

# CIVIL RIGHTS, IMMIGRANTS' RIGHTS, HUMAN RIGHTS: LESSONS FROM THE LIFE AND WORKS OF DR. MARTIN LUTHER KING, JR.

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Unlike several of the scholars participating in this symposium, I have no personal memory of Martin Luther King, Jr. I was born several years after the assassination of Dr. King. My “memories” of Dr. King are the product of books<sup>1</sup> and television.<sup>2</sup> I have seen documentary footage of the March on Washington and have therefore heard, in scratchy recording, Dr. King’s famous “I Have a Dream” speech.<sup>3</sup> These derivative memories are powerful, but I suspect they do not compare with the living memories carried by other symposium authors.

While I have no independent memories of the marches in Birmingham and Washington, D.C. that were led by Dr. King, I do have a clear image in my mind of the marches of May 1, 2006—a date when hundreds of thousands of immigrants and their allies took to the street.<sup>4</sup> The marchers, who sought the normalization of legal status for millions of unauthorized migrants living and working in the United States,<sup>5</sup> organized in opposition to

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1. See, e.g., TAYLOR BRANCH, *AT CANAAN'S EDGE: AMERICA IN THE KING YEARS, 1965–1968* (2006) [hereinafter *BRANCH, AT CANAAN'S EDGE*]; MARSHALL FRADY, *MARTIN LUTHER KING, JR.* (2002); MARTIN LUTHER KING, JR., *THE AUTOBIOGRAPHY OF MARTIN LUTHER KING, JR.* (Clayborne Carson ed., 2001); MICHAEL ERIC DYSON, *I MAY NOT GET THERE WITH YOU: THE TRUE MARTIN LUTHER KING, JR.* (2000); TAYLOR BRANCH, *PILLAR OF FIRE: AMERICA IN THE KING YEARS, 1963–1965* (1998) [hereinafter *BRANCH, PILLAR OF FIRE*]; GERALD D. MCKNIGHT, *THE LAST CRUSADE: MARTIN LUTHER KING JR., THE FBI, AND THE POOR PEOPLE'S CAMPAIGN* (1998); RALPH DAVID ABERNATHY, *AND THE WALLS CAME TUMBLING DOWN: AN AUTOBIOGRAPHY* (1991); TAYLOR BRANCH, *PARTING THE WATERS: AMERICA IN THE KING YEARS, 1954–1963* (1988); STEPHEN B. OATES, *LET THE TRUMPET SOUND: THE LIFE OF MARTIN LUTHER KING, JR., PROPHET WITH HONOR* (1982); DAVID J. GARROW, *THE FBI AND MARTIN LUTHER KING: FROM “SOLO” TO MEMPHIS* (1981).

2. See, e.g., *Eyes on the Prize: America's Civil Rights Movement 1954–1985* (PBS television broadcast 1987) (transcripts available at <http://www.pbs.org/wgbh/amex/eyesontheprize/about/pt.html>) (last visited Apr. 24, 2009).

3. On August 28, 1963, more than 250,000 demonstrators flocked to the Lincoln Memorial, where Dr. King delivered his “I Have a Dream” speech. See *A GUIDE TO RESEARCH ON MARTIN LUTHER KING, JR., AND THE MODERN BLACK FREEDOM STRUGGLE* at 18 (Martin Luther King Papers Project ed., 1989).

4. Randal C. Archibold, *Immigrants Take to U.S. Streets in Show of Strength*, N.Y. TIMES, May 2, 2006, at A1.

5. *Id.*

the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.<sup>6</sup> Among other things, the Act would have converted unlawful presence into a felony and would have criminalized the conduct of anyone who offered assistance to an unauthorized migrant.<sup>7</sup> The measure as drafted would have included the conduct of clergy or social workers offering humanitarian assistance to migrants, a fact which spurred some members of the clergy to work in opposition to the bill.<sup>8</sup> Participants in the marches invoked Dr. King and the civil rights movement of the 1950s and 1960s.<sup>9</sup>

Some of the individuals commenting on the marches—including some prominent African Americans—criticized comparisons between contemporary efforts on behalf of immigrants and the civil rights struggle of the twentieth century.<sup>10</sup> There were several reasons for the criticisms. Some felt that the comparison was inappropriate because they saw the goals of the immigrants' rights movements as antithetical to the needs of the people who were the participants and beneficiaries of the civil rights movement of the 1950s and 1960s, particularly African Americans. Others argued that the legal situation of African Americans in the southern United States in the 1950s and 1960s—where most African Americans

6. H.R. 4437, 109th Cong. (2005). Introduced by Representative Sensenbrenner of Wisconsin, the bill passed the House on December 16, 2005.

7. *Id.* §§ 203, 205. See also Erin F. Delaney, *In the Shadow of Article I: Applying a Dormant Commerce Clause Analysis to State Laws Regulating Aliens*, 82 N.Y.U. L. REV. 1821, 1822 n.4 (2007) (“The bill was radical in its draconian regulation of undocumented immigrants—making an alien’s unlawful presence in the United States a felony—and in its criminalization of efforts to provide humanitarian assistance to undocumented immigrants.”).

8. See Sylvia R. Lazos Vargas, *The Immigrant Rights Marches (Las Marchas): Did the “Gigante” (Giant) Wake Up Or Does It Still Sleep Tonight?*, 7 NEV. L.J. 780, 782–84 (2007); Roger Mahony, *Op-Ed: Called by God to Help*, N.Y. TIMES, Mar. 22, 2006, at A25.

9. See Kevin R. Johnson & Bill Ong Hing, *The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement*, 42 HARV. C.R.-C.L. L. REV. 99, 99–100 (quoting several participants who billed the marches as a “new civil rights movement”); Jennifer Gordon & R. A. Lenhardt, *Citizenship Talk: Bridging the Gap Between Immigration and Race Perspectives*, 75 FORDHAM L. REV. 2493, 2496 (2007) (“Leaders of the protests explicitly aligned their goals and their strategies with the civil rights marches of the 1960s; they carried banners reading ‘We have a dream too’ and heralded the beginning of a ‘new civil rights movement.’” (citations omitted)). See also Rachel L. Swarns, *Growing Unease for Some Blacks on Immigration*, N.Y. TIMES, May 4, 2006, at A1 (“African-Americans during the civil rights movement were in search of the American dream and that’s what our movement is trying to achieve for our community,” said Jaime Contreras, president of the National Capital Immigration Coalition, which organized the April 10 demonstration that drew tens of thousands of people to Washington. ‘We face the same issues even if we speak different languages,’ said Mr. Contreras, who is from El Salvador and listens to Dr. King’s speeches for inspiration.”).

10. See, e.g., Johnson & Hing, *supra* note 9, at 116–17; Andre Banks, *The Price of the Ticket*, APPLIED RESEARCH CTR., <http://www.arc.org/content/view/433/36> (“There is little question that the current immigration debate, though coded and contrived otherwise, is entirely about race. Yet, the framing made popular by immigrants and their advocates is so hostile to Black people and our American experience that it seems impossible for us to stake a claim with this movement.”).

were the descendants of slaves—was not analogous to the plight of contemporary migrants, many of whom are voluntary migrants.

The first criticism centers on the notion that the immigrants' rights movement ought not invoke the legacy of the civil rights movement because the goals of the immigrants' rights movement—liberalized immigration laws and the creation of a path to legalization for millions of unauthorized migrants—are in tension with the needs of the African American community.<sup>11</sup> Critics frequently invoke concerns that immigrants disproportionately displace low-wage black workers.<sup>12</sup> This argument is not a new one—even W.E.B. DuBois, a great internationalist, disfavored liberalized immigration because he feared that immigration policy was being used to displace the demand for African American workers.<sup>13</sup> The economic data tend to suggest that immigration actually improves the economic prospects of almost all workers, though there is some evidence that those workers in the lowest income brackets are slightly hurt by immigration.<sup>14</sup>

Regardless of the actual economic effect, there can be no doubt that some employers are motivated by racism to hire migrants instead of African American workers.<sup>15</sup> The preference for migrant labor also stems from the fact that their legal vulnerability makes them more likely to accept low wages and poor working conditions.<sup>16</sup> The sense that some African Americans have that they are losing out to immigrants has been

11. See, e.g., Carroll Doherty, *Attitudes Toward Immigration: In Black and White*, PEW RESEARCH CTR. PUBL'NS, Apr. 26, 2006, <http://pewresearch.org/pubs/21/attitudes-toward-immigration-in-black-and-white> (“[M]ore blacks than whites say they or a family member have lost a job, or not gotten a job, because an employer hired an immigrant worker (by 22% vs. 14%). Blacks are also more likely than whites to feel that immigrants take jobs away from American citizens (by 34%–25%), rather than take jobs that Americans don’t want.”).

12. *Id.*

13. See Swarns, *supra* note 9, at A1.

14. See, e.g., Giovanni Peri, *Immigration and Cities*, VOX, Nov. 20, 2007, <http://www.voxeu.org/index.php?q=node/734>; George J. Borjas, *The New Economics of Immigration*, ATL. MONTHLY, Nov. 1996, at 72, 78–80. More controversial studies have shown a larger effect on low wage workers, and one controversial study goes so far as to suggest a correlation between immigration and the incarceration of black men. See George J. Borjas, Jeffrey Grogger & Gordon H. Hanson, *Immigration and African-American Employment Opportunities: The Response of Wages, Employment, and Incarceration to Labor Supply Shocks* 39–40, Nat’l Bureau of Econ. Research, Working Paper No. 12518, Sept. 2006, available at <http://www.nber.org/papers/w12518>.

15. See, e.g., Richard Fausset, *Southern Accent on Day Labor*, L.A. TIMES, Dec. 28, 2007, at A1, A28 (quoting illegal immigrant from Mexico who says he “regularly saw employers shun African American workers . . . ‘because they don’t like to work’”).

16. Rebecca Smith, *Human Rights at Home: Human Rights as an Organizing and Legal Tool in Low-Wage Worker Communities*, 3 STAN. J. CIV. RTS. & CIV. LIBERTIES 285, 293–94 & n.21 (2007) (summarizing limitations on undocumented workers’ ability to enforce labor rights under current law, resulting in their particular vulnerability to workplace abuse).

compounded by some unfortunate choices made by immigrants' rights advocates in framing their case for the normalization of unauthorized migrants. Some organizers and marchers have cast immigrants in opposition to negative stereotypes most commonly applied to African Americans.<sup>17</sup> Even the simple declaration "we are a nation of immigrants" is problematized by the experience of the African Americans, whose ancestors were subjected to forced migration when they were brought to the United States as slaves.<sup>18</sup>

Another objection to the immigrants' rights analogy to the civil rights movement concerns the historical asymmetries of the movements. African Americans were brought to this country against their will as slaves,<sup>19</sup> and the civil rights movement involved challenges to unjust laws that impeded constitutional rights guaranteed to African Americans and other minority groups in the post-Civil War era. In contrast, some argue that modern day immigrants have come here willingly<sup>20</sup> and that those who have knowingly violated the law to

17. See Gordon & Lenhardt, *supra* note 9, at 2496 ("The protests were a moving testament to the immigrant community's courage, strength, and desire for recognition. And yet, the seemingly positive rhetoric of the signs that many carried through the streets of some of the nation's major cities had a painful double meaning. 'We Are Not On Welfare.' 'We Are Workers Not Criminals.' *As opposed to whom?* The signs seemed a not-so-subtle attempt by immigrant workers to make a case for their own inclusion by distinguishing themselves from stereotypes of African Americans, a group that enjoys formal citizenship but, in many ways, still exists on the margins of American society." (citations omitted)); Johnson & Hing, *supra* note 9, at 117 (citing statements of immigrant marchers suggestive of negative black stereotypes); Alan Jenkins, *Bridging The Blacks-Immigrant Divide*, TomPaine.common sense, Feb. 20, 2007, [http://www.tompaine.com/print/bridging\\_the\\_blacksimmigrant\\_divide.php](http://www.tompaine.com/print/bridging_the_blacksimmigrant_divide.php).

18. See, e.g., 143 CONG. REC. H3890, H3891 (June 18, 1997) (statement of Rep. Hall) ("We are a nation of immigrants. Those who came as free men went in one direction. Those who came from slave ships, another.").

19. FORCED MIGRATION: LAW AND POLICY 11 (David A. Martin, Alexander T. Aleinikoff, Hiroshi Motomura, Maryellen Fullerton eds., 2007) (noting that the Atlantic slave trade of over 10 million African slaves "constituted forced migration").

20. Of course, this disregards the fact that forces that drive migration—factors such as political repression or instability, economic need, and lack of educational opportunities—often result in reluctant and involuntary migration as well. *Id.* at 13 ("No one knows how many have been caused to move against their will. Some estimate that over 100 million have been displaced by dams and other massive structural changes that often accompany development, that more than 25 million have been forced from their homes by environmental disasters, and that close to 40 million have been compelled by conflict to leave their communities."). Many of these migrants remain in their own countries as internally displaced persons, *id.* at 48, and the vast majority remain in Asia and Africa. *Id.* at 15. Still, there is no doubt that much recent migration to the United States has been motivated by adverse economic and political conditions in source countries, particularly Mexico, the largest source country for unauthorized migrants. See, e.g., Aristide Zolberg, *Immigration Control Policy: Law and Implementation*, in *THE NEW AMERICANS: A GUIDE TO IMMIGRATION SINCE 1965*, at 36 (Mary C. Waters, Reed Ueda & Helen B. Marrow eds., 2007) (noting the role of NAFTA in displacing Mexican workers and driving them north); Frank D. Bean & B. Lindsay Lowell, *Unauthorized Migration*, in *THE NEW AMERICANS*, *supra*, at 80 (same).

come to the United States do not have similar standing to protest the law.<sup>21</sup>

The differences between the civil rights movement of the 1950s and 1960s and the contemporary immigrants' rights movement are real and undeniable, as are the tensions between the participants of those movements. However, an examination of the life and works of Dr. King also reveals important similarities between these movements that deserve to be highlighted. This symposium provides an excellent opportunity to reflect on the parallels. In this essay, I explore some of the lessons that King's life and work might offer us about the contemporary immigrants' rights movement. In Part I of this essay, I look at the methods used and the difficulties confronted by Dr. King and other civil rights activists as they waged their struggle and explore the modern parallels in the immigrants' rights movement. In Part II, I look to King's teachings for insight into how we should understand the contemporary struggle—both national and global—for the rights of migrants.

## I.

### LEARNING FROM THE LIFE OF DR. KING

*One may well ask, "How can you advocate breaking some laws and obeying others?" The answer is found in the fact that there are two types of laws: there are just and there are unjust laws. I would agree with St. Augustine that "An unjust law is no law at all." . . . . An unjust law is a code that the majority inflicts on a minority that is not binding on itself. This is difference made legal. On the other hand a just law is a code that a majority compels a minority to follow that it is willing to follow itself. This is sameness made legal. . . . There are some instances when a law is just on its face and unjust in its application."<sup>22</sup>*

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21. See, e.g., Eugene Robinson, *Protest Proves Real U.S. Need*, ALBANY TIMES UNION, May 2, 2006, at A11 ("But let me be clear: We can also say definitively that the movement whose birth we are witnessing is not a clone, or even really a descendant, of the civil rights movement that won for African-Americans our place in this society. There's just no way to compare a group of people whose ancestors were brought here in chains, forced to work as slaves and then systematically classified as second-class citizens for more than a century with another group of people, however hard-working or well-meaning, who came to the United States voluntarily."); *All Things Considered: Black Community Debates Impact of Illegal Immigrants* (NPR Radio broadcast May 2, 2006) (transcript available at 2006 WLNR 22947041) ("It's bad enough they beat up our children. But they've taken our civil rights, [and] they're doing [it in] the name of Martin Luther King.").

22. Martin Luther King, Jr., *Letter from Birmingham City Jail*, in TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR. 289, 293–94 (James Melvin Washington ed., 1986) (1963) [hereinafter TESTAMENT OF HOPE].

Migrants who have entered the country without inspection or have overstayed their visas lack lawful immigration status. Because of legal changes over the past decade, they often have no way to normalize their status.<sup>23</sup> As long as the law remains unchanged, these individuals will be forced to live in the shadows of society—illegally. Unsurprisingly, many conversations about the rights of migrants in the United States are thus short-circuited by the question, “What part of ‘illegal’ don’t you understand?”<sup>24</sup> The implication of this question is that all migrants who are out of status or unauthorized are criminal and therefore deserve no rights. This question elides important conversations about why the law is written the way that it is,<sup>25</sup> about the role that market demand and historically rooted labor arrangements play in creating the influx of unauthorized migration into the United States,<sup>26</sup> and about the just solution to the problems of a huge and permanent underground population in this country.<sup>27</sup> The question presents the law as immutable and unquestionable and those who break the law as dangerous and undesirable.

King confronted similar problems during the 1950s and 1960s. Those whom he led were challenging unjust laws through peaceful lawbreaking. King’s actions remind us that the quest for equality sometimes involves questioning and even defying unjust laws. However, King’s experience as a target of extensive governmental surveillance reveals the dark side of peaceful protest and serves as a reminder of the dangers posed to democracy by our government’s increasing reliance on surveillance.

23. See, e.g., Jennifer M. Chacón, *Loving Across Borders: Immigration Law and the Limits of Loving*, 2007 WIS. L. REV. 345, 363–65 (summarizing effects of recent changes in immigration and naturalization law on undocumented noncitizens).

24. See Lawrence Downes, *What Part of ‘Illegal’ Don’t You Understand?*, N.Y. TIMES, Oct. 28, 2007, at A11 (“Good thing I am not an illegal immigrant. There is no way out of that trap. It’s the crime you can’t make amends for. Nothing short of deportation will free you from it, such is the mood of the country today. And that is a problem.”). See also *What Part of ‘Illegal’ Don’t You Understand? One Response: What About Rational Dialogue and Reasonable Debate Don’t YOU Understand?*, Posting of Kevin R. Johnson to ImmigrationProf Blog, <http://lawprofessors.typepad.com/immigration/2007/10/what-part-of-il.html> (Oct. 28, 2007).

25. For a compelling history that illustrates how immigration laws have resulted in the construction of Mexicans as the “iconic illegal alien” in the United States, see generally MAE NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* (2004).

26. See, e.g., DOUGLAS S. MASSEY, *BEYOND SMOKE AND MIRRORS: MEXICAN IMMIGRATION IN AN ERA OF ECONOMIC INTEGRATION* (2002); STEPHEN CASTLES & MARK J. MILLER, *THE AGE OF MIGRATION: INTERNATIONAL POPULATION MOVEMENTS IN THE MODERN WORLD 65–97* (3d ed. 2003); Bean & Lowell, *supra* note 20, at 70–82.

27. See Johnson, *supra* note 24.

*Defying Unjust Laws: Nonviolent Protest Then and Now*

King's *Letter from Birmingham City Jail* instructs the reader to remember the differences between just and unjust laws.<sup>28</sup> In the stark apartheid regime of the southern United States in the 1950s, King and other members of the civil rights movement attacked a system of laws that was blatantly racist.<sup>29</sup> Knowing that the laws of the segregated South were unjust, members of the civil rights movement in Dr. King's era fought unjust laws through disobedience and submitted to the assigned punishment.<sup>30</sup>

King's letter is invaluable in the context of the immigration policy debate in the United States. Although the injustices of contemporary immigration law are more subtle, its critics contend that they are no less real.<sup>31</sup> The contemporary immigrants' rights movement also targets a system of unjust laws, and immigrants' rights activists have deployed various modes of civil disobedience and nonviolent protest in challenging these laws. A brief look at their efforts demonstrates the degree to which King's tactics of civil disobedience and peaceful nonviolence have influenced those seeking justice for immigrants.

First, there are the efforts of individual migrants, acting in concert with sympathetic advocates. Elvira Arellano, a Mexican national who returned to the United States from Mexico in violation of a prior removal order, is perhaps the most well-known example.<sup>32</sup> Arellano is the mother of a U.S. citizen child, and she argued that her deportation would also result in the constructive deportation of her U.S. citizen child because he would have to leave with her.<sup>33</sup> An unsuccessful lawsuit raising this claim was filed on her

28. King, *Letter from Birmingham City Jail*, *supra* note 22.

29. See, e.g., MICHAEL KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY (2004); James W. Fox, Jr., *Intimations of Citizenship: Repressions and Expressions of Equal Citizenship in the Era of Jim Crow*, 50 HOW. L.J. 113, 130–61 (2006) (discussing various forms of political, social, and economic subordination of blacks during the Jim Crow era).

30. King, *Letter from Birmingham City Jail*, *supra* note 22.

31. See, e.g., KEVIN R. JOHNSON, OPENING THE FLOODGATES: WHY AMERICA NEEDS TO RETHINK ITS BORDERS AND IMMIGRATION LAWS 19–21 (2007) (discussing the political and moral deficiencies of U.S. immigration law); BILL ONG HING, DEPORTING OUR SOULS: VALUES, MORALITY, AND IMMIGRATION POLICY (2006) (discussing the negative impact of U.S. deportation policies, restrictions on immigration, and security policy on noncitizens and their families); Joseph H. Carens, *Aliens and Citizens: The Case for Open Borders*, 49 REV. POLITICS 251, 270 (1987) (“The current restrictions on immigration in Western democracies . . . are not justifiable. Like feudal barriers to mobility, they protect unjust privilege.”).

32. Gretchen Ruethling, *Chicago Woman's Stand Stirs Immigration Debate*, N.Y. TIMES, Aug. 19, 2006, at A10.

33. *Id.*

son's behalf,<sup>34</sup> and when the lawsuit failed, Arellano continued to defy her removal order.<sup>35</sup> The response to her act of civil disobedience was decidedly mixed:

Some supporters have likened her to Rosa Parks, while detractors say Ms. Arellano broke the law and should face the consequences. Critics say illegal immigrants have children with the hope that they will be allowed to stay in the United States. "She had an anchor baby, that's what she did," said Mike McGarry, acting director of the Colorado Alliance for Immigration Reform. "If she was so concerned about her child, she'd take him with her."<sup>36</sup>

As the example of Elvira Arellano demonstrates, despite passing analogies to the civil rights movement, the "civil disobedience" of modern immigration laws by migrants has failed to excite much sympathy.<sup>37</sup> These migrants are painted as opportunistic rather than idealistic.

Second, there are examples of citizens who have organized to assist migrants, even when their actions violate the immigration laws. For example, there are organizations that exist to carry out humanitarian efforts at the increasingly militarized U.S.-Mexico border, where thousands of migrants have died during attempted crossings.<sup>38</sup> Organizations such as No More Deaths<sup>39</sup> aim to provide humanitarian aid to those border crossers in dire need of medical attention, but some people affiliated with such groups suffer legal consequences for their work with the organizations. For example, on July 9, 2005, Daniel Strauss and Shanti Sellz—volunteers with No More Deaths—picked up migrants in the Arizona desert who were severely dehydrated and in need of medical attention.<sup>40</sup> Strauss and Sellz were driving the migrants to Tucson for treatment by volunteer medical professionals.<sup>41</sup>

34. *Arellano v. Gonzalez*, 454 F. Supp. 2d 757 (N.D. Ill. 2006) (dismissing Arellano's complaint).

35. Ruethling, *supra* note 32.

36. *Id.* The "anchor baby" label lacks a basis in law, since—as Arellano's plight clearly establishes—a child cannot sponsor a parent for immigration purposes until that child is 21. See 8 U.S.C. § 1151(b)(2)(A)(i) (2006). That does not stop detractors from using the derogatory term "anchor baby," even when talking about factual scenarios that demonstrate the inaccuracies of the label.

37. Ruethling, *supra* note 32.

38. See JOHNSON, *supra* note 31, at 71; Wayne A. Cornelius, *Death at the Border: Efficacy and Unintended Consequences of US Immigration Control Policy*, 27 POPULATION AND DEV. REV. 661 (2001); Bill Ong Hing, *The Dark Side of Operation Gatekeeper*, 7 U.C. DAVIS J. INT'L L. & POL'Y 121 (2001). For a graphic journalistic account of the cruelties of the crossing see LUIS ALBERTO URREA, *THE DEVIL'S HIGHWAY* (2004).

39. Founded in 2004, No More Deaths/No Más Muertes articulates a mission to end death and suffering on the U.S./Mexico border through civil initiative. See No More Deaths/No Más Muertes, <http://www.nomoredeaths.org> (last visited Jan. 19, 2009).

40. Billie Stanton, *2 Arrested for Aiding Migrants Cleared*, TUCSON CITIZEN, Sept. 2, 2006, at 1A.

41. *Id.* See also Amnesty Int'l USA, *Humanitarian Aid is Not a Crime*,

They were arrested and charged with transporting and conspiring to transport unauthorized migrants, charges that carried a possible maximum sentence of fifteen years<sup>42</sup>—and that were dismissed a year later.<sup>43</sup> The principle aim of activists like Strauss and Sellz is not to engage in lawlessness for the sake of lawlessness.<sup>44</sup> Rather, their stated goal is to provide humanitarian assistance in response to an indifferent border policy that generates hundreds of horrific deaths each year. These activists see an unjust law, work to save lives, and are prepared to suffer the consequences of their actions. Like King and his allies, they face a decidedly mixed public reception.

Finally, there are the marches themselves.<sup>45</sup> The marches of May 1, 2006, involved immigrants and citizens marching side by side, thus invoking the visual imagery of the marches of the 1950s. Commentators have noted the parallels between the movements, even as these analogies have been criticized.<sup>46</sup>

It is easy to view Arellano, Strauss, Sellz, and even unauthorized migrant marchers as lawbreakers who were—or could be—duly punished. But Dr. King's famed letter from the Birmingham jail reminds us that this is not the only way to view their actions. In that letter, King wrote that "[a]ny law that uplifts human personality is just. Any law that degrades human personality is unjust."<sup>47</sup> There can be no doubt that our immigration laws degrade "human personality."<sup>48</sup> As Arellano's saga reminds us, these immigration laws separate families.<sup>49</sup> As Strauss and Sellz's work illustrates, the laws lead to tremendous human suffering and death. As the marchers remind us, the laws lead to unsafe workplace conditions and substandard wages for migrants—with consequences for all workers—and leave migrant communities susceptible to crime and exploitation.<sup>50</sup>

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[http://www.amnestyusa.org/us/humanitarian\\_aid.html](http://www.amnestyusa.org/us/humanitarian_aid.html) (last visited Apr. 24, 2009).

42. See Amnesty Int'l USA, *Public Statement: Amnesty International's Concerns About Criminal Charges Filed Against Two Human Rights Activists Who Assisted Migrants in Desert*, Dec. 13, 2005, <http://www.amnestyusa.org/document.php?lang=e&id=ENGAMR512012005>.

43. Stanton, *supra* note 40.

44. See, e.g., Amnesty Int'l USA, *Public Statement*, *supra* note 42 ("[A]t no point did either of the two assist migrants to enter the USA in contravention of the law, nor did they appear to be helping them to circumvent immigration controls. Their activities were confined to assisting the three men appearing to be in need of urgent medical treatment.").

45. See Archibold, *supra* note 4.

46. See Johnson & Hing, *supra* note 9; Robinson, *supra* note 21.

47. King, *Letter from Birmingham City Jail*, *supra* note 22, at 293.

48. See, e.g., Chacón, *supra* note 23, at 370–78 (documenting the dehumanizing effect of certain immigration laws).

49. See also *id.* at 359–70 (documenting the ways in which contemporary immigration laws divide families).

50. See Bill Ong Hing, *The Case for Amnesty*, 3 STAN. J. CIV. RTS. & CIV. LIBERTIES 233, 283 (2007) ("Undocumented workers are also susceptible to exploitation and live in constant

The degradation wrought by current law is also clear in the racism and nativism that animate the contemporary national conversation about immigration.<sup>51</sup> Racism lies at or near the surface of many restrictionist arguments, and some very high-profile immigration restrictionist organizations have ties to white supremacist organizations.<sup>52</sup> The issue of immigration has served to galvanize hate groups across the country, including the Ku Klux Klan.<sup>53</sup> These newly-invigorated hate groups pose a problem for all minority communities, but they have been particularly active in their attacks on the Latino community. Statistics compiled by the Federal Bureau of Investigation (FBI) demonstrate a thirty-five percent increase in hate crimes against Latinas/os in the period from 2003 to 2006; they also reveal that during this same period, the number of hate crimes against Latinas/os have doubled in California.<sup>54</sup> As the Southern Poverty Law Center has noted, this rise in hate crimes coincided with the increasingly vitriolic debate over immigration, as anti-immigrant rhetoric became a recruitment tool for racist hate groups.<sup>55</sup> Of course, the individuals who perpetrate these attacks pay little attention to the immigration status of their victims, and they are obviously motivated by racism and xenophobia, not by a straightforward desire to see immigration laws enforced.<sup>56</sup> The rise of violent hate groups in response to the

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fear of deportation . . ."); Rachel Bloomekatz, *Rethinking Immigration Status Discrimination and Exploitation in the Low-Wage Workplace*, 54 UCLA L. REV. 1963, 1964–65 (2007) (“The reality is that many employers actually prefer to hire immigrants rather than U.S. workers, believing that the former are more easily exploitable.”); Riki Altman & Terry Aguayo, *Here Illegally, Guatemalans Are Prime Targets of Crime*, N.Y. TIMES, Aug. 27, 2006, at A12.

51. See Jennifer M. Chacón, *Unsecured Borders: Immigration Restrictions, Crime Control and National Security*, 39 CONN. L. REV. 1827, 1839–43 & n.55 (2007).

52. See, e.g., Heidi Beirich, *The Teflon Nativists: FAIR Marked by Ties to White Supremacy*, S. POVERTY L. CTR. INTELLIGENCE REP., Winter 2007, <http://www.splcenter.org/intel/intelreport/article.jsp?aid=846>; Daphne Eviatar, *Nightly Nativism*, THE NATION, Aug. 28, 2006, available at <http://www.thenation.com/doc/20060828/eviatar>.

53. Press Release, *Ku Klux Klan Rebounds With New Focus On Immigration*, ADL Reports, ANTI-DEFAMATION LEAGUE, Feb. 6, 2007, [http://www.adl.org/PresRele/Extremism\\_72/4973\\_72.htm](http://www.adl.org/PresRele/Extremism_72/4973_72.htm) (reporting that the Ku Klux Klan has experienced “‘a surprising and troubling resurgence’ during the past year due to the successful exploitation of hot-button issues including immigration . . .”); Editorial, *They Are America*, N.Y. TIMES, Feb. 18, 2007, at A11 (noting “an increase in Ku Klux Klan activity around the country, much of it focused on hatred of new immigrants. This virus in the bloodstream usually erupts amid national ferment and fear, and . . . hate groups like the Klan have moved quickly to exploit the simmering debate over immigration.”). For a discussion of the role of restrictive immigration policies in fueling racial discrimination and segregation, see JOHNSON, *supra* note 31, at 103–11.

54. Brentin Mock, *Immigration Backlash: Hate Crimes Against Latinos Flourish*, S. POVERTY L. CTR. INTELLIGENCE REP. (Feb. 26, 2007), <http://www.splcenter.org/intel/intelreport/article.jsp?aid=845>.

55. *Id.*

56. See *id.* See also, e.g., Nina Bernstein, *U.S. Raid on Immigrant Household Deepens Anger and Mistrust*, N.Y. TIMES, Apr. 10, 2007, at B1 (describing one how one man “welcomed the [immigration] raid” of a neighborhood home, even though it

immigration debate illustrates how the broader social struggle for racial justice is implicated in and intertwined with the struggle for immigrants' rights.

Unfortunately, violent attacks from hate groups are not the only forces that immigrants must fear. Even in the context of mainstream popular culture, pervasive negative stereotypes present all immigrants as criminally dangerous and a threat to national security.<sup>57</sup> Suspicions about immigrants' disloyalty to the country ensure that immigrant communities—including citizens who share the racial and ethnic background of recent immigrants—are particularly vulnerable to state surveillance and intrusive law enforcement. Here again, King's own life experiences provide illuminating lessons, offering insights into the meaning and implications of this surveillance.

### *Surveillance and the Outsider*

Surveillance is not usually the first thing that comes to mind when one thinks of Dr. King. Nevertheless, in an era when issues concerning domestic surveillance have entered the public consciousness,<sup>58</sup> King's life provides a good opportunity to reflect on the origin of existing anti-surveillance laws. King's life offers lessons not only in the dangers of excessive state secrecy, but also about the ways in which foreign threats are used to justify surveillance that is actually aimed at quelling challenges to unjust laws.

The historical record richly illustrates the devastatingly pervasive role that government surveillance played in the life of Dr. King.<sup>59</sup> The FBI was involved in a tireless spy campaign aimed at King, and J. Edgar Hoover took his surveillance to an absurd level. Hoover not only bugged King's hotel rooms in order to record his sexual indiscretions, but—in an effort to prevent him from claiming his Nobel Peace Prize in Oslo, Norway—also had the tapes mailed to King, along with a note suggesting that he kill himself.<sup>60</sup> Hoover used the information from his spying campaign to

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was a "household where everyone was an American citizen by naturalization or birth").

57. See Chacón, *Unsecured Borders*, *supra* note 51, at 1838–43.

58. See, e.g., Elizabeth Williamson, *Secret U.S. Intelligence Court Intends To Keep Wiretap Rulings Under Wraps*, WASH. POST, Dec. 12, 2007, at A27 ("The surveillance program that the Bush administration launched shortly after the Sept. 11, 2001, attacks has been the subject of intense battles involving Congress, the president and advocacy groups."); Editorial, *Spies, Lies and FISA*, N.Y. TIMES, Oct. 14, 2007, at A11 (criticizing Congress' quiescence to calls by President Bush for greater domestic surveillance authority).

59. See, e.g., BRANCH, PILLAR OF FIRE, *supra* note 1; GARROW, *supra* note 1.

60. See BRANCH, PILLAR OF FIRE, *supra* note 1, at 528–29, 556–57.

undermine King's efficacy as a leader. Hoover pressured King into cutting ties with his allegedly "Communist" advisor, Stanley Levison.<sup>61</sup> When King later resumed his working relationship with Levison, Hoover conducted secret electronic surveillance of their conversations and manipulated this intelligence to pursue his own ends.<sup>62</sup> Taking advantage of his access to intelligence, Hoover systematically inserted himself as a wedge in the already-fraught relationship between Dr. King and President Johnson.<sup>63</sup> "Wiretaps on King's antiwar statements were excerpted by the FBI, interpreted as personal assaults on Johnson, and then channeled to the White House in a steady drip-drip of venom to poison Johnson's mind on King."<sup>64</sup> Hoover used King's renewed relationship with Levison as evidence that King's civil rights movement was a front for Communism.<sup>65</sup> Relations between Dr. King and President Johnson were bound to be strained and difficult, given King's increasingly vocal opposition to the war in Vietnam during the period from 1967 to the end of his life.<sup>66</sup> But the evidence of the role that Hoover played in wreaking further distrust between these men is a reminder of the ways in which a government's reliance on secrecy and surveillance involves the manipulation of human relationships.<sup>67</sup>

Since only the FBI had access to the facts discovered through surveillance, Hoover was also able to manipulate and re-write the facts to undermine and discredit not only King, but also the larger goals of the civil rights movement. For example, Hoover actively played on long-standing racial fears by encouraging the notion that white women participating in the civil rights movement were doing so only to have sex with black men.<sup>68</sup> Hoover dictated the memorandum to President Johnson suggesting that Viola Liuzzo, a white mother of five who was brutally murdered while shuttling Montgomery bus marchers to Selma, was "sitting very, very close to the Negro in the car; . . . it had the appearance of a necking party."<sup>69</sup> Hoover also falsely told Johnson that Liuzzo had track marks on her arms from using drugs and insisted that the President should not contact her husband to offer condolences because he was a violent Teamster

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61. Garry Wills, *An American Iliad*, 53 N.Y. REV. OF BOOKS, at § 3 (Apr. 6, 2006) (reviewing BRANCH, *AT CANAAN'S EDGE*, *supra* note 1).

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. See *infra* notes 99–103 and accompanying text.

67. For a vivid interpretation of the ways in which pervasive government surveillance—in this case, perpetrated by the Stasi in 1970s East Berlin—undermines human relationships, see *DAS LEBEN DER ANDEREN* (Sony Picture Classics 2006).

68. See Wills, *supra* note 61 at § 1.

69. *Id.* See also BRANCH, *AT CANAAN'S EDGE*, *supra* note 1, at 177.

enforcer.<sup>70</sup> In this way, Hoover worked to drive a deeper wedge in the already-strained ties between Johnson and King.

It would be comforting to think of J. Edgar Hoover as a sort of aberrational character, but the truth is that “he was not an idiosyncratic wild man but a reasonable expression of one important part of American society.”<sup>71</sup> As David J. Garrow has written, “American popular thought has had strong themes of nativism, xenophobia, and ethnocentrism. These very same qualities were writ large in the FBI.”<sup>72</sup> Hoover deployed his heavy-handed and abhorrent techniques in an effort to secure the popular social goal of preserving the status quo, with all of its inequalities of class, race, and gender. He approached his task in a way that many U.S. citizens at the time might not have criticized.<sup>73</sup> The same echoes of “nativism, xenophobia and ethnocentrism” that generated the hyperactive surveillance culture of the 1950s and 1960s may be more muted today, but they are not dead. The re-emergence of a heavy surveillance culture in the United States in the post-September 11, 2001 era illustrates that the lessons of the King era have not been fully internalized.

It was the abuses perpetrated against King and thousands of others<sup>74</sup> — abuses committed in the name of national security—that prompted Congress to pass the Foreign Intelligence Surveillance Act (FISA) in 1978.<sup>75</sup> Over the course of a series of hearings held in the 1970s, many members of Congress learned that wiretaps purportedly aimed at “foreign agents” were actually used to conduct vast numbers of unconstitutional wiretaps of civil rights leaders and Vietnam War critics.<sup>76</sup> Responding to these abuses,

70. See Wills, *supra* note 61, at § 5.

71. Russell Baker, *Bravest and Best*, 45 N.Y. REV. OF BOOKS 4, 6 (Apr. 9, 1998) (discussing GARROW, *supra* note 1).

72. GARROW, *supra* note 1, at 209.

73. *Id.*

74. Dr. King certainly did not stand alone as a target of surveillance. The FBI was spying on many Americans at the time, including a great number of activists within the African American community. GARROW, *supra* note 1, at 182–83, 187; MCKNIGHT, *supra* note 1, at 29–30, 102–04, 107. Documents recently released also reveal that the CIA undertook an extensive, seven year domestic surveillance operation—code-named Chaos—involving 300,000 American individuals and organizations, aimed at achieving President Johnson’s goal of tracking down foreign Communists interfering in domestic affairs. See Mark Mazzetti & Tim Weiner, *Files on Illegal Spying Show C.I.A. Skeletons From Cold War*, N.Y. TIMES, June 27, 2007, at A1. State and local law enforcement and other U.S. agencies were also involved in active surveillance of political dissidents and war opponents. See Frank Donner, *The Theory and Practice of American Political Intelligence*, 16 N.Y. REV. OF BOOKS 27 (Apr. 22, 1971).

75. Foreign Intelligence Surveillance Act, Pub. L. 95-511, enacted Oct. 25, 1978, 50 U.S.C. ch. 36 (“FISA”).

76. See, e.g., CRIMINAL PROCEDURES: CASES, STATUTES AND EXECUTIVE MATERIALS 484 (Marc L. Miller & Ronald F. Wright eds., 3d. ed. 2007). In *Katz v. United States*, 389 U.S. 347 (1967), the Supreme Court held that wiretaps constituted a

Congress carefully delineated the circumstances under which national security interests would allow for the circumvention of domestic procedural complaints on wiretapping.<sup>77</sup> In cases involving national security, the law would still require warrants for wiretaps, but the government could obtain such warrants from the statutorily created Foreign Intelligence Surveillance Court rather than through traditional means.<sup>78</sup>

After a terrorist organization staged successful terrorist attacks on New York and Washington D.C. on September 11, 2001,<sup>79</sup> Congress enacted provisions in the USA PATRIOT Act that weakened some of FISA's protections against the use of foreign intelligence surveillance in domestic crime control, but FISA's warrant requirement remained intact.<sup>80</sup> Thus, many Americans were surprised to learn that the Bush Administration had used the "emergency" of the events of September 11, 2001, to engage in a long-term and systematic program of warrantless domestic surveillance, outside even the broadly permissive scope of FISA after the PATRIOT Act.<sup>81</sup> The Bush Administration's wiretapping program was broad enough to affect the telephone calls of thousands of Americans.<sup>82</sup> These wiretaps have been justified on grounds of "national security." But like the surveillance of the King era, it often takes on the appearance of social control through surveillance.<sup>83</sup> Those who challenge the legal order through protest,<sup>84</sup> those who have ties to foreigners<sup>85</sup>—in

"search" for purposes of the Fourth Amendment and were therefore subject to the warrant requirement.

77. Foreign Intelligent Surveillance Act, 50 U.S.C. §§ 1801, 1802(a)(1) (2006). *See also* CRIMINAL PROCEDURES, *supra* note 76, at 484.

78. *See* CRIMINAL PROCEDURES, *supra* note 76, at 484.

79. Serge Schmemmann, *U.S. Attacked: President Vows to Exact Punishment for 'Evil,'* N.Y. TIMES, Sept. 12, 2001, at A1.

80. *See* CRIMINAL PROCEDURES, *supra* note 76, at 484.

81. Eric Lichtblau & Adam Liptak, *Bush and His Senior Aides Press on in Legal Defense for Wiretapping Program*, N.Y. TIMES, Jan. 28, 2006, at A1. The "emergency" arguments are problematic in light of the fact that FISA developed an express procedure to deal with emergencies, and the fact that the vast majority of surveillance requests—16,970 out of 16,974—had been granted by the FISA court in the period between 1979 and 2003. *See* CRIMINAL PROCEDURES, *supra* note 76, at 487.

82. *See* CRIMINAL PROCEDURES, *supra* note 76, at 487. Due to technical errors, even those surveillance efforts that have been approved by the FISA court often exceed the scope of surveillance permitted by the FISA warrant. *See* Eric Lichtblau, *Through an Error, F.B.I. Gained Unauthorized Access to E-mail*, N.Y. TIMES, Feb. 17, 2008, at A1.

83. *See* Sunaina Maira, *The Intimate and the Imperial: South Asian Muslim Immigrant Youth After 9/11*, in *YOUTHSCAPES: THE POPULAR, THE NATIONAL, THE GLOBAL* 64–84 (Sunaina Maira & Elisabeth Soep eds., 2005) (theorizing that surveillance is used to enforce adherence to norms of "citizenship" in communities seen as foreign). *Cf.* MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (2d ed. 1995).

84. *See* Dan Eggen, *FBI Took Photos of Antiwar Activists in 2002*, WASH. POST, Mar. 15, 2006, at A5; Eric Lichtblau, *F.B.I. Watched Activist Groups, New Files Show*, N.Y. TIMES, Dec. 20, 2005, at A1, A25 ("One F.B.I. document indicates that agents in Indianapolis planned to conduct surveillance as part of a 'Vegan Community Project.'")

short, those who deviate from the political, racial, or ethnic “norm”—risk surveillance. In turn, the threat of surveillance can coerce people to alter their conduct. This threat can also reify constructions of certain racial or ethnic groups as perpetual immigrant outsiders. Furthermore, electronic surveillance is not the only form of government surveillance that is being expanded in this regard. Heightened concerns over unauthorized migration have led to an increase in police surveillance and ethnic profiling of certain immigrant communities.<sup>86</sup>

King’s life offers valuable lessons about the way that dissenters are cast as outsiders and the way that governmental surveillance can be wielded to police the boundaries between legitimate citizens and outsiders. Now, as in King’s time, U.S. spies<sup>87</sup> and their methods offer a reflection of mainstream sentiment and a window into the health of American democracy. Living in an age where U.S. government agents torture foreign nationals for information, then destroy the evidence of their misdeeds,<sup>88</sup> there is reason for concern.

If King’s life offers lessons that are useful in helping us to understand the events unfolding at present, his thoughts and words—transmitted to us through words and speeches—provide us with a sense of how King might have conceptualized and responded to the civil rights issues that confront us today. Just as King continued to speak out, even when his loyalty as a citizen was questioned and his life placed under a metaphoric microscope, we can presume that he would urge us to speak out against injustices today, even if doing so results in our marginalization. But would King care

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Another document talks of the Catholic Workers group’s ‘semi-communistic ideology.’ A third indicates the bureau’s interest in determining the location of a protest over llama fur planned by People for the Ethical Treatment of Animals.”)

85. See *Editorial: Because They Said So*, N.Y. TIMES, Feb. 10, 2008, at A11 (“When Mr. Bush started his spying program, FISA allowed warrantless eavesdropping for up to a year if the president certified that it was directed at a foreign power, or the agent of a foreign power, and there was no real chance that communications involving United States citizens or residents would be caught up. As we now know, the surveillance included Americans and there was no ‘foreign power’ involved.”).

86. See, e.g., DAVID COLE, *ENEMY ALIENS: DOUBLE STANDARDS AND CONSTITUTIONAL FREEDOMS IN THE WAR ON TERRORISM* 47–56 (2003); Richard Winton, Teresa Watanabe & Greg Krikorian, *LAPD Defends Muslim Mapping Effort*, L.A. TIMES, Nov. 10, 2007, at A1 (discussing proposal—ultimately scuttled—by LAPD to “map Muslim communities in an effort to identify potential hotbeds of extremism”); Bernstein, *supra* note 56 (noting “repeated surveillance” of Latina/o household in East Hampton); Nina Bernstein, *Held in 9/11 Net, Muslims Return to Accuse U.S.*, N.Y. TIMES, Jan. 23, 2006, at A1 (noting lawsuit challenging surveillance of telephone calls with Egyptian clients).

87. We live in a place and time where spies are a paradoxically visible feature of the political landscape. See, e.g., VALERIE PLAME WILSON, *FAIR GAME* (2007).

88. See Mark Mazzetti, *C.I.A. Destroyed 2 Tapes Showing Interrogations*, N.Y. TIMES, Dec. 7, 2007, at A1.

at all about the plight of immigrants in the United States? There is much in the record that he left behind to suggest that he would care very much.

## II.

### LEARNING FROM THE WORKS OF DR. KING

*Let us be dissatisfied until the empty stomachs of Mississippi are filled and the idle industries of Appalachia are revitalized. Let us be dissatisfied until brotherhood is no longer a meaningless word at the end of a prayer but the first order of business on every legislative agenda. Let us be dissatisfied until our brother of the Third World—Asia, Africa, and Latin America—will no longer be the victim of imperialist exploitation, but will be lifted from the long night of poverty, illiteracy, and disease. Let us be dissatisfied until this pending cosmic energy will be transformed into a creative psalm of peace and “justice will roll down like waters from a mighty stream.”<sup>89</sup>*

If Dr. King’s life provides valuable lessons for the contemporary immigrants’ rights movement, his teachings are even more useful. King’s increasing focus on global justice and nonviolence gives us a glimpse of the way that Dr. King might respond to the contemporary immigrants’ rights movement. The internationalist vision that he espoused in the last years of his life requires us to recognize that the “choices” of many migrants are shaped and constrained by political and economic realities beyond their control.<sup>90</sup> Indeed, the United States has sometimes participated in creating the conditions that lead to migration.<sup>91</sup> King’s robust vision of a nonviolent world teaches us to recognize the interrelationship between global suffering and domestic civil rights matters. In this way, his teachings point to the need to integrate the struggle for the rights of migrants with the broader struggle for racial justice and nonviolence.

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89. Dr. Martin Luther King, Jr., Speech Honoring the 100<sup>th</sup> Birthday of Dr. W.E.B. Du Bois (Feb. 23, 1968), *quoted in* PENNY M. VON ESCHEN, *RACE AGAINST EMPIRE: BLACK AMERICANS AND ANTICOLONIALISM 1937–1957*, at 185 (1997).

90. CASTLES & MILLER, *supra* note 26, at 4 (noting that increasing migration will be driven by “growing inequalities in wealth between the North and the South . . . ; political, ecological and demographic pressures . . . ; increasing political or ethnic conflict . . . ; and the creation of new free trade areas . . . .”); MASSEY, *supra* note 26, at 8–23 (refuting the notion that migration is an unconstrained choice, and noting that exogenous economic factors and social networks drive patterns of migration).

91. WALTER LAFEVER, *INEVITABLE REVOLUTIONS: THE UNITED STATES IN CENTRAL AMERICA* (1993); Thomas Kleven, *Why International Law Favors Emigration Over Immigration*, 33 U. MIAMI INTER-AM. L. REV. 69, 85 & n.49 (2002) (noting large levels of migration from Cuba, Vietnam, El Salvador, Nicaragua and Guatemala—all countries where the U.S. “has contributed to great internal disruption and hardship”).

In the period from 1955 through 1964, Dr. King focused his energy primarily upon the all-consuming and critical task of desegregating the American South and enfranchising black citizens.<sup>92</sup> He consistently espoused the notion that nonviolence was the proper means to achieve desegregation and antidiscrimination.<sup>93</sup> Dr. King brought intellectual breadth to his task. He made it clear through speeches and interviews that he was concerned with more than just desegregation in America; his attention was drawn to many issues—from caste segregation in India,<sup>94</sup> to the role of the church in the lives of blacks,<sup>95</sup> to the synergies of the labor movement and the civil rights movement,<sup>96</sup> to the interplay of racism and colonialism.<sup>97</sup> He also provided advice to *Ebony* readers on a variety of topics from marital relations to interracial friendships.<sup>98</sup>

But it was not until after winning the Nobel Peace Prize in 1964 that Dr. King's outlook on social change manifested an important public shift. In the last few years of his life, Dr. King broadened his account of nonviolence, making clear a point that had long been implicit in his words and actions: nonviolence was not just a means to the end of desegregation, but an ends in itself.<sup>99</sup> Dr. King's philosophy of nonviolence was broad. It required an end to the violence of

92. Wills, *supra* note 61, at § 2. See also Martin Luther King, *Alabama's Bus Boycott: What It's All About*, U.S. NEWS & WORLD REPORT, Aug. 3, 1956, at 82, 88–89 (calling for the end of segregation and advocating nonviolent methods); Martin Luther King, Jr., *Statement at Youth March for Integrated Schools*, 105 CONG. REC. 8696–97 (May 20, 1959), reprinted in THE PAPERS OF MARTIN LUTHER KING, JR.: THRESHOLD OF A NEW DECADE, JANUARY 1959–DECEMBER 1960, at 186–187 (2005) (arguing that American democracy requires racial integration); Martin Luther King, Jr., *In a Word: Now*, N.Y. TIMES MAG., Sept. 29, 1963, at 91, 91–92, reprinted in A TESTAMENT OF HOPE, *supra* note 22 (advocating for the immediate changes to achieve equality, including ensuring the right to vote).

93. Martin Luther King, Jr., *Nonviolence and Racial Justice*, 74 CHRISTIAN CENTURY 165, 165–67 (1957), reprinted in TESTAMENT OF HOPE, *supra* note 22, at 7–9; Martin Luther King, Jr., *Pilgrimage to Nonviolence*, 77 CHRISTIAN CENTURY 439, at 439–41 (1960), reprinted in TESTAMENT OF HOPE, *supra* note 22, at 35–40; Martin Luther King, Jr., *The Terrible Cost of the Ballot*, 1 SCLC NEWSLETTER, Sept. 1962, at 1–2.

94. Martin Luther King, Jr., *My Trip to the Land of Gandhi*, EBONY, July 1959, at 84, 84–92.

95. Martin Luther King, Jr., *Crisis and the Church*, COUNCIL QUARTERLY, Oct. 1961.

96. Martin Luther King, Jr., *If the Negro Wins, Labor Wins*, HOTEL, Feb. 12, 1962, at 4, 6, reprinted in TESTAMENT OF HOPE, *supra* note 22, at 201–07.

97. Martin Luther King, Jr., *My Talk With Ben Bella*, N.Y. AMSTERDAM NEWS, Oct. 27, 1962, at 13 (describing links between Southern segregation and international colonialism).

98. See, e.g., Martin Luther King, Jr., *Advice for Living*, EBONY, Sept. 1957, at 74 (discussing the difficulties of interracial friendships); Martin Luther King, Jr., *Advice for Living*, EBONY, Apr. 1958, at 104. Dr. King wrote columns such as these for *Ebony* from 1957–1958. See THE MARTIN LUTHER KING, JR., PAPERS PROJECT, A GUIDE TO RESEARCH ON MARTIN LUTHER KING, JR., AND THE MODERN BLACK FREEDOM STRUGGLE 46–48 (Stanford University 1989).

99. Wills, *supra* note 61, at § 2.

colonialism—including the war in Vietnam.<sup>100</sup> It required an end to poverty, which King saw as a form of violence, too.<sup>101</sup> In short, it required a re-ordering of what he saw as the imperialist and capitalist underpinnings of our society.<sup>102</sup> The ideas that King articulated near the end of his life were not new for him; they were contained in his earlier thoughts and statements, but his later speeches made these themes more explicit and more central. This more radical King was infinitely more threatening to the powerful in America.<sup>103</sup>

Dr. King's focus on anti-colonialism and economic justice from 1964 to 1968 connected him to the more internationalist civil rights struggle of the 1930s. Civil rights activists, such as Alpheus Hunton, Paul Robeson and W.E.B. Du Bois, linked their own arguments against Jim Crow segregation in America with broader questions of global colonialism and racist capitalism in Africa and Asia.<sup>104</sup> But by the late 1940s, the American quest for civil rights was largely severed from questions of economic and social rights and global economic power.<sup>105</sup> Confined by dichotomous Cold War politics, in which concerns regarding anti-colonialism and economic justice were reactively labeled "communist," the focus of the civil rights movement turned inward. Civil rights activists focused their agenda on domestic political rights; they largely tabled questions of global economic justice.<sup>106</sup>

Dr. King's speeches and actions from 1965 through the end of his life, and particularly in his last year, demonstrated his renewed connection with

100. See, e.g., Martin Luther King, Jr., *The Domestic Impact of the War in Vietnam*, DRUM MAJOR, 1971, at 14–17; Martin Luther King, Jr., *A Time to Break Silence*, 7 FREEDOMWAYS, 1967, 103–17, reprinted in TESTAMENT OF HOPE, *supra* note 22, at 231–44 (explaining his decision to take a stand against the Vietnam War); Martin Luther King, Jr., Beyond Vietnam: Address to the Clergy and Laymen Concerned About Vietnam, Apr. 4, 1967 (transcript available at [http://www.stanford.edu/group/King/publications/speeches/Beyond\\_Vietnam.pdf](http://www.stanford.edu/group/King/publications/speeches/Beyond_Vietnam.pdf)); Martin Luther King, Jr., *The Casualties of the War in Vietnam*, 11 GANDHI MARG 185 (1967) (explaining that the casualties of the Vietnam War extend beyond physical casualties to principles and values, including the United Nations Charter, the principle of self-determination, and the Great Society); *Dr. King to Weigh Civil Disobedience if War Intensifies*, N.Y. TIMES, Apr. 2, 1967, at A1.

101. See, e.g., Martin Luther King, Jr., *The Violence of Poverty*, N.Y. AMSTERDAM NEWS, Jan. 1, 1966, at 6.

102. See DYSON, *supra* note 1, at 51–100.

103. See generally OATES, *supra* note 1, at 437 (“[I]n April, 1967, most of King’s country supported the Vietnam War, and his [anti-war] address provoked a fusillade of abuse from all sides . . . . [FBI] documents denigrated King as ‘a traitor to his country and to his race.’ Taking his cue from the FBI, a Johnson aide remarked that King’s argument was ‘right down the Commie line,’ and Congressman Joe D. Waggoner, in communication with the White House and the bureau, charged on Capitol Hill that King’s ‘earlier training at such gatherings as the Communist Highlander Folk School has called him on to another Communist end, mobilizing support for Peking and Hanoi in their war against South Vietnam.’”); Marshall Frady, *Prophet With Honor*, 30 N.Y. REV. OF BOOKS, at 79 (Oct. 27, 1983).

104. VON ESCHEN, *supra* note 89, at 4.

105. *Id.*

106. *Id.*

the broader concerns of the historic civil rights movement. His expansive understanding of the philosophy of nonviolence inevitably led him to believe that achieving lasting domestic racial equality would require a radical reordering of the global political and economic system.<sup>107</sup> However, his broader message did not appeal to all of his followers, some of whom continuously pressed for him to retain a focus on achieving integration, enfranchisement, and anti-discriminatory protections for African Americans.<sup>108</sup> Numerous individuals and organizations called upon him to focus on civil rights rather than involving himself in the politics of war.<sup>109</sup> As Garry Wills recently wrote, “Many thought that he should stay where he belonged, in the South, talking about black issues. What right did he have to speak out about poor whites, Chicago schools, or Vietnam?”<sup>110</sup>

What these individuals and organizations failed to recognize was that Dr. King no longer saw issues like colonialism and war as separate from civil rights. Rather, he recognized them as deeply intertwined. For Dr. King, nonviolence was not just a means to achieve the ends of formal racial equality in the South but an end in itself—and it required the eradication of the global violence of war and poverty, regardless of who was suffering.<sup>111</sup> Dr. King expressed his reconnection with these ideas, which

107. See, e.g., Martin Luther King, Jr., *A Testament of Hope*, PLAYBOY, Jan. 1969, at 174, 194, reprinted in TESTAMENT OF HOPE, *supra* note 22, at 313, 314 (“White America must recognize that justice for black people cannot be achieved without radical changes in the structure of our society.”); Martin Luther King, Jr., *The American Dream*, 31 NEGRO HISTORY BULLETIN 10–15, reprinted in TESTAMENT OF HOPE, *supra* note 22, at 208–16 (arguing for Americans to assume a global outlook); Federal Role in Urban Affairs, Subcomm. on Exec. Reorganization, Comm. on Gov’t Operations, 89th Cong. 2967–2999 (1966) (statement of Rev. Martin Luther King, Jr.) (calling for, *inter alia*, fundamental restructuring of the U.S. economy to redress the economic manifestations of racism).

108. See Gene Roberts, *Dr. King and the War: His Opposition to U.S. Role in Vietnam Said to Hurt Position as Rights Leader*, N.Y. TIMES, Apr. 14, 1967, at A21.

109. See, e.g., Peter Kihss, *Rowan Terms Dr. King’s Stand on War a Peril to Rights Gains*, N.Y. TIMES, Aug. 28, 1967, at A10 (“The Rev. Dr. Martin Luther King Jr.’s opposition to the Vietnam war was attacked yesterday by a fellow Negro, Carl T. Rowan, as endangering civil rights advances.”); *Half of 160 Negroes In a Survey Oppose Dr. King on Vietnam*, N.Y. TIMES, May 23, 1967, at A3; John Sibley, *Bunche Disputes King on Peace*, N.Y. TIMES, Apr. 13, 1967, at A1 (“Dr. Ralph J. Bunche asserted today that the Rev. Dr. Martin Luther King Jr. should not try to lead both a civil rights campaign and a crusade against American involvement in Vietnam.”).

110. Wills, *supra* note 61, at § 2.

111. Baker, *supra* note 71, at 6 (“[King] now saw race, war, and poverty as evils inextricably bound and decided that all three must be tackled as one.”). See also Wills, *supra* note 61, at § 2 (“At a time when black militancy was growing, and white antiwar protesters in the SDS were veering toward bombing, he had to keep arguing that violence is self-defeating, just as he had in the earliest marches. And when the violence of Vietnam was tearing the nation apart, he would have been untrue to himself had he not spoken out against it. What he said has been validated by the ugly course of the war and its ignoble ending. Those who think he was not qualified to make a judgment on the war need only read what was being said and thought by the ‘experts’ in the White House to see how

built upon notions that had been advanced by DuBois and others earlier in the twentieth century, in a speech in celebration of the 100<sup>th</sup> birthday of DuBois. There he expressly called for dissatisfaction until our “brother” in Asia, Africa or Latin America no longer need be the victim of “imperialist exploitation.”<sup>112</sup>

Dr. King’s broad mind and inclusive agenda remind us that the fight for justice is not about picking battles. Instead, it is one battle against violence in its physical, political, social, and economic forms. The struggle of immigrants in our society—and indeed, the struggle of the poor around the world—was Dr. King’s concern. Dr. King counseled that the struggle for social justice would not allow us to ignore the oppression of our “brother of the Third World;” we certainly cannot ignore that oppression when it takes place in our own country.

### CONCLUSION

In an interdependent world, issues of inequality must be addressed globally. It is impossible to cordon off discussions of race and poverty in America from global poverty and racism. Our social order is premised on the exclusion of noncitizens as a fundamental component of national sovereignty and domestic economic stability,<sup>113</sup> but Dr. King’s life and words challenge us to imagine the possibilities for justice unconstrained by borders.

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totally in the dark were most of those who thought they had sound intelligence and political experience.”); BRANCH, *AT CANAAN’S EDGE*, *supra* note 1, at 225-226 (“[King] pictured democracy itself as a political form of nonviolence, merged and refined in history’s slow rise from primitive conquest toward the established vote. ‘It is an axiom of nonviolence action and democracy that when any group struggles properly and justly to achieve its own rights, it enlarges the rights of all,’ King asserted. ‘This element is what makes both democracy and nonviolent action self-renewing and creative.’”).

112. Martin Luther King, Jr., *Honoring Dr. DuBois*, 8 *FREEDOMWAYS* 104, 110 (1968) (praising DuBois’ “committed empathy with all the oppressed and his divine dissatisfaction with all forms of injustice”).

113. See JOHNSON, *supra* note 31, at 95-100 (reviewing and dismissing these arguments).