

WHAT DOES IMMIGRATION LAW SCHOLARSHIP ACCOMPLISH?

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TABLE OF CONTENTS

I. HOW I BECAME AN IMMIGRATION LAW SCHOLAR	1251
II. GOALS FOR MY SCHOLARSHIP.....	1255
A. <i>Enduring, Not Ephemeral</i>	1256
B. <i>Social Science Research</i>	1256
C. <i>Comparative</i>	1257
D. <i>Ideals</i>	1258
III. WHAT IF THERE IS NO FUTURE OF IMMIGRATION LAW SCHOLARSHIP?	1259

I. HOW I BECAME AN IMMIGRATION LAW SCHOLAR

In the spring of 2007, as I prepared to return to Rutgers after two years visiting another law school, I spoke by telephone with Vice-Dean Ron Chen. Ron said: “Alan, I need you to start teaching a different upper-class elective. Enrollments in labor law no longer justify repeated sections.” I responded that I could teach either pension and benefit law, or immigration law. Ron said: “Immigration law.” That is how I became a teacher and scholar of immigration law.

I was happy to begin learning about immigration law, because immigrant workers made surprising appearances in my book on Silicon Valley.¹ Immigrant workers at all levels had the most interesting and imaginative organizations. The Justice for Janitors campaign, organizing janitors through ethnic community, was the most successful union organizing of the 1990s.² South Bay Labor Council had opened its own

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1. See generally ALAN HYDE, WORKING IN SILICON VALLEY: ECONOMIC AND LEGAL ANALYSIS OF A HIGH-VELOCITY LABOR MARKET (2003) (discussing how unorthodox labor market institutions, such as high turnover and flexible compensation, facilitate rapid economic growth in high-technology districts).

2. See *id.* 154–55.

temporary help agency.³ At the high end, organizations like the Indus Entrepreneur seemed prototypes of a new organization that supported individuals both when they worked as employees and also when they were self-employed, a common pattern in high tech.⁴ None of these organizations proved able to sustain itself, but they seemed promising at the time.

Much more influential in my future work was my research for the chapter on H-1B visas, a three-year renewable visa for educated noncitizens heavily used in tech. The program was controversial, then as now. Tech companies insisted they needed H-1B visas to solve labor shortages. From the other side, critics like Norm Matloff and Ron Hira charged that H-1B visas led to displacement and unemployment for computer programmers who were either U.S. citizens or lawful permanent residents.⁵ Neither claim seemed persuasive, though I wasted a lot of time looking for these mass layoffs of incumbent programmers.

I was amazed that there were zero sources of objective information about any of these claims. (I was very naïve then). I could not believe that the government made no effort to compile data on who got H-1Bs, where they worked, what they were paid.⁶ I could not believe that the whole visa was based on the idea of a labor shortage,⁷ but there was no working definition of a labor shortage or any attempt to find out whether the United States had one. The concept of labor shortage is meaningless to an economist. In Economics-land, an employer who needs programmers, but cannot attract them, raises the entry-level wage until enough undergraduates switch their majors from law and finance to computer science. But I thought there must be some kind of rough administrative concept of labor shortage, which would trigger employers' ability to offer temporary jobs to foreign workers. (I was *very* naïve). I had no budget or

3. *See id.* 175–76.

4. *See id.* 168–70.

5. *See Clifton B. Parker*, ICONOCLAST: Contrarian Computer Scientist Questions H1-B Visas, U.C. DAVIS (Apr. 10, 2009), <https://www.ucdavis.edu/news/iconoclast-contrarian-computer-scientist-questions-h1-b-visas> [<https://perma.cc/QXL9-PSKX>]; *see* Deepak Chitnis, If There Are Increases in H-1B Visas Without any Reform, There Is Risk of Racial Hatred: Dr. Ron Hira, AM. BAZAAR (June 12, 2014), <https://americanbazaaronline.com/2014/06/12/increases-h-1b-visas-without-reform-risk-racial-hatred-dr-ron-hira/> [<https://perma.cc/K8RX-RNC2>].

6. *But cf.* H-1B Employer Data Hub, U.S. CITIZENSHIP & IMMIGR. SERVS. (Sep. 30, 2025), <https://www.uscis.gov/tools/reports-and-studies/h-1b-employer-data-hub> [<https://perma.cc/5HGT-B3JG>] (showing an interactive database published by USCIS on the availability of employer petition data from fiscal years 2009 to 2025).

7. *See* Brian Dan-Ding, *The Rise and Fall of the H-1B Visa*, AM. AFFS. (Nov. 20, 2025), <https://americanaffairsjournal.org/2025/11/the-rise-and-fall-of-the-h-1b-visa/> [<https://perma.cc/VN9H-HY4U>].

skill to create my own database of hiring by type of visa, but I did phone every lawyer in the Bay Area who represented plaintiffs in age discrimination suits to see whether any of these supposedly laid-off senior programmers had ever sued. I am quite confident that none had. I found myself very skeptical that firms at that time were hiring H-1Bs for any reason other than the one they stated: that they desperately needed programmers now and could not find enough U.S. workers. But I also marveled—still do—at how the United States makes immigration policy without the most basic data about what it is doing, without even an immigration policy office. This vacuum led to political debates in which participants took extreme, unjustified positions.⁸

8. Today we know that, as a general matter, the H-1B program is positive for almost all Americans, in just the way that immigration is generally: the visa recipients perform complementary labor that increases the opportunities for all workers. However, we also know that the program can be abused, and that Congress has not fixed the abuse.

First the good news. Because H-1B visas are distributed by lottery, it is possible to compare the tech sectors in cities that got a lot of H-1Bs with cities that got few. This is the kind of random experiment that scientists love but that economists rarely get to conduct. (I know, right?) If a city does badly in the lottery, growth in information technology is badly slowed and jobs are not created for anyone. Every 1% drop in H-1B visas means as much as a 7.1% drop in jobs in information technology for U.S.-born workers without college education. THE P'SHIP FOR A NEW AM. ECON., CLOSING ECONOMIC WINDOWS: HOW H-1B VISA DENIALS COST U.S.-BORN TECH WORKERS JOBS AND WAGES DURING THE GREAT RECESSION 14 (2014), https://www.americanimmigrationcouncil.org/wp-content/uploads/2014/06/pnae_h1b.pdf [<https://perma.cc/8GWP-76HE>]. And when the H-1B application is denied, it is not as if the employer hires a U.S.-born worker instead. This almost never happens. See generally Giovanni Peri et al., *STEM Workers, H-1B Visas, and Productivity in US Cities*, 33 J. LAB. ECON. S225 (2015) (discussing an increase in STEM workers being associated with significant wage gains for college-educated natives). When Congress cut the number of H-1B visas in half, there was no increase in hiring of U.S.-born workers. See Anna Maria Mayda et al., *The Effect of the H-1B Quota on Employment and Selection of Foreign-Born Labor*, 108 EUR. ECON. REV. 105, 125 (2018). When an employer loses the H-1B lottery, it usually reposts the same job, because these jobs are in fact, just as employers say, very difficult to fill. See Jonathan Rothwell & Neil G. Ruiz, *H-1B Visas and the STEM Shortage*, BROOKINGS INST. (May 10, 2013), <https://www.brookings.edu/articles/h-1b-visas-and-the-stem-shortage/> [<https://perma.cc/NL3J-R75A>]. The difficulty in filling the jobs is not because employers are not offering enough money. H-1B recipients are paid more than U.S. workers in their occupation and industry and are typically more skilled. See *id.*; Magnus Lofstrom & Joseph Hayes, *H-1B: How Do They Stack Up to US Born Workers?* 2 (Inst. Stud. Lab., Discussion Paper No. 6259, 2011). Each worker hired on an H-1B visa increases that firm's hiring of native-born workers. Sari Pekkala Kerr et al., *Skilled Immigration and the Employment Structures of US Firms*, 33 J. LAB. ECON. S147, S173 (2015).

So, overall, H-1B visas are a good deal for Americans. The visa holders are productive, and their presence in the United States creates jobs in the United States for other workers. Their faults mirror those of employment-based permanent visas—there are not enough; they are slow and expensive to obtain, requiring a lot of expensive lawyering. So they are useless to small businesses (other than billion dollar startups) and dominated by a relatively few employers. More than one-third of H-1B approvals last year—like every

As I began researching for my first immigration law class, I soon learned that the situation with H-1B visas is absolutely typical. The immigration agencies do not have research budgets. Economic research on immigration takes place outside the government. Research has a strong restrictionist bias. It always measures the alleged *costs* of migration (finding none), but never the benefits. There is always money for the fiftieth redundant study of whether immigrants commit a lot of crime. Spoiler alert: they don't.⁹ The National Academy of Sciences, a decade ago, published two extensively researched volumes on the alleged costs of migration, hoping to put the debate to rest. The leading experts concluded that immigrants create many more jobs than they take, and that their chief cost to society is that their children go to school.¹⁰ But just try to find data on the benefits of immigration, including phenomena we can observe with our eyes, such as small business formation, urban

year—went to twenty companies. These include major tech employers like Amazon, Microsoft, Google and Apple. Kate Gibson, *Which Companies Have the Most Employees Working on an H-1B Visa?*, CBS NEWS (Jan. 13, 2025, at 15:40 ET), <https://www.cbsnews.com/news/elon-musk-h1b-work-visa-tesla-technology/> [<https://perma.cc/542A-EKXL>].

But they also include staffing companies that merely contract their H-1B visas holders out, such as Infosys, Cognizant, Tata, and Wipro. While these staffing agencies, like any temporary help agency, have their functions, they are also where the abuses tend to show up. Their jobs pay closer to \$80,000 a year, \$30,000 less than the median for other employers. (Some of the big tech companies also recruit H-1Bs and pay well under median wage). DANIEL COSTA & RON HIRA, ECON. POL'Y INST., H-1B VISAS AND PREVAILING WAGE LEVELS 22 (2020), <https://www.epi.org/files/pdf/186895.pdf>, [<https://perma.cc/V2PW-4VUC>].

They are less likely to employ workers with any education past a bachelor's degree. And in a few well-publicized cases, they have been part of an outsourcing strategy in which employers such as Disney or Southern California Edison have trimmed or eliminated their information technology departments and required employees to train H-1B holders before their layoffs so that the latter can return to India and recreate the jobs there. Sarah Pierce & Julia Gelatt, Migration Pol'y Inst., Evolution of the H-1B: Latest Trends in a Program on the Brink of Reform 10 (2018), https://www.migrationpolicy.org/sites/default/files/publications/H-1B-BrinkofReform-Brief_FinalWeb.pdf [<https://perma.cc/XC6M-2UBA>]. Congress is well aware of these abuses but has been incapable of addressing them.

9. Pia Orrenius & Madeline Zavodny, *Do Immigrants Threaten US Public Safety?*, 7 J. ON MIGRATION & HUM. SEC. 52, 58 (2019).

10. See generally NAT'L ACADS. OF SCIS., ENG'G., & MED., THE INTEGRATION OF IMMIGRANTS INTO AMERICAN SOCIETY (Mary C. Waters & Marisa Gerstein Pineau eds. 2015) (discussing the multidimensional integration of immigrants into American society across socioeconomic, legal, spatial, and health domains); NAT'L ACADS. OF SCIS., ENG'G., & MED., The Economic and Fiscal Consequences of Immigration (Francine D. Blau & Christopher Mackie eds. 2017) (discussing the economic and fiscal impacts of immigration on the United States, including its effect on wages, employment, economic growth, and governmental budgets at the federal, state, and local levels). These studies then sank like stones. I note that none of the Symposium papers cites either.

revitalization, and very talented children.¹¹ These studies of the *benefits* of migration rely much more heavily on estimation.

II. GOALS FOR MY SCHOLARSHIP

I decided that I wanted, in my own scholarship, to address this weakness and bias in immigration research and the absence of any clear pipeline from research to immigration policy.

Had I foreseen in 2007 the extremely limited impact of the National Academy of Sciences studies eight years later, I might have been more pessimistic about the value of research. Still, I think that economic research, explained to legal and policy makers, is one of the few sources of hope. I think this, because I changed my mind on immigration, and I know that some others can, too. Obviously some forty percent of the U.S. population opposes, and has always opposed, further migration on racial or cultural grounds: it used to be their country and now it is not. I don't know how to reach those people. But there is a group in the middle that can be persuaded that immigration is good for America, even if that group is in political eclipse as this symposium meets.

When immigration reform was before Congress in the 1980s and 1990s, I was a labor guy, and I thought in labor ways. I always thought immigrants should be treated with dignity. But I did not think it was a good idea for American working people to encourage a lot of immigration of people without much education. I thought this would inevitably reduce wages and opportunity for U.S. workers, particularly those who already faced discrimination. Then the country ran that precise experiment in the Clinton years. The Clinton years were years of enormous migration to the United States, most of it authorized, some of it not.¹² They were also years of enormous job and wage growth of a kind we have not seen since.¹³ The labor market found jobs for both immigrants and U.S. workers. The 1990s were the only recent decade in which both the high-

11. For the last, see RAN ABRAMITZKY & LEAH BOUSTAN, *STREETS OF GOLD: AMERICA'S UNTOLD STORY OF IMMIGRANT SUCCESS* (2022). They used the website ancestry.com to trace immigrant success across generations! That is what I mean about research on the benefits of immigration being rare and underfunded.

12. See *Immigrant Families and Workers: The Dispersal of Immigrants in the 1990s*, URB. INST. IMMIGR. STUD. PROGRAM (Nov. 2002), <https://www.urban.org/sites/default/files/publication/60621/410589-The-Dispersal-of-Immigrants-in-the-s.PDF> [<https://perma.cc/Y6GD-28PR>].

13. See *The Clinton Presidency: Historic Economic Growth*, WHITE HOUSE, <https://clintonwhitehouse5.archives.gov/WH/Accomplishments/eightyears-03.html> [<https://perma.cc/VA5J-7VPT>] (last visited Feb. 4, 2026).

and low-educated saw real wage gains.¹⁴ Plainly the labor market did not work the way I, and the people I listened to, had supposed. I needed to learn more about how immigration affects labor markets. So I changed my mind on immigration, once I began looking at the data, and I know others can, too.¹⁵ The key concept is that immigrant labor complements, rather than displaces, U.S. labor.¹⁶

I developed four principles for my immigration scholarship: (1) it should look at the big picture; (2) embed policy arguments in social science research; (3) compare U.S. policy with other countries', particularly Canada and Australia; and (4) not be afraid of ideals. Obviously there are lots of other ways one can do immigration scholarship.

A. *Enduring, Not Ephemeral*

I tried to focus on the big, enduring problems in U.S. immigration policy, the problems that exist for decades, not just under any particular administration. For example, I have mentioned the excessive use of temporary visas for jobs that are in no way temporary, and the fact that no administration makes any use of economic data. I realize that focusing on enduring not ephemeral problems is a claim of privilege. The modal teacher of immigration in a U.S. law school directs an immigrants' rights clinic. These are my heroes. They practice law at the highest level, train students, and still produce scholarship from which I have learned so much. I wanted to do something different since I had the luxury of not needing to respond with the most up-to-date argument opposing removal.

B. *Social Science Research*

I continue to be bothered by the gap between the way law conceptualizes migration, and the way that social scientists do. I have already mentioned different understandings of the labor market and specifically the complementary labor that immigrants perform.¹⁷ Let me mention another. Law conceptualizes refugee and related humanitarian

14. Giovanni Peri, *Did Immigration Contribute to Wage Stagnation of Unskilled Workers?*, 72 RSCH. ECON. 356, 356 (2018).

15. This is not to say that economic data will always make the case for immigration. There is immigration in the world that is of no benefit to the receiving country. But in every study of which I am aware of the immigration that the United States currently sees, that immigration directly benefits the United States and almost everyone in it.

16. See Alan Hyde, *The Law and Economics of Family Unification*, 28 GEO. IMMIGR. L.J. 355, 374–77 (2014) (immigrants admitted on family unification visas are particularly likely to work in family businesses and perform paid and unpaid child care).

17. See *id.*

admission as something that individuals request and that is evaluated in individual terms. This is why each individual seeking asylum must prove well-known facts about conditions in the country they left. But it is an absolutely safe bet that, whenever we observe a large group of migrants leaving their country for the United States, that the United States has messed up their country. The United States has likely propped up and armed rapacious dictators, adopted trade policies that impoverish particular regions, emitted carbon that has rendered former farming areas arid. These groups are not strangers at the gate. They come from countries where the United States has maintained military bases or economic presence, holding them in close embrace, delivering the poisoned kiss. They come to the United States because their siblings, cousins, friends from their village, are already here. They come if they know there are jobs for them and that a network from their homes already exists to support them.¹⁸

C. Comparative

Canada and Australia are two countries with great cultural similarity to the United States, and higher percentages of immigrants in the population, but with some very great differences in policy. I do not think we should emulate Australian refugee policy.¹⁹ However, Canada's visas for caregivers, seasonal agricultural workers, and tech workers (Global Talent Stream) put the United States to shame.²⁰ Canada's refugee processing system is worth copying.²¹ Both countries do a much

18. I have been most influenced by Douglas S. Massey, *Why Does Immigration Occur? A Theoretical Synthesis*, in *THE HANDBOOK OF INTERNATIONAL MIGRATION: THE AMERICAN EXPERIENCE* 34–52 (Charles Hirschman et al. eds. 1999), and Oded Stark & J. Edward Taylor, *Relative Deprivation and International Migration*, 26 *DEMOGRAPHY* 1 (1989).

19. See generally BEHROUZ BOOCHANI, *NO FRIEND BUT THE MOUNTAINS: WRITING FROM MANUS PRISON* (2019) (recounting, through a series of Farsi text messages, the author's five-year illegal detention on Manus Island and providing a lyrical firsthand witness to the systemic mistreatment of stateless refugees in Australian offshore centers).

20. See generally Rupa Banerjee et al., *From "Migrant" to "Citizen": Labor Market Integration of Former Live-in Caregivers in Canada*, 71 *INDUS. & LAB. RELS. REV.* 908 (2018) (analyzing the labor market outcomes of migrant caregivers in Canada); Leah F. Vosko, *Legal but Deportable: Institutionalized Deportability and the Limits of Collective Bargaining Among Participants in Canada's Seasonal Agricultural Worker Program*, 71 *INDUS. & LAB. RELS. REV.* 882 (2018) (analyzing the design and operation of Canada's Seasonal Agricultural Workers Program in creating a form of "institutionalized deportability").

21. See generally REBECCA HAMLIN, *LET ME BE A REFUGEE: ADMINISTRATIVE JUSTICE AND THE POLITICS OF ASYLUM IN THE UNITED STATES, CANADA, AND AUSTRALIA* (2014) (comparing refugee status determination regimes in the United States, Canada, and Australia and concluding that cross-national variations in asylum outcomes depend on an administrative agency's insulation from political and judicial interference).

better job of encouraging lawful permanent residents to naturalize.²² I note that none of our symposium contributions includes any comparative dimension.

D. Ideals

I do not mean to suggest that only empirical social science matters. If you want to motivate people—and I assume that is why we write about policy—one must also appeal to ideals. (One should also write in popular media. I am proud of the few pieces I did for a general audience, and wish I had done more.²³)

I have been particularly influenced for years by a brilliant essay by Claus Offe and Helmut Wieselthaler.²⁴ One cannot explain collective action, such as a labor union, exclusively by appealing to economic rationality. The rational worker would always free-ride on the collective action of others. One needs a second logic of collective action, appealing to workers' ideals. Similarly, it is not enough—as has become painfully clear—to show Americans that immigration is in their economic interests. One needs ideal appeals.

My ideal comes undiluted from Linda Bosniak.²⁵ Accepting her brilliant invitation to think about citizenship, I have concluded that my

22. Alan Hyde et al., *Why Don't They Naturalize? Voices from the Dominican Community*, 11 *LATINO STUD.* 313, 315 (2013).

23. See, e.g., Alan Hyde, *First Immigrants, then You: Policing Methods Are Used on Immigrants, then Others*, *THE HILL* (July 31, 2019, at 14:30 ET), <https://thehill.com/opinion/immigration/454719-first-immigrants-then-you-policing-methods-are-used-on-immigrants-then> [<https://perma.cc/NCK9-L2GZ>]; Alan Hyde, *Even Republicans Once Hated ICE, so Why Keep It?*, *THE HILL* (Nov. 15, 2018, at 14:00 ET), <https://thehill.com/opinion/immigration/416568-even-republicans-once-hated-ice-so-why-keep-it> [<https://perma.cc/7VZD-HXEN>]; David Brancaccio, *How Family-Based Immigration Can Boost the Economy*, *MARKETPLACE* (Feb. 27, 2018), <https://www.marketplace.org/2018/02/27/economy/immigration-data> [<https://perma.cc/HU7G-BK7E>] (interview with David Brancaccio).

24. See generally Claus Offe & Helmut Wieselthaler, *Two Logics of Collective Action: Theoretical Notes on Social Class and Organizational Form*—, in *CLAUS OFFE, DISORGANIZED CAPITALISM* 170 (1985) (arguing that associations of capital and labor follow fundamentally different “logics” of collective action, where business groups merely aggregate fixed interests while unions must use dialogical processes to overcome structural distortions and define a collective identity). The best article I ever wrote was an extended application of their thesis to law. See generally Alan Hyde, *A Theory of Labor Legislation*, 38 *BUFF. L. REV.* 383 (1990) (proposing that sweeping labor law reforms function as symbolic “ritual events” designed to restore industrial order during periods of worker unrest rather than serving as purely functional or behavioral adjustments).

25. See generally LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* (2006) (examining the legal and social status of “aliens” to argue that the inclusionary ideals of domestic citizenship and the exclusionary nature of immigration law fundamentally collide within national territories).

ideal involves disaggregating citizenship into myriad smaller questions: who should get student benefits? Who should vote?—and normally starting from an assumption that anyone who has lived in a place without trouble for a month or so, and intends to stay, should normally be secure from ejection so long as they commit no crime. I've argued that labor law protection should extend to everyone working in a place, irrespective of their citizenship, which is actually U.S. practice for the most part, though not true everywhere.²⁶

III. WHAT IF THERE IS NO FUTURE OF IMMIGRATION LAW SCHOLARSHIP?

All of this assumes that immigration law scholarship over the next few years will resemble the scholarship we know, an assumption that is very much in doubt.

It is possible for an area of law to disappear entirely as an academic subject. If you don't believe me, just ask your colleague who teaches labor law, assuming that you have one, which you probably don't, since professors of labor law are typically not replaced on retirement and the subject then disappears from law school curricula.

I can think of three reasons why immigration law might similarly disappear as a subject of academic study. The first two come from labor law.

First, immigration law's social predicate might disappear. Perhaps our era of mass migration will end. I do not think this likely. I expect the disruption that climate change daily brings to agriculture and habitability around the world will increase pressures to migrate.

Second, and more likely, immigration law might become a technical field like labor law, or banking law or securities law. People who need

26. See generally Alan Hyde, *On the Irrelevance of Citizenship in the House of Labour*, in *SOCIAL JUSTICE AND THE WORLD OF WORK: POSSIBLE GLOBAL FUTURES—ESSAYS IN HONOUR OF FRANCIS MAUPAIN* 99 (Brian Langille & Anne Trebilcock eds. 2023) (arguing that citizenship is irrelevant to labor law and that all workers should be entitled to the full protections of the laws in the territory where they are physically working, regardless of their immigration status). My goal is to get you to find very strange any of the daily, ordinary invocations of the juridical concept of "citizen". This may seem a large task. Every day, in thousands of mundane legal contexts, the different treatment of two otherwise identically situated individuals is justified on the purported ground that one is a citizen, and the other is not. Indeed, *the justification of unequal treatment is the primary contemporary social and legal function of the concept of citizenship*. We normally accept "because he or she is not a citizen" as a complete justification. I do not think that we should. If I achieve my goal, readers who encounter this routine justification of different treatment should acquire the habit of asking, reflexively, so to speak: "What possible difference should that make?" To a future generation, the purported justification "because she is a noncitizen" will sound, often already sounds, as problematic and troubling as the non-justifications "because she is Black" or "because she is a Jew" or "because she is a woman" sound to us.

visas or who supervise law enforcement will need to consult technical experts in immigration law. But it will not be a field of academic study, because it will not be seen as including any ideas worth discussing or of interest to anyone but specialists.²⁷

However, the third, and greatest threat to the existence of immigration law, is that it will be replaced by the commands of the leader. There would then be no immigration law worth studying. Written law that might be an obstacle to these commands would simply be of no effect. This is exactly how it worked in Nazi Germany, and the meticulous analyses of Franz Neumann are particularly timely.²⁸ We are in a perpetual state of exception, “a space devoid of law.”²⁹ People are declared devoid of rights in the absence of any legal proceeding.³⁰ The United States Supreme Court has just asserted the primacy of law over the Government’s claim to a state of exception.³¹ But history offers no confidence that the judiciary alone can prevent the imposition of a sovereign state outside the law.

27. I saw this coming for labor law and take no pleasure in having been accurate. Alan Hyde, *The Idea of the Idea of Labour Law: A Parable*, in *THE IDEA OF LABOUR LAW* 88, 96 (Guy Davidov & Brian Langille eds. 2011).

28. See generally FRANZ NEUMANN, *THE DEMOCRATIC AND THE AUTHORITARIAN STATE: ESSAYS IN POLITICAL AND LEGAL THEORY* (1957) (analyzing the tension between political freedom and state power in industrial societies by examining the evolving role of law, the limits of civil disobedience, and the theoretical foundations of democratic and dictatorial regimes); FRANZ NEUMANN, *BEHEMOTH: THE STRUCTURE AND PRACTICE OF NATIONAL SOCIALISM 1933–1944* (1944) (characterizing the Nazi regime not as a unified “totalitarian” state but as a “Behemoth” of competing power blocs—the party, the army, the bureaucracy, and industry—operating in a state of institutionalized lawlessness).

29. GIORGIO AGAMBEN, *STATE OF EXCEPTION* 50 (KEVIN ATTELL TRANS. 2005).

30. Alexandra Berzon et al, *Social Security Lists Thousands of Migrants as Dead to Prompt Them to “Self-Deport”*, N.Y. TIMES (Apr. 10, 2025), <https://www.nytimes.com/2025/04/10/us/politics/migrants-deport-social-security-doge.html> [https://perma.cc/8N9L-ZVMF]. On declaring people dead or authorizing their killing, see Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Daniel Heller-Roazen trans. 1998).

31. See generally *Noem v. Abrego Garcia*, 145 S. Ct. 1017 (2025) (affirming order requiring the Government to facilitate the return to the United States of a noncitizen summarily and wrongfully removed).