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The Condition of Illegality

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The articles in this volume eloquently, and at times dramatically, testify to the multiple ways in which "illegality" is socially, culturally, and politically constructed. As people move across ever more porous national boundaries, their status is determined by those nation-states, not some essential quality inherent in the migrants' genetic code or personal philosophies on life. Policymakers, using Foucauldian techniques of government, construct classifications to further bureaucratic control of populations, including, and perhaps most especially, migrants (Inda, 2006). For unauthorized migrants, "illegal", as Tomey shows, becomes written upon the their bodies because, as Willen observes, illegality is both produced and experienced. Illegality is a status resulting from political decisions made by governmental representatives who could just as well have decided to allow migrants to enter under the sanction of law – as legal immigrants, legal workers, or legal guests of some type (Ngai, 2004). The migrants themselves are the same people, whether deemed legal or illegal by their countries of destination.

What marks the illegal is the receiving state's unwillingness to recognize the conditions that create a demand for labour, most notably falling fertility rates, aging populations, and values that imbue certain jobs as "immigrant jobs". As a result, a legal fiction emerges. This fiction recognizes that "X" number of migrant labourers will be attracted to most of the industrialized nations, but also recognizes that politicians will respond to their constituents' fears of immigration by allowing far fewer legal immigrants/workers to enter legally than are contained in the actual flow (Coutin, 2005). The surplus could have been allowed to enter legally, but instead the "illegal" entrant is constructed. The total flow, the "X" number of in-migrants, continues albeit under these constructed categories of legal and illegal migration.

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A number of themes explicitly or implicitly run through these articles. The condition of illegality and the social responses to in-migrants are strongly related to what Mary Douglas (1966) refers to as "matter out of place". Members of receiving societies often resist the demographic and cultural changes associated with the arrival of foreign bodies (Chavez, 2006). The newcomers are viewed as "space invaders", as Nirmal Puwar (2004) put it, whose presence challenges the perpetuation of national myths of essentialized singular cultures and racial histories. At the same time, in-migrants are welcomed as workers in competitive sectors of local economies. This is the basis for the liminal status that is such an inherent part of illegality, and out of which emerges the "gray areas" discussed by Holmes and Laubenthal. Members of receiving societies often denigrate undocumented immigrants and legal systems are increasingly making their lives more difficult. Yet the very same "illegals" are given jobs, some medical care, and housing, and are integrated into racialized hierarchies of status and prestige. These simultaneous processes of inclusion and exclusion underscore the schizophrenic context within which illegality exists and which undermines imagining undocumented immigrants as part of the larger society (see Ayse Parla's article, this volume; Anderson, 1983; Chavez, 1991).

The related theme of structural violence also runs through the articles in this volume. The inequities caused by the structural position of illegality are indelibly portrayed by the confusion constructed over asylum narratives in Germany (Gehrig's article); the closed doors to medical care in Israel (Rosenthal); the status of indigenous Mexicans having the lowest pay and lowest social standing on farms in the United States (Holmes' article); the denial of citizenship to children of migrants despite their being born in Ireland (Tormey's article); the suffering of spatial and psychological confinement and fear of illegality in Israel (Willen's article); and the experience of deportation indignities (Peutz' article). The benefits from the structured inequalities and violence inherent in the condition of illegality accrue to citizen members of the societies in question, who gain value in the commodities immigrants produce and the services immigrants provide. Nationals also gain because of the symbolic value and material privileges that accrue to them as "citizens".

Each of these papers underscores the insecurities felt by citizens, for whom the very notion of "citizen" and the privileges of citizenship are challenged by transnational migrant flows (Chavez, 2007). Citizens are suffering a crisis of identity as they perceive the privileges of citizenship slipping away as a result of porous national borders (and porous bodies, that is fertility), increasing immigration, and demographic changes. The response to these insecurities has been to make laws which re-define the "citizen" by defining, and often excluding, the "alien" and the "illegal". As Ngai (2004) has observed, "citizen" is given meaning, and

privilege, through the construction of the "alien". The poignant experiences of immigrants in Israel, Turkey, Ireland, Germany, and the United States, found in the articles in this volume, can be traced to this crisis of citizenship and state's attempts to re-affirm the privileges of citizenship through increased enforcement of national borders, increased surveillance and expedited deportations of extra-national populations, and restrictions on government-sponsored services for non-citizens, including the means to move from a position of illegality to one that is legally sanctioned. Even denying citizenship by birth, the principle of *jus soli*, has been contemplated in the United States and implemented in Ireland. What we are witnessing, through such techniques of power, are performances to re-affirm the importance and privilege of citizenship and the continued viability of the nation-state.

Perhaps one of the most fascinating recent developments is the reaction of immigrant communities to assaults on their rights and their very existence as moral beings. As nation-states narrow the rights of immigrants and develop new techniques of control and surveillance, immigrant communities have responded by coming out of the shadows to engage civic debates on their presence (illegal), character (immoral; criminal), and motivations (threats to nation). As Laubenthal shows in her article in this volume, there has been an upsurge in pro-regulation movements in immigrant communities across Europe. In the mid-1990s, illegal migrants from sub-Saharan Africa, Latin America, and the former Yugoslavia occupied churches and initiated demonstrations in France, Spain, and Switzerland. The aim of these social movements was to protest migrants' illegality, and to push for means to legalize, or regularize, their status. Undocumented immigrants in other contexts also performed acts of agency rather than existing as docile bodies, including finding ways to continue living despite the fear of deportation and social stigma heaped upon them. The struggle to find medicine to counteract the effects of HIV is another poignant example, although on a more personal level, as Rosenthal documents in her article.

In April and May of 2006, immigrants in the United States responded to highly punitive proposed immigration reform legislation (HR 4437) with massive demonstrations in cities across the country (Archibold, 2006). The catalyst for this reaction was a provision that would make it a felony to be an "illegal" immigrant. This would not only criminalize the very presence of undocumented immigrants, it would make it impossible to become a legal immigrant, a status barred to felons. The public outpouring against the proposed legislation, literally into the streets, underscored Michel Foucault's (1977) famous dictum, "Where there is power, there is resistance". These spectacles were public performances to counter representations of immigrants as criminals and threats to the nation so prevalent in public discourses and embedded in the proposed legislation

(see also Willen's article depicting resistance to the representation of undocumented immigrants as "criminals") (Chavez, 2001). Significantly, the spectacles worked, somewhat. Although the demonstrations did not derail calls for increased border surveillance or tougher employer sanction penalties, as the direct result of actions undertaken by immigrants and their supporters, the felony provision will no longer be part of comprehensive immigration legislation. In these examples, undocumented immigrants in Europe and the United States not only participated in civic society through political action, such as demonstrations and church take-overs, they made clear and powerful symbolic statements about their inclusion in the imagined societies of the nations in which they reside.

Finally, these articles attest to the power of ethnographic research to put the conditions of illegality into sharp relief, a necessary first step if our work as ethnographers is to have any purchase in today's highly polarized debate over transnational migration. Drawing attention to the lived experiences of undocumented immigrants, as Willen advocates, is perhaps the most compelling way of illuminating the contradictions of contemporary capitalism in increasingly neoliberal Europe and the United States (Harvey, 2005). The demand for immigrant labour in many industrialized nations is taking place at the same time governments are reducing their responsibility for the social welfare of their citizens and non-citizens alike. If these articles serve as a guide, undocumented immigrants bear the brunt of those policies to an inordinate degree. Public policy regarding undocumented immigrants should consider the hardships, abuses, structural violence, and yearning to belong and live with dignity so prevalent among those existing under a condition of illegality.

REFERENCES

Anderson, B.
  1983   *Imagined Communities*, Verso, London.
Archibold, R.C.
  2006   "Immigrants take to U.S. streets in show of strength", *The New York Times*,
          2 May:1.
Chavez, L.R.
  1991   "Outside the imagined community: undocumented settlers and experiences
          of incorporation", *American Ethnologist*, 18:257-278.
  2001   *Covering Immigration: Popular Images and the Politics of the Nation*, Uni-
          versity of California Press, Berkeley.
  2006   "Culture change and cultural reproduction: lessons from research on trans-
          national migration", in *In* J. Stockard and G. Spindler (Eds.), *Globalization
          and Change in Fifteen Cultures: Born in one World and Living in Another*,
          Thomson-Wadsworth, Belmont, CA.
  2007   "The spectacle in the desert: the minuteman project on the U.S-Mexico
          border", in D. Pratten and A. Sen (Eds.), *Global Vigilantes: Anthropologi-
          cal Perspectives on Justice and Violence*, C. Hurst & Company Publishers,
          London, England.
Coutin, S.B.
  2005   "Being en route", *American Anthropologist*, 107(2):195-206.
Douglas, M.
  1966   *Purity and Danger*, Routledge & Kegan Paul, London.
Foucault, M.
  1977   *Discipline and Punish*, Tavistock, London.
Harvey, D.
  2005   *A Brief History of Neoliberalism*, Oxford University Press, Oxford.
Inda, J.X.
  2006   Targeting immigrants: government, technology, and ethics, Blackwell Publish-
          ing, Malden, MA.
Ngai, M.M.
  2004   *Impossible Subjects: Illegal Aliens and the Making of Modern America*,
          Princeton University Press, Princeton.
Puwar, N.
  2004   *Space Invaders: Race, Gender and Bodies Out of Place*, Berg, Oxford.