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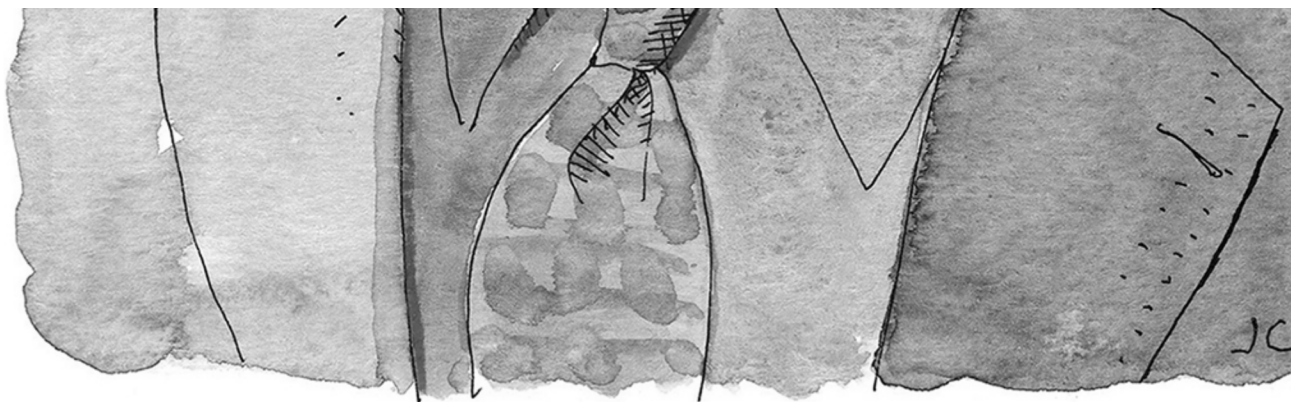
'Deportation World'

KANSTROOM WARNS OF RULE-OF-LAW AND HUMAN RIGHTS CATASTROPHE.

BY DAVID REICH([HTTP://LAWMAGAZINE.BC.EDU/AUTHOR/DAVIDREICH/](http://lawmagazine.bc.edu/author/davidreich/))

ILLUSTRATION BY JOE CIARDIELLO





Pocket Résumé

Degrees: JD, Northeastern, 1983; LLM, Harvard, 1992. **Credentials:** Extensive litigation in Massachusetts courts, immigration courts, district courts, circuit courts of appeal, and amicus briefs for the US Supreme Court. **Titles:** Th F. Carney Distinguished Scholar; Faculty Director of the Rappaport Center for Law & Public Policy; Director of the International Human Rights Program; Associate Director of the BC Center for Human Rights and International Justice. **Writing:** Author or editor of eight books, including the forthcoming *Deportation World* (Harvard), thirty-five law review articles, thirty book chapters, and op-eds in the *New York Times* and *Washington Post*.

The Idea: Deportation, broadly defined, is evolving globally as a major way to deal with undocumented migrants—and, especially in the US—with legal immigrants convicted of petty lawbreaking. The practice, though a quintessential aspect of nation-state sovereignty, is becoming internationalized, with idea-sharing, cooperation across national borders, and training and funding of immigration agencies in poorer countries by richer ones. Because it can split up families and send people to countries where they lack connections or job prospect and because many deportees don't receive due process before their removal, deportation can be a rule-of-law and human rights catastrophe that demands a clear response in international law.

The Impact: Thanks to work by Professor Daniel Kanstroom and likeminded scholars, the human rights community is increasingly awakening to the challenges of deportation. Deportations from the US have grown from some 23,000 in 1985 to 340,000 in 2016, statistics that bespeak “a fundamental ambivalence about immigration,” says Kanstroom. While businesses in fields from meatpacking to medicine need immigrant workers, immigration still evokes “a rule-of-law discourse that is often tinged with racism and xenophobic fear,” he says. US deportation got a major push in 1996, with legislation that allows the border patrol to deport many noncitizens without a court order. The law also narrows judges' discretion, makes it harder for appeals courts to review immigration rulings, and allows deportation of long-term immigrants, including parents and spouses of US citizens, for minor offenses like criminal possession or petty theft.

Still, undocumented immigrants keep on coming in waves of “desperation migration.” In a relatively unknown, partial response, the US has been training Mexican immigration agents and subsidizing their work to the tune of some \$80 million annually. In 2014, Mexico launched a program to turn back US-bound Central American migrants, near the Mexico-Guatemala border. The next year, Kanstroom writes in *Deportation World*, more Central Americans were deported from Mexico from the United States. “The model can be quite efficient,” he says, “because Mexican law offers fewer procedural protections for migrants. It’s also much cheaper [for the US] than building a wall or hiring more immigration judges. However, it raises powerful human rights issues.”

Europe, Australia, and South Africa have also experienced recent dramatic growth in migration because of violence, poverty, and climate change, causing considerable political turmoil. In response, deportations and “voluntary” departures from Germany have grown ninefold since the mid-1980s and from the UK, astonishingly, by a factor of 40. Like the US, some European countries such as France, use summary immigration enforcement. Also like the US, European countries have extended border enforcement outwards—outsourcing deportation in effect—to reduce immigration; as the US is to Mexico—a funder and trainer of external migration control—Europe has been to Morocco, Libya, Sudan, and Turkey.

While others learn from US practices, the US repays the compliment by looking overseas for inspiration, with the Trump administration, according to Kanstroom, contemplating outside-the-country detention of asylum seekers, in imitation of Australia, which has parked applicants for refugee status in the poverty-stricken island nation of Nauru. And President Trump has reportedly consulted Israeli engineers on plans for his Mexico border wall.

Kanstroom has played a leading role in the nascent human rights response to the deportation crisis. His books and articles have been cited hundreds of times by scholars, litigators, and courts. He frequently consults with lawyers, judges, UN human rights agencies, and government officials. Along with other members of BC Law’s Immigration and Deportation Human Rights project (PDHRP), which he cofounded, he authored a “Declaration of Rights” for those already deported, a formerly neglected group whose plight he exposed in the groundbreaking *Aftermath* (Oxford, 2012). These include the right to judicial review even after removal from the country, a right affirmed this year by the US Fifth Circuit in a case brought by PDHRP and pro bono lawyers from Nix Peabody.

Kanstroom would like to see certain basic protections extended to all migrants. In cases of legal migrants convicted of petty crimes, he argues, judges should balance

harm done by the lawbreaking with harms that might result from deportation. He likes to see an end to wholesale detention of those awaiting immigration trials and an end to fast-track deportation proceedings, which can result, he says, in life-threatening errors. “The world is moving toward a regime in which certain noncitizens are considered in many respects to have no rights,” says Kanstroom, “and that needs to be vigorously resisted.”

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