

# Immigration: A Conversation with Professor Vanessa Merton



■ **A busy day at the Immigration Justice Clinic**

LONG AN ADVOCATE for immigration reform, both in and out of the classroom, Professor Vanessa Merton infuses her students with an appreciation for the historical context and economic implications of American immigration law, as she inspires a commitment to work towards assuring basic legal representation and development of a regulatory system that prioritizes equity and consistency, even in changing political times. At Pace Law School, Professor Merton directs the Immigration Justice Clinic (IJC). Student attorneys, authorized to practice law under faculty supervision, handle the immigration law problems of indigent people in the lower Hudson Valley. The students represent clients before federal agencies, Immigration Courts, the Board of Immigration Appeals, the Second Circuit, and even the U.S. Supreme Court. The IJC's overall job, Professor Merton likes to say, is law enforcement: making sure that the U.S. government obeys its own laws.

President Obama's recent immigration policy announcements have created a tidal wave of discussion so we sat down with Professor Merton to gather her views.

## What is the landscape of immigration today?

First, it's important to understand that recent policy changes come after the absence of responsible lawmaking for a generation, and an unwillingness in Washington to honestly discuss the role of immigrants in the American economy. We harbor paradoxical views. On one hand, business leaders support increases in the availability of skilled workers, including workers in key industries (food processing, agriculture) that are unable to attract a sufficient workforce composed solely of U.S. citizens. At the same time, we hear vehement attribution of unemployment and wage stagnation primarily to excessive immigration.

Of course it can be argued that if industries would increase their wages and improve working conditions, immigrant populations would not be the only people willing to take these jobs. This is the economic conundrum no one wants to acknowledge: higher compensation and better conditions could attract American-born or U.S. citizen workers but the products would then become too expensive to be competitive.

Unless we reinstate tariffs, improvements on a significant scale would impede our competitive position in the world marketplace. The last thing I want to do is apologize for the appalling conditions in which many noncitizen workers live and work. Rather the role of government should be to help achieve a sweet spot of decent conditions, risk reduction, and fundamental worker rights, to protect public safety and health as much as the workers. All of these factors have to be considered when devising sensible immigration law and policy.

## In recent years, President Obama has taken a number of steps to refine his immigration agenda. What are your views on his recent actions?

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The President is in a unique constitutional position because immigration is uniquely within the role of the Executive. We need flexible, adaptive regulations because they become obsolete quickly and need to be updated continually. All modern Presidents have used the vast discretion reposed in them by the Constitution to revise regulations and decide on priorities for enforcement of the law. Aided by hundreds of law professors, President Obama did a very careful analysis—as only an ex-law professor could do—of his executive powers to identify precisely what he could lawfully do to relieve the enormous misallocation of enforcement resources.

From the perspective of an immigrant advocate, President Obama has both a deplorable and an outstanding record. By the time he leaves office, he is on track to have deported over two million

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people, more than any other president. But he has been willing to ask the key question: are we removing the people we most want to remove—the terrorists, the multiple felons, the drug and human traffickers? Or are we removing the hard-working folks who support their families and contribute to the regeneration of our country, particularly in rural America? Are we removing the students who have lived in this country most of their lives, just when they are finishing their studies and could contribute to our economy, which desperately needs educated workers? President Obama is trying to get these latter groups moved to the bottom of Immigration and Customs Enforcement’s docket, freeing up resources to concentrate on the truly dangerous.

#### How do you bring these issues into your teaching?

In addition to representing clients, seminar students are told: “You are the U.S. Czar of Immigra-

tion Policy. You have the responsibility to devise the most effective immigration system, in the interest of the country and in the interest of justice.” I give them a list of 25 types of people with different characteristics and they have to rank them in terms of their desirability for admission to the U.S. They also have to identify the characteristics that account for their rankings. I count it a success if, during that assignment, students decide that one of the characteristics that should NOT determine admissibility is what country the immigrant comes from. It is pernicious to ration access to coveted spots in the U.S. based on country of origin.

#### Have you seen Pace students changing answers to this question over time?

Yes. Pace is blessed to have a significant number of students who are immigrants, from immigrant families, and for whom these issues are immediate and concrete. When students develop an understanding of the real impact of immigrants on this country, their views of policy begin to evolve. I find they begin to see the need for a less punitive and less simplistic system.

#### How has the clinic responded to recent events?

In our area, there are very few providers of free legal representation for immigrants but we have coordinated efforts with these partners. We are part of a pro bono coalition to assist unaccompanied immigrant children—a crisis generated by the lawlessness and violence rampant in Central America. We collaborate with the White Plains branch of Greenberg Traurig, the Pace Community Law Practice, and the Empire Justice Center to assess the need and meet it with efficient division of labor. IJC students are also informing people of their various options at community education sessions in local schools, libraries, and houses of worship. These programs go a long way to make our eventual legal representation more efficient and help keep community members from falling into the clutches of the rip-off artists and rogue lawyers who prey on immigrants.

We provide as much as we can responsibly do, commensurate with the educational purpose of a clinical program.