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# MIGRANT "ILLEGALITY" AND DEPORTABILITY IN EVERYDAY LIFE

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■ **Abstract** This article strives to meet two challenges. As a review, it provides a critical discussion of the scholarship concerning undocumented migration, with a special emphasis on ethnographically informed works that foreground significant aspects of the everyday life of undocumented migrants. But another key concern here is to formulate more precisely the theoretical status of migrant "illegality" and deportability in order that further research related to undocumented migration may be conceptualized more rigorously. This review considers the study of migrant "illegality" as an epistemological, methodological, and political problem, in order to then formulate it as a theoretical problem. The article argues that it is insufficient to examine the "illegality" of undocumented migration only in terms of its consequences and that it is necessary also to produce historically informed accounts of the sociopolitical processes of "illegalization" themselves, which can be characterized as the legal production of migrant "illegality."

## INTRODUCTION

Illegal immigration has emerged as a generalized fact in virtually all of the wealthiest nation-states (Sassen 1998; 1999, p. 143) as well as in many regional centers of production and consumption (Harris 1995) during the post–World War II era, regardless of the political culture or particular migration policies of any given state. Migrant "illegality" has risen to unprecedented prominence as a "problem" in policy debates and as an object of border policing strategies for states around the world. The literature written in English on migrant "illegality" is predominantly focused on undocumented migration to the United States (cf. Harris 1995) and especially on undocumented Mexican migration. There are, of course, historical reasons for this uneven development in scholarship.

In Europe, "illegal immigration . . . has emerged as a major issue" only "in the last few years" (Sassen 1999, p. 104). By the 1970s, several Western European states—as well as Australia, Canada, Venezuela, and Argentina—were already attempting to "regularize" undocumented migrants by recourse to "legalization"

procedures (adjustments of status) and official "amnesties": 12,000 were "legalized" in Belgium in 1974; 15,000 in the Netherlands in 1975; 140,000 in France in 1981; 44,000 in Spain in 1986, and 104,000 more in 1991 (Soysal 1994, p. 132); 15,000 in Australia and 30,000 in Venezuela by the early 1990s (Hagan 1994, p. 174; cf. Meissner et al. 1986). Yet these figures are dwarfed by the 3.2 million undocumented migrants "legalized" in the United States following the 1986 "amnesty." Moreover, the U.S. Border Patrol's apprehension and deportation practices began in the 1920s [contrast this with the case of Japan, where migrant "illegality" was made an object of law only in 1990, as Sassen (1998) points out]. The geographical unevenness of the scholarly literature on undocumented migration reflects its character as a response to real sociopolitical transformations. Predictably, the revision of analytic frameworks and the development of new theoretical perspectives have tended to lag far behind the sheer restlessness of life.

Thus, this essay strives to meet two challenges. As a review essay, it provides a critical discussion of the scholarship on undocumented migration, with a special emphasis on ethnographically informed works that foreground significant aspects of the everyday life of undocumented migrants. Other reviews in this series that have addressed some of the broader themes that frame the specific concern of this essay include Alonso (1994), Alvarez (1995), Kearney (1986, 1995), and Ortiz (this volume). But another key concern here is to formulate more precisely the theoretical status of the themes of migrant "illegality" and deportability in order that further research related to undocumented migration may be conceptualized more rigorously.

## THE STUDY OF MIGRANT "ILLEGALITY" AS AN EPISTEMOLOGICAL, METHODOLOGICAL, AND POLITICAL PROBLEM

There is a vast social science literature on so-called "illegal aliens" and "illegal immigration." At the outset, it is worthwhile dwelling for a moment on the terminologies that signal more fundamental analytic categories that operate pervasively in the formulation of the subject at hand. In this essay, the term undocumented will be consistently deployed in place of the category "illegal" as well as other, less obnoxious but not less problematic proxies for it, such as "extra-legal," "unauthorized," "irregular," or "clandestine." Throughout the ensuing text, I deploy quotes in order to denaturalize the reification of this distinction wherever the term "illegality" appears, as well as wherever the terms "legal" or "illegal" modify migration or migrants. Thus, the appearance of quotes around these terms should not be understood to indicate the precise terminology that pertains in any particular nation-state context, or any historically specific instance, or any particular author's usage, so much as a general analytic practice on my part. Likewise, the term "migration" will be consistently deployed here to supplant "immigration." Unless referring specifically to immigration law or policy, I also deploy quotes wherever the terms "immigration" or "immigrant" appear, in order to problematize the

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implicitly unilinear teleology of these categories (posited always from the standpoint of the migrant-receiving nation-state, in terms of outsiders coming in, presumably to stay). This strategy allows me to problematize the way that U.S. nationalism, in particular, interpellates historically specific migrations in its production of "immigration" and "immigrant" as an essentialized, generic, and singular object, subordinated to that same teleology by which migrants inexorably become permanent settlers and the U.S. nation-state assumes the form of a "promised land"—a self-anointed refuge of liberty and opportunity. [For an expanded treatment of this "immigrant" essentialism and the figure of "the immigrant" as an object of U.S. nationalism, see De Genova (1999, pp. 67–104; n.d.); (cf. Chock 1991 and Honig 1998, 2001)].

The conceptual problems embedded in terminology are symptomatic of deeper problems of intellectual—and ultimately political—orientation. Remarkably, little of this vast scholarship deploys ethnographic methods or other qualitative research techniques to elicit the perspectives and experiences of undocumented migrants themselves, or to evoke the kinds of densely descriptive and textured interpretive representations of everyday life that sociocultural anthropologists tend to relish. If, as Kearney (1986, p. 331) has suggested, the academic home of migration studies was long a murky "back room of demography," where it did not receive much attention from anthropologists, then surely the study of undocumented migration has long been lost in the shuffle somewhere in a corridor between demography, policy studies, and criminology. Indeed, much of the scholarship has been persistently prescriptive, either explicitly promulgating one or another purported "solution" to the putative "problem," or simply deploying the entire arsenal of social scientific objectivities in order to assess the presumed "successes" or "failures" of such legislative strategies or administrative and enforcement tactics. Portes (1978) made this point nearly 25 years ago, and the situation is not drastically different today. As he explained at that time, "The reasons for this emphasis are not difficult to determine. Illegal immigration is one of those issues in which the interests of scholars and government agencies converge. Hence, much of the recent literature aims at an audience composed of decision-makers . . . " (1978, p. 469). The concern of such researchers with policy-relevance, now as then, entails presuppositions through which research is effectively formulated and conducted from the standpoint of the state, with all of its ideological conceits more or less conspicuously smuggled in tow. In contrast, from the standpoint of "the free movement of people," as Harris puts it, "the problem is the state rather than those who are mobile" (Harris 1995, p. 85; cf. Carens 1987). Assuming that undocumented migration is indeed a "problem," that the state genuinely seeks to remedy this situation on behalf of the majority of its citizenry and that the state is capable of actually effecting the recommendations of such studies, "studies which examine the problem within officially pre-established limits [. . .] yield a constrained and impoverished product" (1978, p. 470). "If governmental definitions of reality do not coincide with those of other actors in the system," Whiteford elaborates, "that should not come as a surprise. What does seem surprising is that social scientists . . . share the worldview of the bureaucrats" (1979, p. 134).

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"Illegality" (much like citizenship) is a juridical status that entails a social relation to the state; as such, migrant "illegality" is a preeminently political identity. To conduct research related to the undocumented noncitizens of a particular nation-state from the unexamined standpoint of its citizens, then, involves the kind of uncritical ethnocentrism that is, by definition, a perversion of anthropology's putative aims as a distinctive mode of inquiry (De Genova 1999, 2003). There is a still deeper methodological problem, however. It is necessary to distinguish between studying undocumented people, on the one hand, and studying "illegality" and deportability, on the other. The familiar pitfalls by which ethnographic objectification becomes a kind of anthropological pornography—showing it just to show it, as it were—become infinitely more complicated here by the danger that ethnographic disclosure can quite literally become a kind of surveillance, effectively complicit with if not altogether in the service of the state. As Foucault observes, in his characteristic style that so elegantly states the obvious, "the existence of a legal prohibition creates around it a field of illegal practices" (1979, p. 280). In the case of undocumented migrants, the ethnographic documentation and exhibition of such practices can have quite practical consequences and entail certain ethical quandaries and strategic risks at the levels of both research practice and representation.

It is important to clarify that undocumented migrants, as such, do not comprise an objectively or intrinsically self-delimiting domain for anthropological study. As Malkki argues with respect to "refugees," the analytic validity and usefulness of the term undocumented migrants is that it supplies "a broad legal or descriptive rubric" that includes within it a tremendous heterogeneity (Malkki 1995, p. 496; cf. Brennan 1984, Couper 1984). Undocumented migrations are, indeed, preeminently labor migrations (cf. Burawoy 1976; Bustamante 1972, 1976, 1978; Castells 1975; Chavez 1992a, pp. 139–55; Hondagneu-Sotelo 2001; Kearney 1998; Rouse 1995a,b). (Note that the U.S. Border Patrol, from 1925—when it was first created—until 1940, operated under the auspices of the Department of Labor). As such, undocumented migrations would be inconceivable were it not for the value they produce through the diverse services they supply to citizens. "Illegality," then, both theoretically and practically, is a social relation that is fundamentally inseparable from citizenship. Furthermore, concretely, there are no hermetically sealed communities of undocumented migrants. In everyday life, undocumented migrants are invariably engaged in social relations with "legal" migrants as well as citizens, and they commonly live in quite intimate proximity to various categories of "documented" persons—sometimes as spouses, frequently as parents or extended family members (often sharing the same households), as well as neighbors, coworkers, and so on. "On a day-to-day basis, their illegality may be irrelevant to most of their activities, only becoming an issue in certain contexts . . .. Much of the time they are undifferentiated from those around them, but suddenly . . . legal reality is superimposed on daily life" (Coutin 2000, p. 40; cf. Corcoran 1993, pp. 144–51). To conduct research on undocumented migrants as such—conceptualized in isolation—is therefore to perpetrate a rather egregious kind of epistemic violence on the social

reality of everyday life for those migrants. Furthermore, by constituting undocumented migrants (the people) as an epistemological and ethnographic "object" of study, social scientists, however unwittingly, become agents in an aspect of the everyday production of those migrants' "illegality"—in effect, accomplices to the discursive power of immigration law. In her ethnography of Sanctuary Movement activists' struggles on behalf of securing refugee status and political asylum for undocumented Central Americans, Coutin (1993) emphasizes the everyday social relations that help to sustain what she calls "alienation" (the process through which individuals come to be defined as "illegal aliens"). "Given the pervasiveness of this system," Coutin (1993, p. 89) contends, "any act that constructs individuals' legal identities has political implications." Notably, in her ethnography of Salvadoran legalization struggles, Coutin is explicit in her characterization of the research as "an ethnography of a legal process rather than of a particular group" (2000, p. 23). There is a need for such research on "illegality" *qua* sociopolitical condition, in contradistinction to research on undocumented migrants *qua* "illegal aliens."

A premier challenge, therefore, is to delineate the historical specificity of contemporary migrations as they have come to be located in the legal (political) economies of particular nation-states. Only by reflecting on the effects of sociolegal, historical contexts on research does it become possible to elaborate a critical anthropological perspective that is not complicit with the naturalization of migrant "illegality." It thus becomes possible for the ethnographic study of undocumented migrations to produce migrant "illegality" as the kind of ethnographic object that can serve the ends of a distinctly anthropological critique of nation-states and their immigration policies, as well as of the broader politics of nationalism, nativism, and citizenship.

What at first appeared to be a merely terminological matter, then, upon more careful consideration, is revealed to be a central epistemological and conceptual problem, with significant methodological ramifications, ethical implications, and political repercussions.

## THE STUDY OF MIGRANT "ILLEGALITY" AS A THEORETICAL PROBLEM

Undocumented migrations are, as I have already suggested, preeminently labor migrations, originating in the uniquely restless creative capacity and productive power of people. The undocumented character of such movements draws our critical scrutiny to regimes of immigration law and so demands an analytic account of the law as such, which is itself apprehensible only through a theory of the state. Likewise, the specific character of these movements as labor migrations within a global capitalist economy demands an analysis of the mobility of labor, which itself is only understandable through a critical theoretical consideration of labor and capital as mutually constituting poles of a single, albeit contradictory, social relation.

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This review is concerned with the theoretical challenge of denaturalizing migrant "illegality," not merely as a fetish that commands debunking but rather as a determinant (or real) abstraction produced as an effect of the practical materiality of the law. Sassen contends that migrations are not autonomous processes—they "do not just happen; they are produced. And migrations do not involve just any possible combination of countries; they are patterned" (1998, p. 56). This argument applies even more decisively to undocumented migrations: They are not self-generating and random; they are produced and patterned. It is useful here to consider a distinction between that which simply falls outside of any precise legal prohibition and so is beyond the law's purview, on the one hand, and that which is constituted as "illegal," on the other (cf. Heyman & Smart 1999, p. 1). The law defines the parameters of its own operations, engendering the conditions of possibility for "legal" as well as "illegal" practices. "Illegalities" are constituted and regimented by the law—directly, explicitly, in a manner that presumes to be more or less definitive (albeit not without manifold ambiguities and indeterminacies, always manipulable in practice) and with a considerable degree of calculated deliberation. Furthermore, at the risk of sounding tautological, within the context of any given state, the history of legal debate and action concerning "immigration," and the determinant effects so produced by the law comprise, precisely, a history. There is, therefore, a methodological double-emphasis here on the productivity of the law as well as on its historicity.

The recent proliferation and acceleration of transnational migration has involved the global emergence of a variety of sociohistorically distinct undocumented migrations as well as a concomitant variety of sociohistorically particular configurations of migrant "illegality." Demographic perspectives in particular seem stubbornly resistant, if not inherently averse, to assigning the law a primary role in defining the character of migration processes. By recourse to a discourse of demographics influencing the effective operation of law, laws themselves appear to merely provide a neutral framework. Thus, the inequalities generated by the law's apparently uniform application among asymmetrically constituted migrations from distinct sending countries tend to be naturalized. This essay insists on the historical specificity of the distinct configurations of "illegality" that are mutually constituted by particular migrations within the respective immigration regimes of specific nation-states. Hence, this is likewise a call for research that is emphatically concerned with distinct migrations and that repudiates the validity of any claim to the existence of "the" (generic) "immigrant experience"; there simply is no such animal.

The history of immigration law, in any given state, is nothing if not a history of rather intricate and calculated interventions. This should not be understood to suggest that such a calculus is simply derivative of some apparently coherent and unified strategy. Nor should this contention be misconstrued to imply that this history is merely a functional by-product of some presumed (and thus, teleological) structural logic. Both of these analytic frameworks would suggest an externality of structure and struggle, and thus, would fall into the trap of reifying (again) the already fetishized divide between social relations and the objectified forms

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of their appearance (Bonefeld 1994, 1995; Holloway 1995). That is, by treating the law as effectively definitive, coherent, and complete, such perspectives tend to recapitulate the reification of the state's authority and power, which the state itself propagates. On the contrary, the intricate history of law-making is distinguished above all by the constitutive restlessness and relative incoherence of various strategies, tactics, and compromises that nation-states implement at particular historical moments, precisely to mediate the contradictions immanent in social crises and political struggles, above all, around the subordination of labor (cf. Bonefeld 1994, 1995; Holloway 1994, 1995). Thus, immigration laws serve as instruments to supply and refine the parameters of both discipline and coercion, but this is largely so through the deployment of those laws as tactics. By emphasizing this "tactical" character of the law, it is imperative to recall that tactics that aim to make a disciplined and manageable object of any given social group are conjunctural and can never be assured of the certainty of their realization. These tactics are ensnared in a struggle to subordinate the intractability that is intrinsic to the constitutive role of labor within capital—what Marx described as "a protracted and more or less concealed civil war" (Marx 1976, p. 412 [1867]; cf. Bonefeld 1995, Holloway 1995). If we understand the state to be a particularization of "the political"—which is to say, "the abstraction" [and separation] "of coercion from the immediate process of exploitation" (Holloway 1994, p. 31; cf. Pashukanis 1989, p. 143 [1929])—then it is useful here to underscore that labor plays such a constitutive role not only within capital but also within the capitalist state itself. As Holloway writes, "Once the categories of thought are understood as expressions not of objectified social relations but of the struggle to objectify them, then a whole storm of unpredictability blows through them. Once it is understood that money, capital, the state . . . " [and here I would add, emphatically, the law] " . . . are nothing but the struggle to form, to discipline, to structure what Hegel calls 'the sheer unrest of life,' then it is clear that their development can be understood only as practice, as undetermined struggle" (Holloway 1995, p. 176). It is this appreciation of the law—as undetermined struggle—that I want to bring to bear on how we might apprehend the historicity of immigration law, especially as it has devised for its target those characteristically mobile social formations comprised by labor migrations, particularly the undocumented.

One prominent formulation of the theoretical problem concerning the productivity of the law, and the production of migrant "illegality" in particular, has been derived from Foucault's analysis (1979) of modern power as productive, and specifically, from his discussion of "illegalities" and "the production of delinquency" (1979, pp. 257–92).

Behdad (1998) advances a Foucauldean rendering of U.S.-Mexico border enforcement in terms of discipline, surveillance, and the production of delinquency—emphasizing the critical role that the "illegality" of the undocumented plays for disciplining and othering all noncitizens, and thus for perpetuating monolithic normative notions of national identity for citizens themselves. (Note that Behdad's invocation of the "delinquency" of the undocumented resonates with Bustamante's

much earlier [1976] revisionist recourse to the sociological convention of "deviance" as a means for situating social perceptions of the undocumented that culminate in discrimination and subjection to organized control by the state. (By way of contrast, for an unreconstructed deployment of the category of "deviance" with respect to undocumented Irish migrants in the United States, see Corcoran 1993). Unfortunately, however, Behdad refers only superficially to border enforcement practices and otherwise reveals a regrettable disregard for any consideration of the law itself and its historicity in generating the pertinent sociopolitical categories that might substantiate his theoretical insights. Coutin (1993, 1996, 2000) is likewise explicit in her efforts to deploy Foucault's insights for theorizing the relationship between law and migration, but she is considerably more precise than Behdad in her examination of how immigration law produces its subjects. Coutin admirably insists that one must not presuppose the category of "illegal immigration," which itself should be under critical scrutiny, and argues for a consideration of U.S. immigration law's production of "illegality," stressing the power of the law to constitute individuals through its categories of differentiation. Furthermore, Coutin's work (1998, 2000; cf. Coutin & Chock 1995) is quite grounded (both historically and ethnographically) and does indeed provide excellent, detailed, empirical discussions of how immigration law structured the experiences of undocumented Salvadorans who later sought asylum status as refugees.

Coutin's reliance on a Foucauldean conception of power leads to an emphatic interest in understanding immigration law as comprising "*more than* legal codes, government policies, and bureaucratic apparatuses" (1993, p. 88, emphasis added). This orientation proves to be methodologically enabling for Coutin's ethnography of how "a myriad of practices, usually carried out by people who have no connection to the government, produce knowledge that constitutes individuals as citizens, illegal aliens, legal residents, asylees, and so forth" (1993, p. 88). As suggested above, Coutin offers crucial insights into the production of "illegality" in everyday life—precisely where ethnographic approaches can make their greatest contribution. She points to a variety of ways that surveillance in the United States has been increasingly displaced in recent years from immigration authorities, to local police, to other state officials (e.g., clerks in a variety of bureaucratic capacities related to public education, housing, and welfare benefits), to private citizens—from employer verification of the work authorization of migrant workers, to charitable organizations who scrutinize immigration documents as a condition of their social service provisioning, to college admissions and financial aid officers charged with monitoring the legal statuses of prospective students (Coutin 1993, p. 97; cf. Coutin 2000, p. 11; cf. Mahler 1995, p. 161; for an example of an employer complaining that the 1986 U.S. immigration law "forces us [employers] to do the police work for the government . . . to do their surveillance," see Repak 1995, p. 157).

In her work on Salvadoran "legalization" struggles, Coutin—revisiting a point made much earlier, in passing, by Castles & Kosack (1973, p. 105) with regard to undocumented migrant workers in Western Europe—creatively expands her theorization of "illegality" in terms of a consideration of the multiple ways in

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which the contradiction between undocumented migrants' physical and social presence and their official negation as "illegals" generates "spaces of nonexistence" (Coutin 2000, pp. 27–47). The social space of "illegality" is an erasure of legal personhood—a space of forced invisibility, exclusion, subjugation, and repression that "materializes around [the undocumented] wherever they go" (p. 30) in the form of real effects ranging from hunger to unemployment (or more typically, severe exploitation) to violence to death—that is nonetheless always already confounded by their substantive social personhood. Coutin outlines several dimensions of the nonexistence imposed by migrant "illegality": the delimitation of reality to that which can be documented (Coutin 2000, p. 30; cf. Cintron 1997, pp. 51–60; Mahler 1995, pp. 159–87); the "temporalization of presence," whereby the undocumented come to be qualified or disqualified for adjustments of legal status according to the accumulation of continuous, verifiable (documentable) "illegal" residence (Coutin 2000, p. 31); "legal aconsanguinity," whereby immigration policies nullify the legal legitimacy of certain kinship ties (Coutin 2000, pp. 32–33; cf. Heyman 1991, pp. 197–200); enforced clandestinity (Coutin 2000, p. 33; cf. Chavez 1992a, pp. 157–69; Rouse 1992); the transformation of mundane activities—such as working, driving, or traveling—into illicit acts, related to compounded legal ineligibility (Coutin 2000, p. 33; cf. De Genova 1999, 2003; Heyman 1998b; Mahler 1995); restricted physical mobility, paradoxically effected as a consequence of the initial, unauthorized mobility of undocumented migration, which signifies a measure of captivity and social death (Coutin 2000, pp. 33–34; cf. Corcoran 1993, pp. 151–55; Hagan 1994, pp. 163–64; Patterson 1982; Rouse 1992); and restricted social mobility, related to compounded legal ineligibility (Coutin 2000, p. 34; cf. Jenkins 1978, Portes 1978). Although she does not comment on it, another feature of these conditions of nonexistence that arises in the comments of one of Coutin's undocumented interlocutors is something that might be called an enforced orientation to the present, or in Carter's (1997, p. 196) eloquent phrase, "the revocability of the promise of the future," occasioned by the uncertainties arising from the possibility of deportation, which inhibit the undocumented from making many long-term plans (Coutin 1993, p. 98; cf. Chavez 1992a, pp. 158–65; Hagan 1994, pp. 94, 129, 160), although they nevertheless do inspire various short- and medium-term precautions (Chavez 1992a, p. 164). In all of this, Coutin's contribution to a deeper theorization of everyday life for undocumented migrants is extraordinary and suggests many avenues for further ethnographic inquiry, including the investigation of how the incommensurability of multiple interrelated forms of existence and nonexistence can enable certain evasions and subversions of legal obligations entailed by the putative social contracts from which the undocumented are excluded (Coutin 2000, pp. 43–44), and more generally, may facilitate participation in multiple transnational, political, economic, and social spaces that generate new claims of belonging and formations of citizenship (Coutin 2000, pp. 45–47; cf. Appadurai 1996; Basch et al. 1994; De Genova 1998; Flores & Benmayor 1997; Glick Schiller et al. 1992; Kearney 1991, 1996; Rosaldo 1994, 1997; Rouse 1991, 1992, 1995a; Sassen 1996a, 1996b, 1998; Whiteford 1979).

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The requirement for the undocumented to refashion their social status with false "papers" raises more general theoretical questions about legal legibility. "Legalization" required documentation from the undocumented in order to prove continuous unauthorized residence within the space of the U.S. nation-state. A verifiable past became the condition of possibility of a documentable present, which itself would serve as a condition of eligibility for a documented future (cf. Coutin 2000, pp. 49–77). This points toward the more general sociopolitical condition of "the documented" themselves. Republican forms of government have created their citizens in relation to a founding document—a constitution—"and as a result, what had been a concrete relationship between subject and monarch became an abstract linkage between individuals and the law . . . [granting] citizens a *legal* existence in addition to their *physical* existence, a juridical form of being that continues to be affirmed through birth certificates, death certificates, and the like" (Coutin 1993, p. 94, emphasis in original; cf. Marrus 1985).

There is a more general problem of methodological presentism that is common in ethnographic work, however, to which Coutin becomes susceptible. Though her examinations of the revisions in immigration law that transpired during her study are indisputably incisive, Coutin nevertheless largely presupposes the extant U.S. immigration regime that preceded the 1980s and 1990s (the specific period of her research), and thus she does not examine the historical genesis of the contemporary U.S. economy of "legality" and "illegality." As a result of these limitations of historical horizon, coupled with the theoretical orientations that justify them by seeking to transcend an analysis of "legal codes" and "government policies" in favor of a privileging of the more capillary forms of power, Coutin's specific argument about U.S. immigration law's production of "illegality" remains rather too partial. Indeed, though Coutin's work demonstrates that Foucauldean analyses of power are instructive for law as a broad discursive field of signifying practices, it also demonstrates the insufficiencies of such a theoretical approach, in its anemic treatment of the state—not in the reified (structuralist) sense of a fixed institutional matrix, but rather as a site of struggle in itself.

Ultimately, Coutin's analysis of the law, as such, is much more illustrative of the conditions of possibility of "legalization" (the production of "legal" status for migrants/refugees who were previously undocumented) than of the law's actual production of "illegality" (cf. Coutin & Chock 1995). In contrast, Hagan (1994), in her ethnography of "legalization" by undocumented Guatemalan Mayan migrants in the United States, concisely but admirably identifies how the history of revisions in U.S. immigration law, beginning in 1965, has been instrumental in producing Mexican/migrant "illegality" in its contemporary configuration (cf. De Genova 1999, 2003). Not confining her historical horizon to the narrower parameters of her own study, Hagan perceptively identifies how the earlier revised immigration policies actually "generated" the new undocumented influx from Mexico, which came to be socially and politically constructed as a new "social problem" (Hagan 1994, p. 82). In addition to Coutin's (1998, 2000) and Hagan's (1994) studies, there have been other noteworthy ethnographies that have included considerations of undocumented (primarily Central American) migrants' participation in the

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"legalization" program established by the 1986 U.S. immigration act (Hamilton & Chinchilla 2001, Mahler 1995, Repak 1995, Villar 1999; cf. Baker 1990, 1997; Hagan & Baker 1993). It is nonetheless another matter entirely to study the sociopolitical processes of "illegalization" (cf. Calavita 1982, p. 13; 1998, pp. 531–32, 557; Joppke 1999, pp. 26–31).

Indeed, "illegalizations"—or what I call the legal production of migrant "illegality"—supply the foundational conditions of possibility for these programs, variously called "legalizations," "regularizations," or "amnesty," that institute an official adjustment of status for the undocumented. Every "illegalization" implies the possibility of its own rectification. Once we recognize that undocumented migrations are constituted in order not to physically exclude them but instead, to socially include them under imposed conditions of enforced and protracted vulnerability, it is not difficult to fathom how migrants' endurance of many years of "illegality" can serve as a disciplinary apprenticeship in the subordination of their labor, after which it becomes no longer necessary to prolong the undocumented condition. Furthermore, every "legalization" has an inherently episodic and strictly partial character that never eliminates the field of "illegality" but rather, in concert with the amassing of immense quantities of data for scrutiny by the authorities, simply refines and reconstitutes that field for the ineligible who will remain undocumented along with all subsequent "illegal" arrivals. This kind of rationalization tends to be a rather explicit feature of such "regularizing" operations, as in the 1986 law in the United States (De Genova 1999, 2003; cf. Coutin 2000, p. 16; Mahler 1995, pp. 159–87) as well as the 1972 regulations enacted in France (Castells 1975). Indeed, in this light, "legalizations" are themselves disciplinary and serve as instruments of labor subordination. Here, it is useful to recall both Coutin's point concerning the perceived subversiveness of migrant "illegality" (1993, p. 95; 2000, pp. 43–44) and Behdad's insight into the usefulness of migrant "illegality" as a justification for expanded surveillance against all of the state's subjects (1998, p. 106).

An attempt to incorporate some of the Foucauldean insights into the productivity of power with Gramsci's conception of hegemony as a contingent interlocking of coercion and consent (1971 [1929–1935]), as well as a synthesis of legal anthropological perspectives and critical legal realism, is elaborated by Heyman & Smart (1999). Positing the analytic necessity of coupling law and its evasion and the theoretical challenge of conceiving of states and illegal practices as counterparts, these authors develop a position that resembles my own perspective. They emphasize "the incompleteness of formal states and the unlikelihood that they will master their own and people's 'illegal' maneuvers" (p. 2). In this way, they also critique the totalizing aspects of Foucault's treatment of power and instead favor analyses that foreground the indeterminacy, ambiguity, open-endedness, and duplicity of practices and processes "on both sides of the state/illegal practice nexus" (p. 7). They seek to destabilize the hegemonic claims by which states project their own purportedly definitive authority, integrity, and boundedness, yet without ever relinquishing a focus on the state as such (pp. 10–11). Furthermore, they sustain a combined attention to both the legal formalism that imbues an ideology of the purity of the state's orderliness, sovereignty, and legitimacy, on the one hand, and

the empirical messiness that reveals how that ideology "disguises the ambiguous dealings of its agents" (pp. 11–14). Likewise, illegality is not essentialized as deviance, subversion, or the putative subculture of a stigmatized group, but instead, is construed as an option or resource available to diverse groups at particular moments, including elites and state functionaries as well as states themselves (pp. 13, 19). In these respects, Heyman & Smart critically recuperate many of the hallmarks of legal anthropology—an awareness of the play of law in its practical contexts, the persistence of plural and nonlegal modalities, the importance of sociohistorical specificities, and an analytic distinction between legitimacy and legality (p. 8).

It is noteworthy that Heyman & Smart's position marks, in important respects, a considerable theoretical advance from Heyman's earlier work, in which he contends, rather more simplistically, that "states are aggregations of rules . . . and the bureaucratic organizations required to implement these rules; for short, states are rules of the game" (1994, p. 51). Heyman makes a compelling case for ethnography in his insightful work on the U.S. Border Patrol (1995, 1998b) and the ways that de facto policies actually guide law enforcement with respect to the undocumented. He falls prey to a familiar anthropological trap, however, by articulating a theoretical/methodological disinclination to examine law itself, advancing instead a one-sided preference for studying the state "from below," through the ethnography of local enforcement practices (1998b). Clearly, Heyman & Smart's approach—explicitly requiring "that states be viewed 'from below' and 'from within' as much as 'from above'" (1999, p. 15)—is more sophisticated and significantly problematizes the one-sidedness of a complacent anthropological predilection for the view "from below."

In much of his prior work (1991, pp. 40, 197; 1998a, pp. 24–29), Heyman's general orientation to the practices of everyday life, including undocumented migrants' border crossings as well as law enforcement's efforts at apprehension, obstructs his capacity to appraise the larger forces at work in the "illegalization" of migrants who cross the U.S.-Mexico border. Though Heyman discerns the decisive facts in the history of U.S. immigration law since 1965 that would substantiate an account of the legal production of migrant "illegality" in its contemporary formulation, he nonetheless persists in treating undocumented migration as if dramatic revisions of the law had not been instrumental in restructuring it. Heyman argues:

> The migration laws of the United States rely on 'numerical control': numerical targets for finite social types . . .. Yet such numbers mismatch the social process of migration and inclusion into the host society . . .. In real-world migratory situations, people adapt numerical-legal categories to these actual connections when possible, and ignore the law when it does not fit migratory intentions . . .. Unlike numerical control, actual migration is flexible in who enters and how long they stay, and adapts quickly to the actual niches and labor demand (that is, the realities) of U.S. society. As a result, either the migrant network system manipulates the legal system to its own ends . . . or people migrate illegally . . .. If current U.S. migration is disordered, the reordering of immigration sought here simulates, but enriches, the *naturalistic* migration system. (1998a, pp. 28–29; emphasis added)

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Here, Heyman problematizes the law's quotas and preferences, but his critique remains at the formal level, suggesting a mere mismatch between legal abstraction and actual migration patterns that he depicts as "naturalistic" and systematic. This is a rather grave example of how the fetishization of "demographics," referred to above, can derail a critical analysis of the law. By naturalizing migration processes themselves, Heyman tends here to naturalize "illegality" and diminish the significance of the historical specificities of the law by characterizing its apparatus of "numerical control" as little more than a symptom of an abstract rationality ill-matched to the "natural" flexibility and opportunism of "real-world" migration scenarios. Again, Heyman & Smart's insistence on the combined examination of illegal practices in concert with the law itself is an immeasurably more promising line of inquiry.

Everyday life for the undocumented has become more and more saturated by the regimes that receiving states impose through immigration laws. Historical scholarship on U.S. immigration law has been recently described as still "a relatively new field" (Lee 1999, p. 86). Nonetheless, recent scholarship on the history of U.S. immigration, naturalization, and citizenship law has begun to demonstrate the extent to which legislation is in fact only one feature of the law. Research on law also requires an investigation of judicial cases and administrative decisions affecting the implementation of admission and deportation procedures, as well as policies regulating access to employment, housing, education, and eligibility for various social welfare benefits (Ancheta 1998, Chang 1999, Fitzgerald 1996, Haney López 1996, Hing 1993, Johnson 1993, Kim 1994, Salyer 1995; cf. Lee 1999). Anthropologists interested in the everyday life of the undocumented need not become legal historians. Yet, with respect to the "illegality" of undocumented migrants, a viable critical scholarship is frankly unthinkable without an informed interrogation of immigration law. However, anthropologists are often insufficiently concerned with, if not sorely negligent of, even the elementary aspects of the legislative history affecting the formulation of "illegality" itself, especially as it pertains to particular migrations. Moreover, when ethnographers make even brief passing mention of immigration law, it is not uncommon to find that crucial details of these legal histories have been woefully misrepresented (e.g., Chavez 1992a, p. 15; Chock 1991, p. 291). Thus, the treatment of "illegality" as an undifferentiated, transhistorical fixture is, sadly, a recurring motif in much of the scholarship on migration (e.g., Passel 1994, Reimers 1985).

## THE VISIBILITY OF "ILLEGAL IMMIGRANTS" AND THE INVISIBILITY OF THE LAW

Migrant "illegality" is produced as an effect of the law, but it is also sustained as an effect of a discursive formation (cf. Carter 1997, pp. 129–58). Calling the apparent naturalness of migrant "illegality" into question requires a critique of the ways that the sociospatial presuppositions and conceits of nationalism have significantly shaped the very conceptualization of migration itself and a critique of how scholars have reproduced what Alonso (1994) calls "dominant strategies

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of spatialization" in the very paradigms that organize academic knowledge (De Genova 1998). It is imperative in a review such as this to clarify that the social science scholarship of undocumented migration is itself often ensnared in this discursive formation of "illegality" (cf. De Genova 1999, 2003).

Indeed, across an extensive, multidisciplinary, social science literature, one encounters a remarkable visibility of "illegal immigrants" swirling enigmatically around the stunning invisibility of the law. Only infrequently does one encounter an explicit discussion of the law, much less the history of its revision and reformulation. When immigration law is addressed directly, a detailed empirical investigation of its actual operations is not provided (e.g., Cardenas 1975, Garcia 1995, Heller 1992, Johnson 1997, Sassen 1990). The material force of law, its instrumentality, its historicity, its productivity of some of the most meaningful and salient parameters of sociopolitical life—all of this seems strangely absent, with rather few exceptions. This entanglement within the fetishism of the law (Pashukanis 1989 [1929]; cf. Collins 1982) tends to characterize even the work of scholars who criticize the disciplinary character of the Border Patrol and the policing of migrant workers' documented or undocumented statuses and who question or frankly reject the dubious distinction between "legal" and "illegal" migrations (e.g., Cockcroft 1986, p. 214; Johnson 1997, pp. 171–74; Mirandé 1987, p. 127). Rather than investigate critically what the law actually accomplishes, much scholarship takes the stated aims of the law, such as deterring undocumented migration, at face-value and hence falls into a naïve empiricism. Many scholars then proceed to evaluate legislation—and specifically, various efforts to restrict undocumented migration—in order to sustain the claim that these legal efforts were somehow not effective or were simply "failures" (e.g., Cornelius 1989, pp. 10–14). Furthermore, there is a subcategory of scholarship that is derivative of this naïve empiricism, whereby the overtly restrictive intent of particular laws is not only taken at face-value, but also supplied with a preemptive apology. Such commentators (e.g., Hondagneu-Sotelo 1994, p. 26) assert that the effects on particular migrations of changes in a state's immigration laws can be somehow presumed to have been inadvertent—unanticipated and thus unintended consequences. This show of "good faith" toward the state, and its underlying belief in the law's transparency, does not even allow for the possibility that the law may have been instrumental in generating parameters of migrant "illegality." Still other researchers (e.g., Reimers 1985, Tienda 1989, Zolberg 1990) do identify crucial aspects of legal histories that result in the expansion or reconstitution of migrant "illegality," only then to persist in treating "illegal immigration" as a transparent and self-evident fact. There is, in short, an unfortunate taken-for-grantedness that bedevils much of this scholarship, resulting from an uncritical reproduction of hegemonic common sense. In the best of cases (e.g., Bach 1978; Burawoy 1976; Calavita 1982; Cockcroft 1986; Coutin 1996, 2000; Kearney 1996, 1998; Portes 1978; Tienda 1989; Zolberg 1990), the explanatory power of the work is dulled, and its critical potential is inhibited; in the worst scholars naturalize the category of "illegality."

The tenuous distinction between "legal" and "illegal" migration, which has become increasingly salient throughout the world, was deployed to stigmatize

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and regulate mainly Mexican migrant workers in the United States for much of the twentieth century. Indeed, the Annual Reports of the U.S. Immigration and Naturalization Service (INS) long divided statistics for their apprehensions of "deportable aliens" into two discrete categories—Mexicans and All Others. In 1973, for instance, the INS reported that Mexicans literally comprised 99% of all apprehended "deportable aliens" who had entered surreptitiously (Cardenas 1975, p. 86). Selective enforcement of the law—coordinated with seasonal labor demand by U.S. employers (as well as the occasional exigencies of electoral politics)—has long maintained a revolving door policy, whereby mass deportations are concurrent with an overall, large-scale, more or less permanent *im*portation of Mexican migrant labor (Cockroft 1986). One of the consequences of this history of selective border enforcement is that the sociopolitical category "illegal alien" itself—inseparable from a distinct "problem" or "crisis" of governance and sovereignty—has come to be saturated with racialized difference and indeed has long served as a constitutive dimension of the racialized inscription of "Mexicans" in the United States (De Genova 1999, 2003; cf. Ngai 1999, 2003). Although he has rather little to say directly about undocumented migration and the social condition of "illegality," Vélez-Ibáñez (1996) advances the idea of a "commodity identity" for Mexicans in the United States—a concept originally articulated specifically for undocumented Mexican migrants by Bustamante (1978). Vélez-Ibáñez suggests important ways in which the stigmatization of undocumented Mexicans—as a people reducible to the disposability of their labor for a price—has become central to the racialization of all Mexicans/Chicanos and other Latinos (regardless of immigration status or even U.S. citizenship). During the Great Depression, this more plainly racist character of Mexican criminalization became notoriously and abundantly manifest, culminating in the systematic exclusion of Mexican migrants and Chicano (Mexican American) U.S. citizens alike from employment and economic relief, followed by the forcible deportation of at least 415,000 Mexicans and Chicanos and the "voluntary" repatriation of 85,000 more (Balderrama & Rodríguez 1995, Guerin-Gonzáles 1994, Hoffman 1974). People were expelled with no regard to their status as legal residents or U.S. citizens by birth—simply for being "Mexicans." The conjunctures of migrant "illegality," nativism, and racialization should become increasingly prominent in future research (cf. Balibar 1991a,b,c,d; Bosniak 1996, 1997; Chavez 2001; De Genova & Ramos-Zayas 2003; Carter 1997; Perea 1997; Pred 2000; Sanchez 1999; Vila 2000).

Though Mexican migrants are very commonly the implied if not overt focus of mass-mediated, journalistic, as well as scholarly discussions of "illegal aliens" (Chavez 2001, García 1980, Johnson 1997), the genesis of their condition of "illegality" is seldom examined. In my own research, I have sought to interrogate the history of changes in U.S. immigration law through the specific lens of how these revisions—especially the imposition, since 1965, of numerical restrictions on "legal" migration from Western Hemisphere countries—have had a disproportionately deleterious impact on Mexican migrants (De Genova 1999, 2003). In her historical research, Ngai (1999, 2003) makes an analogous argument for the period beginning in the second half of the 1920s, on the basis of substantially

different modes of migrant inclusion and exclusion. It is crucial to explore how the U.S. nation-state came to deploy a variety of different tactics at distinct historical moments, to systematically recreate "illegality" in ways that have ever more thoroughly constrained and circumscribed the social predicaments of undocumented migrants.

Mexican scholars of Mexican migration to the United States (publishing primarily in Spanish, but also, to a limited extent, in English; e.g., Bustamante 1972, 1976, 1978) have tended to be much more inclined to approach the topic in terms of the structural features of U.S. capitalism and labor demand and to engage in the kinds of analyses that cast a critical light on "illegalization." Many U.S. scholars (including some Chicanos), however, when not preoccupied with policy-driven questions, more typically have tended to approach the subject through the hegemonic sociological rubric of "settlement" and "assimilation" (cf. De Genova 1999, pp. 19–104; n.d.). (On this score, arguing for Mexican migration as a temporary national economic development opportunity, Gamio 1971 [1930], as a student of Boas and a founder of Mexican Anthropology, is the most prominent exception among Mexican researchers.) Beginning with the very earliest efforts of anthropologists and sociologists to produce social science accounts of Mexican migrants in the United States, the literature has been distinguished by a strikingly disproportionate, seemingly compulsive obsession with "the transition . . . from an immigration of temporary laborers to one of settlers" (Clark 1974 [1908], p. 520). In 1911, the Dillingham U.S. Immigration Commission produced its own assessment: "Because of their [Mexicans'] strong attachment to their native land, low intelligence, illiteracy, migratory life, and the possibility of their residence here being discontinued, few become citizens of the United States" (quoted in Weber 1982, p. 24). And further: "While they are not easily assimilated, this is of no very great importance as long as most of them return to their native land. In the case of the Mexican, he is less desirable as a citizen than as a laborer" (quoted in Calavita 1992, p. 180; cf. Reisler 1976a, 1996 [1976b]).

In a significant sense, the themes that revolve around discerning whether or not Mexican migrants to the United States can or will "assimilate," and the variety of ways that this question has been elaborated through the "sojourner"—"settler" binary, have remained quite ubiquitous ever since (e.g., Gamio 1971 [1930]; Bogardus 1970 [1934]; Chavez 1988, 1991, 1992a,b, 1994; Cornelius 1992; Durand & Massey 1992; Hondagneu-Sotelo 1994; Massey 1987; Massey et al. 1987; Massey & Liang 1989; Portes & Bach 1985; Smith 1996; Suárez-Orozco 1998; Rouse 1992; Villar 1990). In his ethnographic monograph, *Shadowed Lives: Undocumented Immigrants in American Society*, Chavez (1992a) explicitly counterposes the analytic categories "migrants" (as "sojourners") and "settlers," as he explains that he "concluded that the important story to be told is that of the transition people undergo as they leave the migrant life and instead settle in the United States" (1992a, p. 4; cf. 1991, Chavez et al. 1989). Chavez then proceeds to invoke an anthropological analogy—the rite of passage—as the organizing theoretical metaphor through which he characterizes the process of migrant "settlement":

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> For undocumented migrants, crossing the border is a territorial passage that marks the transition from one way of life to another [. . ..] A territorial passage, like more conventional rites of passage, can be divided into three important phases: *separation* from the known social group or society, *transition* (the 'liminal' phase), and *incorporation* into the new social group or society [. . ..]
>
> [B]y examining practical, everyday experiences, modes of behavior, and knowledge acquired by undocumented immigrants during their territorial passage, we can begin to understand this transition and the problem of the undocumented immigrant's incorporation into the larger society [. . ..]
>
> For some the transition phase begins with crossing the border, but never comes to a close; these people never accumulate enough links of incorporation . . . to allow them to become settlers and feel part of the new society. They remain 'liminals,' outsiders during their stay in the United States, often returning to their country of origin after a relatively brief time [. . ..] However, even individuals who have accumulated a great number of such links may find full incorporation into the new society blocked because of their undocumented status and the larger society's view of them as illegal aliens [. . ..] This observation gives added significance to the questions this book poses [. . ..] How do the experiences of undocumented migrants influence their decision to return home or settle in this country? (Chavez 1992a, pp. 4–6, emphases in original; cf. 1991)

Chavez's schema of the "transition," "settlement," and "incorporation" of undocumented Latinos in their passage from "migrants" to "immigrants," driven by the teleological analogy of "rites of passage" in the life cycles of "individuals," almost perfectly reiterates Park's logic in "Migration and the Marginal Man" (Park 1980[1914/1928]), whereby the migrant is characterized as a "cultural hybrid" moving across the marginal zone between two societies. What seems to matter, above all, to Chavez, is to repudiate the allegation that undocumented Mexican and Central American migrants are mere "sojourners" (cf. 1991, 1994). "Illegality" as such, however, is treated here as little more than a prejudicial perception on the part of citizens toward newcomers that obstructs their integration. With regard to the genesis of "illegality" for these Latino (mainly Mexican) migrants, Chavez (1992a, p. 15) not only recapitulates the dominant mythology of the 1965 U.S. immigration law as a grand liberalization but also goes further by celebrating as "egalitarian" the introduction of a numerical quota for Western Hemisphere migrations—precisely that which, in this reform, was most illiberal and restrictive (and inordinately detrimental for Mexican migration in particular) (De Genova 1999, 2003).

The figure of the "sojourner" has always been gendered as male, and profit from his labor has relied upon exploiting the separation of the (migrant) working man from the woman (and children) who remained "in his native land" in order to defray some of the costs of the reproduction of labor power (Chock 1991, 1995, 1996;

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Coutin & Chock 1995; Gonzalez & Fernandez 1979; Hondagneu-Sotelo 1994; Kearney 1986; Rouse 1992; cf. Burawoy 1976; Kearney 1991, 1996, 1998; Ortiz, this volume). What has been insufficiently explored is how the historical production of the racialized figure of "the Mexican," as male "sojourner," has been rendered synonymous with migrant "illegality." This linkage has become more readily visible with the increasing equation of undocumented migrant women with permanent migrant (family) settlement (Chock 1995, 1996; Coutin & Chock 1995; Roberts 1997; cf. Lowe 1996, pp. 159–60). Chock poignantly identifies the pervasive presumption that "a natural relationship between babies and mothers [blurs] lines of rights and responsibilities mapped by the state between two categories of people (citizen and alien)," such that "women's fertility [multiplies] the risk to the nation" (Chock 1995, p. 173).

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## THE BORDER SPECTACLE

Undocumented migration, and Mexican migration in particular, has been rendered synonymous with the U.S. nation-state's purported "loss of control" of its borders and has supplied the pretext for what has in fact been a continuous intensification of militarized control on the U.S.-Mexico border (Dunn 1996, Jiménez 1992; cf. Andreas 1998; Heyman 1991, 1999; Kearney 1991, 1998). Overstaying a visa—the rather discrete act by which very significant numbers of people become undocumented migrants—is, after all, not terribly dramatic. Hence, it is precisely "the Border" that provides the exemplary theater for staging the spectacle of "the illegal alien" that the law produces. The elusiveness of the law, and its relative invisibility in producing "illegality," requires the spectacle of "enforcement" at the U.S.-Mexico border that renders a racialized migrant "illegality" visible and lends it the commonsensical air of a "natural" fact.

There is a pattern of policing that is critical for the perpetuation of the "revolving door" policy: the great majority of INS apprehensions of "deportable aliens" consist of those who have just surreptitiously crossed the Mexican border, and this has increasingly been the case. These enforcement proclivities and perogatives, and the statistics they produce, have made an extraordinary contribution to the commonplace fallacy that Mexicans account for virtually all "illegal aliens," have served to restage the U.S.-Mexico border as the theater of an enforcement "crisis," and have rendered "Mexican" the distinctive national/racialized name for migrant "illegality." Heyman (1995) describes what he calls "the voluntary-departure complex," whereby "deportable aliens" apprehended at the U.S.-Mexico border (who are, predictably, overwhelmingly Mexican) "are permitted (indeed, encouraged) to waive their rights to a deportation hearing and return to Mexico without lengthy detention, expensive bonding, and trial," and then, upon release in Mexico near the border, "they can and do repeat their attempts to evade border enforcement until they finally succeed in entering" (1995, pp. 266–67). Heyman thus establishes that the U.S. state maximizes arrests and enhances the mass-mediated impression of "border control," while actually negating the efficacy of those apprehensions and

facilitating undocumented labor migration. Indeed, undocumented border-crossing has become a staple for journalistic "participant-observation"; see, e.g., Conover 1987; Decker 1994; Dwyer 1994.

The operation of the "revolving door" at the U.S.-Mexico border couples an increasingly militarized spectacle of apprehensions, detentions, and deportations, with the banality of a continuous importation of undocumented migrant labor (Cockcroft 1986). Indeed, Mexican as well as Central American migrants' border-crossing narratives quite often relate experiences of tremendous hardship that are commonly juxtaposed with accounts of easy passage (Chavez 1992a; Davis 1990; De Genova 1999, 2003; Kearney 1991; Martínez 1994; e.g., Guillén 2001, Hart 1997, Pérez 1991). These same narratives are commonly punctuated with accounts of life in the United States that are distinguished by arduous travail and abundant exploitation (De Genova 1999, 2003; Kearney 1991; Mahler 1995; Martínez 1994). The legal production of Mexican (and also Central American) migrant "illegality" requires the spectacle of enforcement at the U.S.-Mexico border for the spatialized difference between the nation-states of the United States and Mexico (and effectively, all of Latin America) to be socially inscribed upon the migrants themselves—embodied in the spatialized (and racialized) status of "illegal alien." The vectors of race and space, therefore, are both crucial in the constitution of the class specificity of Mexican labor migration (De Genova 1999, 2003).

The "illegality" effect of protracted and enduring vulnerability has to be recreated more often than on the occasions of crossing the border. Indeed, the 1986 U.S. legislation, for instance, which instituted for the first time federal sanctions against employers who knowingly hired undocumented workers, was tantamount to an extension of the "revolving door" to the internal labor market of each workplace where undocumented migrants were employed. By establishing an affirmative defense for all employers who could demonstrate that they had complied with the verification procedure—simply by having filled out and kept on file a routine I-9 form attesting to the document check, without any requirement that they determine the legitimacy of documents presented in that verification process—the legislation insulated employers from any penalty. What this meant in practice was that the employer sanction provisions generated a flourishing industry in fraudulent documents, which merely imposed further expenses and greater legal liabilities upon the migrant workers themselves, while supplying protection for employers (Chavez 1992a, pp. 169–71; Cintron 1997, pp. 51–60; Coutin 2000, pp. 49–77; Mahler 1995, pp. 159–87; cf. U.S. Department of Labor 1991, p. 124). It also required a heightening of INS raids on workplaces. Given that inspectors are required to give employers a three-day warning prior to inspections of hiring records, to make it "pragmatically easy" for employers to comply with the letter of the law (Calavita 1992, p. 169), and that, in order to avoid fines associated with infractions, employers typically fire or temporarily discharge workers known to be undocumented prior to a raid—these provisions have primarily served to introduce greater instability into the labor-market experiences of undocumented migrants and to institute an internal "revolving door." What are putatively "employer sanctions," then, have

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actually functioned to aggravate the migrants' condition of vulnerability and have imposed new penalties upon the undocumented workers themselves (cf. Sassen & Smith 1992).

The "illegalities" of everyday life are often, literally, instantiated by the lack of various forms of state-issued documentation that sanction one's place within or outside the strictures of the law (Cintron 1997, Coutin 2000, Hagan 1994, Mahler 1995). The policing of public spaces outside of the workplace, moreover, serves to discipline undocumented migrants by surveilling their "illegality" and exacerbating their sense of ever-present vulnerability (Chavez 1992a; Coutin 2000; De Genova 1999, 2003; Heyman 1998b; Mahler 1995; Rouse 1992). The lack of a driver's license, for instance, is typically presumed by police in most states in the U.S. to automatically indicate a migrant's more generally undocumented condition (De Genova 1999, 2003; cf. Mahler 1995, pp. 146–47).[1] Such forms of everyday "illegality" are responsible for many undocumented migrants' encounters with everyday forms of surveillance and repression. But there are also those "illegalities" that more generally pertain to the heightened policing directed at the bodies, movements, and spaces of the poor—especially those spatialized as "foreigners" in the United States, Europe, Canada, and Australia and those racialized as not-white in particular (cf. Balibar 1991a,c,d; Calavita 1998; Carter 1997; Haney López 1996; Lowe 1996; Paul 1997; Pred 2000; Satzewich 1991; Saxton 1971). Subjection to quotidian forms of intimidation and harassment reinforces undocumented migrants' vulnerability as a highly exploitable workforce.

Yet the disciplinary operation of an apparatus for the everyday production of migrant "illegality" is never simply intended to achieve the putative goal of deportation. It is deportability, and not deportation per se, that has historically rendered undocumented migrant labor a distinctly disposable commodity. There has never been sufficient funding for the INS to evacuate the United States of undocumented migrants by means of deportations, nor even for the Border Patrol to "hold the line." The INS is neither equipped nor intended to actually keep the undocumented out. The very existence of the enforcement branches of the INS (and the Border Patrol, in particular) is premised upon the continued presence of migrants whose undocumented legal status has long been equated with the disposable (deportable), ultimately "temporary" character of the commodity that is their labor-power. Indeed, although the Border Patrol has, since its inception, defined unauthorized entry as "a continuous offense [that] is not completed . . . until the alien reaches his interior destination," and so defined its jurisdiction as effectively the entire interior (Ngai 2003), INS enforcement efforts have disproportionately targeted the U.S.-Mexico border, sustaining a zone of relatively high tolerance within the interior (Chavez 1992a, Delgado 1993). The true social role of INS enforcement

[1]There are only four states in the United States that issue driver's licenses to any state resident who can pass the driving test, regardless of their legal status; they are North Carolina, Tennessee, Utah, and Virginia (*New York Times*, 4 August 2001).

(and the Border Patrol) is in maintaining the operation of the border as a "revolving door" (Cockcroft 1986), simultaneously implicated in importation as much as deportation (Calavita 1992), and sustaining the border's viability as a filter for the unequal transfer of value (Kearney 1998).

Migrant "illegality" is lived through a palpable sense of deportability, which is to say, the possibility of deportation, the possibility of being removed from the space of the nation-state. There are some significant analogies between migrant deportability and the threat of deportation confronted by denationalized citizens [as, for example, with European Jews and Gypsies under Nazi Germany (Agamben 1998, pp. 126–35, 166–80), or women who were U.S. citizens by birth but denationalized for having married noncitizen men (Bredbenner 1998), or political dissidents under McCarthy-era legislation that still remains in effect in the United States (e.g., Randall 1987; cf. Nathan 1991, pp. 90–108)], but my focus here is the specificity of migrant deportability. What makes deportability so decisive in the legal production of migrant "illegality" and the militarized policing of nation-state borders is that some are deported in order that most may remain (un-deported)—as workers, whose particular migrant status may thus be rendered "illegal." Therefore, migrant "illegality" is a spatialized social condition that is frequently central to the particular ways that migrants are racialized as "illegal aliens" within nation-state spaces, as for example when "Mexicans" are racialized in relation to "American"-ness in the United States (De Genova 1998, 1999, 2003). Moreover, the spatialized condition of "illegality" reproduces the physical borders of nation-states in the everyday life of innumerable places throughout the interiors of the migrant-receiving states. Thus, the legal production of "illegality" as a distinctly spatialized and typically racialized social condition for undocumented migrants provides an apparatus for sustaining their vulnerability and tractability as workers.

## CONCLUSION

There is nothing matter-of-fact about the "illegality" of undocumented migrants. As Calavita has argued with respect to immigration law in Spain, "There may be no smoking gun, but there is nonetheless a lot of smoke in the air" (1998, p. 557). "Illegality" is the product of immigration laws—not merely in the abstract sense that without the law, nothing could be construed to be outside of the law; nor simply in the generic sense that immigration law constructs, differentiates, and ranks various categories of "aliens"—but in the more profound sense that the history of deliberate interventions that have revised and reformulated the law has entailed an active process of inclusion through "illegalization."

Undocumented migrant labor has been criminalized as "illegal" and subjected to excessive and extraordinary forms of policing. The undocumented have been denied fundamental human rights and many rudimentary social entitlements, consigned to an uncertain sociopolitical predicament, often with little or no recourse to any semblance of protection from the law. The category "illegal alien" is a

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profoundly useful and profitable one that effectively serves to create and sustain a legally vulnerable—and hence, relatively tractable and thus "cheap"—reserve of labor. That proposition is quite old; indeed, it is so well established and well documented as to be irrefutable (cf., for example, Burawoy 1976; Bustamante 1972, 1976, 1978; Calavita 1990, 1992; Castells 1975; Cockcroft 1986; Delgado 1993; Galarza 1964; Gamio 1971 [1930]; Gledhill 1998; Grasmuck 1984; Hondagneu-Sotelo 2001; Jenkins 1978; Kearney 1996; Kwong 1997; McWilliams 1949; Piore 1979; Rouse 1995a; Samora 1971; Sassen 1988; Smith 1998; Taylor 1932). A central contention of this review has been that, in and of itself, this important critical insight into the consequences of migrant "illegality" is insufficient insofar as its origin may be left unexamined and thus naturalized. We must go further and examine the fundamental origin of the status "illegal" (and its attendant sociospatial condition of deportability) in the law itself—what I call the legal production of migrant "illegality."

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