

# How Out-of-Date Immigration Laws are Obstructing Our American Values

Tommy Clines

What are human rights? As chair of the LBA's Human Rights Section, I have often contemplated what the scope of human rights is and what that means for the world today. To begin, I think it would be useful to understand when our modern definition of human rights came about.

The concept of universal human rights was not defined fully until the aftermath of World War II and it is still evolving. Ancient civilizations did not contemplate this as can readily be seen in Hammurabi's preoccupation with eyes and teeth. Medieval Europe did not either. The Magna Carta appeared in the year 1215 and established that a king was not above the law, but it certainly did not deign to advance the rights of serfs.

One might point to the Enlightenment era of "life, liberty, and property" in the 17th century, but those are more accurately grouped as natural rights. Thinkers such as William Lloyd Garrison and Henry David Thoreau in the 19th century did begin to use the phrase "human rights," but exclusions based on gender or race prevent an exact portrayal.

It was not until the aftershock of the barbarism of World War II and the Holocaust that an attempt was made to define what rights were universal and inherent for all people regardless of their race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This list comes from the Universal Declaration of Human Rights that the United Nations adopted.

So what rights are included in this declaration? Freedom from slavery and torture, freedom of thought and expression, the right to a standard of living including healthcare and economic rights are a few mentioned in this legally non-binding document. However, all of these rights are those you associate with the individual.

Today, many discussions of human rights refer to those of groups. We can see this with the advancement of LGBTQIA+ rights and the Black Lives Matter and Abolish ICE movements. So, it seems that the human rights discourse has shifted from an individual concept to one that focuses on the protection of your family, whether that be your biological or chosen family.

I recently read Bill Bryon's "A Short History of Nearly Everything," and while the scientific discussions often went over my head, the chapter that discussed the rise and proliferation of *homo sapiens* stayed with me. When our ancestors left the African continent between 70,000 to 100,000 years ago, they did so for their survival and for the survival of their families.

One of the most commonly held reasons for this migration was climate change. Modern humans did not and do not migrate because they are bored and are looking for adventure. They do so because they are fleeing harmful circumstances. The desire to improve the lives of one's family is an inherent evolutionary instinct. Long before cave paintings, farming, written language and architectural feats, the central human need was to find resources and a place to thrive. I would suggest that ability to migrate and be with one's family is an essential human right.

As an immigration attorney, I hear the stories of immigrants here in the United States every day. I hear why they decided to leave their country of birth and I can tell you it is not because they want to leave. People seeking protection here in the United States are fleeing something. It makes me incredibly sad to hear the heartbreaking situations people have escaped. Gang violence, extortion, domestic violence, natural disasters and extreme poverty are some of the difficulties my clients faced. Again, the common denominator is the wish to create a better life for their family. Often, parents are willing to sacrifice their freedom and future so that their children have just that.

In law school, I took an immigration law class and one of our assignments was to research our own family's immigration history. I made a profile on *Ancestry.com* and started digging. I was told growing up that my family immigrated from Ireland, England and Germany. This was confirmed after submitting a DNA sample years later. What I found most interesting was not that my ancestors came from these countries. I was more intrigued about why they came to the United States. It was pretty clear why my Irish

predecessors fled their homes. The Irish Potato Famine from 1845 to 1852 devastated the country and produced mass starvation, disease, and poverty. My German forebears left due to lack of available farmland, the lack of decent paying jobs and the strict limitations of political rights.

Many Germans were fed up with the lack of opportunity and denial of political and civil rights after the failure of the democratic revolution of 1848. Again, they did not want to leave, but felt they had no choice. They were

looking out for the best opportunity for those close to them. With the exploding popularity of ancestry DNA tests today, many people know where their ancestors came from. I would recommend everyone research the motivations and causes of those immigrations. My guess is that you will find that your family was fleeing something.

The world today is fraught with conflict on an international and local level. People are increasingly insulating themselves and only interacting or identifying with those who share their immutable characteristics or social and cultural values. We tend to look after our own interests and those of our group to the detriment of those around us.

When new immigrant populations are vilified and blamed for society's problems, our past has been forgotten. From Irish and German immigrants in the 1850s and 1860s to Central American immigrants of today, new arrivals are mistreated or worse simply for being the newest arrivals. It is easy to forget that everyone in the United States is a product of immigration and that this immigration was for the same reason, to make a better life for their family. This is a basic human instinct and right.

The United States is the destination for many immigrants due to the opportunities it provides from an economic and safety standpoint. However, American exceptionalism paints an inaccurate picture of reality. We decry the persecution and imprisonment of the Uyghur people in China. We lament the deterioration of freedom and democratic gains in Afghanistan after the recent withdrawal of troops.

However, we are a nation that imprisons more immigrants than anywhere else in the world. We claim to be the land of opportunity and of family values, but we separate families at our southern border. Many of you have likely seen the terrible images of border patrols using whips on Haitian migrants who are fleeing poverty, political unrest and natural disasters. Why are we treating people like this when our own ancestors came to this country for the same reasons?

Being an immigration lawyer is difficult work. Policies change constantly. There were high hopes for the new presidential administration, but few changes of note have occurred. One of my clients is who ten years old fled

with her father from Guatemala after family members were killed by gang members. She arrived at the border with her father hoping to seek protection in the United States. She was allowed to enter the country, but her father was deported. Our country is still separating families every day.

One common form of defense in a deportation court case is called "Cancellation of Removal." To be eligible, you must demonstrate continuous presence in the United States for ten years, good moral character, that you have immediate relatives with citizenship or permanent residency and that those relatives will suffer extreme and exceptionally unusual hardship. I have seen a single mother lose her case because a judge told her that her two young American-born daughters with a history of mental health conditions and no other relatives to care for them would not suffer enough if she was deported. I tried to explain the legal standard multiple times, but she understandably could not understand. How do you explain to her daughters that their suffering is not enough, that their mother had to return to Mexico and leave them in the United States?

One immigration judge I have appeared before told a colleague of mine that he finally appreciated the hardship of family separation when he was transferred to a court across the country and had to face his tearful children regularly. Why do we only show compassion for others when we can sympathize with them? We need to show more empathy in our daily lives. I saw a bumper sticker that I think shows this disconnect in our country that said, "WWJD: Who Would Jesus Deport?"

It is clear that reform is needed with our immigration laws. The last major immigration reforms in the United States were enacted in the 1980s and 1990s. How can we expect for our system to be remotely effective with outdated and inadequate laws? The problem is that any sort of meaningful reform must be passed through Congress. The idea of passing any law in Congress much less an immigration-related bill today is fantasy.

As humans, we are all evolutionarily the same. We have 99.9% of the same DNA as every person on earth. As people living in the United States, we all are here because our families fled something to make better lives for our loved ones. If we keep those truths in mind, we might be able to create a more compassionate country. If you, like me, are not a legislator, there are still so many things you can do to make this country, state and city more welcoming to immigrants. Migration is a human right. Being with your family is a human right.

Tommy Clines is a Louisville native who graduated from the University of Louisville Brandeis School of Law in 2014. Clines is an attorney at O'Brien Law Group where his primary practice area is immigration law. He is also chair of the LBA's Human Rights Section. ■



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