

# Political Representation and Economic Rights in the Shadows of Citizenship

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*In recent years, the remarkable movement for the political rights of undocumented youth—the so-called “DREAMers”—has catalyzed a critical conversation about the economic rights of all noncitizens. A growing number of states have amended their laws in response to advocacy by and for this particular group of noncitizens. This Essay situates this modern legal development in a broader conceptual and historical frame. It reflects on the relationship between economic rights and political aspirations in this movement, as well as in two other key legal developments in immigration history: the passage of anti-Asian alien land laws in the 1910s and 1920s, and the equal protection revolution in noncitizen rights in the 1970s. These three examples demonstrate the interplay between economic rights and political aspirations or dispossessions in the history of immigration and citizenship. While our conversations about immigrant rights are often siloed into specific areas—the economy, education, politics, and so on—we see that these areas are not so separate but instead can be interconnected and intimately related.*

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## INTRODUCTION

This Essay is guided by a broad conceptual and historical question: How do efforts to either expand or contract the economic rights of immigrants impact their access to political representation and the political community? Our conversations about immigrant rights are often siloed into specific areas—the economy, education, politics, and so on—but in reality, these areas are not so separate; instead, they are interconnected and intimately related. This reflection provides some concrete examples of the interconnectedness of political and economic rights. In my prior work, I have focused primarily on what would be considered the economic, rather than political, rights of noncitizens, including the rights to work, own property, and participate in various commercial activities.<sup>1</sup> Here, I take the opportunity offered by this Symposium to move in a new direction, reflecting on how struggles for economic rights—or efforts to impede them—have reverberated in the realms of politics and civic engagement. It is my aim to help us reflect further on the broader themes of this Symposium, while also encouraging greater attention to the possibilities for working collaboratively across various areas of advocacy for the rights of noncitizens.

This query is inspired by what I have observed of the connections between efforts to build a path to citizenship for the “DREAMers”—undocumented young people brought to the country as children—and the expansion of economic rights for noncitizens more generally.<sup>2</sup> As I describe below, in recent years the organizing and advocacy on behalf of Dreamers and the beneficiaries of Deferred Action for Childhood Arrivals (DACA) has catalyzed a reconsideration of state laws that discriminate based on citizenship or legal status. While the initial impetus for this movement grew from a broad claim to full membership rights for undocumented youth, including eventual political incorporation, it appears to have had the most legal traction thus far in the sphere of economic rights.

This connection between political aspirations and economic results is notable, but it is not unique in the history of immigration, citizenship and civil rights. In order to better situate this modern legal development and connect it to broader themes, I first provide a reflection on two distinct historical moments, each of which gives us a different viewpoint on the connection between economic access and political representation in American history. First, I draw on Keith Aoki’s seminal work on anti-Asian alien land laws and Japanese internment, which highlights the way that economic exclusion can lead to political dispossession. Next, I provide an example from my own research into

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1. Allison Brownell Tirres, *Property Outliers: Non-Citizens, Property Rights and State Power*, 27 *GEO. IMMIGR. L.J.* 77 (2012); Allison Brownell Tirres, *Ownership Without Citizenship: The Creation of Noncitizen Property Rights*, 19 *MICH. J. RACE & L.* 1 (2013); Allison Brownell Tirres, *Exclusion from Within: Noncitizens and the Rise of Discriminatory Licensing Laws*, *LAW & SOC. INQUIRY*, Nov. 9, 2023, at 1.

2. On the history of the DREAM Act, DACA and the movement by and for undocumented youth, see generally MICHAEL OLIVAS, *PERCHANCE TO DREAM: A LEGAL AND POLITICAL HISTORY OF THE DREAM ACT AND DACA* (2020).

the immigrant rights movement of the 1970s. Here, what started as a push for economic rights then ripened into a call for full political membership. What immigrants and activists failed to achieve in the 1970s has now been partially vindicated in the 2010s and 2020s, as some states have finally jettisoned their discriminatory laws in response to advocacy by DREAMers and DACA recipients. This Essay is thus a reflection in three parts, with each story telling us something about how efforts in one arena of rights can reverberate in another.

### I. ALIEN LAND LAWS AND JAPANESE INTERMENT

State laws restricting the economic rights of noncitizens have deep roots. Included in this category are exclusionary property laws that prohibit the sale, possession, or transfer of property based on citizenship status, as well as employment and licensing restrictions that bar noncitizens from certain occupations and professions.<sup>3</sup> One of the most notorious examples of such restrictions are the anti-Asian “alien land laws” of the first half of the twentieth century.<sup>4</sup> These laws barred noncitizens deemed “ineligible for citizenship” from owning real property in the state;<sup>5</sup> this category happened to include almost solely immigrants of Asian descent,<sup>6</sup> who were barred from naturalization until 1952.<sup>7</sup>

While these laws were most directly a restraint on economic opportunity, they also had a profound negative effect on broader rights of territorial security and membership in the political community. This is a point forcefully driven home by the late scholar Keith Aoki in his seminal article on California’s alien land laws.<sup>8</sup> In it, Aoki shows how efforts in California to strip Japanese immigrants and their U.S. citizen children of access to property set the stage for later government internment during World War II. These alien land laws “served as a material prelude to the internment of Japanese Americans by weakening the structure of the agricultural opportunity ‘ladder’ faced by Japanese immigrants

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3. Our federal immigration regime is layered over (or under) this state-based rights regime, with federal employment authorization being its own, separate restriction on the right to earn a living based on immigration status. For a discussion of the history of alienage discrimination and civil rights, see generally PRATHEEPAN GULASEKARAM & S. KARTHICK RAMAKRISHNAN, *THE NEW IMMIGRATION FEDERALISM* (2015); KUNAL PARKER, *MAKING FOREIGNERS: IMMIGRATION AND CITIZENSHIP LAW IN AMERICA, 1600–2000* (2015); Polly Price, *Alien Land Restrictions in the American Common Law: Exploring the Relative Autonomy Paradigm*, 43 *AM. J. LEGAL HIST.* 152 (1999); Tirres, *Property Outliers*, *supra* note 1; Tirres, *Exclusion from Within*, *supra* note 1.

4. See Keith Aoki, *No Right to Own?: The Early Twentieth-Century “Alien Land Laws” as a Prelude to Internment*, 40 *B.C. L. REV.* 37, 37–38 (1998); Charles H. Sullivan, *Alien Land Laws: A Re-evaluation*, 36 *TEMP. L.Q.* 15, 28 (1962).

5. See Dudley O. McGovney, *The Anti-Japanese Land Laws of California and Ten Other States*, 35 *CALIF. L. REV.* 7, 7 (1947).

6. See Gabriel J. Chin, *A Nation of White Immigrants: State and Federal Racial Preferences for White Noncitizens*, 100 *B.U. L. REV.* 1271, 1273, 1280 (2020).

7. See *id.* at 1279–80; IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 35 (2d ed. 2006).

8. See generally Aoki, *supra* note 4.

entering this country at the beginning of the century.”<sup>9</sup> Government officials were able to rely on the instability of membership, fostered by land dispossession, to treat Japanese citizens and noncitizens as if they had no rights at all, including the right to freedom from unjustified incarceration.<sup>10</sup>

I first encountered Aoki’s work during graduate school, and it has had a lasting impact on my own scholarly path. I was struck by how Aoki was able to trace the long-term implications of specific legal maneuvers, and also by the instability of membership that such laws can create. In drawing a connection between the alien land laws and internment, Aoki convincingly links the denial of these rights of economic security directly to later political disempowerment.<sup>11</sup> Lack of access to economic rights and economic mobility hampered the achievement of political participation and representation.<sup>12</sup> Aoki understood this in a deeply personal way; his grandparents were Japanese immigrants who farmed land in California, and his father was interned in Arizona during the war.<sup>13</sup>

This connection between economic discrimination and broader membership is part of what is troubling to activists and scholars about the modern-day alien land laws, such as Florida’s recently passed Senate Bill 264,<sup>14</sup> which, among other things, bars most Chinese immigrants without permanent resident status from purchasing real property in the state.<sup>15</sup> Multiple organizations have sued, arguing that the law is unconstitutional. Activists and immigrants are right to be worried; as Aoki’s work reminds us, economic prohibitions can have outsized impacts on membership rights, impacts that can go well beyond the market. Relatively narrow anti-immigrant campaigns can have outsized effects due to the destabilization that they create.

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9. *Id.* at 62.

10. *Id.* at 62–68.

11. *Id.* at 66–72. Studies of the rise of totalitarian governments reveal the direct link between economic destabilization and dehumanization of marginalized populations; the rise of the Nazi party in Europe provides one example. See generally KARL A. SCHLEUNES, *THE TWISTED ROAD TO AUSCHWITZ: NAZI POLICY TOWARD GERMAN JEWS, 1933-1939* (1990).

12. Aoki, *supra* note 4, at 66–72. As Aoki notes, “owning property . . . ties an individual’s fate to the fate of the larger polity, giving him or her a stake in important political controversies of the day, as well as providing a valuable shield against the state and other private parties.” *Id.* at 69.

13. *Id.* at 37.

14. S.B. 264, 2023 Leg., 33d Sess. (Fla. 2023).

15. *Id.* at § 7. See generally *ACLU Applauds Appeals Court Decision Halting Enforcement of Florida Law That Bans Many Immigrants from China and Other Countries from Buying Homes*, ACLU (Feb. 1, 2024, 7:00 PM EST), <https://www.aclu.org/press-releases/aclu-applauds-appeals-court-decision-halting-enforcement-of-florida-law-that-bans-many-immigrants-from-china-and-other-countries-from-buying-homes> (discussing the Eleventh Circuit’s temporary halt on enforcement of S.B. 264); Emily Behzadi Cárdenas, *National Security or National Origin? The Implications of Florida’s Alien Land Law Under the Federal Fair Housing Act*, 75 S.C. L. REV. 195 (2023) (analyzing the discriminatory implications S.B. 264 will have on fair housing).

## II. THE EQUAL PROTECTION REVOLUTION

In the 1910s and 1920s, there was little to prevent states from passing laws like those adopted in California to prohibit Asian immigrant land ownership. Courts largely deferred to state lawmakers, upholding restrictions on the economic rights of noncitizens under either a theory of state police powers or the state's "special public interest" to reserve resources for the "people of the state."<sup>16</sup> This sort of legislation, which grew largely out of stereotypes about and animus towards immigrants, became less tenable after World War II, as the pressure for constitutional change intensified amid burgeoning civil rights movements. This takes us to a second historical moment, when efforts to expand economic rights for immigrants opened space to reconsider, in very concrete ways, the political rights of noncitizens.

In 1971, the Supreme Court first declared, in the case of *Graham v. Richardson*, that so-called "aliens" were a "discrete and insular minority."<sup>17</sup> The case was a consolidation of two challenges to economic rights—namely, discriminatory welfare laws in Arizona and Pennsylvania—and it catalyzed a major shift in equal protection jurisprudence. The legal aid lawyer who brought the challenge to Arizona's law and argued it before the Court, Anthony Ching, was an immigrant himself and a graduate of the University of Arizona Law School. Ching had become a naturalized citizen just a few years before, so that he could sit for the Arizona bar and be licensed to practice in the state.<sup>18</sup> Ching's victory in *Graham* was remarkable, not only because the Court announced, to the surprise of many observers, that strict scrutiny should be applied to state laws that discriminate based on alienage, but also because laws discriminating based on citizenship were still so common at the time. One contemporary estimated that there were thousands of such laws at the state level, prohibiting those without citizenship from all sorts of professions and economic opportunities.<sup>19</sup> Lawyers took up the challenge, bringing cases that eventually overturned a wide range of restrictions on employment.<sup>20</sup>

But another thing also happened: Lawyers, scholars and immigrants themselves began to make new efforts towards noncitizen inclusion in the

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16. Tirres, *Exclusion from Within*, *supra* note 1, at 5.

17. 403 U.S. 365, 372 (1971).

18. *Wildcat Wednesday—Letter of the Law: Centennial Snapshot—An Alum Recalls Dean Lyons*, JAMES E. ROGERS COLL. OF L. (Aug. 12, 2015), <https://lotl.arizona.edu/aug122015.htm>; *see also* Alejandra Cardenas Cuestas, *Arizona Law to Honor Six Distinguished Alumni at 2017 Lifetime Achievement Awards*, JAMES E. ROGERS COLL. OF L. (Aug. 15, 2017), <https://law.arizona.edu/news/2017/08/arizona-law-honor-six-distinguished-alumni-2017-lifetime-achievement-awards> (celebrating Ching's achievements); *Wildcat Wednesday—Letter of the Law: New Scholarship Celebrates Anthony ('65) and Nancy Ching*, JAMES E. ROGERS COLL. OF L. (Nov. 28, 2018), <https://lotl.arizona.edu/NOV282018.htm> (creating a scholarship in Ching's honor).

19. ELIZABETH HULL, WITHOUT JUSTICE FOR ALL: THE CONSTITUTIONAL RIGHTS OF ALIENS 45 (1985) ("[T]housands of state statutes that discriminate against aliens.")

20. *See, e.g.*, *Sugarman v. Dougall*, 413 U.S. 634, 646–48 (1973); *In re Griffiths*, 413 U.S. 717, 729 (1973); *Ind. Real Est. Comm'n v. Satoskar*, 417 U.S. 938, 938 (1974); *Examining Bd. of Eng'rs v. Flores de Otero*, 426 U.S. 572, 606 (1976).

political space, not just in the economic sphere. One such immigrant was Daiil Park, a refugee from North Korea who immigrated to Alaska in the 1960s. He attended law school in Oregon and passed the Alaska bar exam, but was not granted his law license since he was not a citizen. Park sued the state of Alaska for its discriminatory attorney licensing law and was victorious.<sup>21</sup> Just a few years later, Park was again in court, this time challenging Alaska's voting laws, which barred noncitizens from the ballot box.<sup>22</sup>

Park was not alone in following a legal challenge to an economic restriction with a challenge to a political restriction. Another immigrant, Lester Perkins, first brought a challenge against a Maryland statute that limited veterinary licenses to citizens only, which he won.<sup>23</sup> Shortly thereafter, Perkins then sued the state for barring noncitizens from jury service.<sup>24</sup>

Each of these lawsuits—along with efforts by the ACLU and other groups to provide for noncitizen voting rights in school board elections<sup>25</sup>—reflected the space to question the exclusion of noncitizens from the political sphere that this new litigation around economic rights had opened up. Scholars, too, began to explore the possibilities, as typified by an article by Gerald Rosberg in 1977, aptly titled *Aliens and Equal Protection: Why Not the Right to Vote?*<sup>26</sup> As one attorney noted in oral argument when arguing a case about employment rights, “the traditional classical roles of citizenship seem to be changing and perhaps changing for the better.”<sup>27</sup>

Yet the courts have not quite seen it that way. When confronted directly with the challenge to citizenship restrictions in voting and jury service, courts—including the U.S. Supreme Court—uniformly declined to interpret the Constitution as requiring such rights.<sup>28</sup> The Constitution did not require states to guarantee political rights, although presumably states are still able to extend voting and jury service to noncitizens—as they have done in the past—if they so choose.<sup>29</sup>

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21. See *In re Park*, 484 P.2d 690, 695 (Alaska 1971) (“[The] statutory requirement of citizenship . . . is an encroachment upon prerogatives of this court in establishing regulations for the practice of law in Alaska.”).

22. See *Park v. State*, 528 P.2d 785, 786 (Alaska 1974) (“On appeal it is asserted that the state’s requirement of citizenship as a voter qualification denies to appellant the equal protection of the laws . . .”).

23. See *Perkins v. Smith*, 370 F. Supp. 134, 134 n.1 (D. Md. 1974), *aff’d*, 426 U.S. 913 (1976).

24. *Id.* at 135 (“[I]t cannot be disputed that aliens are ‘persons’ within the protection of the equal protection clause . . . no compelling state or federal interest justifies the disqualification of aliens as a class from jury service.”).

25. See *Skaft v. Rorex*, 553 P.2d 830, 831, 833 (Colo. 1976).

26. Gerald M. Rosberg, *Aliens and Equal Protection: Why Not the Right to Vote?*, 75 MICH. L. REV. 1092 (1977).

27. Transcript of Oral Argument at 26, *Sugarman v. Dougall*, 413 U.S. 634 (1973) (No. 71-1222).

28. Allison Brownell Tirres, *The Unfinished Revolution for Immigrant Civil Rights*, 25 J. CONST. L. 846, 884–86 (2023).

29. On the history of noncitizen voting, see generally ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* (2000) (discussing the history of voting in the United States); Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional, and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1391, 1406–09 (1993) (discussing the practice of alien suffrage in Wisconsin). On noncitizens as jurors, see Lewis H. LaRue, *A Jury of One’s Peers*, 33 WASH. & LEE L.

The litigation in the 1970s to secure greater economic rights for noncitizens catalyzed this push for greater political rights, encouraging a reassessment of noncitizens' role in the political community. While this litigation for greater political voice was ultimately not successful in the courts, the example is nevertheless illustrative of the connection between these discourses: As discrimination in one area comes to be seen as baseless, it can stimulate a conversation about the irrationality of discrimination in another area. After all, it is by no means irrational to consider that a political community should represent the voices of all those who are active participants in the economic, social, and cultural community.

Despite the inclusion of alienage as a suspect category in *Graham* and subsequent decisions, there remain many laws on the books that prevent noncitizens from accessing not just the ballot box and the jury rolls, but also various professions and occupations based on their lack of citizenship.<sup>30</sup> This result is in part due to later Supreme Court decisions that carved out zones of exclusion within equal protection law; in *Foley v. Connelie*<sup>31</sup> and *Ambach v. Norwick*,<sup>32</sup> the Court held that states have wider latitude to discriminate in areas that pertain to the political community or governmental functions that are related in some way to the “heart of representative government.”<sup>33</sup> In *Foley* and *Ambach*, the Court used this rationale to uphold New York’s restrictions on noncitizens serving as state troopers and public school teachers.<sup>34</sup> State laws that discriminate in these areas, as well as in private employment, persist. In recent years, however, the movement to support undocumented youth has inspired a critical, and still unfolding, conversation about the many citizenship and legal status restrictions that remain in state law and practice.

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REV. 841, 848–66 (1976). See generally Mary Lombardi, *Reassessing Jury Service Citizenship Requirements*, 59 CASE W. RES. L. REV. 725 (2009) (discussing jury service eligibility for noncitizens); Allison Brownell Tirres, *American Law Comes to the Border: Law and Colonization on the U.S./Mexico Divide, 1848–1890*, at 1–3 (March 2008) (Ph.D. Dissertation, Harvard University) (ProQuest) (discussing participation by individuals of Mexican descent on the frontier).

30. See, e.g., Tirres, *supra* note 28, at 908 (“In West Virginia, for example, one must be a citizen to work as an auctioneer; in South Carolina, citizenship is required to obtain a commercial fishing license; in Alabama, Massachusetts, New Jersey, Pennsylvania, and Tennessee, one must be a citizen in order to be a funeral home director; in Indiana, one has to be a citizen in order to be a licensed practical nurse.”); see also Michael A. Olivas, *Within You Without You: Undocumented Lawyers, DACA, and Occupational Licensing*, 52 VAL. U. L. REV. 65 apps. 1–2 (2017); Janet M. Calvo, *Professional Licensing and Teacher Certification for Non-Citizens: Federalism, Equal Protection and a State’s Socio-Economic Interests*, 8 COLUM. J. RACE & L. 33, 40, 43–44, 50–52 (2017); Jenessa Calvo-Friedman, *The Uncertain Terrain of State Occupational Licensing Laws for Noncitizens: A Preemption Analysis*, 102 GEO. L.J. 1597 app. 2 (2014).

31. 435 U.S. 291, 302 (1978).

32. 441 U.S. 68, 80–81 (1979).

33. *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973).

34. *Foley*, 435 U.S. at 296–97; *Ambach*, 441 U.S. at 75–76.



### III. THE DREAMERS AND THE IMPACT OF DACA

The fight to create a path to naturalization for the “DREAMers” is, at root, about extending full citizenship rights to the persons in our midst who are American in everything but name.<sup>35</sup> This decades-long advocacy effort is ultimately aimed at establishing both territorial security (relief from deportation) as well as political voice; only through attaining permanent resident status and then naturalized citizenship can undocumented persons become full political participants with the right to vote, hold political office, and practice all the forms of civic engagement.

It is important to acknowledge that this goal is ultimately, and painfully, unrealized as of yet. The bipartisan Development, Relief, and Education for Alien Minors (DREAM) Act was introduced in the Senate in 2001, after repeated congressional failures to pass comprehensive immigration reform legislation that would have created a path to citizenship for qualified undocumented residents. Despite support from both Democrats and Republicans, it failed to gain sufficient support to become law.<sup>36</sup> Versions of the bill were subsequently reintroduced over several years. The Act appeared poised to succeed in 2010, with bipartisan support, widespread political popularity, and a remarkable grassroots political mobilization effort, but it failed to pass a Senate filibuster by five votes.<sup>37</sup> Subsequent attempts to pass the bill have not yet succeeded.<sup>38</sup>

Passage of the DREAM Act itself is not, of course, the only way to measure the impact of this remarkable movement. Advocates have had success in changing policies and laws at both the state and federal level. Most notably, after the DREAM Act failed to pass in 2010, President Barack Obama’s administration found a way to achieve at least some of the goals of the bill by adopting Deferred Action for Childhood Arrivals (DACA) in 2012.<sup>39</sup> DACA did not create a path to citizenship, but it has enabled short-term gains in terms of

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35. WALTER J. NICHOLLS, *THE DREAMERS: HOW THE UNDOCUMENTED YOUTH MOVEMENT TRANSFORMED THE IMMIGRANT RIGHTS DEBATE* 1 (2013); OLIVAS, *supra* note 2, at 90–91.

36. See Development, Relief, and Education for Alien Minors Act, S. 1291, 107th Cong. (2001).

37. David M. Herszenhorn, *Senate Blocks Bill for Young Illegal Immigrants*, N.Y. TIMES (Dec. 18, 2010), <https://www.nytimes.com/2010/12/19/us/politics/19immig.html>; Muzaffar Chishti & Claire Bergeron, *Senate Blocks Passage of DREAM Act by Five Votes*, MIGRATION POL’Y INST. (Dec. 21, 2010), <https://www.migrationpolicy.org/article/senate-blocks-passage-dream-act-five-votes>.

38. Justine McDaniel, *Durbin, Graham Unveil Immigration Legislation at an Urgent Time for Dreamers*, WASH. POST (Feb. 10, 2023, 11:29 AM EST), <https://www.washingtonpost.com/politics/2023/02/10/immigration-dreamers-durbin-graham-congress/>; Dream Act of 2023, S. 365, 118th Cong. (2023).

39. President Barack Obama, Remarks by the President on Immigration (June 15, 2012); Memorandum from Janet Napolitano, Sec’y of Homeland Sec., to David Aguilar, Acting Comm’r, U.S. Customs and Border Protection, Alejandro Mayorkas, Director, U.S. Citizenship and Immigr. Servs., and John Morton, Dir., U.S. Immigration and Customs Enf’t, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012) (on file with U.S. Department of Homeland Security) (announcing the program of deferred action for childhood arrivals).

basic (if temporary) economic security for more than 800,000 young people.<sup>40</sup> Those who have been able to take advantage of the program have demonstrated the power that can come with economic mobility—the right to work itself having positive ripple effects.<sup>41</sup> Even temporary territorial security, combined with the ability to work lawfully, has enormous benefits for those who receive it, and their families and communities, even if it is not accompanied by full political rights.<sup>42</sup>

The push for a path to citizenship—and ultimately full political representation—for undocumented youth has also catalyzed a broader reconsideration of state laws that discriminate based on citizenship or legal status in the economic realm. The ripples have spread far beyond DREAMers and DACA recipients; this work has forced a broader review and reconsideration of discriminatory state laws, many of which impact all noncitizens, not only those who may be lacking legal immigration status. Advocates have forced states to address long-standing citizenship discrimination in their state employment and licensing laws.

The recent “Opportunity for All” campaign in California provides one such example. The campaign aims to make it possible for undocumented students in the University of California system to work as student employees, despite their lack of employment authorization under federal law.<sup>43</sup> The campaign strategy relies on research produced by Professors Hiroshi Motomura, Ahilan Arulanantham and Astghik Hairapetian of UCLA’s Center for Immigration Law and Policy, which reveals that the 1986 Immigration Reform and Control Act (IRCA) more than likely does not bar state governments—and, by extension, state public institutions of higher education—from employing undocumented workers.<sup>44</sup> This argument, if successful in the courts, has the potential to

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40. Ariel G. Ruiz Soto & Julia Gelatt, *A Shrinking Number of DACA Participants Face Yet Another Adverse Court Ruling*, MIGRATION POL’Y INST. (Sept. 2023), <https://www.migrationpolicy.org/news/shrinking-number-daca-participants> (“More than 800,000 people have had DACA at one time or another since the program’s creation in 2012.”).

41. See, e.g., Roberto G. Gonzalez, *Here’s How DACA Changed the Lives of Young Immigrants, According to Research*, VOX (Feb. 16, 2018, 5:50 AM PST), <https://www.vox.com/2017/9/2/16244380/daca-benefits-trump-undocumented-immigrants-jobs>; see also ROBERTO G. GONZALES, LIVES IN LIMBO: UNDOCUMENTED AND COMING OF AGE IN AMERICA (2015) (tracking the lives of 150 undocumented youth over 12 years to show the importance of having the right to work).

42. But see Els De Graauw & Shannon Gleeson, *DACA’s Stratified Tracks for Economic Mobility and Lessons for Addressing Immigrants’ Long-Term Inequality*, 75 U.C. L.J. 1601, 1606–07 (2024) (noting that DACA’s gains are not equally distributed but instead stratified according to various factors, including economic security and family immigration status).

43. See Miriam Jordan, *Students, Legal Scholars Push California Universities to Hire Undocumented Students*, N.Y. TIMES (Oct. 19, 2022), <https://www.nytimes.com/2022/10/19/us/daca-dreamers-university-of-california.html>.

44. Letter from Hiroshi Motomura & Ahilan Arulanantham, Dirs., UCLA Ctr. for Immigr. L. & Pol’y, (Sept. 7, 2022) (on file with the UCLA Center for Immigration Law & Policy) (“In short, when Congress passed IRCA, Congress did not curtail states’ historic power to determine the employment qualifications of state employees. As a result, IRCA’s prohibition on hiring undocumented persons does not bind state government entities. State entities can lawfully hire undocumented students irrespective of employment authorization status

significantly widen the field of available jobs for workers in state employment, regardless of legal status. The University of California Board of Regents considered the campaign's proposal regarding student employees this year but has postponed a decision.<sup>45</sup> Regardless of how the Board eventually votes, the effort has launched a new way of considering not just the economic rights of DREAMers, but of all noncitizens in the state.

Other reform efforts on behalf of noncitizens have already succeeded. In California and Illinois, among other states, recent legislation has opened up many areas of employment that were previously limited to only citizens, including policing and the legal profession.<sup>46</sup> In 2014, California removed citizenship and legal status requirements for the legal profession and other licensed occupations in the state.<sup>47</sup> In 2015, Illinois reformed its laws to make it possible for DACA recipients to become licensed attorneys;<sup>48</sup> just a few years later, the legislature amended the laws to eliminate citizenship discrimination entirely from occupational licensing in the state.<sup>49</sup> Last year, Illinois made it possible for noncitizens to serve as police officers.<sup>50</sup> In a similar way, DACA catalyzed a conversation about access to driver's licenses, with the result that most states now grant driver's licenses to DACA recipients, and an increasing number also grant driver's licenses regardless of immigration status.<sup>51</sup>

These are small steps towards ensuring economic access for those who lack citizenship or legal status. It is only through naturalization that the undocumented will have both territorial security and full political voice, which are paramount goals. But, while the push to secure a path to citizenship for undocumented persons who were brought to the United States as children is still

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under federal law.”); *see also* Memorandum from Ahilan Arulanantham, Hiroshi Motomura & Astghik Hairapetian (Oct. 2022) (on file with the UCLA Center for Immigration Law & Policy).

45. *Opportunity for All Campaign Continues as UC Regents Fail to Meet Self-Imposed Deadline for Announcing Plan to Implement Equitable Employment Opportunities for Undocumented Students*, UCLA L. (Nov. 16, 2023), <https://law.ucla.edu/news/opportunity-all-campaign-continues-uc-regents-fail-meet-self-imposed-deadline-announcing-plan-implement-equitable-employment-opportunities-undocumented-students>.

46. *Deferred Action for Childhood Arrivals: Federal Policy and Examples of State Actions*, NAT'L CONF. OF ST. LEGISLATURES (Apr. 16, 2020), <https://www.ncsl.org/immigration/deferred-action-for-childhood-arrivals> (noting that “[f]ifteen states—Arkansas, California, Florida, Illinois, Maine, Minnesota, Nebraska, Nevada, New Jersey, New York, Oregon, South Dakota, Utah, West Virginia and Wyoming—have enacted legislation to provide or improve professional licenses for certain populations, such as DACA recipients, legal immigrants and/or unauthorized immigrants.”).

47. *Advocates Applaud Signing of Professional Licensing Bill for Immigrants*, ACLU NORCAL (Sept. 28, 2014), <https://www.aclunc.org/news/advocates-applaud-signing-professional-licensing-bill-immigrants>; S. 1159, 2013 Leg., Reg. Sess. (Cal. 2013).

48. S. 0023, 99th Gen. Assemb., Reg. Sess. (Ill. 2015).

49. S. 3109, 100th Gen. Assemb., Reg. Sess. (Ill. 2018).

50. H.R. 3751, 103d Gen. Assemb., Reg. Sess. (Ill. 2023); *see also* Allison Brownell Tirres, *Perspective: It Doesn't Make Sense to Bar Authorized Immigrants from Certain Jobs*, WASH. POST (June 21, 2023, 8:00 AM EDT), <https://www.washingtonpost.com/made-by-history/2023/06/21/immigration-citizenship-police-officers> (emphasizing the need for getting rid of restrictions on the right to work for noncitizens).

51. NAT'L CONF. OF ST. LEGISLATURES, *supra* note 46; GULASEKARAM & RAMAKRISHNAN, *supra* note 3, at 132. On the larger implications of the movement for DREAMers on the landscape for immigrant rights, *see* NICHOLLS, *supra* note 35, at 143–67.

ongoing, it has already shaken up the status quo in state laws that discriminate based on citizenship. While the full vision of inclusion certainly has not been realized, the push for political rights has had an impact in the area of economic rights, a vision that appears may outlast DACA itself.<sup>52</sup>

### CONCLUSION

At first glance, the three stories highlighted in this Essay might seem to be disconnected moments in time, each relating uniquely to their particular historical time and place. Yet, we can also trace a thread through them. In each case, we see the interplay between economic rights and political aspirations or political dispossessions. In the 1910s and 1920s, severe restrictions on noncitizen property rights enabled a sort of political erasure, as Leti Volpp so eloquently calls it,<sup>53</sup> through the internment of more than 125,000 Japanese residents and Japanese American citizens.<sup>54</sup> In the 1970s, immigrants and lawyers successfully challenged many of the laws limiting access to the workplace and the economy; this movement itself gave rise to a reconceptualization of the place of noncitizens in the political sphere. In our current era, what started as a broader goal for political incorporation and full rights of membership for undocumented youth has instead thus far been a vehicle for increasing economic access and economic rights. Here, the push for full political rights for one group has catalyzed a broader conversation about the economic rights of all noncitizens, regardless of immigration status.

As lawyers, advocates, or activists, our fights are often siloed—we work in one area or another, seeking to make incremental change where possible. But these areas are woven together; a shift in one can sometimes have unintended consequences in the other. In each of the examples highlighted here, we see that these discourses are not separate, but instead can have direct implications and consequences for the other. Awareness of these connections can help in the quest to achieve greater representation and inclusion of noncitizens on a broader scale.

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52. The Department of Homeland Security has not processed new DACA applications since 2021, after a federal district court upheld an injunction against the program based on a legal challenge by Texas and other states. The litigation is ongoing. See *DACA Litigation Information and Frequently Asked Questions*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Sept. 13, 2023), <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/daca-litigation-information-and-frequently-asked-questions>.

53. Leti Volpp, *Weep the People*, 75 U.C. L.J. 1705, 1707 (2024).

54. *Immigration and Relocation in U.S. History: Behind the Wire*, LIBR. CONG., <https://www.loc.gov/classroom-materials/immigration/japanese/behind-the-wire> (last visited June 30, 2024) (“By the end of the war in 1945, 125,000 people, half of them children, had spent time in what even Roosevelt admitted were concentration camps.”).