

A Better “Best Interests”: Immigration Policy in a Comparative Context

In Children’s Best Interests Symposium

American University

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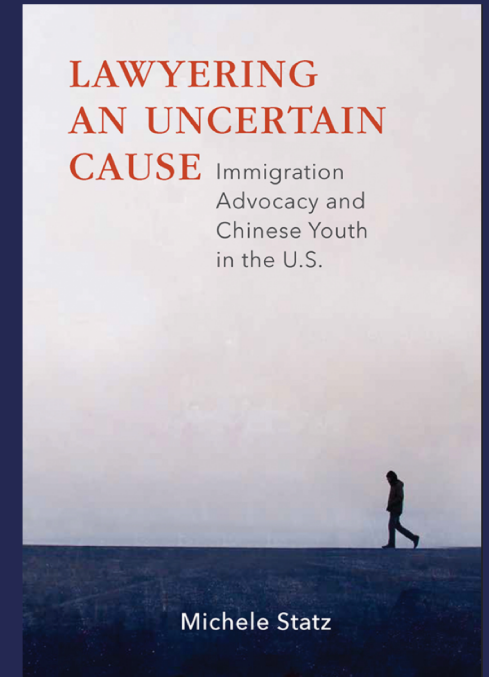
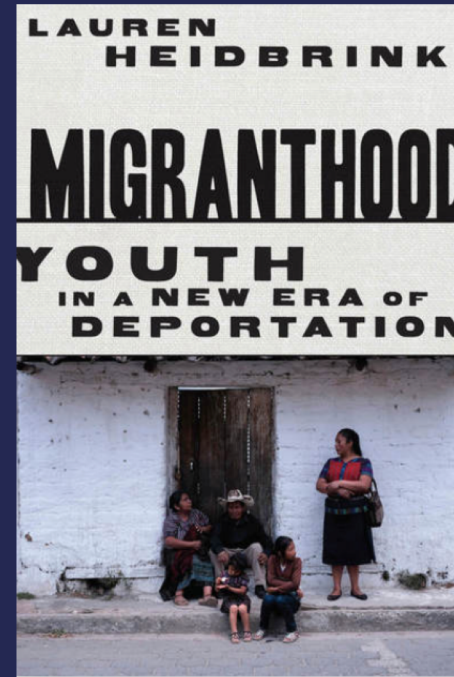
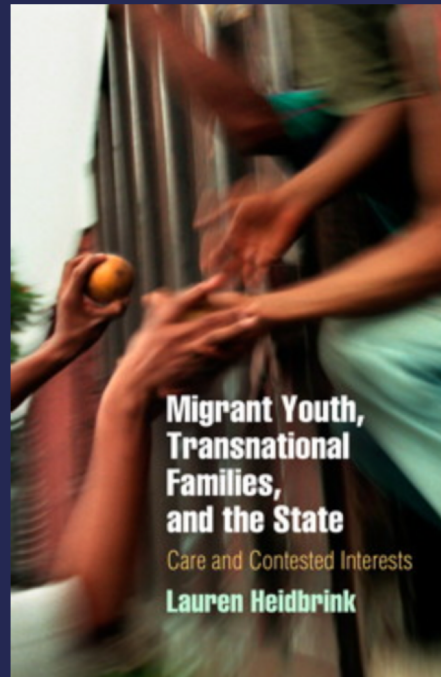
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LAW & POLICY

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A Better “Best Interests”: Immigration Policy in a Comparative Context

MICHELE STATZ  and LAUREN HEIDBRINK



Best Interests Standard in Context

- UNHCR
- CRC
- International refugee law
- US immigration law
- SIJ

Best Interests in Practice



- Pathologizing global youth
- “Ideal victims”
- Individual need over family unity
- Cultural and social contexts



Application of BIS in Other Settings

- Family law
- Indian Child Welfare Act (ICWA)
- Medical Context
- Abortion

Family Law

- Defining “participation”
- Diverse parties and values
- State by state differences

“While in theory [the best interests standard] appears enlightened, in practice custody decisions focus on parents rather than children and are marred by personal and cultural bias.”

Andrea Charlow



Indian Child Welfare Act (ICWA)



- Best interests defined via relationality
- “Microcosms of anxiety” and the rights of parents of color

“To protect the best interests of Indian children *and to promote the stability and security of Indian tribes and families...*”

Medical Context

- “Within the context of family decisions...”
- Age and experience

“If a parent’s decision is judged to be contrary to the child’s best interest, seeking state intervention to interfere with that decision is justified. As a result, *the best interest standard has also become the standard by which physicians judge parental decisions...*”

- Douglas Diekema

Abortion

- Technology
- Competence and support



A New Path Forward

A Best Interests Standard that:

- Underscores children's unique age and experience-specific expertise
- Welcomes collaborative decision-making premised on the diverse competencies of all parties
- Does not defer to professional titles
- Recognizes the consequences of autonomous, decontextualized, and rushed readings of "best interests"

Youth as Experts of Their Own Lives



Cultural Experts / Cultural Mediators

- “The dignity of participation”
- Accountability
- Trust



Inclusive Best Interests Determinations

