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*Notes and Suggestions from the Preface to
Immigration Law and Society (Polity, 2018)*

Immigration law is utterly fascinating, and yet it's one of the most complex areas of law and policy, and the federal immigration code is just slightly less voluminous and complicated than the federal tax code. One can spend a lifetime mastering all of it. For students who are new to the topic, please note that many people get confused in this area of law and policy, and many folks take a while just to get a handle on the basics. For professors who've not taken immigration law in law school, or who might be familiar with just one or two areas of socio-legal studies in the immigration law, I hope that my book offers an overview of some of the most compelling themes across this vast field without being overwhelming. It's also a good idea, as you're reading this one, to have handy a set of other books that present the basics of immigration law in all of its complexity.¹

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As much as it's important for us to get a clear handle on immigration law, it's also (equally?) important to note that the law itself doesn't always work, and many people don't behave according to the letter of the law. It has always been thus: in the Judeo-Christian tradition, God gave his chosen people the Ten Commandments, and yet even as He is giving these commandments, his people are messing up. Well before and long after, the Bible is full of characters who can't follow these simple commandments, and so it's like a Top Ten List, the Top Ten Rules That People Can't Follow. It's still a problem, is it not? If God Himself cannot somehow inspire or coerce human beings to obey His rules, what chance might lesser entities have when they declare or impose their own laws?

From time immemorial, some rule-breakers have been utterly horrible, and they deserve our condemnation, perhaps even the fierce judgment of God, and yet how many of *you* have recently broken the speed limit or have told a "white lie"? In my house, the general rule is that we must always keep our rooms neat and clean, even if you're a busy teenager, but sadly, the teenagers in my house seem incapable of following this simple rule. Calibrating our reactions to the wrong-doing can be tricky: is the overwhelming evidence of messiness, for example, a violation of that commandment to honor they mother and father, which cometh from God

Himself, or is it a more casual, even understandable, sin? Is it a sin at all? (I think so, my wife not so much.)

Immigration law is complex and multifaceted, people generally do follow the law, and much of the law does work as the lawmakers intended. But then a great many people don't follow the law, and the law itself has consequences that the lawmakers didn't foresee. Some Americans see immigration transgressions as horrible sins, others as understandable and forgivable. Still others wonder whether migrating should be a sin at all. In writing this volume, I've drawn heavily from a certain intellectual sensibility that I'd developed in graduate school—or rather, the sensibility was developed into me. I learned socio-legal studies from a group of scholars who were interested in the broader social and political dimensions of law, and how it worked and how it didn't work in the real world. How does *any* particular rule work? And is the rule just, and from whose perspective? Moreover, how do legal professionals, legal institutions, and other social groups and actors shape and respond to specific rules, laws, and legal regimes?

Perhaps because I was trained within a law and society program, I'm inclined to think that this approach to law—using social science and humanistic methods to study its origins, contexts, and consequences—is the most fascinating and the richest in terms of intellectual content and in the range of insights that its scholars have offered. I am, obviously, biased, but this seems to me an excellent way to structure an undergraduate education as well as an academic career: that is, if you're interested in law, and if you're thinking about law school, dear student, my advice is that you start by reading excellent scholarly work in law and society, for such scholarship will introduce you as well to basic theories and methods in the humanities and in the social sciences more generally, even as it deepens your interest in law itself. Because I've relied so heavily on law and society scholars in this particular volume, I would also recommend works that explore the underlying sensibilities of scholars who've taken these approaches to the study of law.²

Many of my own professors were some of the brightest legal historians, economists, philosophers, sociologists, and literary scholars. Through a variety of methods, they'd devoted their entire lives to the study of law and legal institutions, and of how and why people obeyed, transgressed, reformed, and abolished legal rules. For many of these scholars, any particular law was like the middle of things—just as interesting (even more interesting?) as the law itself was how it came to be, how other legal actors and subjects reacted to it, and then its fate in a broader social and political world where some saw the law as necessary and just, while others viewed the same rule with suspicion and even loathing. For example, many slave-owners in the South, in the late 18th century, considered the constitutional rules protecting slavery as just, necessary, and perhaps permanent; his slaves, however, would have considered these same rules morally repugnant, unnecessary, and inconsistent with the other provisions of the constitution. And let's thank God that they weren't permanent.

Socio-legal studies has existed in one form or another ever since the modern social scientists, and the humanists have also had, through creative productions, literary criticism, and other critical engagements with the arts, a tremendous impact on the way we see law and modern

legal institutions. In the second half of the 20th century, the “legal realists” criticized the law schools and the training of lawyers, saying that law was more the result of politics and messy social realities, not the neat and tidy logical syllogisms taught in contracts or in torts. The realists recommended (once again) using social science and humanistic methods to understand how law and legal institutions really worked, and then why they sometimes failed. For this book, I’d highly recommend, especially to younger students, that my readers consider the rules governing immigration from these perspectives. Instead of thinking about them as necessary, or just, or permanent, it’ll be more interesting to consider how they’re maybe not so necessary nor are they especially just and maybe they shouldn’t be permanent. Perhaps they cause more problems than they solve. I’d invite all of my readers to consider critical perspectives toward the immigration law, to appreciate its many dimensions and open-ended aspects.

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When I was a student in college, I was totally lost during my first semester. It didn’t occur to me, until sometime during my second semester, that books and articles were not just books and articles, but that they were structured contributions to existing scholarly conversations. Now, to refer to books as “structured contributions to existing scholarly conversations” sounds weird, I know, but that’s what they are. In the social sciences and in the humanities, the authors of books and articles are offering, in a highly organized way, a thorough and careful presentation of their ideas, sometimes over hundreds of pages, and they’re usually doing this for the sake of other scholars and readers interested in those same ideas. In the scholarly world, we also like to believe that all new books and articles represent new or original presentations—in order to get published, the author should offer original, novel work, or they should offer at least a new take or a new way of looking at familiar material. All books and articles are thus contributions to existing debates and conversations.

This book itself offers a new take, and I’ve attempted to combine and to bring together a lot of material that would be familiar to a researcher of the immigration law, but I’ve also organized it in such a way that a new undergraduate can hear about *many* interesting conversations about immigration law and policy all at once. It’s like a dinner party: for students, you’ll get to meet scholars who work in legal history and in ethnographic sociology, and you’ll hear about people who study skilled immigrants, as well as those who study people who are out of status. Often, they don’t much talk to one another, and a scholar working on deportation is likely to talk to other scholars working on deportation—rarely, though, do they meet or discuss higher education policy in China or in India, for example, nor do they pay much attention to privileged, wealthy people circulating around the world. (I’ve had this problem myself: my last book was about deportation and removal and such, and so professionally, I didn’t pay much attention to richer, privileged immigrants for, like, five years.) My book is thus an effort to bring many different kinds of scholars to the same conversation, as I think there’s a real value in seeing all of these topics together, all at once.

I hope that many of my students will find these multiple scholarly conversations as fascinating and as interesting as I have, and I hope that other folks will use this book and teach this class to welcome even more students to participate in these vital discussions. In recent years, many people have taken an interest in the immigration law, as this volume shows, and their debates have been acrimonious, bitter, and partisan. As an observer, though, I've noted that many of the leading participants are simply misinformed, ill-informed, or plain wrong. The current President of the United States seems especially confused and misinformed about the immigration rules that he wishes to "reform." I'd like for him to read my book, but people say he's not much of a reader, and so I won't hold my breath. I do know that most people reading this particular book are in college or have been through college, and that the whole point of a college education is, among other things, to help create a more educated, informed citizenry. I'm old-fashioned that way: like many other professors, I teach and write in the hope that educated citizens will then vote and conduct themselves in ways that are smarter and more engaged with the messy world as it is. I've always felt very fortunate to be a part of that process, and so I'm grateful for your attention.

Typos and Errors in the Preface

On page vi, in the sixth lines from the bottom, it should read: "...people were of Hispanic ancestry, representing..." As it is, the phrasing isn't technically incorrect, but I should have edited for clarity.

On page x, one of my favorite TAs is Malaphone Phommasa, not Malaphone Phommassa. Now, in many books, authors often say, "Thanks to Bob, Tom, and Steve for catching errors in the book, and all the remaining errors are mine." Well, I'm pretty sure that this one *isn't* mine, even as I'm embarrassed that Malaphone's name appears incorrectly, at least in the first edition. I'm very sorry, Malaphone, and I'll make sure that your lovely last name will appear correctly in subsequent volumes.

Endnotes

¹ I'd recommend having at least two of these books for that purpose: Kevin Johnson, Raquel Aldana, et al., *Understanding Immigration Law* (Lexis Nexis, 2015); Stephen Legomsky and Christina Rodriguez, *Immigration Refugee Law and Policy* (Foundation Press, 6th ed., 2015); and T. Alexander Aleinikoff, David Martin, et al., *Immigration and Nationality Laws of the United States* (West Academic, 2016). I myself learned immigration law through Professor Legomsky's classic casebook in law school, and I still use it often. The other scholars who've co-authored these books are also impressive: Kevin Johnson is Dean and Professor of Law at UC Davis, and Raquel Aldana is also Professor of Law at UC Davis; T. Alexander Aleinikoff and Christina Rodriguez are Professors of Law at the Yale Law School; and David Martin recently retired as Professor of Law at the University of Virginia. Professor Aleinikoff taught for many years at Georgetown Law School, one of the leading intellectual centers for immigration law and policy. Now, professors at the law schools use these heavy, dense casebooks to teach immigration law for second and third year law students. They're certainly not for first year college students. They are very useful, though, for social scientists and even for humanists unfamiliar with the immigration law—they tell us the difference, say, between “immigration” and “emigration,” or an “immigrant” and a “non-immigrant,” or between an EB-1 and an H-1B. None of these books would qualify as light reading, however. I'd recommend these as important reference sources, because the authors have clarified the minutiae of immigration law for people who aren't necessarily specialists, and they've organized the materials in a way that's easy to search. For students interested in law school, try one and see if you'd like to spend fifteen or thirty weeks going through it in great detail. Some students run the other way.

² Here are two helpful overviews: *The Handbook of Law and Society* (Austin Sarat and Patricia Ewick, eds, Wiley Blackwell, 2015); and Kitty Calavita, *Invitation to Law and Society* (University of Chicago Press, 2016). Of the two, Professor Calavita offers the best introduction to the field for undergraduates. For advanced students, I'd recommend two other works: *Crossing Boundaries: Traditions and Transformations in Law and Society Research* (Austin Sarat, Marianne Constable, et al., Northwestern University Press, 1998); and *The Law and Society Reader II* (Erik Larson and Patrick Stewart, eds., New York University Press, 2014). The second work draws from several articles that were originally published in the *Law and Society Review*, one of the leading scholarly journals for law and society scholarship and the flagship journal for the Law and Society Association.