductory Immigration Law & Policy class and for the advanced Business and Immigration Law course, where we do not consider refugee or family law issues, but concentrate upon Immigration Law as the trans-national regulation of labor and employment.

Second, I alternate my immigration scholarship with my writing and study in my other academic field, higher education law and finance. I always have higher education ideas and have a long term research agenda, so can plug in at anytime and at any place along the continuum. This system has served me well, and I have a well-evolved world of higher education law/finance that includes an ongoing casebook project (with a forthcoming third edition, a biennial supplement, forthcoming teachers manual, and a webpage with updates for my users and readers), law consulting (recent cases include several personnel and academic freedom matters, as well as service to a client whose case(s) went to the U.S. Supreme Court, where we won), and law practice (in addition to handling several cases, I served as General Counsel for four years to the American Association of University Professors [AAUP]). I direct a major research institute on college law topics. These interlocking interests have been carved out over nearly twenty five years of study and scholarship in the area, stretching back to a PhD thesis on an historical topic in higher education.

4 MICHAEL A. OLIVAS, THE LAW AND HIGHER EDUCATION, CASES AND MATERIALS ON COLLEGES IN COURT (2nd ed. 1997).

5 My client was the State of Florida, the defendant in College Savings Bank v. Florida Prepaid, 119 S. Ct. 2219 (1999) (fraud claim) and Florida Prepaid v. College Savings Bank, 119 S. Ct. 2219 (patent claim).

6 The UHLC Institute for Higher Education Law and Governance <www.law.uh.edu/lawcenter/programs/center or ihelg@uh.edu>.

My interests in Immigration Law are more personal and recent. In law school, I took a class in the subject from Charles Gordon, the late author of the major multi-volume treatise in the field.\(^8\) We studied from a photocopied galley sheet of the student text of his condensed desk-reference, co-authored with his attorney daughter.\(^9\) He preferred to teach the field by concentrating upon statutes and regulations, many of which he had written in his long career as INS General Counsel. I do not remember reading a single immigration case or article in the course, which I took in 1980. Despite this unusual pedagogical approach, I loved the field, which appealed to many Chicano and Latino students at Georgetown; we even had other Latino students from other DC-area law schools who took the course as transfer or transient students.

Using an adjunct to teach this field was more the norm then than not, at Georgetown and elsewhere, and even today many of the persons who teach the basic course in Immigration Law are either parttime, adjunct teachers or clinical professors, who teach the course as a part of their clinical-training capacity in human rights or immigration law clinics. The 1998-99 AALS Directory of Law Teachers lists fewer than two dozen immigration law full-time teachers who have been teaching in the field for more than ten years. In that grouping, fewer than half a dozen have been teaching longer than I; I have been teaching the subject since 1985-86, the year the first casebook appeared.\(^10\)

EDUC. 357 (Summer, 1984); see also Michael A. Olivas, A Legislative History of the Ohio Board of Regents, 19 CAP. U. L. REV. 81 (1990).

\(^8\) The multi-volume treatise is CHARLES GORDON & STANLEY MAILMAN, IMMIGRATION LAW AND PROCEDURE (1988-\(\cdots\) ) and he and his daughter also produced a single volume “Desk Edition”: CHARLES GORDON & GITTEL GORDON, IMMIGRATION LAW AND PROCEDURE (1995-\(\cdots\) ).

\(^9\) We used a photocopy of the page proofs for the first “student edition,” later published in a paperback edition.

\(^10\) ASSOCIATION OF AMERICAN LAW SCHOOLS, THE AALS DIRECTORY OF LAW TEACHERS, 1998-99 1145, 1146 (1998). The volume is updated each December. In contrast, 66 fulltime law faculty have taught the course fewer than six years, while 23 have done so from six to ten years. See id.
This is by way of showing that I have not evolved the immigration law
research/practice agenda that I have in my other scholarly field of interest. I have written
eight books, including seven in higher education, but none in immigration law. I am ripe to
carve out the same system in this field, but I always feel as if I am running to catch up.
There are the aforementioned changes. There is also a veritable flood of books, and
dozens of articles on immigration. A February, 1999 Chronicle of Higher Education article
on immigration studies singled out nearly a dozen full-length monographs on edited
volumes published since 1996.\textsuperscript{11} Of course, the list omits many others published in the
same period and since, such as the Juan Perea-edited volume analyzed by Professor
Johnson.\textsuperscript{12}

Third, this is a field where I have personally encountered many of the issues raised
by Professor Johnson’s article. It is funny, but I hadn’t put my finger on some of these
problems until I read his piece. In addition to the lag between the state of legislation (and
regulation) and the casebooks, which can render the casebooks very difficult to use, there
are the personal issues that arise in the classroom, especially the lowered stature accorded
teachers of color, in my instance encountering students (or audience participants) who
aspire certain views to me because I am Mexican American. I also have encountered
regional student variations at other law schools where I have taught as a visitor.\textsuperscript{13} The

\textsuperscript{11} D. W. Miller, Scholars of Immigration Focus on the Children, CHRON. OF HIGHER EDUC., February 5, 1999, at A19, A20.


\textsuperscript{13} For example, while teaching immigration law as a visitor at the University of Wisconsin (1989-90) and the University of Iowa (1997), I found that virtually all the students, both majority and minority, felt that immigration restrictions should be relaxed. See also infra at ______.
sum total of these experiences, some of which Professor Johnson notes or addresses, may be that I am a better teacher than I would otherwise be, as I am regularly reminded of my position -- occupational, ethnic, and ideological -- in a way I am not in my other teaching fields.

Finally, I have some thoughts on the “imperial scholar” phenomenon, described by Professor Richard Delgado and elaborated upon by Professor Kevin Johnson. Here, my views transcend immigration law as a field of study, as I have noted this phenomenon in the social sciences and have my own Richard Delgado – inspired story to relate. Professor Johnson puts me behind the eightball, in using and naming me as an example of a “Senior Chicano scholar,” writing in the field of immigration law, whose work is widely cited by one leading casebook, but not by the other. Therefore, I approach this topic gingerly, so as not to step in Professor Matthew Finkin’s “Quatsch,” appear self-aggrandizing, or appear to be self-pitying.

This project tracks three points, each arising from Professor Johnson’s piece. First, I address the fundamental “Why write,” or better, “Why cite” questions, ones that he assumes but does not directly ask or answer. Second, I reflect upon the “imperial scholar” issues he raises, including my own experience with this phenomenon. Finally, I address

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15 Johnson, Race Matters, supra note 1, at _____.

16 See infra at _____.

17 See Johnson, Race Matters, supra note 1, at _____.

18 Matthew Finkin, QUATSCH!, 83 MINN. L. REV. 1681 (1999). Professor Finkin offers a helpful translation from the original German: the word “Quatsch” means “nonsense” or “rubbish,” or in German slang, “rot,” “crap,” and bullshit.” See id. at 1681.
the topic of ideological balance in immigration law teaching and scholarship, which he raises indirectly, but which to me is the key point of his evocative essay.

I. Why Write? Why Cite?

Although he raises many interesting questions, as noted by me and others responding in this issue devoted to his article, Professor Johnson does not directly address the fundamental issues of Why do we write? and Why do we cite?, both of which are implicit in his critique. After all, he chose to address scholarship rather than to emphasize teaching, litigation strategies, or service obligations. While it is true that in this article he mentions his practice of representing immigrants before he entered teaching\(^{19}\) and he has expanded upon this experience in his compelling autobiographical book, HOW DID YOU GET TO BE MEXICAN? A WHITE/BROWN MAN’S SEARCH FOR IDENTITY,\(^{20}\) he elides over this avenue for legal change by noting in passing, “My representation of immigrants, which necessarily required formulating arguments based on legal doctrine, significantly contributed to my scholarly interest in immigration and refugee law.”\(^{21}\) In this project, he has focused near-exclusively upon scholarship, the most-refined, elite part of law teaching and the activity that requires highly self-actualized skills, sheer relentless hard work, and a specialized, scholarly, lonely mindset.

A critical understanding of imperial scholarship, exclusionary citation analysis, or textbook selection practices must first address the epistemological assumptions of any body of knowledge: why engage in the knowledge creation and dissemination function?

\(^{19}\) Johnson, \textit{supra} note 1 at ___.

\(^{20}\) KEVIN R. JOHNSON, HOW DID YOU GET TO BE MEXICAN? A WHITE/BROWN MAN’S SEARCH FOR IDENTITY (199x).

\(^{21}\) Johnson, \textit{Race Matters}, \textit{supra} note 1 at ___.

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Even after all this time, my friends are often amused to discover that the blank page (or monitor screen) still terrifies me. Really. I regularly despair at how hard this work is, how long it takes, and how solitary it can be -- even in the few instances where I collaborate with other colleagues on an interdisciplinary piece. This is even before the gnawing feeling that one’s work is typeset (by traditional means or by desk top publishing) into oblivion, cast into the void to be studiously ignored by judges, legislators, practitioners, colleagues, and deans-making-merit-pay-decisions. I have never experienced the near-sexual ecstasy that Flaubert felt in his act of writing: "Last Wednesday I had to get up and fetch my handkerchief; tears were streaming down my face. I had been moved by my own writing; the emotion I had conceived, the phrase that rendered it, and satisfaction of having found the phrase -- all were causing me to experience the most exquisite pleasure."^22 I aspire to more pedestrian satisfaction in my writing, and I suspect it shows. I am certain it shows here.

So why write? Two of my greatest influences form a bookend of reasons, John Updike and Richard Delgado. Updike, whose novel The Centaur^23 remains a favorite work and one I reread each year, is the consummate stylist and chronicler of life in the U.S. To be sure, his suburban New England life doesn’t resemble mine (and will not resemble most of my readers’), but I have always admired elegant, evocative writing, whoever wrote it. Updike has written:

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^22 In JOHN UPDIKE, Why Write?, in JOHN UPDIKE, PICKED UP PIECES (1975), at 30. For additional insights into the writing impulse, see WILL BLYTHE, ed. WHY I WRITE, THOUGHTS ON THE CRAFT OF FICTION (1998), a book of essays on the subject by twenty different writers.

^23 JOHN UPDIKE, THE CENTAUR (1963). My favorite scene is Updike’s father teaching a class on evolution, where the whole class devolves into a bleating, barking, growling menagerie. To get the students’ attention, and to make the point, he forms and throws a snowball at the blackboard.
Why write? As soon ask, Why rivet? Because a number of personal accidents drift us toward the occupation of riveter, which pre-exists, and, most importantly, the riveting-gun exists, and we love it . . . The writer's strength is not his own; he is a conduit who so positions himself that the world at his back flows through to the readers on the other side of the page. To keep this conduit scoured is his laborious task; to be, in the act of writing, anonymous, the end of his quest for fame . . . [More] and more the writer thinks of himself as an instrument, a means whereby a time and place make their mark. To become less and transmit more, to replenish energy with wisdom -- some such hope, at this more than mid-point of my life, is the reason why I write.²⁴

My good friend Richard Delgado, known to legal scholars as a wonderful and wonderfully provocative writer, said in his useful piece, "How to Write a Law Review Article":

Why write? There are several reasons: because your colleagues are writing, because you have something to say, because you want to change the law, because it's enjoyable (at least sometimes), or because you want professional advancement and recognition. Personally, I prefer the intrinsic reasons--writing as self-expression, writing because it is satisfying. But, I also enjoy the result when something I have written has an impact--stirs people up, helps a court

²⁴ WHY WRITE? In JOHN UPDIKE, id., at 33, 39.
make the right decision. Everyone's motivation is, I think, mixed, and
the mix varies from person to person and article to article.25

There you have it, from two of our most prolific writers (and with Richard's recent
forays into Chronicle - writing,26 two of our most prolific fiction writers and book reviewers).
People write because they have virtually no choice but to write. Ideas and thoughts pour
from prolific writers. Updike sheepishly confesses that he would write catsup ads if need be
for a living.27 Richard once told me that he likes to write but loves being read -- a scholarly
aspiration to fit Chesterton's famous maxim, "It is hell to write but heaven to have
written."28

I write because I like to read, and because I am regularly called upon to write and
express my views. I carry on regular correspondence with many persons, in law and in other
fields, both epistolary and through exchange of manuscripts and articles, and each week's
mail or email brings me interesting things to read and invitations to write. Although I am
certainly not in the symposium pantheon described so well by Jean Stefancic,29 I am
rounded up with the usual suspects more often these days, and this forces me to write for


26 Richard Delgado has now published dozens of fictional pieces, featuring "Rodrigo" and "the Law Professor," who
discuss legal themes. See, e.g., Richard Delgado, Rodrigo's Book of Manners: How to Conduct a Conversation on
Race - Standing, Imperial Scholarship, and Beyond, 86 GEO. L. J. 1051 (1998); several of these allegorical stories
are collected in RICHARD DELGADO, THE RODRIGO CHRONICLES (199x). The character Rodrigo is the
brother of Geneva Crenshaw, Derrick Bell's well-known fictional character. DERRICK BELL, AND WE ARE
NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987); DERRICK BELL, FACES AT THE

27 Remarks at University of Houston lecture by John Updike, March 20, 1985. See also, One Big Interview, in
Updike, Supra note 22, at 517.

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new audiences and undertake projects I otherwise would probably not begin. Thus, in the last few years I have been asked to respond to Derrick Bell,\textsuperscript{30} Martha Minow,\textsuperscript{31} Lino Graglia,\textsuperscript{32} and Kevin Johnson\textsuperscript{33} to write in symposia on racial harassment,\textsuperscript{34} on graduate education,\textsuperscript{35} and on higher education law.\textsuperscript{36} The Chronicle of Higher Education editors asked me to write about then-retiring Justice Marshall and his higher education cases;\textsuperscript{37} of course, this is an invitational piece as well, shoehorned in between book obligations. In short, I also write because I’m invited and encouraged to do so, and for the academic equivalent of why Sir Edmund Hillary climbed Mt. Everest: because the forum was there.

I suspect this explanation is what motivates many scholars and it is a perfectly acceptable reason for taking on the public task of personal revelation. We write to influence, to redirect, to frame, to provoke, to give more precise form to our thinking, to correct the record, to establish the record. There is a monastic or Talmudic basis to this aspect of our

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\begin{enumerate}
\item Olivas, \textit{State Law}, supra note 7 (in symposium issue on higher education legal issues).
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profession, scholars not as scriveners simply transcribing works but rather scholars as commentators and shapers of a synoptic text. This sense of being in a tradition, in a community of scholars (today, tied by print, faxes, and e-mail) sustains me even when I do not know all the members of the group. As Updike wryly noted, in an essay about being underwhelmed upon meeting his childhood hero James Thurber, meeting authors is like "light from a star that has moved on." In other words, through our writing we are all so well met, even if we've never met.

Professor Johnson may well feel that the need for concentrating upon the high end of the racial critique of immigration law is a self-evident proposition, one where he need not take the time to lay out the predicate for this judgment. But I do not think it self-evident and would have made it clearer why he sought to contest on this terrain rather than the other plausible sites, such as practice, politics, or regulatory policy. Surely these issues warrant our attention, rather than the fragile egos of some few scholars. Professor Finkin calls this school of radical critique "nonsensical, visible or a good deal worse"; Professors Daniel Farber and Suzanna Sherry style it "a set of relatively simple ideas and slogans that help hold a group together;" and Steven Gey characterizes the various radical critiques as "a motley batch of theories that constitute this season's academic haute couture."

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39 See id. at 7.
40 Finkin, supra note 18 at 1682.
Although Professor Johnson is a leading practitioner of LatCrit and Critical Race Theory, where several of his articles are foundational, immigration law scholarship, with few exceptions, such as the work of Peter Brimelow, has not become such a battlefield. While it is certainly true that racial critiques of immigration law and more mainstream scholarship on the subject have elided past each other, largely ignoring each other’s analyses, this politeness mirrors my own view of the practicing immigration bar: cooperation and sharing forms and information are the norms, rather than competing or sniping. In other words, there is a politeness that prevails in this field of practice, one that, to some extent, characterizes its scholarship as well.

And even Brimelow, an English immigrant who wants to pull up the ladder behind himself, and who rues that his adopted country is becoming less and less like him, even he relishes the discourse: “As a journalist, I adore angry letters from readers. They give you that warm, comforting feeling that somebody, somewhere, cares.”

Thus, Professor Johnson’s call for the two streams to interact more is also a tacit call to mix it up more, in the hope that the overall field will be shaken up and improved as a result. Two recent examples of the two sides mixing it up pose cautions, through, to those who hope that such an exchange will inevitably emit more light than heat. First, the dyspeptic, fulminating response of Anglo scholars to Critical Race Theorists of color has

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43 For example, in the edited volume, THE LATINO/A CONDITION: A CRITICAL READER (1998), the editors, Richard Delgado and Jean Stefancic, include five of Johnson’s previously-published law review articles.


46 Id. at 58.
resulted in these scholars characterizing minority practitioners of CRT as anti-Semitic, arrogant, and, in one particularly breathtaking accusation, Fascist. The same author who accused "radical multiculturalists" of such godlessness has also chided other legal scholars for allowing this sort of rubbish to exist; he charges others with an "abnegation of responsibility" for their collective failure to debunk the Delgados, Culps, Calmores, and (Pat) Williamses of the CRT movement: "the outpouring of radical multiculturalism in the legal literature has not been met with any comparable body of legal writing in reply. Farber and Sherry note the occasional dissenter; but, for the most part, the response of the traditional legal academic community has been silence." These vicious responses to CRT have no counterpart in immigration law and policy scholarship, despite the

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47 FARBER & SHERRY, supra at note 41; Daniel Farber & Suzanna Sherry, Beyond All Criticism?, 83 MINN. L. REV. 1735 (1999).


49 Gey, supra note 43, at 1718.

50 Finkin, supra note 19 at 1693-1703.

51 Id. at 1704.

52 Richard Delgado, supra note 44.


56 Finkin, supra note 19, at 1703.
amply-detailed racial dimensions of the field and the demonstrably-racist parentage of the nativist movement, as exemplified by Peter Brimelow,\(^{57}\) John Tanton,\(^{58}\) and others.

A second body of critical legal literature recently emerged, took root, and was then widely attacked and eradicated, the brief and curious half-life of hate crime regulation on campuses. This movement, perhaps the first area where Critical Race theory and praxis intersected, was launched in 1982 by Professor Richard Delgado, in his now-classic article in the *Harvard Civil Rights-Civil Liberties Review*, *Words That Wound: A Tort Action for Racial Insults, Epithets, and Name Calling*, where he argued that 14\(^{th}\) Amendment protections from harm equaled or balanced the First Amendment rights on campus to utter harmful or denigrating remarks.\(^{59}\) As a result of this scholarship, bolstered by young, early minority CRT law scholars such as Patricia Williams,\(^{60}\) Mari Matsuda,\(^{61}\) Charles Lawrence,\(^{62}\) and,

\(^{57}\) BRIMELOW, *supra* note 46.

\(^{58}\) John Tanton was one of the founders of U.S. English, an English-only and nativist group that has actively opposed bilingual education and immigrant rights. He caused a furor when a confidential memo he wrote was published, alleging that Latinos would out-breed Whites and overrun the U.S.: Latinos were “homo progenitiva” and a group “that is simply more fertile.” See JAMES CRAWFORD, HOLD YOUR TONGUE, BILINGUALISM AND THE POLITICS OF “English-Only” (1992), at 150-152 (citing Tanton memo). See also Sylvia R. Lazos-Vargas, *Judicial Review of Initiatives and Referendums in Which Majorities Vote on Minorities’ Democratic Citizenship*, 60 OHIO ST. L. J. 399, 442-443 (1999) (reviewing Tanton’s efforts); LINDA CHAVEZ, OUT OF THE BARRIO: TOWARD A NEW POLITICS OF HISPANIC ASSIMILATION (1991). Chavez, a Hispanic conservative, was president of Tanton’s organization, who resigned when the memo leaked. *Id. But see* Michael A. Olivas, Torching Zozobra: The Problem with Linda Chavez, 2 RECONSTRUCTION 48 (1993); Chavez, [Response to Olivas], 2 RECONSTRUCTION 182 (1994); Olivas [Response to Chavez], *Id* at 184.


\(^{60}\) See *supra* note 55.


literally dozens more scholars of color, colleges and universities began to enact hate speech codes premised upon these theories, to dust off old Vietnam-era student conduct regulations, and to take campus hate crimes seriously. It was the first higher education legal issue devised and inculcated by minority scholars.

Then, as cases began to find these codes unconstitutional, and as a sharp critical backlash grew, the new codes were dismantled or rescinded, and the status quo ante was restored. Even so, the period marked the first time that minority scholarship had altered the discourse and the political landscape of white campuses. The outpouring of scholarship on this topic was larger even than the considerable literature occasioned by the Bakke case a decade earlier, which was certainly a minority issue, but which was largely analyzed and critiqued by majority scholars. The demography of law teaching had changed a dozen years later, lending to the different voices arguing for campus hate speech codes. The

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65 See id., at 580-584. At least, it is the first since litigation lending to the Brown decision. See supra note 37.


69 This point was raised by Derrick Bell, in In Defense of Minority Admissions Programs: A Response to Professor Graglia, 119 U. PENN. L. REV. 364 (1970).

trickle of Latino/a, Black, and Asian legal scholars into the academy inevitably led to the situation where there is enough of a critical stream for Professor Johnson to make his well-placed call for integration in the immigration area.

I only note that in at least these two other scholarly encounters, CRT generally and hate speech regulation, minority scholars did not win the culture war, although the jury is out on the fledging CRT movement. Immigration may turn out differently and may be an area where the subject’s racial shadow is so long that there will not be the visceral reaction by conservative Anglo scholars.\(^7\) As long as the immigration scholarly community acts like the immigration practice community, where support and sharing are the norm, Professor Johnson’s plea for more interaction might turn out to be an important and successful clarion call.

II. Imperial Scholarship in Immigration Law Research

I begin this section with a painful story, one where a senior colleague of mine came to tell me he had spoken against my candidacy for the deanship at another law school, where I had been one of three finalists heavily recruited by the search committee, and where I fell shy of the supermajority required by the process. I heard of the effect his remarks had had upon the process, as several of my colleagues had heard about his bad review and on their own initiative had called members of the search committee to offer a different recounting of my qualifications, a counter-story.

Having heard all this obliquely, and not directly, I sent an email to my colleagues that recounted the experience and recounted several of the accusations that had been made. In

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\(^{7}\) _Infra_, at text accompanying notes ___.
my email, I concluded, “if I were as dreadful as I had made been out to be, I would not have supported my candidacy either.” But the truth (or my truth) was, his accusations of me as an anti-Anglo, racist, divisive person who was against institutional quality were not accurate or fair, and some of the criticisms (e.g., that I was the highest paid faculty member on my faculty) were not only provably false, but I had wished they were true. The issue was more complicated than is necessary to recount there, and I will fully settle that score some other day. But you get the picture.

But, after I sent out the email and received about a dozen sympathetic responses -- and provoked several outraged, public emails on my behalf -- this man came to see me late on a Friday afternoon. As I said, the details of this exchange are better suited for another venue, but he made one remark that has particular resonance here, hence the details about a publicly humiliating development that was, by far, my professional nadir. He told me he had personally opposed my deanship candidacy at this school and at my own institution and would do so again. Among many other grievances he had harbored against me in the then -- fifteen years I had been on the faculty was that my publication record, while admirable, was suspect. A library staff member had recently produced a list of faculty publications cited by other scholars, a simple citation count, where I was among the 3-4 top members of my 50-member faculty. The only persons cited more often than I were people who are quite prolific and had been in teaching longer than I. I hadn’t thought it a big deal, as I had placed much of my efforts in bookwriting and a casebook, neither of which were tallied in this list of law review citations. I also write often in non-law review venues (such as refereed journals), which were also not referenced. To tell the truth, I had forgotten about the study, which had been circulated recently in the lunch room during a faculty lunch talk.
But when my colleague’s list of my horribles lengthened, I defensively said (and this is my point), “Well if I am so terrible, why is my work so well cited”? He paused, and thrust the dagger fully into my breast, responding, “Well, you people who write in that area make it a habit of citing each other.” There it was, the perfect riposte, the coup d’ grace, and I remember sagging as the matador finished me off.

I barely remember how the rest of our 1½ hour discussion went, but I vividly remember crying that evening, after going to my usual Friday late matinee movie with my wife, a movie I do not even recall. (This, as most of my good friends will tell you, is the most telling detail of the whole story.) I cried for my own lost personal and professional opportunity, one that had seemed attractive, but I was so devastated by the experience that I withdrew from two other searches, including one where I was the sole candidate still under consideration and have not allowed my name to go forward to another since then, though I get a dozen calls each hiring season.

But I also cried for my colleague, a bitter, soured man who dislikes me so much that he wouldn’t even let me leave the faculty for other pastures. But his point about citation was one I have thought about since, in other contexts and settings. To him, all minority scholars know and cite each other, building up our citation counts, rather like ordering one’s own book on Amazon.com® to boost the popularity of the volume in the company’s records. In his hermetically-sealed world, it is perfectly symmetrical and reasonable to believe both that I am not an accomplished scholar and that my citation count is high, but due to my friends’ concerted efforts to boost my stature.

This experience, which has seared me for several years, is my only personal experience with citation analysis. Or it is at least my only one, except for Professor Johnson’s generous argument on my behalf, where he notes that one of the leading
immigration casebooks cites six of my articles, while the other does not include a single reference to my work. I confess I had questioned this, but I have read and used both books, depending upon which was the most-recent and updated. However, Professor Johnson’s article, and the invitation to invite this response caused me to go to the two other casebooks in the field, both written by minority authors, one by a Mexican American\footnote{BILL PIATT, IMMIGRATION LAW, CASES AND MATERIALS (1994).} and the other by an African American and Mexican American team.\footnote{RICHARD BOSWELL AND GILBERT CARRASCO, IMMIGRATION AND NATIONALITY LAW (2\textsuperscript{nd} ed. 1992).} There may be an equivalency problem, as the Aleinikoff, Martin, Motomura text (A,M,M,)\footnote{T. ALEXANDER ALEINIKOFF, DAVID MARTIN, AND HIROSHI MOTOMURA, IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY (4\textsuperscript{th} ed. 1998).} and Stephen Legomsky text\footnote{STEPHEN LEGOMSKY, IMMIGRATION AND REFUGEE LAW AND POLICY (2\textsuperscript{nd} ed. 1997).} have been updated more frequently and recently, but the citation patterns looked like this:

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Even with the equivalency problem, it is clear that both these sets of authors were more cognizant of other minority scholars and inclusive in their incorporation of minority authors into the casebooks. This despite the relative recency of minority authors in the immigration field, the relative youth of Asian and Latino faculty, and the relative paucity of minority law teachers overall, whether or not they teach immigration or write in the area.
Latino Professor Juan Perea, for example, the author of *IMMIGRANTS OUT!,* cited as an victim of the imperial scholar phenomenon, does not teach immigration law.\(^7^6\)

I have been intrigued by the phenomenon Professor Delgado has described, and have extended his thesis into other fields, as Professor Johnson has done in immigration. Of all the books and law-review articles I’ve ever written or collaborated upon, the one that has generated the most comments from colleagues is one I didn’t actually write, but one in which I was acknowledged in a footnote. The article was written by Richard Delgado, it is the most extraordinary *cri de coeur* I’ve ever read in a law review—concededly, not your usual source of inspired writing.

In the article, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature,*\(^7^7\) Professor Delgado asserts that there is a circular, elite, self-citing priesthood of white, male legal scholars who, guised in a predominantly liberal legal tradition, have made it impossible for minorities to break into their prestigious ranks. This tradition, he writes, “consists of white scholars’ systematic occupation of, and exclusion of minority scholars from, the central areas of civil rights scholarship. The mainstream writers tend to acknowledge only each other’s work. It is even possible that, consciously or not, they resist entry by minority scholars into the field, perhaps counseling them, as I was counseled, to establish their reputations in other areas of law. I believe that this ‘scholarly tradition’ exists mainly in civil rights; non-white scholars in other fields of law seem to confront no such tradition.”\(^7^8\) In a devastating, meticulous manner, Professor Delgado reviews a representative

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\(^7^6\) Johnson, *supra* note 1 at page ___. See, e.g., *supra* note 13. I acknowledge the count is imperfect, as I did not know the race of several authors, but I know, or knew of, most of the minority authors.

\(^7^7\) 132 U. PENN. L. REV. 561 (1984); *see also*, Delgado, *Revisited, supra* note 15.

\(^7^8\) Delgado, *Imperial Scholar,* *supra* note 77 at 566.
sample of frequently cited articles on major civil-rights themes in elite law reviews—and finds them to have been written exclusively by white, male authors and to display a pattern of self-citation, with remarkably few references to scholarship by black or Latino scholars.

He argues that his intellectual dominance by a handful of writers is not harmless error, and that this “elaborate minuet” has real consequences—or the characterization of racial issues, for the fashioning of remedies, and for the general hegemonic exclusion of other, more practical racial perspectives: “This exclusion does matter: the tradition causes bluntings, skewings, and omissions in the literature dealing with race, racism, and American law,” he concludes.79

Richard, a close friend and colleague, shared his draft manuscript with a close circle of colleagues, and he generously acknowledged us in his first footnote.80 In addition, he noted in a subsequent reference that I had assisted him in thinking though another point. His article, which bristled with passion and remains the most exciting manuscript I’ve ever read in law, was published during my second year of law teaching. I was extremely flattered to have been so involved in this honorable collaboration, particularly because he tapped a vein that most minority scholars feel at some time—that our views on race are taken less seriously than those of Anglos and are assumed to be ethnocentric or self-serving.

I received nearly a dozen phone calls or notes from colleagues shortly after the article appeared. But the article and its theme have continued to reverberate. The most recent occasion was at a conference of law professors, where two colleagues mentioned the article—one cohorting about how Richard had so deftly bearded the establishment, and the other clucking that we had bitten the liberal had that fed us and that Richard had probably ruined

79 Id. at 573.
the chances for other Chicanos to be hired as law professors. (To the latter colleague, I whistled the old song by Gary Lewis and the Playboys, "I Won't Make That Mistake Again," adding that it was the unofficial law-school theme song.)

Richard's profound observations continued to be demonstrated in many areas of scholarship besides law, including higher education research. I analyzed the research citations in a special journal issue devoted to minority students,\textsuperscript{81} for example, and I found similar extraordinary racial patterns. Of the seven substantive articles, five were written by majority scholars; the other two were written by black sociologists.

All of the articles teemed with references to scholarly studies, dissertations, reports by organizations, government publications, and basic reference works on minorities, minority enrollments, and race in higher education. In the five articles by majority scholars, there were 131 references, citing nearly 160 authors and co-authors. Allowing for fractions (representing collaborations), minority scholars accounted for just 7.9 of the references. This number included graduate students who were junior authors and one book (written by me) that was cited in a bibliography but, oddly, not cited in the text of the article. In the two articles in the journal written by the black scholars, one cited works by 23 black and Hispanic scholars, and the other 13.

Perhaps a recount should be ordered, as I might have missed a black or a Chicano cited in an \textit{et al." reference. Nonetheless, the point remains that in a project devoted to the issue of minority students, one would have expected more, and more substantive, references to the extensive research literature by black and Latino scholars. The articles by black and Latino scholars cited by the white scholars were not even their most

\textsuperscript{80} \textit{Id.} at FN. 1.
authoritative works. Of the 7.9 citations, only one was a refereed article by a single author, and only 2 were citations of books. All the others were references to microfiche documents in the Educational Resources Information Center (ERIC) system, essays in a magazine, or references to minority graduate students who had collaborated with the white authors. Yet the two black scholars found a treasure trove of pieces across the spectrum of research resources. How could this be? How could majority scholars so unfamiliar with basic research literature be accorded a refereed forum for their views?

I don’t accuse these authors -- all of them friends or colleagues well known to me -- of deliberately casting a blind eye to the extensive literature on minorities by minorities. Nor do I hold that members of minority groups are automatically experts on racial issues. Still, minority voices on these topics more often ring with a clarity and timbre that are not as easily found in white scholars’ throats. Richard Delgado accounts for the situation in his characteristically generous, hopeful terms, saying in his article: “I reject conscious malevolence or crass indifference. I think the explanation lies at the level of unconscious action and choice. It may be that the explanation lies in a need to remain in control, to make sure that legal change occurs, but not too fast.”83 He is right on target. After all, several of the authors in the special issue on minorities grew up at a time when higher education was even more racially stratified or segregated than it is today. The literature they studied (and still read, in most journals) is predominantly by Anglos, about Anglos. Most white scholars have no substantive, regular contact with minority communities except in position of dominance. Even in highly structured situations where specific minority expertise is called

81 11 REV. OF HIGHER EDUC. 323 ff. (Summer 1988).

83 Delgado, Imperial Scholar, supra note 77 at 574.
for, as in postsecondary desegregation litigation and development of remedies, white scholars are the one generally appointed by courts to act as consultants and special masters.

To give a more recent example, I analyzed the important new book by William Bowen and Derek Bok, former presidents of Princeton and Harvard, *The Shape of the River*, *Long-Term Consequences of Considering Race in College and University Admissions*.\(^{84}\) The book has received extraordinary press, in part because the Mellon Foundation financed an extraordinary press-tour that resulted in widespread publicity, and in part because the authors wrote it to provide a “social science brief” for the defendants in important admissions litigation against the University of Michigan and the University of Washington.\(^ {85}\) The book even received the highest accolade possible, when it figured in a *Law and Order* television episode, where the black Ivy League defendant killed his mentor because he was failing his classes and the mentor purchased exam answers for his young protégé. The book figures in the cross examination of a hostile defense witness social scientist.

The book makes an extensive brief for minority admissions in elite colleges, arguing that blacks more often than not make the grade, graduate, and become productive role models as a result of *Bakke* – approved affirmative action. Interestingly, however, and in disregard of the extensive literature by Black, Latino, and Asian scholars, Bowen and Bok engage in demonstrable imperial scholarship. In almost ten pages at the end of their book, they list references totaling over 220 scholars, but I count only 22 references to scholars of color, including one Asian and no Latinos. This is an area where there are many dozens of


Asian, Latino, and Black scholars, who have produced hundreds of articles and dozens of books on the topics of minority admissions, attrition, and college participation. There is an entire subgenre of research on elite students of color, but neither Bowen, an economist, or Bok, a labor lawyer, seem familiar with these works, which were directly on point for their study and are published in major, mainstream journals.\(^\text{86}\)

As in so much of the work produced by imperial scholars, even well-intentioned ones such as Bowen and Bok, such well-known books trigger the cycle of making it harder for minority scholars to break into print with their own works, or to receive foundation grants to undertake the scholarship, or to receive press coverage if such work is produced. Majority scholars are assumed to be objective when they study minority issues; black and Latino scholars often are viewed as being incapable of objectivity. Minority scholars’ research on race is widely viewed as too self-conscious, ethnocentric, or angry, while the issues they raise are deemed too peripheral, contentious, or controversial.

Worse, when white scholars become interested in minority issues, however opportunistically, they automatically establish their liberal credentials and often convert their newfound expertise into philanthropic gold, winning large grants for studies on minorities -- for which they then hire blacks and Latinos as consultants. I believe foundations exacerbate the problems I have described when they fail to cultivate minority scholars to direct such projects. If this cycle continues—in the workings of editorial boards, book publishers, grant committees, academic conferences, and tenure and promotion committees—minority scholars

in higher education will reduced to being academic *campesinos*, simply picking others’ crops and not contributing to, or benefiting from, the intellectual means of production.

Majority scholars must begin to read minority scholarship, to enlarge their chorus of research citations, and to listen to minority voices. Journal editors must cast their nets wider for genuine expertise on minority topics, not merely publish the landed gentry with hired minority help. The best thing everyone could do would be to work more diligently to recruit new members to the choir, so that it will be more fully rounded and resonant, and not so off-key.

**III. Ideological Balance in Teaching Immigration Law**

Everyone develops a personal pedagogical style, including how much of an advocate for an ideological/political/partisan position to be in a given class. But evolving a position and examining that constellation of assumptions is not a theoretical nicety; it is an absolute necessity in undertaking a teaching profession. While I do not struggle with it daily or let doubts paralyze me, I confess that I teach differently depending upon the context of subject matter material, degree of partisanship possible, level of student sophistication, and evolution of the field of study. Thus, when teaching Immigration Law, I routinely remind myself not to give short shrift to INS viewpoints on an issue; this remains a constant struggle, given government perfidy and the developing spirit of nativism sweeping the land, but most important, I struggle with it consciously. On some issues, I voice my doubts on both sides, negotiate a discussion in class to elicit polarities, and use the resultant exchanges (usually sharply divided) to gain an appreciation of the legitimate governmental role in this crucial function -- the issue of constituting our political community. I have a colleague, a more conservative Anglo who teaches Immigration Law at an elite Eastern law school. He once told me that his major teaching concern was that
his ethnic minority students could not rationally discuss limits upon immigration, legal or undocumented. Mine can, and do. As a Mexican American, I am assumed by most students to be pro-immigrant, while he labors under no preconceptions. Issues of advocacy in the classroom often turn upon characteristics ascribed by students to their teachers, e.g., that women teachers are feminists, favor women, and are “soft on social issues” or that professors of color are “too sensitive” on issues of race, as in Derrick Bell’s now-famous case at Stanford Law School,\textsuperscript{87} rather than upon their professors’ actual views, which many of us struggle to control or, at least, not to represent as the only truth.

But I note how little I struggle with these issues of advocacy when I have taught Legal Ethics, even though the opportunity to proselytize is greater in this subject matter where proper behavior is extremely relativistic and uncharted. Here, due to the non-ethnic context of the course material, I am not perceived as a reflexively anti-government partisan. It is little wonder that race, gender, and sexuality provoke the most frequent faculty-student clashes. In Legal Ethics, I find myself trying to spark student interest, while in Immigration Law I am always trying to harness it and to channel student beliefs -- not well understood but strongly felt -- into useful discussions, once the highly technical subject matter has been examined.

My major teaching areas are immigration law, business and immigration law, education law (particularly higher education law), and professional responsibility. I have also taught and written in the areas of administrative law and legislation, and I have developed shorter CLE-type or workshop topics in higher education finance and in organizational theory -- all of which I have taught to lawyers and various administrators,

\textsuperscript{87} DERRICK BELL, THE PRICE AND PAIN OF RACIAL PERSPECTIVE, in MICHAEL A. OLIVAS, THE LAW AND HIGHER EDUCATION (2\textsuperscript{nd} ed. 1997), at 1122-1125 (recounting student behavior in his class).
from colleges and law firms to the Federal Executive Institute. What I address in this third related essay is not really the need for ideological balance in teaching immigration law, or, if so, I would be concerned with the opposite: how to keep students focused upon policy rather than procedures and how to have them be more critical of the INS or of U.S. refugee policy. This used to be less of a problem: As I have noted earlier, I try to be fair and it used to be that the daily papers in Texas were routinely carrying pro-refugee stories, particularly after attention was drawn in 1989-90 to the mortifying, substandard housing and dreadful conditions of confinement in Texas for unaccompanied, undocumented children seeking asylum. These Nicaraguan and Salvadoran children elicited much sympathy and the national news regularly carried gruesome stories on Haitians fleeing poverty and political oppression.\textsuperscript{88} Now, in 1999-2000, the international eye is upon ethnic Albanians, displaced Turks, and the Middle East, so I note that my students are better focused upon policies rather than upon specific population groups.

I will sketch three “cases” from Immigration Law that illustrate tricky or difficult-to-teach issues, due either to intrinsic complexity, gender/ethnic complexity (what I will call “demographic complexity”), or another feature that adds a degree of difficulty to the subject matter, namely horrific conditions that cannot fail but to engender sympathy. The first is the issue of alien benefits/alien costs; the second is the uneven immigration history of the U.S. treatment of Cubans and Haitians; the third is the conditions of confinement for refugee children and their rights under \textit{Reno v. Flores} and similar cases.\textsuperscript{89}


A. Inherent Complexity, the Case of Alien Benefits/Alien Contributions

In the Aleinikoff, Martin, and Motomura text, the authors take a small cut at this topic, where they excerpt several studies that show the approximate costs of undocumented aliens upon the seven states that are home to 86% of the U.S. undocumented population, especially California (which in 1994 was estimated to be the home of 1.4 million undocumented aliens, 43% of the U.S. total, and 4.6% of California’s total population).\textsuperscript{90}

They cited major findings from a non-partisan Urban Institute study: undocumented aliens contribute $1.9 billion dollars in state sales, property and income taxes in those seven states; their share is far less than their population share, due to their low incomes; and in California, they paid $732 million in taxes (1.7% of all taxes), but constitute 4.6% of the California population.\textsuperscript{91}

They further offer a short piece by the political scientist Wayne Cornelius, who indicates that

the weight of the evidence suggests that immigration per se is not the most important factor affecting wages and labor standards in these and other sectors of the U.S. economy. Far more influential are technological changes affecting the labor content of products, foreign competition (the changing international factor price of labor), and the declining strength of the U.S. Labor movement -- a decline which is largely unrelated to the growing presence of immigrant workers.\textsuperscript{92}

While the Cornelius snippet is a thoughtful and balanced piece from an experienced border scholar and social scientist, they also reprint a single paragraph from a 1992 \textit{Atlantic}

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\textsuperscript{90} ALEINI\textsc{KOFF et al., supra note 74 at 611 (citing Urban Institute study).}
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\textsuperscript{91} See id. at 614.
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\textsuperscript{92} Id. at 617-620.
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Monthly article on job displacement by Latinos of native born blacks, on the grounds that "non black employers --- trust Latinos [while they] fear or disdain blacks."93

What to make of all this, especially in a class where students either 1) do not know this sophisticated literature or 2) do not care, as their minds are made up by their own experiences or prejudices? And it isn’t always an ethnic cleavage, as many of my UHLC Chicano students come from the Rio Grande Valley, where the negative effects of undocumented alienage upon local wages, markets, and lifestyles are often quite pronounced. In contrast, when I taught Immigration as a visitor at the University of Wisconsin and the University of Iowa, the students did not, on the whole, challenge the "Cornelius-line" of reasoning, and would not accept any displacement theories. After all, Iowa Beef Processing actively employs Mexicans to come to the state and work in the harsh meatpacking industry. In full employment Iowa, there are no tradeoffs, at least ones that are obvious to the students.94

Well, I think it is an excellent place to make several points, but to do so requires a lot of auxiliary work by the teacher. First, these costs/benefit studies reflect an important policy dimension to immigration policy itself (viz, the Congressional debate about LPR benefits and federal benefits to the undocumented)95 and as immigration law teachers, we should always try to understand -- even if we cannot always carry over to our scholarship

93 Id. at 620 (citing Atlantic Monthly article). Many Latinos will find this statement absurd on its face.

94 Indeed, one of my UHLC students, now in practice, has been retained by IBP to help them hire 200 Mexican butchers. The work is too hard and dangerous to find U.S. butchers who will come to do the work in Iowa.

or our teaching -- real life examples of the consequences of immigration law as well as basic research on the effect of immigration upon the polity and community.

Now, I know this is hard, as few of us are trained in economics, particularly the voodoo economics of immigration policy. However, I took a stab at it in a recent article on preemption and my findings were very different than those offered by the A,M, M sampling of authors. For example, while it is true that the Urban Institute showed that undocumented workers may have paid less than their share of local taxes (sales, property, and state income taxes), a similar LA County study showed that the undocumented pay eighteen times more federal tax and 9 times more state revenue than they do county taxes and fees. The problem is one of tax allocation, not tax shortage. The late Julian Simon, a leading economist in this field, estimated that each immigrant contributes over $1300 more in taxes than he or she receives in benefits. After all, the undocumented are ineligible (increasingly so) from most governmental benefits. Aleinikoff and his colleagues cite Donald Huddle, a leading restrictionist economist, whose work has not been published in refereed journals or academic books, but rather in anti-immigration organizational literature. At the same time, while they cite law suits brought by aggrieved states to

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97 Id. at 227-230 (citing LA county study).


99 This is an area that remains in flux. After the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the Welfare Act), Publ. L. 104-193, 110 Stat. 2105 (1996), stripped permanent residents of many benefits, an outcry ensued and the 1997 Balanced Budget Act, Publ. L. 105-33, 111 Stat. 251 (1997), restored some, but not all of the benefits. At the federal level, only Medicaid for emergency care, immunizations, and public health disaster relief are available to persons irrespective of immigration status, 8 U.S.C.A. § 1611, although the Attorney General can extend other federal assistance if it is “necessary for the protection of life and safety.” Id.
recover unreimbursed costs for providing services undocumented aliens, nowhere do they note that Texas was forced to return $90 million in 1994 to the federal government in unexpended federal alien assistance funds, at the same time Austin was suing for more resettlement money.\textsuperscript{101}

By now you may be saying to yourself: but this is not a case necessitating statistical expertise, it is a case of sovereignty or states’ rights or even a case of peripheral interest. But these data, properly presented and discussed in class, can radically shift the discussion from an intuitively-more-obvious restrictionist cost basis to a more useful, thorough, cost/benefit analysis that is possible only when the full data picture is available. Unfortunately, it requires a surefooted grasp of the literature, which I do not claim to have, and it also convinces some students that the teacher is not a neutral, especially if the A, M, M, casebook is in use, as it is more one-sided on this issue than I would like. I have also been able to supplement this section with a visit by a UH Sociology colleague whose expertise is in the area of immigrant resettlement and ethnic enterprises. He is able, in an authoritative way, to discuss the low level jobs open to the undocumented in Houston, and to explain the growth of ethnic business enterprises.\textsuperscript{102} His saying these things forces me to referee the different sides and also allows me to appear more objective.

\textsuperscript{100} ALEINIKOFF \textit{et al.}, \textit{supra} note 74, at 611, n. 6, 616 (citing Huddle). \textit{But see} Estevan Flores, \textit{The Impact of Undocumented Immigration on the United States Labor Market}, 5 \textit{HOU. J. INT’L L.} 287 (1984), where Prof. Flores analyzes Prof. Huddle’s work in unreferred and unpublished forums, such as trials and unpublished papers. \textit{Id.} at 295-300.

\textsuperscript{101} James Cullen, \textit{Blame the Newcomers}, TEX. OBSERVER, Aug. 19, 1994, at 2,3.

B. Cuban/Haitian Entrants and the anti-Communist Bugaboo

A related problem arises in explaining how U.S. refugee policy applies unequally to persons fleeing Cuba and their darker skin counterparts fleeing Haiti. Jean v. Nelson is an unsatisfying case for most students (and readers), and it is harder and harder to describe the Cold War and anti-Communist policies and practices to students who were born after 1975, who have seen Lithuanians play in the NBA, and who read about President Yeltsin in People magazine.

How does one reconcile the inconsistent treatment of Nicaraguans, whose “Communist” government was said to be within a missile’s reach of Brownsville, yet whose people fleeing our proxy war were deemed to be “economic refugees.” How do I explain then-AG Meese’s change of mind to allow Nicaraguans to gain asylum? It is unconvincing to most students that the Federal Aviation Agency should allow US planes to use Florida landing strips to facilitate leafleting Havana, while we sink Haitian vessels at

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104 Between 1987-1990, the high tide of Central American immigration to the U.S., South Texas immigration courts granted asylum to a total of 6 Guatemalans, 36 Nicaraguans, 2 Hondurans, and no Salvadorans, of the many thousands who applied (in 1988, 2400 sought asylum in the region, while in 1990, over 3600 applied). It was no better elsewhere in the United States: only 3% of all Salvadorans and 6 of 2000 Haitians successfully claimed asylum during the same period. Central American Asylum-Seekers: Hearings before Subcommittee on Immigration, Refugees, and International Law of the [U.S.] House [of Representatives]Committee on the Judiciary, 101st Cong., 1st Sess. 277-79, 328-29 (1990) [hereinafter 1989 House Hearings] (Central American Asylum Statistics, FY 1980-1988). Following the 1987 “Meese Memorandum,” 96% of all Nicaraguan claims in South Texas were adjudicated in favor of Nicaraguans. In December, 1988, the policy was reversed and few were granted asylum. See id., at 66-73.

sea and repatriate the Haitians to Port au Prince. Even my few Cuban students are not as reflexively anti-Communist as their parents.

In a number of classes devoted to this topic, or to Haitian Refugee Center, I have students -- usually African LLM’s or African American law students, but not always -- who raise the color line issue. As in all these issues, I play them out by pointing out that many Cubans are black and that the 1980 Refugee Act was designed to remove ideological bias remaining from the 1965 changes. Unlike many classroom discussions where race is at issue, this topic seems more clear-cut and straightforward than, say, Con Law treatments of race or Criminal Law’s often-contentious use of race. Here, students of color are able to point out with specificity the asymmetrical treatment without fear that some Anglo students will put them down or engage in I-was-not-a-slaveowner kind of rhetoric. Of course, there is a great deal of grist to point to the poor treatment of Asians, which often gives rise to increased participation by my Asian students, both JD and LLM.

C. The Detention of Undocumented Alien Children

In 1988-89, I organized a clinic at UHLC, in order to serve the particular needs of unaccompanied minors arriving in the Southwest and being incarcerated in South Texas facilities. Although I was away in Wisconsin during 1989-90, I was haunted by the extraordinary situation in South Texas, only hours from my relatively risk-free life in Houston. A converted USDA pesticide storage facility in Port Isabel was used to warehouse these children. (Port Isabel is at the foot of the miles-long bridge one crosses to get to Padre Island’s pristine beaches and marinas.)

105 Rene Sanchez & Catherine Skipp, Two Exile Planes Shot Down Near Cuba, Group Previously Had Buzzed Havana, WASH. POST, February 26, 1996, at A1 (reporting the loss of the planes and initial reaction from United States officials).

I had studied Dickens as an English Literature graduate student, so I was prepared in one sense to see these conditions. I interviewed children who were sexually abused on their sojourn through Mexico to the US. I arranged for a sociologist colleague (the one who lectures in my class about Guatemalan resettlement in Houston) to administer psychological stress inventories, and he had to calibrate the responses because they were all so far “off the scale.”\textsuperscript{107} It and other facilities like it (6 in all throughout Texas alone) were located in remote areas, I was (and am) convinced, to keep lawyers like me away. The nearest law schools (UH in Houston or St. Mary’s in San Antonio) were 5-6 hours away by car and still remote by infrequent plane schedules.

Because I wrote about this experience in another venue I will not replicate that effort here,\textsuperscript{108} except to say that I found teaching asylum adjudication a real moral dilemma, and I am certain I fell short of my objective to be non partisan, as the government was clearly the lawbreaker in this matter -- transferring children after they had obtained representation, tricking these children into conceding their rights without even minimal due process, and failing even to abide by injunctions and consent decrees to provide basic care and legal services, such as phones. (During one trip to another South Texas detention facility, I found all six phones to be out of service.) If you think I am exaggerating, read the District Court opinions in Reno v. Flores, Orantes-Hernandez v.

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\textsuperscript{108} Olivas, supra note 31, at 820-835.
Meese, Ramirez-Osorio v. INS, and Montecino v. INS. How do you teach respect for the law and the government when the U.S. is the lawbreaker?

I have found Immigration Law to be a most personally rewarding and intellectually stimulating field of law, and teaching it more often than not makes me feel good about my profession, my government, and the state of things. A balanced approach to the class can lead students to appreciate the considerable good, bad, and ugly of U.S. community building. They can learn to critique policy and procedures, and, in the right setting, can learn a great deal about how we constitute ourselves. Almost no field provides such a running application drawn from that day’s headlines. Most importantly, I feel a part of a growing community of interest in the teaching of the field. After 18 years of teaching law, I now have hundreds of former students who practice immigration law, others who teach naturalization classes, many who have undertaken pro bono service in the field, others who never took my classes but who seek someone to advise them on an immigration matter.

IV. Conclusion

Professor Johnson’s article prompted three responses from me, each of which amounted to a mini-essay. First, by his attention to immigration and race scholarship and its intellectual properties, he is among the first to ask these important questions about the origins of the ideas, the influences upon scholars, and the provenance of the project. This is basic, foundational critical inquiry, in his tradition. Second, by engaging in citation analysis, he is doing the kind of critical inquiry that should call textbook authors to account for their choices. As he notes, textbooks occasion many choices, and his careful

examination here should put all the authors on notice that their choices have consequences. As a casebook author myself, I have benefited from many other colleagues’ suggestions. His treatment reminded me of a painful issue in my own experience. Finally, he raises issues of ideological balance and fashions constructive criticism aimed at all parties: he advises majority scholars to read more widely and to incorporate race into their scholarship, and to do so critically. He also advises minority scholars to enter the dominant discourse and to “integrate” its ranks. His advice in this area has prompted me to question issues of ideological balance and to recount my own struggles in this arena.

I have always learned from reading Professor Johnson’s work, across all the genres, from his more traditional doctrinal scholarship, his Critical Race writing, and from his more personal scholarship and autobiography. He has carved out a large swath of territory for such a young practitioner, and I am pleased he has provoked so much heat and light.