Since 1999, the Program in Law and Public Affairs has provided a place at Princeton for interdisciplinary conversations about the myriad ways in which law engages and impacts the world. We provide a variety of forums of intellectual engagement, including the “Law-Engaged Graduate Students” who meet bi-weekly to present concept papers, article drafts, and dissertation chapters, the “Hot Off the Press” series, where authors of recently published books discuss their work with Princeton students and faculty, and bi-weekly LAPA seminars that provide a forum for engaged examination of academic works-in-progress. At the center of our program are the LAPA Fellows. These yearly scholars-in-residence not only pursue their own research projects, but spend the year engaging the Princeton community with an extraordinary trove of legal and interdisciplinary expertise and experience. In this edition of Law and LAPA@Princeton we feature excerpts from the research of this year’s LAPA Fellows. Each will be presenting their projects at a seminar, the schedule of which appears at the end of this edition.

DAVID RABBAN
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Professor Rabban is working on a book on the history, theory, and law of academic freedom. He offers this description of a controversy arising at Princeton University.

A CONTROVERSIAL CASE ABOUT ACADEMIC FREEDOM AT PRINCETON UNIVERSITY

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A case at Princeton University first attracted substantial attention to the potential tension between the developing judicial recognition of institutional academic freedom and the individual academic freedom of professors, which historically had been the primary focus of this concept. Despite the objections of many of its own faculty, Princeton relied on the first amendment to resist any judicial review of its policies regulating access by outsiders to campus facilities. The case arose when Chris Schmid, a member of the United States Labor Party who had no affiliation with the University, distributed and sold on the campus material dealing with the party and the mayoral campaign in nearby Newark. Existing Princeton regulations prohibited any person without a university connection or sponsorship from entering the campus to solicit support or contributions. Schmid was arrested and convicted of trespass. Although the Supreme Court ultimately held that new, more permissive university regulations rendered the original dispute moot, this litigation generated an important debate about the meaning of institutional academic freedom.

In overturning Schmid’s conviction, the Supreme Court of New Jersey relied on the free speech provision of the state constitution, which it acknowledged to be “more sweeping in scope than the language of the first amendment.” Contrasting the state action requirement of the fourteenth amendment, the court observed that the free speech rights in the New Jersey Constitution are enforceable against private as well as public bodies. The court recognized that the New Jersey Constitution also protects ownership of private property, and viewed its task as balancing Princeton’s property rights against Schmid’s expressive rights. In analyzing these competing claims, the court revealed remarkable sensitivity to the institutional context of campus speech. Citing Princeton’s own regulations lauding the importance of free inquiry and free speech in achieving the university’s declared purpose of promoting knowledge, the court concluded that Schmid’s presence on campus was “entirely consonant with the University’s expressed educational mission.” The court acknowledged that “needs, implicating academic freedom and development, justify an educational institution in controlling those who seek to enter its domain” and require substantial judicial deference to university “autonomy and self-governance.” Yet it reversed Schmid’s conviction because Princeton’s regulations contained no reasonable standards relating limitations on expressive freedoms to legitimate educational goals. In its jurisdictional statement to the United States Supreme Court, Princeton complained that its academic freedom protected by the first amendment was violated when the Supreme Court of New Jersey arrogated to itself “the ancient right of a university community to determine how its educational philosophy may best be implemented.” According to Princeton, a private university’s choice of educational philosophy, however broad, orthodox, or eccentric, is immunized by first amendment academic freedom from interference by the state. Princeton insisted
that no governmental body is constitutionally competent to determine whether a private university has acted in accordance with its educational objectives.

Princeton's argument to the United States Supreme Court provoked strong objections from many of its own faculty, particularly those with professional interests in constitutional law. Several professors worried that the broad immunity from judicial scrutiny claimed by Princeton would allow any private university unreviewable discretion to restrict the academic freedom of its faculty. Princeton's "distorted" conception of academic freedom, one faculty member argued, posed a far greater threat to intellectual life in universities than either Schmid's activities or the holding of the Supreme Court of New Jersey. Boards of trustees, following Princeton's theory, could simply assert that faculty ideas are "incompatible" with the university's "educational purposes." Private universities, other faculty members feared, could invoke institutional academic freedom to preclude judicial review of administrative decisions to fire a professor doing controversial research, to determine the content of courses, to revise the grades assigned by faculty to students, and to revoke tenure without cause. Professors criticized Princeton for confusing its own institutional autonomy with the faculty's academic freedom, and asserted that granting the immunity sought by the university would violate the fundamental principle that no person or institution is above the law. One professor warned Princeton's president that the best result Princeton could hope for in the Supreme Court would be a decision holding it up as a "laughing stock... for attacking academic freedom in particular and freedom of discussion in general in the name of private property. Making fun of Princeton-with devastating logic-will become an annual game in which students and faculty elsewhere will delight."

The American Association of University Professors (AAUP) filed an amicus brief with the Supreme Court that reiterated and expanded in legal language many of these faculty views. The AAUP stressed that Princeton's invocation of institutional academic freedom had no connection with its educational mission. Princeton was not trying to protect against an external threat to internal decisions about curriculum or faculty selection, or to the faculty's freedom to teach or do research. Not surprisingly, the AAUP emphasized the dangers to faculty members it perceived in Princeton's legal position. Princeton's broad claim of institutional academic freedom, the AAUP warned, would effectively preclude judicial review of institutional decisions "even in cases where the rights or interests of the faculty might be adverse to the institution's administration." Faculty complaints of employment discrimination or of university violations of contractual commitments to academic freedom and tenure, the AAUP observed, relate much more closely to institutional educational policies than did Schmid's distribution and sale of political literature. The institutional academic freedom Princeton invoked against Schmid would apply even more strongly against these faculty complaints. A university could bar judicial scrutiny of faculty contracts merely by claiming that it was following its own educational policies.

A letter from Princeton's university counsel to a faculty member who had objected at length to the university's position in its jurisdictional statement captures better than any legal papers the administration's reaction to faculty concerns. The letter stressed that the legal arguments of the university in Schmid "have nothing to do with the relative powers or rights within an institution between the Trustees and individual faculty members or students," and promised in the university's next brief to avoid any possible implication that Princeton wanted "to diminish the rights of individual faculty members under the concept of academic freedom." Yet the letter also challenged the view that the state is a better ally of faculty academic freedom than the governing boards of private universities. During the McCarthy era, the university counsel claimed, private institutions were substantially more effective than their public counterparts in protecting scholars from state intervention. He added that private boards of trustees, unlike the state, are constrained by different constituencies within the university as well as by a general ethos supporting academic freedom.

The university counsel assured that a Supreme Court victory for Princeton in Schmid would not "directly affect to any degree whatsoever the relationships between the trustees of a private institution and its faculty members." He did concede, however, the possibility that "reasoning by analogy another court down the road would apply rules enunciated in this case to the dissident opinions of faculty and students." Yet a more realistic and directly relevant fear, the counsel warned, was that a defeat for Princeton's position would encourage additional state intervention in university educational decisions in ways that might eventually constrain faculty academic freedom. He observed the historical tendency of increased state power "to homogenization of standards, to fear of the odd case, and to sensitivity to political fashions." The counsel advised that professors, instead of relying on the state, including its courts, to protect their academic freedom, should place their confidence in the diversity of autonomous American universities. ❖
There is some question as to whether problems associated with the exclusionary design of many of our cities—one-way streets, the absence of sidewalks and crosswalks, and bridges and walls that shape the demographics of a city and isolate a neighborhood from those surrounding it—are merely legacy problems (that is, present physical manifestations of policies that are now defunct), problems that are still ongoing, or a bit of both. Answering this question is important not only in order to understand the severity of the problem more fully, but also for purposes of considering appropriate solutions. Certainly, many examples of architectural exclusion are associated with the urban renewal and highway projects of the 1950s and 1960s. Those projects are no longer being carried out and are now viewed by many as mistakes. Additionally, while most forms of exclusion by law have been declared illegal and the laws repealed, the architecture built in response to those laws remains in place. That said, exclusionary zoning is still quite common, and the exclusionary placement of transit stops and transit infrastructure is ongoing.

Even if architectural exclusion is predominantly a legacy problem, there is still value in pointing out historical issues, especially when they are issues that constrain present behavior and of which the law does not take account. Further, even if some more progressive cities and planning departments now consider some of these issues in making decisions about the built environment, the legacies of the past continue to regulate in the present. Architecture is enduring; the layout of cities is hard to change. As Eduardo M. Peñalver notes, “The durability of land-use decisions’ consequences and the finite quantity of land mean that the decisions that current owners make about how to use their land will reverberate for generations.”

Our roads, bridges, and structures are built in place and made to withstand time and the elements; removal and redevelopment are very expensive. And while courts and legislators typically eliminate old laws upon deciding that they are no longer valid—such as the eradication of racial zoning and the removal of old racially restrictive covenants from chains of title—it is much more difficult to remove exclusionary architecture from the built environment. This is one reason that many courts do not require people to tear down structures that were constructed in violation of ordinances; violators often pay a fine instead. The built environment continues to regulate; as a legal matter, nothing is currently forcing municipalities to confront the continuing harms that result from those past architectural decisions. This is a problem because “there are no meaningful lines between that which the state tolerates, that which it encourages, and that which it effectuates.” Further, these decisions are problematic because public infrastructure and public spaces are such important and dominant features of the built environment.

There are a number of reasons that even legacy effects of the exclusionary built environment are problematic and should be ameliorated. First, as many commentators have noted, a person who is physically excluded from a place often feels stigmatized and degraded; preventing stigma was key to the Court’s holding in Brown v. Board of Education. Indeed, a key element of the civil rights movement was to further and promote “unencumbered movement” as an important right. When certain groups of people are intentionally kept out of, or made to have a hard time accessing, certain parts of a community, it limits their freedom and harms their dignity.
Similarly, extensive research has explored the “geography of opportunity,” which suggests that the place in which a person grows up and lives has a dramatic impact on her future earning ability and educational attainment. The mechanisms through which neighborhoods have an impact on future outcomes for their residents are much debated, but part of the effect likely results from the lack of political power and access to public resources and institutions that often come with residence in a low-income neighborhood. The geography of opportunity provides insight into the social costs of segregation in housing and the built environment, which tends to heavily affect racial minorities; their exclusion “engenders their absence from valuable social networks.”

Finally, because the built environment exists as a result of direct decisions by policymakers who are employed by the state (or municipality), it is effectively the state that has created the exclusion. As Reva Siegel has reminded us, “it is wrong for the state to engage in practices that enforce the inferior social status of historically oppressed groups.” By failing to actively alleviate the continuing harms caused by the exclusionary environment, the state allows those practices to continue. However, because there is at present no affirmative duty for the state to act to remove legacy exclusionary architecture, there is likely no current state action that could be challenged in court. Although no laws currently force local governments to reconsider or reconfigure their exclusionary infrastructures, cities and states do have the opportunity, and perhaps even the incentive, to significantly alter the built environment and remedy some of the impacts of architectural exclusion.

The nation’s infrastructure is in substantial decline and in need of major revitalization; many of the roads and bridges in the United States were put in place over fifty years ago, and these systems are becoming overwhelmed or worn out. Moreover, there are substantial economic incentives to revitalize the country’s failing infrastructure, and numerous initiatives have been undertaken in recent years to address these issues. For example, more than $91 billion of capital is invested annually to improve the nation’s highways and roads. Consequently, there exists an opportunity for localities to address the impacts of architectural exclusion as part of the much-needed rebuilding and repairing of outdated infrastructure. Without large-scale rebuilding, architecture and the built environment are durable and hard to change. Therefore, it will likely be more difficult to eradicate existing exclusionary infrastructure than to prevent the creation of future barriers to access.

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1. How we conceive the right being protected.

First, does Lawrence presuppose that I have a liberty to choose to do whatever traditionally immoral things I wish to do? If so, it indeed does hurl us down the slippery slope. And there is no distinction between the conduct protected there and the types of conduct on Scalia's list. Or does Lawrence presuppose simply that the rights of spacial privacy and intimate association already recognized for straights extend to gays and lesbians? If so, it does not put us on the slippery slope. For there are significant distinctions between the conduct protected there and the sorts of conduct on Scalia's list.

Second, does Lawrence launch a libertarian revolution by holding or presupposing that moral disapproval as such is not a legitimate basis for laws? If so, it shoves us down Scalia's slippery slope. Or does Lawrence instead seek to secure the status of equal citizenship for gays and lesbians by striking down laws that “demean their existence”: an existence that we judge to be a morally worthy way of life entitled to respect. If so, it holds merely that moral disapproval that demeans the existence of a group whose members are worthy of status of equal citizenship is not a legitimate basis for laws. Thus understood, Lawrence does not push us down Scalia's slippery slope. For there is a distinction between the conduct and way of life protected there and, for example, bestiality: If the person wanting to have sex with his horse (or to marry his horse) complains that the law prohibiting bestiality demean his existence and reduces him to the status of second class citizenship, we just aren’t going to be moved.

2. How we justify protecting the right.

Do Lawrence and Obergefell justify protecting the right of gays and lesbians to intimate association and to marry on the ground that individuals have a right (1) to choose whom or what to have sex with, (2) to decide whom or what to marry, and (3) to choose to do whatever they damn well please with their bodies—a right to choose without regard for the moral good of what is chosen? If so, those decisions put us on Scalia’s slippery slope to bigamy, adult incest, prostitution, adultery, fornication, and bestiality.

Or do Lawrence and Obergefell to the contrary justify protecting the right to intimate association and to marry on the ground that doing so promotes moral goods? In Obergefell, Kennedy quotes the stirring language from Griswold v. Connecticut about the noble purposes of marriage: promoting intimacy, harmony, and loyalty within a worthy relationship. He also quotes the Massachusetts Supreme Judicial Court’s formulation concerning moral goods in Goodridge v. Dep’t of Public Health: because marriage “fulfills yearnings for security, safe haven, and connection that express our common humanity, civil marriage is an esteemed institution....” That Court also mentions the moral goods of “commitment, mutuality, companionship, intimacy, fidelity, and family.” If we protect the fundamental right to marry because marriage is an “esteemed institution” for furthering such noble purposes and promoting such moral goods, doing so does not hurl us down the slippery slope. To work down Scalia’s list, if someone says I need the right to commit incest or adultery or to engage in prostitution to enable me to pursue the moral goods of intimacy, commitment, and loyalty, we are not going to be persuaded to protect any such rights. We are not going to accept those rights as justified by those moral goods or as analogous to intimate association for straights and gays.

3. How we understand the processes of constitutional change that have brought us to recognize the right.

Do we conceive the processes of constitutional change (as Scalia does) in terms of idiosyncratic judges arbitrarily imposing their subjective preferences and moral predilections on the rest of us? Or do we conceive those processes in terms of common law constitutional interpretation: reasoning by analogy from one case to the next, building out lines of doctrine interpreting our constitutional commitments on the basis of experience, new insights, moral progress, and evolving contemporary consensus, all of which contribute to moral judgments about the best understandings of those commitments? I have defended the latter view in my recent book, Fidelity to Our Imperfect Constitution: For Moral Readings and Against Originalisms (Oxford University Press, 2015).

If we hold the former view, we will worry about Scalia’s slippery slope, because who knows where the moral predilections of five subjective, willful justices might lead us. But if we hold the latter view of change, we will not be worried about such a slippery slope. For we will understand that in making judgments about the best understanding of our constitutional commitments, justices do not go it alone. For example, in making judgments about evolving contemporary consensus, justices might look for evidence of desuetude, underenforcement of old laws on the books, and democratic repeal of such laws. On this second view of the processes of constitutional change, we will understand that
GUARDIANSHIPS AS PROTECTIVE OF THE WHITE COMMUNITY

In 1726 Massachusetts enacted into law a process for inquiring whether someone who was reputed “to be a lunatick, id[](i)ot, or non compos, be so or not; and, for securing the estate of such id[](i)ot or distracted person from imbezzlement.” Upon receiving a request from family members, the probate judge would order the selectmen of the subject’s town to make an “inquisition” by visiting the reputedly incapacitated person, interviewing household members and neighbors, and making a written “return” of their judgment of the person’s capacity. If local assessment confirmed incapacity, the judge proclaimed the person incompetent and appointed a guardian. Commencing at about the same time, Connecticut adopted a very similar probate process, but termed it a conservatorship.
The guardianship process for adults was collective and communal in that it was deliberately organized to involve a wide swath of local opinion. Sometimes the request for a guardian was signed by not just family members but also neighbors, including women. Furthermore, in making inquiry the selectmen did not rely simply on town talk or their prior knowledge of the case. Instead, they made an official visit to the residence—like the home visit of a social worker today. In 1747 the Springfield selectmen, for example, reported about Nathaniel Sikes: “Several of us have made him a visit, and Staying with him a Considerable Time, we discoursed with him about many things....We have also discoursed with Several of his Neighbours.” To safeguard against an adult’s being duplicitously stripped of legal independence, probate judges wanted to make sure that family members and householders in the vicinity were “united” in their judgment that a guardian was needed.

The guardianship process can be characterized as insular because its dual goals were to protect literally the lives of town residents and to protect land—that most valuable asset of agrarian families and the identifying, foundational basis for the governing entity of the town. In terms of property, the specter raised repeatedly by family and selectmen was that the incompetent would “squander away” his land and goods, leading to two dire scenarios: that of a once-healthy householder (and his dependents) on poor relief, and that of a clutch of sons facing futures with no inherited land and daughters with no marriage portions. The raison-d’être of guardianships in the Anglo-American legal system was to ensure that the property would eventually descend to the proper heirs. Note, however, that there was a pair of concerns embedded in the formula used by those requesting a guardianship: Was the adult in question capable of “taking care of her Person or Estate”? Care of “person” or “self” in this context meant the sort of bodily care (dressing, eating, sleeping) that enabled the adult to carry out daily routines of work and sociability. The guardianship process aimed to ensure that the self-care of the subject did not deteriorate to such a degree either that it was irretrievably obnoxious to household members or that it could lead to the person’s death—by neglect, accident, or suicide. Several impulses drove this effort to protect an afflicted adult from suffering and destruction: a desire by kin and townspeople to take care of one’s own kind, a Congregationalist understanding that brethren and sisters in distress should be made “so far comfortable as a Christian ought to be,” and a belief that at any moment God might visit a similar affliction on you the observer.

If the gaze of the authors of guardianships was insular—looking inward within the bounds of the community to keep intact the families and lands of residents—the process also had a tribal aspect. “Guarding” or protecting the bodies and estates of mentally disordered persons was, according to an unspoken, region-wide policy, reserved for white New Englanders. Among the hundreds of non compos mentis guardianships I have examined for Massachusetts and Connecticut before 1820, not one was set up for a person identified as African American or Indian. What we are seeing here is a two-track system. For settlers of English and European descent, guardianship was designed as a protective mechanism. Accompanying it were procedural niceties that accorded with English legal assurances of due process: the solicitation of opinion from what was in effect a jury of selectmen and peers, the opportunity to appeal and contest the process (though few did), and the chance to petition the judge for the guardian’s removal whenever it could be shown that the ward’s sanity had been restored. For men and women “of color,” alternate measures—disciplinary rather than protective—were standard. The mental illness and despair experienced by blacks and Indians was largely invisible to whites. Rather, whites often “saw” in people of color behaviors they interpreted as disorderliness, wandering, and stubborn lassitude— all of which frequently earned adult Indians, and especially blacks, terms in the dreaded workhouse, physical removal from town bounds, and misdemeanor convictions that resulted in debt servitude. Suffice it to say that individuals who were stripped of their household authority by being thrown into the workhouse, by being warned out and physically removed from the town they had long resided in, or by seeing their children compulsorily bound out had much less recourse to the due process arguments and appeals that were available to white men and women placed under guardianship.
UNDocumented Activism in the “NOT 1 More Deportation” Campaign

Adapted from an article appearing in Berkeley La Raza Law Journal (2016)

In August 21, 2013, the Arizona DREAM Act Coalition (ADAC), a group best known for community education and legislative lobbying on behalf of undocumented youth, ventured into a new tactical territory. Arriving at the Immigration and Customs Enforcement (ICE) Facility in Phoenix, four activists chained themselves to its gates. They formed a human barrier against traffic in and out of the building, until officials freed them with bolt cutters and placed them under arrest. Later that evening, as activists staged a prayer vigil, one spotted a deportation bus beginning to move. ADAC members raced across the parking lot, and knelt in front of the bus, halting its progress. During the standoff, which lasted for two hours, activists chanted and prayed while deportees inside the bus raised their shackled hands in solidarity. Two more undocumented activists were arrested. “I am doing this because I am so fed up with people playing games with our lives,” Ray Jose, one of those arrested, explained. “My mom and my dad are getting tired. My dad cannot do physical labor any more. It is for the sake of my family, who sacrificed so much for me, that I am ready to do this.”

The ICE protest exemplifies a new phase of undocumented activism, spurred by a national campaign known as “Not1More Deportation.” This campaign, which began in mid-2013, emerged at a daunting moment in the immigrant rights struggle. The Comprehensive Immigration Reform (CIR) bill had stalled in the House of Representatives, while the Obama administration, which had escalated immigration enforcement as a “down-payment” on bipartisan immigration reform, continued to deport close to 400,000 undocumented immigrants each month. The Not1More Deportation campaign sought to end deportations, and, in the face of legislative stalemate, to secure executive relief in the form of deferred action for undocumented adults. In institutional terms, this campaign achieved mixed results. President Obama announced a program of expanded deferred action in November 2014; yet it covered only parents of citizens and legal residents, not parents of DREAMers or the young activists who had been integral to bringing it about. Moreover, even this partial relief was challenged by a coalition of states and ultimately enjoined by the federal courts. Yet if we focus not on the immediate institutional outcomes, but on the efforts of activists that set them in motion, we may see a brighter prospect for this emerging movement. The Not1More campaign introduced an ambitious range of tactics and a critical encompassing vision of justice for immigrants, which offer undocumented activists crucial resources for future struggles.

Not1More and the Future of Undocumented Activism

The Not1More campaign introduced changes in personal stories, emotional stances, and organizational tactics. Family members offered anguished narratives, evoking the pain of family separations. Protesters intervened bodily in the machinery of detention and deportation, risking arrest to highlight the excesses of the Obama administration. These innovations raised questions for scholars and observers. What factors made the bold and surprising political self-assertion of this campaign possible? What do these changes portend for the future of the movement? While this campaign risked alienating some members of the public, I believe that its vision of justice for migrants, and the motivational, persuasive, and performative resources it offers activists, will enrich the movement of undocumented immigrants.

The vision of justice for immigrants that fuels Not1More is broader than activists have previously offered. It is premised on the view that activists need not resolve questions of...
formal status to raise claims to humane treatment from the US government. Activists raise claims based on their humanity, or on their status as workers that are prior to or apart from their formal immigration status. Undocumented laborers have claimed that they should be protected from wage theft, indentured servitude, or other forms of exploitative treatment, regardless of their status. Similarly, undocumented families have claimed that the government should respect the efforts of human beings living in the U.S. to preserve and nurture ties with family members, whether or not these individuals have legal status. Families who come to the US to live and work, for reasons of physical or economic security, should not be subject to separation through detention and deportation, because some members lack documentation. This claim points to a right to maintain ties with family members who may remain in, or have been deported to, countries of origin – a right that may entail the ability of undocumented immigrants to move across borders.

A more ambitious claim framed by Not1More is that respect for family integrity should not be forfeited when an immigrant commits a criminal violation in the US. This position has emerged more forcefully in response to Obama’s November 2014 relief for “families not felons.” Activists charge that the distinction between “families” and “felons” is both ambiguous and undesirable, where the government has increasingly criminalized acts associated with undocumented migration, and law enforcement’s disparate treatment of people of color makes “felon” a racialized category. These arguments have led some organizations to contest the deportation of individuals charged with DUls or other non-violent crimes.

Although there may be constituencies who are alienated by more contentious narratives and tactics, I see this approach as holding promise for the movement. First, activists’ ability to challenge policies they view as violating their humanity has enhanced the sense of agency they experience in the movement. Sharply disappointed in the narrowness of President Obama’s November 20, 2014 announcement, activists nonetheless felt pride in the movement’s ability to move the President to action and critique a disastrous policy. Second, contentious politics will provide activists with a broader repertoire, as they struggle for a fuller measure of belonging. In campaigns seeking discretionary relief from enforcement, or targeting decisionmakers like Obama with perceived debts to or professed empathy with the movement, the power to generate negative publicity and exert pressure through a more contentious campaign may offer advantages.

Third, contentious activism may prove to be resonant with publics outside the movement. For a group whose identity is as complex and fluid as DREAMers, choices of tactics or stance will be subject to multiple interpretations. The defiance or risk-taking that some observers cast as undeserved entitlement may be understood by others as political commitment, even courage. The willingness of activists to take the full measure of responsibility for their actions, to spend hours and days in jails and detention centers before their release, aligns them with earlier protesters, such as students who sat at segregated lunch counters, or participated in Freedom Rides to win their civil rights.

Finally, undocumented politics has always had a strong performative dimension. Activists show that they deserve citizenship not simply by petitioning for it, but by publicly taking on its responsibilities. Undocumented participants have demonstrated their potential as citizens by teaching their communities their rights, registering voters, learning more about American institutions than many Americans know. Even observers who are ambivalent about activists’ formal arguments may admire, and gradually accept, their ability to claim and execute these attributes of the citizen’s role. The ability and willingness to dissent – in ways that are contentious, full-throated, even disruptive – are also familiar features of American citizenship. Occupying the role of the dissenter, passionately, but also responsibly, may give undocumented immigrants another opportunity to present themselves as *de facto* citizens whose *de jure* recognition will enrich the nation in which they live.

Members of United We Dream and the Arizona Dream Act Coalition, sat in front of a bus for more than two hours in the middle of deportation proceedings at the Phoenix Removal and Detention Facility in downtown Phoenix.
In the years since I began this research I have become a parent. Within weeks of finding out I was pregnant, I knew in my heart my child would be a boy. By the time I reached the sonogram in the 24th week, when the sex can be verified, I had already chosen his first name. I named him James for my mother’s third brother and my first substitute father. I was elated when science confirmed what my heart knew. In less than 24 hours that elation would transform into intense worry.

My son was conceived in Texas, a place where my family has lived in relatively the same place for nine generations. Texas is the place where my family’s home and labor and blood are built in the soil, where their race had for most of those generations determined their destiny. James was also conceived in “the field,” what social scientists call the places where we conduct our research. I had returned to Texas for one year to immerse myself in this place where my intellectual efforts, if not my body, are always toiling. I visited death row. I attended hearings. I sat next to lawyers who were my teachers and models for how to be a lawyer with the ability to change and save lives. I read. I wrote. I conceived a child.

Even though I was submerged in the history and sadness of the death penalty, I had not connected that part of my life to the part that was about to be a parent until the day the sonographer said, “It is definitely a boy.” Happiness became worry when I thought about the Black men I had met in prisons, jails, and other unproductive places over the years. I thought about how easy it can be for Black men to be caught up in a system that does not value their survival or preservation. I thought about the first day he would be pulled over by the police for performing the ordinary task of driving an automobile. I thought about the intraracial contests of masculinity that have led some young Black men to become their own worst enemies. I thought of how, because he is my child and will surely have my sharp tongue, the public school system will try to pathologize what I know to be precociousness. I thought about my father, who died as I began my dissertation work. All I could see were the negative statistics about the lives of Black men I have studied in my professional life.
This project is bookended by the death of my father and the birth of my son. The life-and-death concerns discussed in this project reflect my long interest in how communities and individuals on the peripheries of American politics understand and articulate the meaning of their citizenship. What does it mean to be both Black and a citizen of the United States in this particular political moment? How are these identities further complicated by other identities such as gender, socioeconomic status, and region? How do both state violence and the unwillingness of the state to redress the violence perpetrated against Black people continue to constrain feelings of belonging among African Americans? Just as they are for me, these questions are both intimate and open for many African Americans. They are individual and interconnected. They are grounded in immediate experience and in the long history of race and place. These questions continue to be relevant because of the way the present mirrors and or reminds African Americans of their past exclusion or vulnerability. The 2011 execution of Troy Davis by the state of Georgia and the 2012 murder of Trayvon Martin by George Zimmerman have forced both state violence and the value of Black life to the front of the minds of many African Americans. They are individual and interconnected. They are grounded in immediate experience and in the long history of race and place. These questions continue to be relevant because of the way the present mirrors and or reminds African Americans of their past exclusion or vulnerability. The 2011 execution of Troy Davis by the state of Georgia and the 2012 murder of Trayvon Martin by George Zimmerman have forced both state violence and the value of Black life to the front of the minds of many African Americans. The old-school narratives of unjust state prosecution of Blacks while the taking of Black life goes unpunished have now been validated once again by twenty-first-century martyrs. Martin and Davis are not alone. They keep company with other African American women and men, boys and girls who have been at the center of media controversies related to the violent excess of the state and the absence of repentance on the part of white perpetrators over the last few years.

It is not just the loss of life or unjust prosecution that are at play in the public grieving and calls for actions, it is also a sincere questioning of belonging and value within the social order. In the faces of Sybrina Fulton, the mother of Trayvon Martin, as well as Lucía McBath, the mother of Jordan Davis, another murdered Florida teen, I and other African Americans see Mamie Till weeping for her boy Emmett and numerous unknown Black women and men whose grief went unnoticed. As I began this project, I was most interested in the meaning of state power in post–Civil Rights America, but I am now also interested in the political meaning of Black mothers’ tears and the fluidity of time in African Americans’ understanding of their political and social location.

Even though I was submerged in the history and sadness of the death penalty, I had not connected that part of my life to the part that was about to be a parent until the day the sonographer said, “It is definitely a boy.” Happiness became worry when I thought about the Black men I had met in prisons, jails, and other unproductive places over the years. I thought about how easy it can be for Black men to be caught up in a system that does not value their survival or preservation.

* * *

Like the book from which this excerpt is drawn, my new project will rely on both traditional social science and reflexive methodologies which have their origins in anthropology. I again plan to utilize archival data, content analysis of media coverage and speeches, public opinion data, and focus groups and to incorporate literature, poetry and theory from other disciplines. My aim is to use these reflexive methods to help clarify the way race and religion impact African American views on the death penalty and continue to constrain the qualitative meaning of their citizenship. My project will reflect my significant interdisciplinary training and the methods reflect my commitment to finding the best methods to answer the questions rather than limiting the scope of my inquiries.
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