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Questionable transactions as grounds for legalization: Immigration, illegality, and law

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Abstract. By differentiating between legal and illegal movements, transactions, and persons, legal prohibitions and law enforcement practices create boundaries between legitimate and illegitimate social spheres. Individuals who are located in an illegitimate domain survive at least in part through unauthorized and quasi-illegal practices. The boundaries between legitimate and illegitimate social domains are, however, permeable, making it possible for individuals who have at one time been deemed illegal to at another time claim legitimacy. This paper examines one context in which such claims are made: deportation hearings in a U.S. immigration court. During deportation hearings, undocumented immigrants' prior involvement in questionable transactions can be deemed an indication of poor moral character or of non-credibility. At the same time, such involvement can be overlooked or reinterpreted in ways that permit an undocumented immigrant to pass from illegality to legality. Close attention to such "readings" or interpretations reveals that there is a sense in which the proceedings that award and deny legal status are as questionable as other immigration-related transactions.

Introduction

Immigrating to the United States from Central America without legal status requires a number of questionable transactions. To enter the country, one has to hire an alien-smuggler, or *coyote*. While en route to the United States, one often has to pay extra "fees" or bribes to Mexican officials encountered along the way. After arriving in the United States, one has to work without authorization, often getting paid "under the table." In order to work without authorization, one may have to buy false papers. To obtain work authorization, one must apply for legal status, sometimes with the assistance of an unlicensed "immigration consultant" who submits shoddy or inaccurate paperwork. Hiring an immigration consultant can be construed as authorizing the preparation of fraudulent documents. A goal of working without authorization and of applying for legal status is to send remittances to family members in one's country of origin. Such remittances are sometimes sent through pseudobanks that are named after Central American financial institu-

tions but that are not licensed to operate as banks in the United States. In short, many aspects of undocumented immigrants' daily lives involve practices that are legally questionable.

Immigration transactions are rendered questionable by complex ideas about sovereignty, law, and agency. Immigration is supposed to be a matter of national sovereignty; therefore, migrants who cross borders without authorization become aliens, quasi-enemies who infringe on the sovereignty of the nation. As illegal beings, undocumented immigrants are considered to possess an illegitimate form of agency*, something that violates rather than contributes to the nation. Illegal aliens' enterprise in seeking homes, jobs, legal status, effective assistance of counsel, and a means of supporting family members is therefore defined as unlawful presence, working without authorization, and even fraud. Similarly, the practices that facilitate unauthorized immigrants' presence and progress – alien-smuggling, document forgery, unauthorized hiring, tax evasion, the unlicensed practice of law – are deemed illegalities. As Ian Taylor notes, immigration is one of the contexts in which criminalization and social exclusion are coalescing.¹

Despite their questionable nature, such transactions can become bases for legalizing not only individuals but also entire cohorts of migrants. Immigration transactions have powerful effects, such as generating income, launching businesses, and contributing to economies.² Claiming or legitimizing these effects requires divorcing transactors from illegitimate spaces and ties to other nations. At moments of legitimation, therefore, undocumented immigrants are retroactively hailed as sovereign, quasi-national subjects who can legitimately claim authority to work, establish residence, and propagate, and whose incorporation invigorates nations. Legalizing the undocumented can thus reinforce national sovereignty by allowing nations to take credit for immigrants' (previously unlawful but after-the-fact legitimate) enterprise. Such legitimation, however, is made possible through a fraud: the denial of both nations' and immigrants' locations in non-sovereign spaces. If nations are in some ways dependent on an alien presence (or on absent citizens) and if national "development" requires incorporating and transforming illegalities, then legalization derives from the illegitimate enterprises that it critiques. Reconnecting legalization to the transactions that precede it suggests that distinctions between legal and illegal transactions and even between what is and is not a transaction, are difficult to maintain.³

My analysis focuses on three transactions that can be part of the legalization process: (1) working without authorization; (2) hiring an attorney and/or paying for legal services; and (3) sending remittances to family members.

*My analysis here benefited from my conversations with Barbara Yngvesson and Bill Maurer.

I am particularly interested in how these exchanges are “read” during potentially legitimating events, such as deportation hearings. These “readings” identify the understandings of sovereignty (both of the subject and of the nation) that validate or delegitimize legalization claims. My analysis draws on observations of immigration hearings in Los Angeles in 1995–1997, interviews with Central American immigrants who were seeking permanent legal status in the United States, participation in meetings of *Comunidades* (“Communities”) a community organization made up of Salvadoran hometown associations, and public and scholarly discourse about the significance of immigrant remittances. I argue that reconnecting these disparate transactions exposes the power relations on which depend the ideas that the United States is sovereign and unauthorized migrants are illegitimate.

Transaction 1: Exchanging labor for money

Unauthorized immigrants generally lack valid documents authorizing them to work in the United States. With the passage of the Immigration Reform and Control Act (IRCA) in 1986, employers became subject to sanctions if they failed to verify the work authorization of new hires.⁴ Despite implementation of employer sanctions, undocumented immigrants have been able to obtain jobs. There are three ways that they can do so: (1) by working for an employer who does not request proof of employment authorization and who pays the worker “under the table;” (2) by obtaining fraudulent employment authorization documents sometimes at an employer’s request; or (3) by being “self-employed” contractors, such as gardeners. Each of these methods is legally questionable. Employers who do not verify new hires’ employment eligibility not only violate IRCA but in addition, they sometimes evade minimum wage laws, fail to pay workers for overtime, do not abide by worker safety regulations, evade tax obligations, and make it difficult for their employees to pay income taxes as required by law.⁵ When a worker uses false papers to establish work eligibility, the employer (if not demonstrably complicit in the fraud)⁶ is protected, but the worker is criminally liable for document fraud.⁷ Unauthorized immigrants who are self-employed do not violate employer sanctions provisions but may face other legal problems. Day laborers can be accused of violating city ordinances and independent contractors may be operating a business without a license. For example, I interviewed one Salvadoran asylum applicant who survived by selling clothing and blankets at laundromats. He continually worried that the police would stop him and confiscate his merchandise, but he could not afford a license, which he said cost \$2,000.

Although undocumented immigrants are not authorized to work, certain immigration proceedings nonetheless require them to document their work history as proof that they are not likely to become public charges. For example, prior to 1996, suspension of deportation – which conferred legal permanent residency – was available to immigrants who could prove seven years of continuous presence in the United States, good moral character, and that deportation would be an extreme hardship to the applicant or to a legal-permanent-resident or U.S.-citizen relative of the applicant. One way to establish extreme hardship was to provide evidence of a solid work history, promotions, raises, and business endeavors. At suspension of deportation hearings that I attended in 1996 and 1997, judges treated applicants' employability as an aspect of applicants' character rather than as a function of the economy, shifts in the labor market, gender or racial biases on the parts of employers, or other structural factors. Evidence of industriousness was praised, and apparent sloth was condemned – or at least questioned. For instance, at one hearing a woman testified that she and her husband lived off of her brother-in-law's income. The Immigration and Naturalization Service (INS) attorney complained to the judge that because they were not working, the couple might become a public charge. The judge agreed that this was a potential problem, but commented that it was up to families to decide how to use their money, and that if this man's brother had enough money to support the couple, all the better. The man's petition for adjustment of status due to his marriage to a U.S. citizen was approved by the judge. Individuals who had received any form of public benefits were suspect. In another case, a judge admonished a suspension applicant who admitted that his children had been born at public expense, "I expect anyone who wants to come to the United States to pay for their own expenses instead of depending on the government." Clearly, immigrants are supposed to be self-supporting.

The questionable nature of immigrants' employment-related transactions can make it difficult for them to demonstrate enterprise and industriousness. Samuel Garcia, a Salvadoran immigrant who had started his own interior finishing business, encountered this difficulty. At his suspension hearing, which I attended, Samuel testified that he had never been unemployed, that he in fact had launched his own business, and that his business employed two other people. The judge praised these achievements, commenting, "Your income is impressive if it can be substantiated. If you receive \$400 per week from one contractor, and presumably there are others, then you are doing pretty well." Problems with Samuel's financial transactions soon emerged, however. Samuel had listed two vehicles as assets, but had not provided evidence of car insurance as required by law. Samuel had not submitted evidence that he had obtained a license for his business. Samuel also had not filed income tax

returns in 1996 and 1997. When the judge asked why he had not yet paid his taxes, Samuel's attorney explained that Samuel was still waiting for W-2 forms from the apartment managers who had contracted for his services. The judge rescheduled the hearing, warning Samuel, "This is not an easy case."

The judge's questions depicted Samuel's employment-related transactions as indices of Samuel's character. People who drive without car insurance, operate unlicensed businesses, and evade tax obligations violate the law. Yet, Samuel's actions may have been necessitated by his status as an undocumented and/or economically marginalized individual. As I have noted elsewhere, "work authorization is not necessary for the self-employed (hence the business), people who are paid under the table have a hard time reporting their earnings (hence the failure to file tax returns), and the unauthorized do not always have the documents or income that allow them to insure their vehicles (hence the lack of car insurance)."⁸ The judge's questions ignored the fact that Samuel's ability to meet the suspension criteria depended at least in part on the structures in which he was situated. Suspension applicants who can maintain the "myth"⁹ of autonomy can depict themselves as people whose industriousness feeds into that of the nation. Ironically, suspension cases award permanent residency to individuals who accomplish the forbidden – living and working in the United States as though they were entitled to do so.

An alternative to working without authorization is applying for legal status. Doing so usually requires paying for legal services.

Transaction 2: Exchanging money for legal services

Within immigrant communities in the United States, rumours about possible ways of legalizing abound. Unauthorized immigrants compare experiences, trying to figure out if they can emulate their peers' legal successes. Such rumours and comparisons give rise to misconceptions about immigration law. The fact that friends and relatives who are in similar situations have met with differing degrees of success makes the legal system appear to unauthorized immigrants as both arbitrary and manipulable.¹⁰ One interviewee attributed her decision to apply for legal status to the successful experience of her friends and coworkers, saying, "I thought, 'Why can't I get a work permit, if everyone else has done it? So why not? Especially if I behave better than other people, and do things better than other people.'" During consultations with attorneys, unauthorized immigrants sometimes suggest that it is possible for anyone to obtain legal status, if they devote the necessary time, effort, and money to the task. For example, at a community presentation on immigration law, a man who had been told that there was no way that he

could qualify for legal status asked an attorney disbelievingly, “You mean there really isn’t any way? What if I get the right attorney? Or spend more money?” Similarly, another immigrant attributed his own undocumented state to carelessness, saying, “Yo me descuidé de mis papeles” (“I didn’t take care of my papers”). Migrants sometimes believe that their time in the United States will automatically confer legal status, that it is possible to obtain a work permit simply by filling out a form, and that legalization programs have been extended indefinitely. For example, one woman told me that she planned to legalize “through the seven years. Because, just think of it, in a few months, I’ll complete eleven years here, so I have a lot more than seven years.”

Such misconceptions both fuel and are fueled by a shady legal industry that preys on unauthorized immigrants’ need for legal status. In Los Angeles, immigration law is practiced not only by licensed and knowledgeable attorneys but also by immigration “consultants” who become notary publics¹¹ and then take advantage of the fact that in many Spanish-speaking countries “notarios” (notaries) are authorized to provide legal services. These notaries overcharge immigrants, claim legal expertise that they do not have, give clients bad legal advice, and submit inaccurate or fraudulent paperwork. Some notaries claim to have inside connections to the INS and promise to “expedite” lengthy bureaucratic procedures in exchange for a “fee.” Notaries typically fail to give clients copies of their paperwork, do not use contracts to establish consistent fees for their services, and do not give clients Spanish translations of documents that have been submitted to the INS on their behalf. In addition, some licensed but unscrupulous attorneys work with notaries, providing legal representation to clients whose cases land in court. Attorneys who are in cahoots with notaries represent clients without reviewing their paperwork or testimony, overschedule their court appearances, misadvise clients, abandon clients, and fail to appear in court. Regarding the legal expertise of the attorneys she usually saw in court, one judge commented to a staff attorney at a community organization, “What? You have expertise? Is that a requirement? Can you read? Can you make objections? If so, you’re in the top flight!”

Exchanging money for legal services can therefore be a questionable transaction. For example, Juan and Maria Bonilla, a Salvadoran couple who immigrated to the United States in 1983 and 1984 respectively, consulted an “attorney” who had been recommended by a friend. The attorney told them that they qualified for “late amnesty” – a lawsuit that had been filed on behalf of individuals who were eligible for legalization through IRCA but who had been given misinformation during the application period. In fact, due to their entry dates, Juan and Maria were not eligible for amnesty. After their meeting, the attorney submitted asylum applications¹² for Juan and Maria, but neither

told them what he had submitted nor gave them copies of the paperwork. When Juan and Maria received appointments for asylum interviews, they returned to the attorneys' office, only to discover that he had disappeared. "That's what happens with these attorneys," Maria told me, "They simply disappear. They just want money. They say, 'It'll cost \$600 to get started,' " Juan and Maria eventually learned that this attorney, to whom they had paid over \$1,500, was in prison. They did not recuperate their money.

Although immigrants are not always knowledgeable about U.S. immigration law or how to distinguish licensed from unlicensed attorneys, the fact that they paid for legal services is sometimes treated in court as evidence that they authorized or knowingly participated in a fraudulent legal claim. Roberto Mendez, a Guatemalan asylum applicant whose immigration hearing I attended in 1996, had this experience. Roberto testified that he came to the United States in 1993, after having been detained, tortured, and forced to sign an incriminating document. Nine months after his arrival, Roberto applied for asylum through a notary agency that his sister-in-law had recommended. Roberto's wife Alicia told me about the application process during an interview: "We had just arrived from Guatemala. We didn't speak English . . . They just gave us the form and said, 'Sign here.' We didn't understand exactly what the form said. But we believed in the [agency]." Roberto and Alicia told me that this agency wrote a narrative in English that did not reflect their experiences, gave them no copies of their paperwork, and charged extra for translating their application to them in Spanish. Out of work and with a baby on the way, Roberto and Alicia declined the translation. Roberto and Alicia were interviewed by an asylum official, but their case was referred to court on the grounds that they lacked proof of their claim. At Roberto's court hearing, the INS attorney questioned him about the accuracy of the asylum application that the notary had prepared:

INS Attorney: Were there specific parts in the application that aren't correct?

Roberto: Most aren't. I don't recognize the story in the application because they didn't read it to me in Spanish and I don't understand English.

INS Attorney: So why did you sign it if you didn't understand it?

Roberto: My wife's family said that the [notary office] would help me. I didn't understand the application because it was in English.

INS Attorney: So you signed the application without reading it.

Roberto: Exactly.

INS Attorney: You signed this knowing that you were applying for asylum from the United States government?

Roberto: I thought that I was going to get good help from them and –

INS Attorney: I'm not talking about the [notary office], I'm talking about you. You signed the application not knowing what was in it?

Roberto: Yes.

Roberto's asylum application was denied by the judge, who stated that it was implausible that Roberto had paid hundreds of dollars for paperwork that he had not even understood.

Like officials' readings of employment transactions, the above exchange treats Roberto's agency as illegitimate. Because Roberto's original asylum application contradicted both a subsequently revised version and his courtroom testimony, Roberto could only be deemed a credible witness if he was not the author of the original application. Yet Roberto had hired the notary service, paid them large sums of money, authorized them to prepare an application, and signed the application form. As a judge in another hearing stated regarding an immigrant who had failed to meet a deadline, "The issue is, to what degree should he be held accountable for his attorney's misconduct? He hired the attorney, but –" Although Roberto denied authorship of the original application, the fact that he had hired the notary and signed the form were taken as evidence that he had consented to the appropriation and even invention of his words. The conditions that made it reasonable for Roberto to authorize the transaction – Roberto's limited English skills, his confidence in the notary service's legal expertise, and the fact that trusted family members had recommended this agency – were not deemed relevant to his act of consent. Roberto was thus constituted as an "autonomous, rights-bearing choice-making individual,"¹³ and was held to be the author of an account that he did not actually produce. Roberto's actions were not considered signs of enterprise, but rather – as was implied by the INS attorney's question, "You signed this knowing that you were applying for asylum from the United States government?" – as an attempt to infringe on the sovereignty of the United States. The judge's decision to deny Roberto's claim also denied the context in which Roberto acted, and thus the hearing's own dependence on a legal strategy that the judge considered illegitimate.

One reason that immigrants work in the United States and attempt to legalize their presence is to send remittances to family members and home communities. Such transactions may or may not be exchanges.

Transaction 3: Sending remittances

Coping with poverty and lack of economic opportunity requires some families to develop transnational financial strategies.¹⁴ Regina Salazar, a Salvadoran woman who immigrated to the United States in 1980, explained her family's strategy to me during an interview. Regina first entered the United

States in 1980, after narrowly escaping being assassinated by the Salvadoran National Guard. She soon found work cleaning houses and, using someone else's name, secured employment in the kitchen of a local university. She continually worried about the safety of her siblings and children, who remained in El Salvador. In 1987, afraid to apply for amnesty and worried that employer sanctions would be enforced, Regina rejoined her children in El Salvador. For two years, she lived in fear that the National Guard would return for her. In 1990, she returned to the United States, again without her children. Initially without papers, Regina was limited to working as a live-in domestic, but after garnering Temporary Protected Status in 1990,¹⁵ she obtained a work permit, a valid social security number, a drivers license, and somewhat better paid work cleaning houses. Her earnings as a housecleaner enabled her to pay for her children's schooling, housing, food, and other expenses. Although anguished over her separation from her children, Regina found it financially necessary to work in the United States: "It's due to being here that my children were able to study, they have a roof over their heads. The countries there are so poor, and I could not have achieved this if I'd stayed." Although her children begged to join her in the United States, Regina insisted that they remain in El Salvador. She pointed out to me that if they came to the United States, they would be here illegally and that her son, who had just graduated with a degree in computers, would have to work as a gardener. Regina's strategy for improving her family's life required her to be in the United States and her children to be in El Salvador.

In addition to sending individual remittances, some Salvadoran immigrants have founded hometown associations dedicated to raising funds for social and economic improvements in their communities of origin. *Comunidades* ("Communities") is a Los Angeles based federation that, in 1997, was made up of 37 hometown associations.¹⁶ Through dances, raffles, dinners, luncheons, and ticket sales by candidates for the *reina* (queen) of traditional festivals, hometown associations funded such projects as building a sports complex, buying computers, establishing scholarships, and sending medical supplies to towns in El Salvador. Organizationally, each hometown association was independent, however, by joining *Comunidades*, associations were able to exchange information, coordinate events, publicize activities, and utilize *Comunidades*'s non-profit (and therefore tax exempt) status. Like individual remittances, which aid families, such collective remittances were also intended to aid development and provide services within El Salvador.

Unlike working without authorization and hiring an unlicensed legal practitioner, sending money or goods to family members or home communities does not intrinsically violate the law. In fact, such transactions are praised by government authorities, business leaders, and participants. At *Comunidades*

meetings that I attended, participants stressed that their goals were humanitarian, not “negocio” (business) and that Comunidades did not pursue political or religious ends. One participant told me that to him, what was most important about Comunidades was the fact that participants work out of the good of their hearts, with no desire for personal gain, and at a personal sacrifice. Salvadoran officials and business leaders have also praised immigrants for sending remittances. Consular officials sought to patronize Comunidades events, a Salvadoran free weekly newspaper donated space in the newspaper for announcing Comunidades activities, a Central American travel agency donated plane tickets as prizes for Comunidades raffles, and Central American businesses, such as the Liborio market, sponsored Comunidades fundraisers. Comunidades earned non-profit status on the grounds that it was dedicated to humanitarian goals, including “promoting the economic and social development of Salvadoran culture in Los Angeles” and “supporting the material and cultural reconstruction of El Salvador”¹⁷ Journalists and scholars have also noted the contributions that remittances make to the Salvadoran economy. An editorial that appeared in *La Opinión* in 1998 declared, “About two million Salvadorans live in the United States. They are vital to the economy of their country, as they send approximately 1.5 billion dollars in remittances annually.”¹⁸ Similarly, Menjívar et al. note that “remittances are either the primary or one of the most important sources of foreign exchange in El Salvador, often approaching or surpassing revenues from exports and foreign aid.”¹⁹

Although remittances are often hailed as altruistic acts produced by love of family, home, and country, some allege that remittances enable individuals to benefit personally from what is supposed to be a gift. Despite their avowed apolitical stance, some hometown associations have been accused of being affiliated with the left or the right. Some associations criticized other hometown association leaders who directed assistance to projects that would benefit a particular political party, or that would increase the prestige of the association leader. Members also complained that other groups attempted to take credit for hometown association activities. During one meeting, members noted that organizations that sponsor association events exchange their “donation” for publicity. Similar criticisms have been made of governmental responses to individual remittances. In April 1996, an FMLN working group in Los Angeles distributed a statement accusing the Salvadoran government of trying to benefit from remittances:

The fact that family remittances have become a fundamental pillar of the economy has made the Salvadoran government turn its attention to Salvadorans who live in the United States. This means that through the consulates in Los Angeles and other cities, the ARENA government

is launching a political-organizational offensive to gain political and ideological influence within the community and the organizations that represent it.²⁰

Scholars have also debated whether remittances encourage or discourage “development” in sending countries. Durand, Parrado and Massey conclude that “despite the obvious potential of migradollars to serve as an engine of economic growth, the research literature is remarkably pessimistic about the economic consequences of labor migration. Numerous studies of sending communities have concluded that U.S. migration leads to a cycle of economic dependency that discourages autonomous development.”²¹

In addition to perhaps facilitating personal and institutional aggrandizement at the expense of autonomous growth, remittances sometimes utilize legally questionable means of transmission. During a 1995 interview, one Salvadoran activist observed that immigrants who are sending money back home might be evading taxes and tariffs and thus acting outside of the law. He added that hometown associations might also be evading tax obligations. In the following interview excerpt, another activist depicted remittance-sending immigrants as victims of illicit financial institutions:

Activist: The Banco [name deleted] . . . has not managed to be licensed to function here as a bank, rather it is functioning as an exchange agency. That is, a Salvadoran asks to be able to open an account in the Banco [name deleted]. But it will be opened in *colones*, not in dollars. Because . . . within the mark of the law of the United States, they do not have authorization to function as a bank. They only use the name of the bank in El Salvador to open an office to send money there. . .

Susan: And do people understand this?

Activist: No. They don't understand.

Susan: So they send money thinking that it is really a bank.

Activist: Yes. Right.

Susan: So it's like the notaries who pretend that they are attorneys.

Activist: Excellent. That's it.

Similarly, a financial analyst concluded that “a substantial proportion of the remittance flows [to El Salvador] have used informal or non-banking channels, thus adding more foreign currency to the black market than to the banking system.”²² Comunidades members also sometimes spoke as though their activities were regarded as illicit by Salvadoran authorities. At one meeting, a Comunidades member announced that, with authorization from the Salvadoran consulate, an ambulance full of medical supplies had been driven from the U.S. to El Salvador. “It's circulating,” the speaker commented, “Per-

haps undocumented, but it's circulating." Others present joked that the ambulance was "mojada" (a wetback).

References to the questionable nature of remittances challenge not only transactors but also the state policies that make it necessary for immigrants to leave their country in order to support their families. An FMLN group in Los Angeles blamed the Salvadoran government's neoliberal policies for generating additional migration from El Salvador to the U.S.²³ During an interview, one hometown association member criticized the Salvadoran government for failing to educate its people and for misusing money that had been intended for development. "It is the committees [hometown associations] here who are sending money to El Salvador for books," she commented. Other association members complained that Salvadoran government officials were charging taxes on donations that were being shipped to El Salvador for the good of the community. Another activist characterized remittances as a substitute for foreign aid: "After the peace accords were signed, less money came to the [Salvadoran] government through foreign aid. So now the aid that it receives comes in the form of remittances that private citizens send to their relatives, and that therefore enters the economy. These remittances enable people to buy things, which keeps the economy afloat, plus the [Salvadoran] government gets taxes." Activists also held the U.S. government responsible for providing military aid that forced Salvadorans to flee political violence. In one activist's words, U.S. military aid had created a "moral obligation" on the part of the North American administrations toward Salvadoran migrants who were "products of a mistaken foreign policy." Depicting remittances as a substitute for assistance that the U.S. or Salvadoran governments ought to have been providing gave remittances political implications.

Remittances have also been defined as a product or as a currency. For instance, Díaz-Briquets and Pérez-López note that internationally, the flow of remittances "is second in size only to the financial transactions associated with crude oil world trade and exceeds global development assistance."²⁴ This comparison treats remittances as a resource or product that a country can generate. Other scholars use such terms as "migradolares" or "poor dollars."²⁵ If remittances are a "currency" then immigrants are taking on the quasi-national task of generating money. In addition, defining remittances as a product (like oil) *naturalizes* the transaction, creating the impression that remittances *automatically* accompany migration. Migrants themselves sometimes find such depictions insulting. At a conference at California State University, Northridge, organizers complained of "the image that the government of El Salvador and Salvadoran society have of us whether as 'distant brothers' or as producers of goods instead of seeing us as countrymen and human beings."²⁶ This complaint seems to be borne out by a "popular

pamphlet” that Salvadoran officials produced to inform Salvadoran citizens of possible routes of legalization.²⁷ Drawings in the “popular pamphlet” by and large depict Salvadorans at work. The last item in the pamphlet – which informs Salvadoran immigrants about means of legalizing their presence – is an advertisement for an exchange agency that can transmit remittances to El Salvador. Far from being “natural” however, remittances are, at least in some cases, made possible by the two transactions previously described – working without authorization and hiring an unlicensed legal representative. Such actions can place migrants outside the U.S. polity.

Remittances have now become an argument for legalization.

The fourth transaction: Legalization

Granting legal status to the undocumented is not supposed to be a transaction. Rather, legalization is a “reward” that the United States can, at its discretion,²⁸ give to the “deserving.” For example, at naturalization ceremonies which I have observed, judges praise new citizens for their sacrifices, hard work, and persistence. In fact, the motion that the judges grant at the beginning of these ceremonies emphasizes that the candidates being presented have “met the requirements,”²⁹ thus suggesting that legal status is granted on the basis of merit. Buying citizenship is generally condemned,³⁰ because citizenship is not supposed to be a “commodity” available on the market. By selecting among petitioning immigrants, nations can use legalization to incorporate the “most deserving” into their polities, thus affirming national sovereignty and reinvigorating the nation. As a judge told new citizens during a naturalization ceremony in Los Angeles, “We welcome your fresh appreciation of what citizenship in this country really means. We welcome your zeal, your eagerness and your determination to become good loyal citizens. You are indeed a stimulating force, which cannot help but bring a new luster to the image of America.” This judge went on to equate immigration with a blood transfusion, stating, “new citizens are the new blood of America, and we need it.”

In contrast to this depiction of legal status as a “reward” that nations can, at their discretion, bestow on the deserving, some immigrants see legalization as a transaction in which the United States often fails to fulfill its end of the bargain. As an activist who works with the Salvadoran American National Network wrote in 1997, “Even a conservative estimate indicates that during the last seven years, Salvadorans protected by ABC [a settlement agreement]³¹ have paid the Immigration and Naturalization Service 113 million dollars in administrative fees. That figure does not include tax contributions.”³² Similarly, one Salvadoran asylum applicant attributed INS

policies to the desire for financial gain, pointing out, “If everyone has to apply for work permits, Immigration gets more money [from the application fees].” Immigrant advocates whom I interviewed also referred to the fees that the INS charges for work permits as an unjustifiable “rent” that immigrants are charged for the right to work. The notion that the INS is seeking to profit from illegal immigration suggests that the systems that deny papers to some and award them to others are themselves of questionable legitimacy. Such comments imply that, like notaries who charge for services that they cannot provide or like employers who fail to comply with minimum wage laws, the U.S. government is failing to deliver the product for which it has been paid. Moreover, according to these comments, in demanding payments and application forms but in reserving the right to deny status, the INS defrauds immigrants and uses the sacrifices of others to pursue its own self-interests.

Reconnecting legalization procedures to the transactions that precede them also suggests that, intentionally or not, states participate in some of the illegitimate enterprises that they condemn. During the 1990s, remittances have become an argument for legalizing Salvadorans who emigrated to the U.S. during the 1981–1992 civil war. Immigrants argue that their remittances relieve the U.S. government of financial responsibilities, such as foreign assistance, that it would otherwise incur. Similarly, the Salvadoran government has pressured the U.S. to ease legalization policies, given that remittances are critical to the Salvadoran economy. These arguments contributed to the passage of the 1997 Nicaraguan Adjustment and Central American Relief Act (NACARA) which restores immigration benefits to some 300,000 Salvadorans and Guatemalans. Some percentage of remittances, however, are produced through the unauthorized labor of people whose presence is forbidden. Moreover, there are individuals who may benefit from NACARA and who opened immigration cases through a *notario*. If remittances are made necessary and possible by un- and underemployment in El Salvador and by U.S. employers’ desire for cheap labor,³³ then the Salvadoran government’s advocacy on behalf of immigrants and U.S. officials’ willingness to implement NACARA are linked to others’ efforts to profit from immigrants’ sacrifices. Immigration procedures that allocate legality and illegality are therefore made possible by the practices whose legitimacy they deny. State immigration policies are therefore also, according to their own criteria, legally questionable.

Conclusion

The preceding analysis suggests that the notions of sovereignty and legitimacy that render unauthorized movement illegal may themselves be “fraudu-

lent.” Such notions depend on the ability to clearly demarcate national and legal spaces. If, however, development and economic growth in both receiving and sending nations are dependant on migratory flows, then “sovereignty” does not provide a basis for defending national borders. Perhaps the United States is a non-sovereign space, tied to multiple nations and created (at least in part) through illegitimate activities. I will conclude with the words of Segundo Montes,³⁴ a scholar and Jesuit priest who was assassinated in El Salvador in November of 1989. Days before he was killed, he completed a study of the social and economic significance of remittances sent by Salvadorans in the U.S. to El Salvador. Defining immigration as an exploitative transaction in which rich nations suffer at the expense of the poor, Montes wrote:

One could argue that as much the “human capital” that emigrates without the cost of training as the production of wealth and the increase in consumption on the part of emigres do not directly benefit either the North American bank or the state as such. The matter does not have to be stated in this fashion or in these terms. North American society collectively, and its national and social economy, are the ones that benefit from this phenomenon and in incredible quantities. It is not a question, therefore, of the banks “pardoning” the debt that has been cancelled out through these increases. It is a question of North American society – in this case, or the corresponding ones for other migrations – benefitting from economic and human worth, and it has to pay for it. The North American state, in this case, will be the means of repaying this value to the society from which it comes, collecting from its citizens the taxes that correspond to this “good” and to this “service,” and equitably distributing the wealth that originated through distant resources that did not cost it [any] investment capital and that are generating wealth that would remain exclusively in that country, such as the benefits produced through the consumption and circulation of goods and services of these emigres.

Montes suggests that balancing accounts would require the United States to reimburse El Salvador for the human and economic wealth generated by immigration. He thus depicts immigration as an incomplete transaction, in which receiving nations incur a debt that they have yet to repay. According to this notion, the United States is morally complicit in practices that it criminalizes.

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Notes

1. See Ian Taylor, "Criminology post-Maastricht," *Crime, Law & Social Change* 1999 (30), 333–346.
2. On the ways that criminal activities generate profits within the "legitimate" economy, see William J. Chambliss, "The Political Economy of Opium and Heroin," in W.J. Chambliss and M.S. Zatz (eds.), *Making Law: The State, the Law, and Structural Contradictions* (Bloomington: Indiana University Press, 1993), and Vincenzo Ruggiero, "Criminals and Service Providers: Cross-national Dirty Economies," *Crime, Law & Social Change* 1997 (28), 27–38.
3. See also the discussion of ways that "hot money" is transformed into "cold money" in Petrus C. Van Duyne and Hervy de Miranda, "The Emperor's Clothes of Disclosures; Hot Money and Suspect Disclosures," *Crime, Law & Social Change* 1999 (31), 245–271.
4. Kitty Calavita, "Employer Sanctions Violations: Toward a Dialectical Model of White-Collar Crime," *Law and Society Review* 1990 (24:4), 1041–1069, and Jacqueline Maria Hagan, *Deciding to Be Legal: a Maya Community in Houston* (Philadelphia: Temple University Press, 1994), and Sarah J. Mahler, *American Dreaming: Immigrant Life on the Margins* (Princeton: Princeton University Press, 1995).
5. Edna Bonacich, "Asians in the Los Angeles Garment Industry," in P. Ong, E. Bonacich and L. Cheng (eds.), *The New Asian Immigration in Los Angeles and Global Restructuring* (Philadelphia: Temple University Press, 1994) and Pierrette Hondagneu-Sotelo, *Gendered Transitions: Mexican Experiences of Immigration* (Berkeley: University of California Press, 1994).
6. Beatriz Sandoval, a Salvadoran woman who worked in the garment industry, told me how her employer handled the problem of hiring undocumented workers: "They'll tell you, 'I'm sure you know where to buy papers,' and the person will come back with papers the next day and be hired."
7. Edwin Harwood, "Arrests without Warrant: The Legal and Organizational Environment of Immigration Law Enforcement," *University of California, Davis, Law Review* 1984 (17:2), 505–548.
8. Susan Bibler Coutin, *Legalizing Moves: Salvadoran Immigrants' Struggle for U.S. Residency* (Ann Arbor: University of Michigan Press, 2000), p. 130.
9. Peter Fitzpatrick, *The Mythology of Modern Law* (New York: Routledge, 1992) and Christopher Stanley, "Politics and Ethics in Cultural Criminology: A Reading of Blanchot's *The Most High*," *Crime, Law & Social Change* 1997 (26), 1–25.
10. Immigrants' sense that the system is both arbitrary and manipulable may also be due to their understanding of the legal systems in their countries of origin. For instance, one Salvadoran man told me that when he got his first drivers license in San Salvador, he simply paid a government official a bribe to issue him a drivers license. After describing this incident to me, he and other Salvadorans who were present discussed their belief that

certain DMV clerks in the United States accept bribes in order to issue drivers licenses to the undocumented.

11. In the United States, notary publics are authorized to authenticate or notarize signatures and documents, not to provide legal representation or expertise.
12. Amnesty and asylum are not the same thing. Amnesty refers to temporary legalization program created by the 1986 Immigration Reform and Control Act. Individuals who could prove that they had been continuously and illegally present in the United States since January 1, 1982 or who had worked as seasonal agricultural workers for specified periods of time were eligible for legalization. Asylum is available at the discretion of the U.S. attorney general to individuals who have a well-founded fear of persecution by their government or groups that their government cannot control on account of their race, religion, nationality, political opinion, or social group membership.
13. Sally Engle Merry, "Gender Violence and Legally Engendered Selves," *Identities* 1995 (2:1-2), 20; see also Jane F. Collier, Bill Maurer and Lilian Suárez-Navaz, "Sanctioned Identities: Legal Constructions of Modern Personhood," *Identities* 1995 (2:1-2), 1-27.
14. Jacqueline Maria Hagan, *Deciding to Be Legal*, and Pierrette Hondagneu-Sotelo and Ernestine Avila, "'I'm Here, but I'm There': The Meanings of Latina Transnational Motherhood," *Gender and Society* 1997 (11:5), 548-571, and Michael Kearney, "The Effects of Transnational Culture, Economy, and Migration on Mixtec Identity in Oaxacalifornia," in Smith and Feagin (eds.), *The Bubbling Cauldron* (Minneapolis: University of Minnesota Press, 1995) and Nina Glick Schiller, Linda Basch and Cristina Szanton Blanc, "From Immigrant to Transmigrant: Theorizing Transnational Migration," *Anthropological Quarterly* 1995 (68:1), 48-63.
15. 1990 Immigration Act. P.L. 101-649, 104 Stat. 4978, November 29, 1990.
16. Roger Waldinger and Mehdi Bozorgmehr (eds.), *Ethnic Los Angeles* (New York: Russell Sage Foundation, 1996), and Beth Baker-Cristales, *El Hermano Lejano: The Transnational Space of Salvadoran Migration to the United States* (Ph.D. Dissertation, University of New Mexico, 1999).
17. Quote from draft of Comunidades by-laws distributed at meeting on 4/24/96.
18. "Un país diferente," *La Opinión*, June 27, 1998, p. 7A. See also Waldinger and Bozorgmehr (eds.), *Ethnic Los Angeles* and Baker-Cristales, *El Hermano Lejano*.
19. Cecilia Menjívar, Julie DaVanzo, Lisa Greenwell and R. Burciaga Valdez, "Remittance Behavior Among Salvadoran and Filipino Immigrants in Los Angeles," *International Migration Review* 1998 (32:1), 99. See also Juan José García, "Hacia una interpretación del impacto económico y sociocultural de las migraciones a Estados Unidos y las remesas familiares," *Política Económica* 1994 (26), 1-29, and Segundo Montes Mozo and Juan Jose Garcia Vasquez, *Salvadoran Migration to the United States: An Exploratory Study* (Washington, D.C., Center for Immigration Policy and Refugee Assistance, Georgetown University, 1988), and Segundo Montes, *El Salvador 1989: Law Remesas que Envían los Salvadoreños de los Estados Unidos* (San Salvador, UCA Editores, 1990) and Carlos Orellana Merlos, "Migración y Remesas: Una Evaluación de su Impacto en la Economía Salvadoreña," *Política Económica* 1992 (1:11), 2-23, and Rivera Campos (1996).
20. Public letter issued by FMLN working group in Los Angeles, April 6, 1996, p. 1.
21. Jorge Durand, Emilio A. Parrado and Douglas S. Massey, "Migradollars and Development: a Reconsideration of the Mexican Case," *International Migration Review* 1996 (30:2), 424.
22. Orellana Merlos, "Migración y Remesas," 5.
23. Public letter issued by FMLN working group in Los Angeles, April 6, 1996, p. 1.

24. Sergio Díaz-Briquets and Jorge Pérez-López, "Refugee Remittances: Conceptual Issues and the Cuban and Nicaraguan Experiences," *International Migration Review* 1997 (31:2), 411.
25. See Durand, Parrado and Massey, "Migradollars and Development."
26. ASOSAL, "La Conferencia: El Salvador y Los Salvadoreños en Estados Unidos," California State University, Northridge, September 11, 1999, Conference Program, p. 3.
27. Ministerio de Relaciones Exteriores, Gobierno de la República de El Salvador, *La Ley NACARA: Paso a Paso para los Salvadoreños, Versión Popular* (San Salvador, El Salvador, 1999). Attorneys have commented that this pamphlet is an excellent source of information about the Nicaraguan Adjustment and Central American Relief Act.
28. See Michael J. Churgin, "Mass Exoduses: The Response of the United States," *International Migration Review* 1996 (30:1), 310–25.
29. The entire text of this motion, as recorded at a naturalization ceremony in Los Angeles on June 26, 1996, is: "Your Honor, the Government is presenting to this Honorable Court 4,000 candidates for citizenship. These candidates have met the requirements of good moral character and the attachment to constitutional principles. The government moves at this time that each candidate be admitted to United States citizenship, subject to taking the oath of allegiance, and that their prayers for change of name be granted."
30. Mark Fritz, "Making a Profit from Portable Patriotism," *Los Angeles Times* April 6, 1998, A14, and Mark Fritz, "Pledging Multiple Allegiances," *Los Angeles Times* April 1, 1998, A1, A14–A15, and Bill Maurer, "Cyberspatial Sovereignities: Offshore Finance, Digital Cash, and the Limits of Liberalism," *Indiana Journal of Global Legal Studies* 1998, (5:2), 493–519.
31. The settlement agreement in *American Baptist Churches v. Thornburgh*, 1991, 760 F. Supp. 796 (N.D. Cal) permitted certain Salvadorans and Guatemalans to apply for political asylum under special rules designed to ensure a fair hearing of their asylum claims. While waiting for asylum interviews with INS, class members are entitled to apply for Employment Authorization Documents, or EADs. EADs must be renewed annually. The renewal fee is currently \$100.
32. "Estrategias no gubernamentales para la defensa de los salvadoreños inmigrantes en los Estados Unidos," *El Defensor del Pueblo* September 3, 1997, 7.
33. Calavita, "Employer Sanctions Violations."
34. Segundo Montes, *El Salvador 1989*, p. 139.