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## HOW DO YOU TEACH IMMORAL LAWS?

NICOLE HALLETT\*

### ABSTRACT

*Teaching immigration law means teaching a system of oppression. Given this, how do professors of immigration law reconcile their status as representatives of the legal system with the harm that the system causes? Can you ethically encourage law students to develop professional identities that require participation in an immoral system? This article will discuss the moral complexities of teaching law students immigration law. It will argue that the least bad alternative is to bear witness to the injustice, even if it means implicitly acknowledging its legitimacy.*

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\* Clinical Professor of Law and Director of the Immigrants' Rights Clinic at the University of Chicago Law School. I would like to thank the generations of students I have taught over the years and who have taught me in turn.

In January 2019, I spent a week with eight law students at the South Texas Family Residential Center in Dilley, Texas.<sup>1</sup> At that time, the detention facility housed women and children, mostly from Central America, while they attempted to navigate the U.S. asylum system. We joined a massive legal effort to make sure every person at the facility had access to legal representation.<sup>2</sup> The permanent staff on the ground welcomed groups of law students and interpreters every week to prepare hundreds of women for their credible fear interviews. If they passed, the families would have a chance to stay in the United States to apply for asylum and most would be released from detention to await their court dates.

The plans for the trip had come together the previous summer after several students from the University at Buffalo School of Law, where I was teaching at the time, came to me distraught over the news about the Trump Administration's family separation policy.<sup>3</sup> The American public had spent weeks in rapt attention to the human rights violations unfolding at the border. Photos of children in cages dominated the news. Like many people, the students felt helpless. I suggested that they channel their rage into action by putting their nascent legal skills to use.<sup>4</sup>

Before the trip, I had a series of sessions with the students where I taught them the basics of U.S. asylum law. I also tried to prepare them for the psychological toll the week might have on them. I had been to Dilley before and I knew what it would be like. They listened intently, taking notes and registering anguish on their faces. But as often happens, they did not truly understand the horror of the situation until they set foot in the detention facility.

The experience of working at Dilley is hard to fully capture on paper. Imagine a small room in a trailer with no windows where you will sit from 7:00

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1. *South Texas Family Detention Center*, IMMIGR. & CUSTOMS ENFT. (May 6, 2022), <https://www.ice.gov/detain/detention-facilities/south-texas-family-residential-center> [https://perma.cc/PW39-MUN5].

2. In 2019, the legal representation program at the South Texas Family Detention Center was run by the CARA Pro Bono Project, a collaboration between the Catholic Legal Immigration Network ("CLINIC"), the American Immigration Council ("AIC"), the Refugee and Immigrant Center for Education and Legal Services ("RAICES"), and the American Immigration Lawyers Association ("AILA"). It is now called Proyecto Dilley and is run by the Immigrant Justice Campaign. See *Family Detention*, IMMIGR. JUST. CAMPAIGN, <https://immigrationjustice.us/advocacy/advocacy-issues/family-detention/> [https://perma.cc/8CYX-VUQ3] (last visited Nov. 19, 2022).

3. For a full accounting of the family separation policy, see Caitlin Dickerson, *The Secret History of Family Separation*, ATLANTIC (Aug. 7, 2022), <https://www.theatlantic.com/magazine/archive/2022/09/trump-administration-family-separation-policy-immigration/670604> [https://perma.cc/ARS3-H6G9].

4. The trip was organized as a law clinic called the U.S.-Mexico Border Clinic. See *U.S.-Mexico Border Clinic*, UNIV. BUFFALO SCH. LAW, <https://www.law.buffalo.edu/beyond/clinics/us-mexico-border-clinic.html> [https://perma.cc/XZT3-ALN9].

am to 8:00 pm with only short breaks. One woman after another will come in the room and tell you why she came to the United States. She will describe unspeakably terrible things that have happened to her: rape, murder of family members, death threats, forced prostitution, extortion. Often the perpetrator is her boyfriend or husband. Other times, it is gang members or narco-traffickers. Sometimes, the woman does not know who it was, but that does not make the scars—physical and psychological—any less real. Sometimes, a child sits beside them, silently listening.<sup>5</sup>

Once she tells you her story, your job is to shoehorn that story into the complex eligibility requirements for asylum in the United States.<sup>6</sup> You will need to explain to her why just being afraid is not enough. She must be afraid of a particular kind of harm inflicted upon her for a particular kind of reason. You will help her practice telling her story to emphasize certain aspects and de-emphasize others, to explain it in such a way that the asylum officer will be able to tick all the boxes on their government-issued form. You will explain that if the interview does not go well—for example, if she forgets or leaves out certain details or, worse still, if she is too traumatized to tell the story at all—she and her children will likely be deported. Then you will send her on her way.

I am not sure you can really prepare someone for this kind of experience. You can teach them about vicarious trauma.<sup>7</sup> You can give them space to reflect and process what they have learned. You can make mental health resources available to them and you can help them develop a self-care plan. But at the end of the day, you cannot protect them from reality. State violence directed toward the most vulnerable among us is always shocking, regardless of how many times you have seen it before. The rage that the students had brought with them to Dilley would be coming home with them. The helplessness would remain with them too, though perhaps lessened by the perception that they were at least doing something.

The long van rides to the hotel in the evenings were an opportunity for the students to reflect on the day. The first few evenings, the van was filled with conversation. By the third evening, though, it was silent. They had simply run

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5. For another account of the legal representation project in Dilley, see Martin Garbus, *What I Saw at the Dilley, Texas, Immigrant Detention Center*, NATION (Mar. 26, 2019), <https://www.thenation.com/article/archive/dilley-texas-immigration-detention> [<https://perma.cc/PML7-9C7Z>].

6. For one account of the complexity of U.S. asylum law, see Stephen Legomsky & Karen Musalo, *Asylum and the Three Little Words that Can Spell Life or Death*, JUST SEC. (May 28, 2021), <https://www.justsecurity.org/76671/asylum-and-the-three-little-words-that-can-spell-life-or-death> [<https://perma.cc/3LRW-SS3T>].

7. To teach vicarious trauma, I invite a trained social worker to the clinic seminar as a guest speaker. I then moderate a discussion about trauma-informed practice and vicarious trauma. One good resource for teaching vicarious trauma is Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359 (2016).

out of ways to talk about the things they had seen and heard, and no one felt much like talking anyway.<sup>8</sup>

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Being a professor of immigration law in the United States today means teaching a system of oppression. The U.S. immigration system was founded on racism and lies, and that legal foundation has remained essentially unchanged to the present day.<sup>9</sup> Our immigration laws are arbitrary, harsh, and illogical.<sup>10</sup> The immigration system is a bureaucratic nightmare fueled by incompetence and malice.<sup>11</sup> Hundreds of thousands of people are chewed up and spit out by the system each year.<sup>12</sup> Lives are ruined. Families are split apart.<sup>13</sup> People die.<sup>14</sup> It is an epic human rights disaster that is happening right before our eyes, but that most people cannot see. To immigration lawyers, the most shocking thing about the family separation policy was not that it was happening, but that people noticed.

There are too many horror stories to share, but I will recount just one. I had a client a few years ago who was from Jamaica. His mother had severe mental health problems and abandoned the family when he was just a toddler. When he was five, he was sexually abused by an “uncle.” He came to the United States with his father when he was six, but his life did not improve. His father left him with relatives for long stretches of time. He was raped by a man who lived in his neighborhood when he was thirteen. He developed mental health issues and was diagnosed with schizophrenia and bipolar disorder. He began abusing alcohol

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8. The students were able to do more reflection upon their return from the trip. In addition, some of the students wrote reflective blog posts during the week. See *US-Mexico Border Clinic*, UB SCH. OF L. RESPONDS, <https://ublawresponds.com/tag/us-mexico-border-clinic> [https://perma.cc/Q7KY-7YKU] (last visited Nov. 19, 2022).

9. For a complete account of the racist foundations of U.S. immigration law, see ERIKA LEE, *AMERICA FOR AMERICANS: A HISTORY OF XENOPHOBIA IN THE UNITED STATES* (1st ed. 2019).

10. For a complete dissection of the immigration system, see Angélica Chárazo, *The End of Deportation*, 68 UCLA L. REV. 1040 (2021).

11. See, e.g., Nicole Hallett, *‘Dysfunctional’ Doesn’t Begin to Describe Our Immigration Bureaucracy*, HILL (Aug. 12, 2021), <https://thehill.com/opinion/immigration/567493-dysfunctional-doesnt-begin-to-describe-our-immigration-bureaucracy> [https://perma.cc/9T5X-EU AK].

12. Over three million noncitizens have been removed in the past ten years, a period of time that spanned one Republican president and two Democratic presidents. *Aliens Removed or Returned: Fiscal Years 1892 to 2019*, U.S. DEP’T HOMELAND SEC. (Dec. 8, 2021), <https://www.dhs.gov/immigration-statistics/yearbook/2019/table39> [https://perma.cc/H9LU-YQ 7D].

13. An example of how the immigration system splits apart families is the Trump Administration’s Zero Tolerance Policy, but families are split apart in less public ways every day. See Dickerson, *supra* note 3.

14. For a recent example, see Paulina Villegas, *Two Men Indicted in Texas Tractor-Trailer Tragedy that Left 53 Dead*, WASH. POST (July 21, 2022), <https://www.washingtonpost.com/nation/2022/07/21/texas-migrants-death-smuggling-trailer> [https://perma.cc/C9R8-3W7Z].

and drugs. At age twenty, he found himself in removal proceedings because of a marijuana conviction.

The U.S. immigration system did not see him for who he was—a traumatized, mentally ill young man in need of help. Instead, they locked him up and took away his medication. When he began hallucinating, the detention center put him in solitary confinement. He attempted suicide and they punished him by taking away his dollar-a-day prison job. The immigration judge decided that his story of abuse and mental illness was not credible and denied his claims for relief. The Board of Immigration Appeals affirmed the denial, though it failed to mail us the decision. On Christmas Eve, he called one of my students in a panic to tell us that the government planned to deport him the day after Christmas.

When I called the government attorney to ask if he would agree to an emergency stay, the attorney chastised me for ruining his holiday celebration. How dare I contact him on the most holiest of days? A student later uncovered a family newsletter that the attorney had written and posted on social media that described his job as “helping immigrants start new lives in their home countries.” It was followed by a laughing emoji.

There are many things to say about this story, but I often feel like my students in the van: speechless.

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As a law professor, one of my tasks is to help law students form their professional identities and instill in them a set of ethical and moral principles that will guide their legal career. Yet, this task is complicated by the morally dubious nature of the profession they have signed up to join. Lawyers can critique the legal system. They can try to change it. But they cannot reject it altogether. The rules of the system do not allow it. It would be like the Royal Guard at Buckingham Palace attempting a coup. They could try it, but if they fail, they will lose the privilege of guarding the King. In fact, the legal system was created by lawyers, and we serve as its gatekeepers. As Professor Katharina Pistor explains, “clients are hiring lawyers to have access to the empire of law, which these lawyers have stitched together over centuries . . . .”<sup>15</sup>

Given this, how should law professors teach immigration law? If we have lost faith in the law, how can we teach it to the next generation of lawyers? I have heard professors teaching constitutional law begin to ask this same question after recent doctrinal developments have destroyed long-settled constitutional rights. I can only begin to imagine what it must have been like to teach *Plessy v. Ferguson*<sup>16</sup> before it was overruled by *Brown v. Board of Education*,<sup>17</sup> though I

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15. KATHARINA PISTOR, *THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY* 165 (Princeton Univ. Press 2019).

16. 163 U.S. 537 (1896).

17. 347 U.S. 483 (1954).

suspect most law professors of the time did not lose any sleep over it. The analogy to teaching immigration law today is a good one. The racist, xenophobic Chinese Exclusion cases<sup>18</sup>—decided around the same time as *Plessy*—are still good law and were cited by the Supreme Court as recently as 2020.<sup>19</sup> Immigration law professors are still living in a pre-*Brown* world.

This dilemma is particularly acute in the survey lecture course I teach on immigration law because the course does not require that the students get any experience outside the classroom. I do what I can to make the material real for them. I show them videos of deported veterans who are begging to come home.<sup>20</sup> I have them watch first-person accounts of some of the Trump Administration's worst immigration policies, such as family separation.<sup>21</sup> These interventions lessen, but do not entirely solve, the problems inherent in teaching an area of law that is fundamentally illegitimate.

These students may also approach the subject matter with a different ideological lens than I do. The ideas expressed in this essay are, to put it bluntly, not universally endorsed even by notably liberal law students. I often find that the goal of providing an open, safe space for discussion conflicts with my deeply held belief in the utter wrongness of one side of the debate. I resolve this conflict by showing, not telling, and by letting them draw their own conclusions. Most leave troubled, but relatively unaffected. To them, it is just a class that they can mostly forget about when the semester is over.

I do not have to explain the U.S. immigration system to the students who take my clinic. The Immigrants' Rights Clinic, which I direct, represents noncitizens whom the U.S. government is attempting to deport. Every deportation is cataclysmic. In asylum cases, it can be tantamount to a death sentence. Even in less severe cases, a deportation may mean near-permanent separation from family and community, financial bankruptcy, and economic devastation. My clinic students see firsthand how the system has affected their individual clients and it is not hard to extrapolate broader conclusions. After seeing the pain and despair the system causes, many of them wonder whether law school was the right choice for them. They gaze at the horizon and see nothing but heartache. They agonize over whether they can join a profession that lends legitimacy to this system.

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18. *Chae Chan Ping v. United States*, 130 U.S. 581 (1889); *Fong Yue Ting v. United States*, 149 U.S. 698 (1893).

19. *Dep't Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1980 n.26 (2020) (citing *Fong Yue Ting*, 149 U.S. at 713).

20. Immigrant Justice, *Virtual Briefing: A Chance to Come Home for the Unjustly Deported*, YOUTUBE (Apr. 28, 2021), <https://www.youtube.com/watch?v=ptJdnIKJrM> [<https://perma.cc/L2MF-DM63>].

21. CBS Evening News, *Mother Separated from Children at the Border Says She "Never Imagined" it Would Happen*, YOUTUBE (June 18, 2018), <https://www.youtube.com/watch?v=gynNg2qqV7w> [<https://perma.cc/WGS9-8K5M>].

On the first day of class, I have my clinic students read Jawziya F. Zaman's excellent essay, "Why I Left Immigration Law."<sup>22</sup> In it, Zaman details the mental compartmentalization and cognitive dissonance required to be an immigration lawyer. For some people like Zaman, it becomes untenable. It may seem strange that I have students read this essay on the first day. After all, how can they decide whether to quit before the work even begins? But over the years, I have found that it is an effective way to set up the parameters of what they will experience in the course. Anyone who practices immigration law must grapple with the question of whether their work *matters* and whether participating in and therefore validating the immoral system is worth the cost. The answer is something that cannot be taught in a classroom. It must be earned through early morning efforts to get a client off a deportation plane. Those moments must be balanced against the other, less frequent moments of triumph, such as when you prevail and the client gets to go home, at least for awhile.

For me, it is an easy decision. Like an existential philosopher putting one foot in front of the other on a snowy mountain,<sup>23</sup> I do this work each day because the alternative is too awful to contemplate. "What saves a man is to take a step," said St. Saint-Exupéry, "[t]hen another step. It is always the same step, but you have to take it."<sup>24</sup> Or in a slightly more modern and less exalted reference, we must all do as Anna does in *Frozen 2* and do "The Next Right Thing."<sup>25</sup> This, too, is why I teach immigration law. We must bear witness in the classroom, even when—or especially when—it alienates us from our profession. It is what you do when standing still is not an option.

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After the week in Dilley was over, I drove the students to the San Antonio airport so they could catch their flights back to Buffalo. My flight was leaving later that afternoon and so I sat in the airport and tried to decompress. The Trump Administration had just announced another draconian and punitive immigration policy. This time it was Remain in Mexico,<sup>26</sup> which would require asylum-seekers to await their asylum hearings in Mexico, making them vulnerable to

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22. Jawziya F. Zaman, *Why I Left Immigration Law*, DISSENT MAG. (July 12, 2017), [https://www.dissentmagazine.org/online\\_articles/left-immigration-law](https://www.dissentmagazine.org/online_articles/left-immigration-law) [<https://perma.cc/9GFM-JJ95>].

23. ANTOINE DE SAINT-EXUPÉRY, WIND, SAND AND STARS 53 (Lewis Galantière trans., Cornwall Press, Inc. 1940).

24. *Id.* at 58.

25. DisneyMusicVEVO, *Kristen Bell – The Next Right Thing (From "Frozen 2"/Lyric Video)*, YOUTUBE (Nov. 18, 2019), <https://www.youtube.com/watch?v=w6glyQV0dIY> [<https://perma.cc/TK22-R6CG>].

26. *Migrant Protection Protocols*, U.S. DEP'T HOMELAND SEC. (Jan. 24, 2019), <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols> [<https://perma.cc/8X42-J6LL>].



violence<sup>27</sup> and denying them access to legal representation.<sup>28</sup> As I read the news on my phone, it dawned on me that the women I had met that week were among the lucky ones, having arrived at the border after the family separation policy had formally ended but before Remain in Mexico was implemented.

As I sat there, I saw a group of women and children enter the airport terminal. I knew they had come from Dilley because they were still wearing their identification bracelets and the white tennis shoes the facility had issued them. Having passed their credible fear interviews, they would be able to stay in the United States, at least for a little while. One of the children, a boy about four years old, asked his mother for some mints at an airport store and she pulled out a few dollars to pay. They looked happy and ready to start the next chapter of their lives. The week in Dilley had been worth it, if only so I could witness this moment.

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27. Alyssa Isidoridy et al., *Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers' Lives and Denies Due Process*, HUM. RTS. WATCH (Aug. 2019), <https://humanrightsfirst.org/wp-content/uploads/2022/10/Delivered-to-Danger-August-2019-.pdf> [<https://perma.cc/R8UR-9GJA>]; “We Can’t Help You Here:” *US Returns of Asylum Seekers to Mexico*, HUM. RTS. WATCH (July 2019), <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico> [<https://perma.cc/M5EL-MFCU>].

28. Priscilla Alvarez, *Immigration Lawyers Struggle to Navigate Return-to-Mexico Policy*, CNN (Mar. 31, 2019), <https://www.cnn.com/2019/03/30/politics/immigration-lawyers-remain-in-mexico> [<https://perma.cc/96Z2-UQDL>].