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By Aviva Chomsky

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Editorial Review

Review

“An impassioned and well-reported case for change.... Chomsky ably lays out just how brutal life can be for the undocumented.”

—*New York Times* Sunday Book Review

“*Undocumented* adds smart, new, and provocative scholarship to the immigration debate.”

—*Los Angeles Review of Books*

“From the first page to the last, *Undocumented* is to immigrant rights movement what *We Charge Genocide* was to the African American movement—a dossier that sets aside quibbles about whether immigrants contribute to the US economy or not, whether immigrants speak English or not and gives flesh to the slogan, ‘Immigrant rights are human rights.’ A clear-headed and smart book that locates the struggles of immigrants squarely in the struggles for human rights. Nothing less is to be accommodated, and much more is to be imagined.”

—Vijay Prashad, author of *The Poorer Nations: A Possible History of the Global South*

“Professional in her scholarship, Chomsky has written a book that will be relevant to those who do not share her position as well as to those who do.”

—*Publishers Weekly*

“Dares to call the [immigration] problem ‘manufactured,’ one that could be solved with the stroke of a pen.”

—*Ms. Magazine*

About the Author

Aviva Chomsky is professor of history and coordinator of Latin American Studies at Salem State University. The author of several books, Chomsky has been active in Latin American solidarity and immigrants’ rights issues for over twenty-five years. She lives in Salem, Massachusetts.

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Introduction

When people say, “What part of ‘illegal’ don’t you understand?” they imply that they, in fact, understand everything about it. They take illegality to be self-evident: there’s a law, you break the law, that’s illegal. Obvious, right?

Actually, illegality is a lot more complicated than that. Laws are made and enforced by humans, in historical contexts, and for reasons. They change over time, and they are often created and modified to serve the interests of some groups—generally the powerful and privileged—over others.

Most of the citizens who brag that their ancestors came here “the right way” are making assumptions based on ignorance. They assume that their ancestors “went through the process” and obtained visas, as people are required to do today. In fact, most of them came before any legal process existed—before the concept of “illegality” existed.

THE INVENTION OF ILLEGALITY

Illegality as we know it today came into existence after 1965. In the decades before 1965, the media rarely depicted immigration in negative terms. Nor did the public or Congress consider it a problem in need of legislation. By the 1970s, though, the demonization of immigrants—in particular, Mexican and other Latino immigrants—and the issue of “illegal immigration” were turning into hot-button issues.

There are some particular historical reasons for these changes. Some are economic. The global and the domestic economies underwent some fundamental structural changes in the late twentieth century, changes we sometimes refer to as “globalization.”

Some analysts argued that globalization was making the world “flat,” and that with the spread of connection, technology, and communication, old inequalities would melt away. Others believed that new inequalities were becoming entrenched—that a “global apartheid” being imposed, separating the Global North from the Global South, the rich from the poor, the winners in the new global economy from the losers. I’ll go more into depth about these changes and show how they contributed to a *need* for illegality to sustain the new world order.

The second set of changes is ideological and cultural. Like the big economic shifts, ideological and cultural changes are a process; they can’t necessarily be pinpointed to a particular date or year. I use 1965 as a convenience, because that’s when some major changes were enacted in US immigration law that contributed to creating illegality. But those changes responded to, and contributed to, the more long-term economic and ideological shifts that were occurring.

In the cultural realm, overt racism was going out of fashion. Civil rights movements at home and anti-colonial movements abroad undercut the legitimacy of racial exclusion and discrimination. While apartheid continued in South Africa through the 1980s, even that lost its international legitimacy. In the United States, the Jim Crow regime was dismantled and new laws and programs were aimed at creating racial equality, at least on paper. By the new century, people were beginning to talk about the United States as a “postracial” society. At the same time, though, new laws hardened immigration regimes and discrimination against immigrants in the United States and elsewhere.

TRUE REFUGEES OF THE BORDER WARS

Before deeply delving into the dizzying and sometimes irrational nature of immigration law, it’s helpful to consider what’s actually happening on the ground. I had the opportunity to see firsthand the human tragedy that’s resulted from the new immigration regime in March 2010, when I participated in a weeklong humanitarian delegation with the organization No More Deaths, one of several that take direct action on the US-Mexico border.

Volunteers from these organizations attempt to provide humanitarian aid to migrants by leaving water at stations along migrant trails and offering basic first-aid at camps in the desert, among other things. My group, though, was taking testimonies on the Mexican side of the border from migrants who had been caught and deported.

During that week, I met several hundred deportees. They were arrested for a crime no US citizen can commit: entering the United States without official permission. Only people who are not US citizens *need* official permission to enter US territory.

Nogales, Sonora, on the US-Mexico border, has the feel of a war zone. Every few hours, a bus from the Wackenhut private security service arrives on the US side of the border filled with would-be migrants, mostly from Mexico's poor southern regions. Most of them were captured by the Border Patrol somewhere in the Arizona desert. "They used to try to capture us near the border," one migrant told me wearily. "Now, they patrol two or three days' walk north of the border. They want to find us when we're dehydrated, exhausted, blistered, so we can't run away."

First, the drivers unload their belongings from underneath the bus—a few backpacks, but mostly clear plastic Homeland Security bags supplied by the Border Patrol. After about half an hour, the migrants descend from the bus in small groups. Under armed guard, the lucky ones retrieve their packages and shuffle back across the border to be processed by Mexican authorities. Many have lost everything on their trek through the desert, when they were attacked by robbers, became separated from their group, got lost, or fled from the Border Patrol.

Processing takes about fifteen minutes. The migrants receive a slip of paper attesting to the fact that they are deportees. The paper confirms their eligibility for the fragmentary social services that the Mexican government and several Catholic church organizations offer to migrants in Nogales: one phone call, a half-fare bus ride home, three nights in a shelter, and, most generously, fifteen days of free meals twice a day at the *comedor*, or soup kitchen, run by the Proyecto Kino, supported by both the Mexican and several US archdioceses of the Catholic church.

After processing, the migrants emerge on the Mexican side of the border. Taxi drivers and food vendors accost them as they stumble out, dazed and bewildered. "Everybody wants to pretend to be a migrant, to get services," one provider told me. "You have to look at their shoes. If they have shoelaces, they're not migrants. Homeland Security takes their shoelaces so they won't . . ." He gestured slitting his throat and laughed conspiratorially. So the migrants stumble because their feet are raw and torn from walking through the desert, and because they have no shoelaces in their tattered shoes.

If they're lucky, one of the first people they'll encounter is Sal, with the Transportes Fronterizos (Border Transport) company, contracted by the Mexican government to provide transportation services for deportees. Sal is a deportee himself. In his twenties, he speaks English with a perfect Chicano lilt. That's not surprising: he came to the United States with his parents when he was three and grew up and graduated from high school in Arizona. "How did you get deported?" I asked him, quickly realizing that we should communicate in his preferred English, rather than Spanish. "You don't want to know," he grimaced. "Jaywalking." Was it racial profiling? The police stopped him for crossing a street where there was no crosswalk, asked him for his documents, and arrested him. In Arizona, local police are empowered to enforce immigration laws.

Sal can tell migrants where to find free food and shelter, and how to access the transportation services offered by Grupo Beta, the Mexican government agency charged with removing migrants from the border to prevent them from attempting to recross. He keeps his booth open from 10 a.m. until 6 p.m., when the last bus leaves for the shelter. Migrants who get deported after that have to sleep on the streets.

Most migrants leave their homes in Mexico with identification papers, money, and family members or other traveling companions. Most are deported alone and can spend days or weeks trying to determine the whereabouts of husbands, wives, children, or cousins. Many have also lost their documents and their cash. The buses arrive every few hours, all day and night. The migrants who are dumped and wander the streets of Nogales are the true refugees of the border wars.

At the door of the Proyecto Kino soup kitchen, the long line for breakfast starts forming around 8:30 a.m.

Some migrants arrive by bus from the shelters, others by foot after spending the night on the street or in the cemetery. The hundred or so men line up on the right, and the ten to twenty women and children, who get served first, on the left. To get in when the *comedor* opens at 9 a.m. for the first breakfast shift, all of them have to show their deportation document. The paper that proves that they were hunted, captured, and deported for not having the proper documents to enter the United States now becomes their ticket to a free meal.

The services available to migrants are paltry compared to their needs. “My wife, my grown daughters, and our two adopted grandchildren are in California,” one man in his fifties told me despairingly. He showed me the adoption papers. His daughter’s children, aged two and three and both US citizens, were taken by Child Protective Services when the daughter became a drug user. He and his wife became their foster parents and then adopted them. “I had to promise that I’d support them and care for them. How can I do that if I can’t get back to them?” He asked to use my cell phone to call his wife and then thrust the phone into my hand. “Talk to her,” he urged me. “Tell her I’m here. Tell her I’m trying to get back.”

A young man spent three days waiting outside the exit port. He and his wife were separated during the deportation process. “Her name is Brenda. She was wearing gray sweatpants and a green T-shirt,” he told everyone who would listen. As each bus arrived, he stood waiting with a desperate hopelessness, watching the deportees slowly trickle out, searching for her familiar face.

As part of No More Deaths, I could offer these people only a few tokens of aid: a phone to call their relatives, donated clothes and socks, a granola bar or rehydration drink. I could beg them to share their stories with us, so that we could tell them back in the United States and try to change our immigration policies. At the end of the day, we’d walk back to Nogales, Arizona, stepping lightly across the border that had destroyed and divided their lives.

THE COURTS PLAY THEIR ROLE

In Tucson, Arizona, the Federal Court processes seventy migrants a day through the Operation Streamline program. About 4 percent of migrants who are captured are sent to Streamline, which began functioning in Tucson in 2008 after beginning in Texas as a pilot program in 2005. Between Tucson and Yuma, the other Arizona district using the program, some thirty thousand migrants are “Streamlined” every year.

Unlike most deportees, Streamlined migrants are charged with a criminal offense and imprisoned. The daily hearings fall somewhere between a kangaroo court and a slave auction. The migrants are shackled hand, foot, and waist, and sit in rows taking up about half of the courtroom. The judge calls them up in groups of ten or so, and their harassed lawyers, who represent four or five defendants a day, scramble to accompany them. Almost all of these migrants were captured in the desert, and are blistered, exhausted, disoriented, and dehydrated when they are placed in cells. They describe being stripped of their belongings and their jackets and left to shiver in T-shirts under the air conditioning, being placed seventy or eighty people deep in cells designed for four or five. There is no room even to sit, much less lie down; they receive only a small juice box and a packet of cheese crackers in two days.

Ten migrants stand before the judge in their shackles, while dozens of others look on. The lawyers hover beside their clients. The judge asks: “Mr. ____, do you understand the charge against you and the maximum penalty? Do you understand your right to a trial? Are you willing to give up that right and plead guilty? Of what country are you a citizen? On or about March 18 of this year, did you enter into Southern Arizona from Mexico? Did you come to a port of entry?”

Most answer that they are citizens of Mexico, though on the day I attended the hearing, there were several Hondurans and Ecuadorians. A court interpreter repeats the questions in Spanish simultaneously, and the defendants listen through headphones that they can't touch because their hands are shackled to their waists. Their lawyers prompt them if they falter in their responses. Mostly, they answer *sí* to everything, which the interpreter dutifully translates as yes, except to the port-of-entry question, to which they are supposed to answer no. Some answer dully, staring at the ground; some respond in strong voices, looking up at the judge. A few are dismissed because they don't speak Spanish, and the court has no interpreters for the indigenous languages of Mexico. A few scorn the headphones and answer in English.

Occasionally, a defendant breaks the pattern. One answered yes when asked if he came to a port of entry. The judge was visibly unnerved. "You came to a port of entry?" she asked. "Let me ask the question again. Did you come to a port of entry?" Again, the defendant answered yes. She asked several more times before the lawyer convinced his client to answer no. Another defendant became agitated when the judge began to question him.

"I'm guilty! I'm guilty!" he exclaimed. "I know you're guilty," responded the judge impatiently. "But I still have to ask you these questions, and you have to answer them."

"How do you plead to illegal entry, guilty or not guilty?" was the judge's last question. Every prisoner answered dutifully, *culpable*—guilty. Most were sentenced to time served and prepared to be deported to Nogales, Mexico. They will leave the country that they sacrificed so much to get to with a criminal record and the threat of up to twenty years in jail if they enter again. They will be among those arriving in Nogales, penniless, lost, and bewildered.

What we saw was only part of the picture. The trip to the border can be as dangerous as the crossing and passage through the US side. Every year, many thousands of migrants are kidnapped as they travel through Mexico. Gangs and drug smugglers see migrants as easy targets and count on the fact that the friends or relatives in the United States who raised the thousands of dollars to fund their trip will be able to generate more to pay for their ransom. As violence in the border region increased, migrants made up many of the victims. If a ransom was not paid, or if migrants refused to work for the gang, they might be killed, sometimes in massacres that claimed the lives of dozens.

SOME BACKGROUND

The many competing interests at stake in the development of law, policy, and ideology surrounding undocumentedness have led to a perplexing and constantly shifting landscape. To understand the changes of the late twentieth century, we need to understand how the system worked before that. From the eighteenth and, especially, the nineteenth centuries on, the United States benefited from its place in the global industrial economy, and white people in the United States benefited from their place in the racial order. A *dual labor market* developed in which some workers began to become upwardly mobile and enjoy the benefits of industrial society, while others were legally and structurally stuck at the bottom.

This dual system was reproduced both domestically and internationally, and race played a big role in it. Legal systems were created to justify and sustain it. Globally, the system was expressed through colonialism. Europeans colonized people of color around the world and benefited from their forced labor and their resources. In the United States, slavery played a big role in sustaining a dual labor system, where whites could move up, but blacks could not.

The United States took some colonies, too, at the end of the nineteenth century, like the Philippines, Cuba, and Puerto Rico. But US companies and citizens also benefited from the dual labor system when American

companies like United Fruit established plantations in Central America and produced bananas using cheap labor there. They benefited when Brazilian slaveholders or German coffee planters in Guatemala used forced labor in those countries to supply cheap coffee for US markets.

Mexico played a big role in the dual labor market in the United States, both domestically and internationally. US mining companies operated in both countries from the late 1800s, and in both, they employed an explicit dual wage system. Mexicans received a lower, “Mexican” wage, while white US citizens received a so-called gold or US wage.

Inside the United States, Mexicans were welcomed as migrant workers as American investment in the southwest grew after the territory was taken from Mexico in 1848 and 1853. A reliance on Mexican workers who contribute their labor to US economic enterprises—but are denied access to the benefits that US law affords its citizens—has underpinned the economy for over a century. Over the course of time, different legal and structural mechanisms have been used to maintain this system. Early on, it was done by legally distinguishing immigrants from workers. Immigrants were the Europeans who came to Ellis Island; workers were the Mexicans and Chinese who built the railroads and planted the food that sustained white settlement in the newly conquered west of the country. They were not expected to settle, stay, or become citizens. Citizenship, after all, was reserved for people defined as white until after the Civil War.

US immigration law thus treated Mexicans not as potential immigrants but as sojourners, temporary migrants who entered the country to work, rather than as immigrants who intended to stay. Anti-immigrant sentiment was directed against newly arrived Europeans, not against Mexicans. Anti-Mexican racism was also common, but it was directed against the supposed racial category of Mexicans rather than their status or citizenship.

Until 1924, the new border between the United States and Mexico was virtually unpoliced, and migration flowed openly. Mexicans were exempted from the immigration restrictions passed into law before 1965. Because they were not considered immigrants, Mexicans were also permanently deportable and were, in fact, singled out for mass deportations in the 1930s and 1950s. The nonimmigrant status of Mexican workers over time underlies the apparent paradox between the United States as a so-called country of immigrants and its xenophobia and restrictive immigration policies.

The creation of citizenship by birth through the Fourteenth Amendment was aimed at remedying the historic exclusion of African Americans. But it also created the apparent paradox that other nonwhites—like the Chinese—could become citizens through birth. Congress quickly moved to remedy this by restricting the entry of Chinese women in 1873 and all Chinese with the Chinese Exclusion Act in 1882. California’s farms then became even more dependent on Mexicans who, unlike the Chinese, could still be counted on to leave after the harvest rather than remain in the country and eventually become citizens.

In 1928, the *Saturday Evening Post* reported that there were some 136,000 farmers in California, 100,000 with farms of under 100 acres, and 83,000 farming fewer than 40 acres. These small farmers did not use hired labor during most of the year, but during the harvest, required some 10 to 50 additional workers. “Fluid, casual labor is for them a factor determining profits or ruin,” the *Post* explained.

“Mexican labor fits the requirements of the California farm as no other labor has done in the past. The Mexican can withstand the high temperatures of the Imperial and San Joaquin valleys. He is adapted to field conditions. He moves from one locality to another as the rotation of the seasonal crops progresses. He does heavy field work—particularly in the so-called ‘stoop crops’ and ‘knee crops’ of vegetable and cantaloupe production— which white labor refuses to do and is constitutionally unsuited to perform.” Mexican labor,

the author estimated, comprised from 70 to 80 percent of “casual” or seasonal farm labor.

This informal system of rotating labor prevailed until the 1940s, when it was supplemented by a government-run system that continued until the mid-1960s, the Bracero Program. The Bracero Program, which brought in over 4 million workers between 1942 and 1964, was terminated in the context of civil rights organizing that highlighted the discriminatory treatment of these guest workers. But the economic structures that relied on these workers didn’t disappear, and neither did the workers; they just returned to the old, informal system.

But, suddenly, the old system became illegal. The 1965 immigration law, which coincided with the termination of the Bracero Program, responded to the domestic and international movements for racial equality by getting rid of the racial and national quota system that had prevailed until then. It gave every country an equal quota. And it included the countries of the Western Hemisphere for the first time, considering Mexicans as potential immigrants rather than just exploitable workers.

Given the structural realities of Mexican migrant labor, treating Mexicans equally under the new law was actually a way to keep exploiting them, but now, by calling them “illegal.” From 1965 on, new laws made them more and more illegal and took more and more rights away from them.

Although it may seem contradictory, restrictive immigration laws actually contributed to a rise in both legal and “illegal” immigration. Two immigration scholars point to a synergy between the way the 1965 law privileged family members of US citizens and legal residents—in many cases, exempting them from the new quotas—and the barrage of laws after 1965 that progressively restricted the rights of noncitizens. It wasn’t the new quota that led to increased Mexican legal immigration after 1965, since the quota drastically reduced the number of Mexicans allowed to immigrate. Instead, it was the punitive aspects of that and subsequent laws that increased the numbers of those who decided to become immigrants, rather than sojourners. In other words, workers decided to stay, bring their families, and become immigrants because the earlier, seasonal pattern was becoming increasingly criminalized.

Some of the very organizations that were pushing to expand legal and social rights in the United States in the 1960s continued to draw a line at the border. The United Farm Workers union campaigned against “illegal” workers in the 1970s. California Rural Legal Assistance and the UFW supported the nation’s first employer sanctions law—making it illegal for employers to hire undocumented workers—in 1971. The first attempt to implement such sanctions at the national level was in 1973, at the initiative of the AFL-CIO and the NAACP. (By the 1990s, all of these organizations had changed their positions and opposed the employer sanctions that were created by the 1986 Immigration Reform and Control Act.) But employer sanctions turned out to be just one more way to maintain a large, exploitable pool of workers to fill agriculture’s most backbreaking jobs. The sanctions could be suspended, as they were after Hurricane Katrina, when federal contractors desperately needed migrant laborers to clean up and rebuild the city of New Orleans.

Agriculture continues to employ large numbers of undocumented workers in the twenty-first century, as farmers and their organizations throughout the United States have publicly acknowledged. Larry Wooten, the president of the North Carolina Farm Bureau, explained at an agricultural summit in Atlanta in 2012 that “agricultural employers who advertise jobs—as is required for those who are part of the federal guest worker program—for nearly two months get little to no response. ‘We have no choice,’ Wooten said. ‘We must use immigrants.’”

Since the 1980s, economic restructuring in the United States has created some huge new demands for extra-legal workers who will contribute to the economy for low wages and few benefits. Many undocumented

people today work at jobs that have been in-sourced. While most of us are familiar with outsourcing—when jobs, from manufacturing to call centers, are shifted overseas—in-sourcing is less well known. The phrase can refer to a company’s decision to carry out internally those tasks that were previously contracted out, or it can mean that a company brings back a job that had been outsourced abroad. Here, though, I’m referring to a particular kind of in-sourcing: when a company closes down an operation in order to move it somewhere else inside the United States where it will have access to cheaper (often immigrant) workers, lower taxes, fewer environmental or health and safety regulations, or other financial incentives.

Almost everybody in the United States benefits from that labor in one way or another, because it underlies almost all of the goods and services we use. Whether they work in agriculture or in-sourced industries like meatpacking, or whether they work in landscaping, newspaper delivery, or cleanup after environmental disasters, the invisible labor of undocumented workers sustains the economy. Moreover, the presence of these migrants also serves to create more jobs. By living in the United States, by spending money and consuming goods and services themselves, they sustain the jobs of other workers.

The work that undocumented migrants do is essential to the functioning of the economy and to the comfort of citizens. The system is also, however, fundamentally unjust. By creating a necessarily subordinate workforce without legal status, we maintain a system of legalized inequality. It’s a domestic reproduction of a global system. The border is used to rationalize the system globally; it makes it seem right and natural that exploited workers in one place should produce cheap goods and services for consumers in another place. Illegality replicates the rationale domestically: it makes it seem right and natural that a legally marginalized group of workers should produce cheap goods and services for another group defined as legally superior.

STATUS, RACE, AND THE NEW JIM CROWS

At the same time that these big economic shifts were occurring, other political, social, and cultural changes were happening globally. After World War II, overt racism and white supremacy began to lose ground. Europe slowly and painfully let go of most of its colonies, and the number of independent countries proliferated. Almost all of the new independent countries were run by people of color. In the United States, civil rights movements fought to dismantle legalized discrimination. South Africa became an international pariah and finally ended apartheid.

In an important book published in 2010, though, Michelle Alexander argues that the racial caste system that United States has maintained since the days of slavery did not end with the passage of civil rights legislation in the 1950s and ’60s. Rather, a new system of legalized discrimination developed to replace the old Jim Crow system. The new system, she writes, is mass incarceration. Black people—and, as I argue here, Mexicans and other Latin Americans as well—were systematically criminalized. Although, on the surface, the system is color-blind, in fact, it targets people of color. But it works better in this supposedly postracial age, because it never uses race directly to discriminate. Instead, it criminalizes people of color and then discriminates on the basis of their criminal status.

Most citizens who rail against the undocumented insist that their opposition is based solely on technical, legal grounds: they oppose people who broke the law. But becoming undocumented is a highly racialized crime. Nationality itself has its origins in racial thinking and still bases itself on birth and origin in ways that echo racialism. The categories “Mexican” and “Latino” have been racialized in the United States, and the category of illegality is heavily associated with the category “Mexican,” whether this is understood as a nationality, an ethnicity, or a race. In 2011, 93 percent of federal immigration crimes were committed by noncitizens, and 89.3 percent of them were committed by Hispanics.

Another way to look at the racialized nature of undocumentedness is to compare the criminalization of immigrants (especially Latino immigrants) in the post–civil rights era with the criminalization of blacks. Alexander argues that laws passed and implemented in the aftermath of the civil rights movement and legislation that accompanied it effectively countered the gains made in the 1950s and '60s. “We have not ended racial caste in America,” she writes, “we have merely redesigned it.” The new system, mass incarceration, consists of “not only . . . the criminal justice system but also . . . the larger web of laws, rules, policies, and customs that control those labeled criminals both in and out of prison.” Once caught in the web, former prisoners are in it forever. They “enter a hidden underworld of legalized discrimination and permanent social exclusion. . . . The current system of control permanently locks a huge percentage of the African American community out of the mainstream society and economy.”

Alexander focuses not only on incarceration itself, but on what happens after release. “Once [prisoners] are released, they are often denied the right to vote, excluded from juries, and relegated to a racially segregated and subordinated existence. . . . They are legally denied the ability to obtain employment, housing, and public benefits.” Possession of a felony conviction, then, replicates the very legal restrictions that used to be enforced by Jim Crow.

In the ideology and culture of exclusion, as well as in the laws and mechanics of its implementation, the arguments Alexander makes about African Americans have a parallel in the situation of immigrants. Like the African Americans that Alexander studies, large portions of the Latin American immigrant population have also been permanently criminalized and legally excluded. As with African Americans, undocumented immigrants are criminalized by a system that is superficially raceblind and defended on that basis.

Just as African Americans have become stigmatized in the post–civil rights era through criminalization, so have immigrants. Before, legal discrimination could be based explicitly on race. When race-based discrimination was outlawed, a new system emerged: turn people of color into criminals. Then you can discriminate against them because of their criminality, rather than because of their race. A new legitimacy for discrimination was thus born.

Alexander meticulously details the ways in which criminal status follows black people into every area of life. With minor drug charges turned into felonies and defendants urged to plea bargain, huge numbers of black men become permanent “felons”:

When a defendant pleads guilty to a minor drug offense, nobody will likely tell him that he may be permanently forfeiting his right to vote as well as his right to serve on a jury. . . . He will also be told little or nothing about the parallel universe he is about to enter, one that promises a form of punishment that is often more difficult to bear than prison time: a lifetime of shame, contempt, scorn, and exclusion. In this hidden world, discrimination is perfectly legal. . . . Commentators liken the prison label to “the mark of Cain” and characterize the perpetual nature of the sanction as “internal exile.” Myriad laws, rules, and regulations operate to discriminate against ex-offenders and effectively prevent their reintegration into the mainstream society and economy. These restrictions amount to a form of “civic death” and send the unequivocal message that “they” are no longer part of “us.”

Like convicted felons—mostly African Americans—the undocumented live in a strange world of internal exile or civic death. While physically present, they are legally excluded by an official status that has been ascribed to them. They can’t vote, serve on a jury, work, live in public housing, or receive public benefits. These exclusions apply equally to those, mostly blacks, with a criminal record and those, mostly Mexican, who are undocumented. Stigmatization and exclusion create a vicious circle of further stigmatization and exclusion.

“In the era of colorblindness,” Alexander writes, “it is no longer permissible to hate blacks, but we can hate criminals.” The same argument could be made for Mexicans and criminalized immigrants. Anti-immigrant blogs, commentaries, and general opinion frequently emphasize the legalistic nature of their anti-immigrant sentiment: “They broke the law!” But it’s a law that, in design and in fact, is aimed at one, racially defined, sector of society.

Another aspect that links the criminalization of blacks and of Hispanics is the enormous rise in detention and what some have termed the “prison-industrial complex.” The Supreme Court commented in 2010 on the dramatic changes in federal immigration law over the previous ninety years. “While once there was only a narrow class of deportable offenses and judges wielded broad discretionary authority to prevent deportation, immigration reforms over time have expanded the class of deportable offenses and limited the authority of judges to alleviate the harsh consequences of deportation.” As criminal convictions of people of color for minor offenses have risen, so have the consequences of these convictions. Now, even legal permanent residents can be deported for minor convictions, well after the fact.

PUTTING IT ALL TOGETHER

This new criminalization of African Americans and Latinos relates to their different places in a changing labor market. Alexander points out that earlier racial caste systems (slavery and Jim Crow) served to keep African Americans as an exploitable labor force. Now, the criminalization of African Americans has coincided with their removal from the labor force. With the collapse of the urban manufacturing sector, their labor was no longer necessary. They have become a surplus population, to be warehoused in the prison system.

The criminalization of Mexican immigrants, however, underlies their increasingly important role in the economy. The language and ideology are similar: fear, marginalization, and exclusion are based upon the supposed criminality of the objects of hatred and justified with repeated invocations of the colorblind nature of modern US society. But in the case of immigrants, the criminalization *justifies* their location in the lowest ranks of the labor force.

Like Alexander, Nicholas De Genova argues that changes in the law deliberately criminalized a group that could no longer be legally defined by race. Illegality, he writes, is not “a mere fact of life, the presumably transparent consequence of unauthorized border crossing or some other violation of immigration law.” Instead, he argues, laws themselves were written with the express purpose of creating this new status of illegality, because it served the purpose of keeping workers exploitable.

At an even deeper level, anti-undocumented sentiment plays into deeply held beliefs and fears about the state, the nation, and sovereignty. The world’s wealthy nations have created islands of prosperity and privilege, and those who live in these islands have an interest in preserving them—and in justifying their own access to them. Illegality is the flip side of inequality. It serves to preserve the privileged spaces for those deemed citizens and justify their privilege by creating a legal apparatus to sustain it. Heightened panic about “illegality” coincides with growing global inequality and the dependence of the privileged on the labor of the excluded.

The idea that countries are such discrete entities is inherently flawed. As every Mexican is aware, the contemporary US-Mexico border is an arbitrary product of the US invasion of Mexico from 1846 to 1848, and the subsequent demand that a huge segment of Mexico’s territory be ceded to the United States. As the descendants of the Mexican population living in what is now the southwestern United States like to remind

us, “We didn’t cross the border; the border crossed us.”

Even since the creation of this new border, in the case of the United States, Mexico, and Central America, the histories, economies, politics, and militaries of these countries are so deeply intermeshed that each would be totally different without its relationship with the others. Without Mexican and Central American labor, and the consumer goods and profits that come from that labor, US prosperity would look entirely different. And without US military, political, and economic intervention, Mexico and Central America would be quite different as well. A person might be a citizen of, and live inside the borders of, a single country. But the social and economic systems that structure our lives go well beyond the borders of any country.

Also worth considering, for a moment, is what it means to criminalize movement or presence. While we are accustomed to a global order in which nation-states define their sovereignty in part by their ability to control movement in and out of their territories, we should also be capable of critiquing this equation and imagining different definitions of sovereignty. Is it necessary to rely on a legal order that forces people to remain inside the political unit into which they were born and makes unlawful their presence outside of that political unit? With a bit of critical distance, the notion appears more and more absurd.

OUTLINE OF THE BOOK

The first chapter of this book, “Where Did Illegality Come From?” seeks to unveil the beliefs and assumptions that have led us to accept discrimination on the basis of a human invention that we call “citizenship.” It places illegality in a long historical trajectory of different ways that people—and, since 1492, especially Europeans—have created an unequal world of privilege and marginalization.

The second chapter, “Choosing to Be Undocumented,” looks at the origins of undocumented people and the different paths to undocumented status. It looks on the ground at sending communities in Mexico and Guatemala, and the historical and social forces that lead people to migrate and lead them into undocumentedness.

Chapter 3, “Becoming Illegal,” looks at the different ways that people enter the United States without authorization or lose authorization after entering legally. Some enter the country with legal permission but fall out of that status, while others pay thousands of dollars to coyotes (smugglers) to make a dangerous and sometimes fatal trip across the desert. This chapter also discusses how Operation Gatekeeper and other US border policy choices have affected people’s lives and choices.

Chapter 4, “What Part of ‘Illegal’ Do You Understand?” explores what exactly is considered illegal about people without documents. It looks at what is actually prosecuted and how this has changed over time, and at who is deported and why. It also examines the contradictory and shifting legal landscape that structures migrants’ lives.

Chapters 5 and 6 look at the world of work. What kinds of work are undocumented people doing in the United States? How does their work support the United States and the global economy? Who benefits, and who is harmed, by the existence of undocumented status? These chapters look into the jobs and the working conditions of the undocumented, and how their status affects their rights in the workplace and the functioning of the US economy as a whole.

Chapter 7 focuses on children and families. As the undocumented population grew, its profile also changed. In earlier years, the undocumented were primarily single, working-age men. By the late twentieth century, large numbers of children were undocumented or had undocumented parents. How does status affect the

lives of children and families? What kinds of organizations have these youth formed, and what are the prospects for their future?

The last chapter looks at solutions. If we do not want to live in a society divided by status, with large numbers of “illegal” people, what can we do to change the situation? I outline some of the so-called solutions that have been attempted, ranging from deportation to border patrols to legalizations. I argue that current immigration reform proposals do not address the problem of being undocumented in a realistic way, and that only by challenging the contradictions inherent in the category itself—that is, by declaring that no human being is illegal—can the law adequately address human rights and human needs.

When people ask me what I think we should do about immigration reform, I tell them that I think the immigrant rights movement had it right back in the 1980s when we insisted that “no human being is illegal.” If discrimination on the basis of national origin is illegal, then we need to acknowledge that our immigration laws are illegal. Human rights—including the right to be recognized as a person equal to other people—apply to everyone: no exceptions. Let’s admit that our discriminatory laws are unjustifiable. Let’s abolish the category “illegal” and give everyone the right to exist. We would solve the problem of illegal immigration with the stroke of a pen.

But I also understand that a lot of political and cultural change is going to have to occur before such a policy change could enter the realm of possibility. Thus, while we insist on unveiling and challenging the roots of injustice and inequality, we need to also, pragmatically and simultaneously, work to relieve its excesses where we can, even if our larger goals seem distant. It’s important, though, to keep sight of the larger goals as well and not adopt short-term campaigns that work at cross-purposes to what we really believe and seek to change.

If we accept the argument that changes in the law deliberately created illegality, and did so for the purpose of keeping Mexican workers available, cheap, and deportable, then it should not be unimaginable to propose drastically changing the law. Likewise, if we understand that, with respect to Mexico, restrictive immigration legislation has had virtually no effect on migration patterns, we must be able to question the value of such legislation even in achieving its avowed purpose. I hope that this book will contribute to opening a new debate that goes well beyond so-called comprehensive immigration reform to challenge the very concept of undocumentedness or illegality in our society.

Users Review

From reader reviews:

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