

The Prodigal Illegal: Christian Love and The Legal Status of Undocumented Migrants

Victor C. Romero

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Citizenship and Personhood

U.S. Constitution, Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the State wherein they reside. ... No State shall ... deny to any **person** within its jurisdiction the equal protection of the laws.



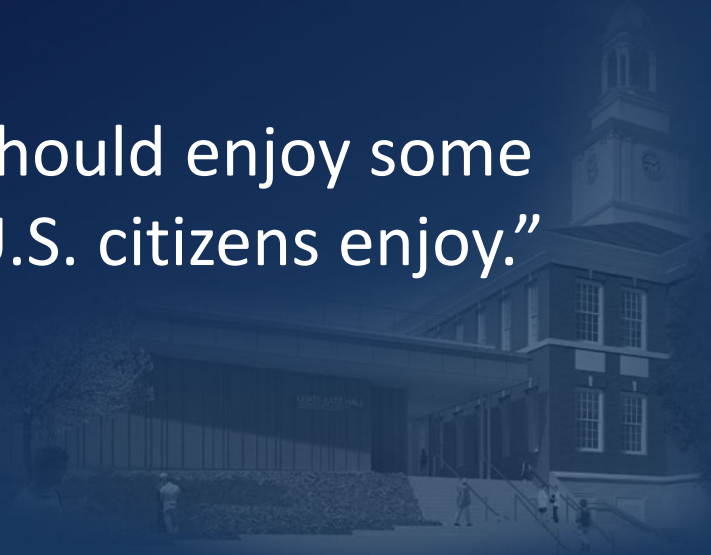
Citizens, Noncitizens

- U.S. Citizens – born or naturalized in U.S.
- Noncitizens:
 - Immigrants – **Family**, Work, Lottery, Asylum
 - Nonimmigrants – Temporary Visitors
 - **Unauthorized Migrants**
 - Visa Overstays
 - Border Crossers



3 Views of Unauthorized Migrants' Rights

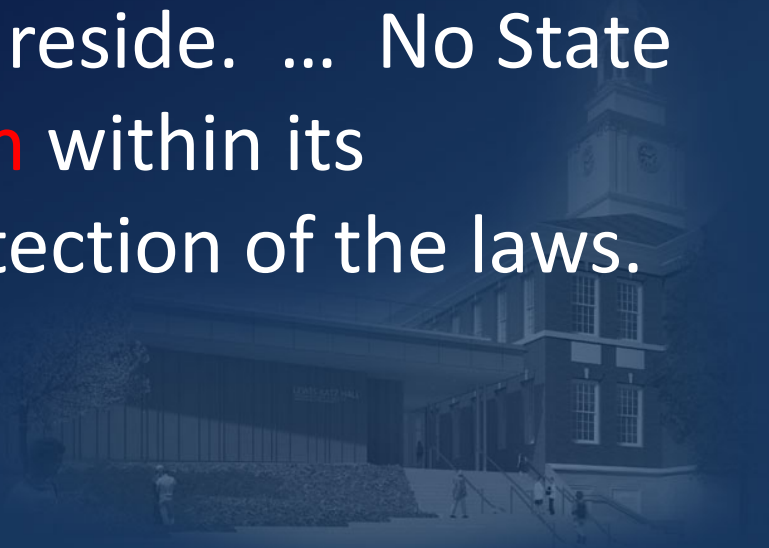
- Sovereignty/Membership: “They should have no rights whatsoever because they have no right to be in the U.S.”
- Human Rights/Personhood: “They should have the same rights as U.S. citizens because they are human beings like everyone else and the U.S. is a country of immigrants.”
- Hybrid: “As persons, they should enjoy some rights, but not those that U.S. citizens enjoy.”



“As **persons**, they should enjoy some rights, but not those that **U.S. citizens** enjoy.”

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Law Like Love, by Jeffrie Murphy

55 Syracuse Law Review 15 (2004)

- “What would law be like if we organized it around the value of love and thought about and criticized law in terms of that value? ... My concern will be with *agape* – *love of neighbor...*” [p. 18]
- “Such love is concerned not simply with satisfying preferences, alleviating distress, providing for people’s material well being, and thereby making their lives more pleasant [i.e. liberal compassion] *but is also centrally concerned with promoting their moral and spiritual good – helping each one to grow in virtue.*” [p. 22]
- *In the context of criminal punishment – “hatred,” “cruelty,” and “callous indifference” – would be inconsistent with agapic love.* [p. 29]

The Good Samaritan (Ribot)

(which Jeffrie and Scaperlanda, among others, cite)



The Return of the Prodigal Son (Rembrandt)



Agapic Love and the Prodigal Illegal



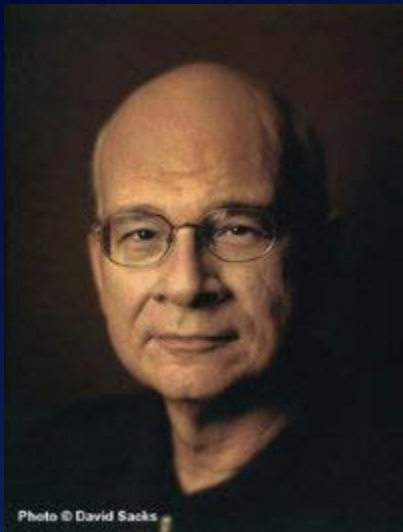
The Younger Brother



The Elder Brother



“If the elder brother had known his own heart, he would have said, ‘I am just as self-centered and a grief to my father *in my own way* as my brother is in his. I have no right to feel superior. ‘ Then he would have had the freedom to give his brother the *same forgiveness* that his father did. But elder brothers do not see themselves this way.”



LPR v. USC? Lessons from Nguyen v. INS (2000)



Membership v. Personhood

- One's perspective on the legal treatment of the noncitizen depends on how one views the relevant issues along the following spectrum from membership to personhood:
- Membership: Because each nation is sovereign, only full members (citizens) enjoy full individual rights; noncitizens can be handled en masse, viewed as numbers in the aggregate that must be efficiently managed. (E.g., immigration law as a form of contract between the nation and the noncitizen.)
- Personhood: The U.S. Constitution's due process and equal protection guarantees extend to all "persons"; noncitizens' concerns should be viewed as individual rights issues and government should strive to treat all noncitizens as individuals first. (E.g., immigration law as subject to minimum human rights guarantees)

