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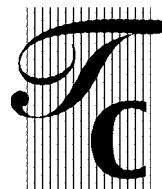
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Contesting criminality

Illegal immigration and the spatialization of legality

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Abstract

As a field, criminology has paid insufficient attention to societal processes that obscure the distinction between legality and illegality, decriminalize formerly objectionable behavior or redefine law-breakers as deserving members of society. An analysis of undocumented immigrants' efforts to redefine themselves as legal residents highlights ways that the category of the criminal is rendered unstable, suggests that logics of social control create opportunities to challenge exclusion and shows how law and illegality are entangled. For instance, individuals who are deemed socially dangerous can argue that they are low risk, or can redefine risk, highlighting the social costs of situating offenders exclusively in a domain of illegitimacy. Through such arguments, the licit can seep into and reconstitute the illegal, and vice versa.

Key Words

contestation • criminality • illegality • immigration • Salvadorans
• space

Distinguishing offenders from non-offenders has been central to the criminological enterprise since the discipline's founding. Whether identifying characteristics that predispose individuals to commit crimes, calculating crime rates or evaluating the accuracy of the criminal justice system's

determinations of illegality, criminologists have had to devise ways of differentiating law-breaking from law-abiding behavior. Less attention has been paid, however, to societal processes through which distinctions between legality and illegality become obscured, to the decriminalizing of formerly objectionable behavior¹ or to the redefining of law-breakers as deserving members of society. Yet such processes occur not only in the case of the so-called 'victimless' crimes like prostitution and drug use but also through ongoing efforts to challenge the current excesses—supermax prisons, three strikes laws, the death penalty—of penal practices.

Spatialization is key to both criminalization and to challenging how criminality is defined. For convicted offenders experience social exclusion not only through the experience of incarceration, but also through policies and practices that deny many convicts employment, the right to vote, welfare benefits, educational and vocational training programs and access to federally funded housing (Petersilia, 2003). In a sense, these offenders are located in a separate social domain, one that can take the form of a prison but that is also produced and reproduced through social interactions that deny convicted offenders particular rights and services.² Challenges to criminalization also follow spatial, among other, logics. Criminality can be challenged by arguing that particular practices are not morally reprehensible, by noting that offenders engage in above-board as well as illegal activities;³ and by pointing out that legal and illegal practices are not always as distinct as they might seem.⁴

My interest in contestations of criminality derives from my research regarding Salvadoran immigrants' efforts, from the 1980s to the present, to challenge the US government's contention that they were illegal aliens, deserving of deportation. During the late 1980s, I did ethnographic research in California and Arizona regarding the sanctuary movement: a network of congregations that declared themselves 'sanctuaries' for Salvadoran and Guatemalan refugees and that assisted these refugees in crossing the US–Mexico border (Coutin, 1993). This research detailed the on-going social practices (such as requests for identity documents) that defined undocumented immigrants as illegal aliens, movement members' efforts to redefine Salvadorans and Guatemalans as refugees, and participants' attempts to challenge the US government's contention that sanctuary activists were alien-smugglers (Coutin, 1995). In the mid-1990s, I conducted a study of the ways that Salvadoran immigrants' legalization strategies, which had focused on gaining political asylum, were affected by the adoption of more restrictive immigration policies in the United States and the end of civil war in El Salvador (Coutin, 2000). Between 1995 and 1997, I spent 18 months observing the legal services programs of three Central American community organizations in Los Angeles, attending deportation and removal hearings in immigration court, following advocates' efforts to shape US immigration laws and interviewing advocates, legal service providers and immigrants themselves. Most recently, I have been investigating the ways that US and Salvadoran policies have incorporated Salvadorans into or

excluded these migrants from US and Salvadoran society. This project, which has entailed interviews with activists, migrants and policy makers in San Salvador, Los Angeles and Washington, DC, attends to the ways that migrants are made present in and absent from their countries of origin and residence.

Although illegal immigration is perhaps at the margin of the activities that are construed as crimes, undocumented immigrants' efforts to secure legal status nonetheless shed light on how criminality can be challenged. First, criminality and unauthorized migration have increasingly been conflated. Penalties for illegal entry and related offenses grew during the past two decades (Freeman, 1992; Cornelius et al., 1994), culminating in the increased presence and technological sophistication of law enforcement personnel along the US–Mexico border (Andreas, 2000; Nevins, 2002) and growing numbers of detainees in INS detention centers (Simon, 1998; Welch, 2002). Salvadoran migrants, who began entering the United States in large numbers during the 1980–92 Salvadoran civil war, have had to negotiate their immigration status in this context of increasing restriction and criminalization.

Second, in certain senses, the legal treatment of unauthorized immigrations is an extreme case of current penal logics. Recently, corrections have moved from a rehabilitation model to one of 'risk management' (Feeley and Simon, 1992; Petersilia, 2003). Instead of attempting to reform socially deviant individuals, penal practices now attempt to 'manage' dangerous persons, who are then 'warehoused' as part of ever-growing prison populations. Criminality is treated more as a condition of a person than of a particular act (though an act can be used to 'diagnose' this underlying condition). Similarly, in the case of illegal immigration, illegality is less an action than 'a facet of "illegal aliens" very being'. The so-called problem presented by illegal immigration is migrants' mere presence; therefore the alleged solution is to exclude unauthorized migrants, whether through deportation, detention or denying such migrants access to employment, higher education, drivers licenses, public benefits, medical care, social services and other basic necessities. Current penal logics may therefore be particularly apparent in the practices that constitute unauthorized immigrants as illegal persons.

Analyzing contestations of criminality makes at least three contributions to criminological theory. First, examining the instability of 'the criminal' suggests that, when mapped onto individuals, demarcations between 'offenders' and 'non-offenders' are too sharply rendered. In reality, because law-breakers do not spend all of their time committing crimes, individuals move between these categories. Attending to movements and interconnections between the licit and the illicit highlights the social costs and theoretical inadequacy of policies and accounts that locate 'the criminal' and 'the law-abiding' in separate social and physical spaces. As Schinkel notes, 'Much modern(ist) criminology pretends that there exists a coherent unity called "society", apart from something outside called "crime", which

is thus assumed to be equally coherent. But the criminal and the conventional are intertwined' (2002: 137).

Second, examining how individuals contest their criminality makes it possible to delineate social processes that make the distinctions between law and illegality unclear. For instance, the logic of 'risk management' (Feeley and Simon, 1992) creates opportunities to challenge these distinctions. Individuals who are deemed high-risk can accept the terms of this discourse and attempt to define themselves as 'low-risk', or can redefine 'risk' altogether, highlighting the dangers that are associated with policies of social exclusion. Such efforts highlight fissures within current penal strategies, fissures that (to be optimistic) might gesture toward the creation of an alternative penal order.⁵ Third, contestations of criminality suggest that, rather than being an objective phenomenon or a clear-cut category of persons, 'the criminal' is defined and redefined through societal processes (see also Ferrell and Sanders, 1995; McRobbie and Thornton, 1995; Ferrell and Websdale, 1999). Attending to such contestations therefore counters tendencies to remove the categories of 'crime' and 'criminals' from the practices that name them.

I begin with a theoretical discussion of the category of the criminal. I then describe connections between criminality and illegal immigration. I next examine how Salvadoran immigrants contested claims that they were illegal aliens, and conclude by discussing the broader relevance of this case for theorizing criminality.

On the category of the criminal

In order to understand how and why criminality is contested, it is important to describe both why this category appears definitive and the shortcomings of accepting its stability at face value. The notion that criminals are a distinct group is linked to practices that locate offenders outside of society. Prisons are conceptualized as a space *outside* of society (Schinkel, 2002), as evidenced by the increasing use of the term 'reentry' to refer to being released from prison (Petersilia, 2003).⁶ Despite the fact that crimes are committed within prisons and against other prisoners, 'incapacitation' is thought to prevent crime by removing criminals from society, the presumed target of their criminality. Terms such as 'half-way house' similarly spatialize punishment regimes, suggesting that individuals are partially within and partially outside of society. Alternative penal technologies, such as electronic monitoring devices, go further, making the prison materialize around the individual as he or she moves within social settings. These devices combine the mechanism and agent of both punishment and surveillance, and, as they are fitted to the body of the convict, create a mobile 'prison-person'. Furthermore, even after being released from prison, convicts are set apart, as labeling theorists and others have noted (Patnoster and Iovanni, 1989). Such categorization takes spatial form, as

those who are labeled as deviant are excluded from conventional activities. Even offenders who have never been arrested or convicted are conceptualized as living somehow ‘outside’ of the social order in a criminal underground. Referring to criminal cases as a contest between ‘the people’ and the accused (but not yet convicted) criminal further suggests that criminal defendants are deemed to be outside of the social (and legally constituted) community.

Although offenders are situated outside of the social order, the domains of the licit and the illicit are, in certain respects, both indistinguishable and interdependent. As Schinkel queries, ‘Where exactly are those that are not a part of society? Does there exist some mythical, and naturally closed off world outside of society where the criminals reside?’ (2002: 139). Obviously, this world is *not* closed off, despite efforts to isolate certain convicts in high security prisons. Individuals who commit crimes but are not incarcerated also do many other things, such as shop, socialize, engage in leisure activities and participate in family life.⁷ Some portion—perhaps the majority—of such individuals’ behavior is lawful. Even prisoners maintain some degree of contact with family members and others, through visiting hours and other forms of communication. There are also senses in which the conventional and the illicit are interdependent. The prison industry is profitable, some industries depend on prison labor, and building prisons has become a strategy for economic recovery in certain towns. Illicit drug sales contribute to national economies, illegal drug economies provide ‘part-time jobs’ in neighborhoods where ‘good jobs’ are lacking (Hagedorn, 1991: 531), illegal labor produces earnings that have been incorporated into countries’ balance of payment calculations (Hernandez and Coutin, n.d.) and conventional activities create opportunities for criminal acts (Schinkel, 2002). Distinctions between law and illegality are further complicated by the fact that the state reserves the authority to perform actions, such as imprisoning or executing people, that, if committed by anyone else, would be considered illegal. Through efforts to counter the unlawful, law takes on (but must continually deny) a taint of illegality (see also Coutin et al., 2002).

The practice of situating criminals outside of society, despite connections between licit and illicit activities, suggests that there are instances in where law, rather than criminality, is ‘outside’ or out of step with the social order. If illegal activities in some ways contribute to practices that are not taken to be illegal, and if such illegal actions are, at least in certain circles, part of the ‘normal’ way of operating, then the laws that criminalize such actions appear to be illegitimate. For example, certain industries in the United States depend on the labor of undocumented immigrants. Immigrating to the United States with or without authorization is a relatively normal strategy for Salvadoran families that face restricted income opportunities, and the Salvadoran economy depends on funds that are sent home by migrants, whether or not these migrants have legal status. The laws that

deny work authorization to the undocumented, or that prohibit unauthorized entry, can appear to violate what some would deem to be legitimate social practices. Moreover, prohibiting unauthorized migration can make undocumented immigrants' labor more valuable, as workers who lack legal status may be subject to greater exploitation by their employers (Jenkins, 1978; but see Delgado, 1993). Certain legally acceptable practices (such as selling fruit at a grocery store) may therefore depend on and be produced through the criminalization of other activities (such as crossing the US–Mexico border in order to work harvesting fruit).

Given that criminality and legitimate social practices can be integrally related, it is important not to treat the category of the criminal as transparent or easily applied. Labeling theorists, of course, have long contended that categorization is power-laden and somewhat arbitrary (Paternoster and Iovanni, 1989).⁸ By noting that those who are labeled 'deviant' are then excluded from conventional activities, labeling theory draws attention to structural processes that situate particular categories of individuals outside of society. Despite labeling theory's contributions, criminological research has sometimes evinced a slippage between the theorization of crime, and the operationalization of the category of the offender.⁹ Individuals are generally deemed to be offenders on the basis of conviction records or on their own admission (e.g. in a self-report) of having committed an offense, which is usually defined as a violation of the law. Yet, crime is often theorized as anti-social or deviant behavior, the result of a lack of commitment to conventional behavior, an indication of alienation, a product of social disorganization and the like. Actions that, legally, are offenses (and that therefore produce conviction records) may actually follow, rather than violate, societal norms. For example, certain common practices within youth culture may be deemed criminal acts by state authorities (Ferrell, 1995).¹⁰ Avoiding such slippages is important because, as Lee (2001) has noted, academic fields such as criminology can play a role in producing their objects of study.¹¹ Treating 'the criminal' 'unproblematically, as if it were a pre-discursive object of inquiry' (Lee, 2001: 468) or 'an ontological or absolute category for analysis' (Walters, 2001: 206; see also Katz, 1988) naturalizes this category, sets 'criminals' apart and thus helps to produce the domain of illegality that is the very object of criminological inquiry.

One way to counter these tendencies is to direct criminological attention to ways that individuals and groups contest allegations of criminality (see also Sibley, 1995; Cresswell, 1996). There are at least three ways that such contestations can occur. First, if there is societal ambiguity about the criminality of an act in question, then those who are deemed to be criminals can argue that their actions were not morally reprehensible (and therefore not crimes to begin with). This strategy uses societal ambiguity to question the criminality of acts, and to suggest that those who commit these acts do not, in fact, present a risk to society.

Second, as social exclusion is usually incomplete, individuals who are

considered to be criminals can highlight their legitimate social activities. Here, individuals who face lengthy prison sentences can argue that, although they violated the law, they are integral members of communities. Moreover, they can contend that their absences will harm loved ones and that potentially productive people are being rendered inactive through imprisonment. Indeed, a significant body of literature examines the effects of mass incarceration policies on prisoners' families and neighborhoods, as well as on national politics (see, for example, Human Rights Watch and the Sentencing Project, 1998; Arditti and McClintock, 2001; Clear et al., 2001; Johnson and Waldfoegel, 2002). This strategy uses spatial ambiguity to point out that policies of social exclusion, which may be designed to manage dangerous individuals, actually create risks of their own.

Third, individuals can draw on resemblances or interconnections between law and illegality to suggest that laws themselves are illegitimate. For instance, during the 1940s and 1950s, civil rights advocates violated Jim Crow laws, largely by engaging in practices (e.g. sitting at lunch counters) that mirrored 'acceptable' actions. Similarly, those who favor the decriminalization of drugs often draw attention to the double standard of permitting alcohol, cigarettes and over-the-counter medications to be distributed legally but prohibiting other drugs. Individuals who violate what some view as politically discriminatory laws may become folk heroes; for example, rap artists sometimes celebrate young people's defiance of the police. This strategy draws on legal ambiguity to expose traces of illegality in law.

Before examining how Salvadoran immigrants challenged claims that they were illegal aliens, I discuss the status of illegal immigration within assessments of criminality. As I noted earlier, the category of 'the criminal' and 'the immigrant' have been converging.¹²

Immigration and criminality

The practices through which unauthorized immigrants are constituted as illegal aliens elucidate trends in criminal justice practices. As Welch notes, recent changes in US immigration policies have been 'driven primarily by a criminal justice agenda' (2002: 60). Like prisoners, unauthorized immigrants have been denied access to increasing numbers of social rights and benefits. Similarly, just as the criminal justice system has increasingly relied on mass incarceration, so too have immigration authorities' use of detention centers expanded (Human Rights Watch and the Sentencing Project, 1998; Welch, 2002). More non-citizens are now mandated to be detained, for longer periods and in facilities that were designed for criminals rather than for immigrants. Such detentions are not considered punishments, but rather are a means of sorting out those who do not belong (Kanstroom, 2000). The criminal justice system has also moved closer to such a model in that, according to what Feeley and Simon (1992) refer to as 'the new

penology', criminality is increasingly regarded as a condition that can be managed by sorting populations according to risk. Three-strikes laws, for example, judge defendants according to their criminal record as well as according to the particular crime committed.

Further, US authorities who are investigating criminal cases have increasingly made use of immigration proceedings. For instance, many of the suspects held in relation to the 2001 attacks on the Pentagon and World Trade Center were charged with violations of immigration law rather than with crimes. Non-citizens convicted of crimes have also become mandatorily deportable for a broader range of offenses. The use of mandatory deportation replaced a system that allowed immigration judges to consider equities, such as whether or not an alien with criminal convictions had reformed, and is therefore consistent with broader trends away from rehabilitation. Another connection between illegal immigration and crime is, of course, the fact that numerous violations of US immigration laws are also crimes. Individuals who enter the country without the authorization of a US government official can be charged with a misdemeanor; if they do so more than once, they can be charged with a felony. As the US code (8 USC § 1325) states:

(a) Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18, United States Code, or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, United States Code, or imprisoned not more than 2 years, or both.

The penalties for other immigration violations are even more severe. Individuals who are deported from the United States and who then reenter the country can be imprisoned for two years. Individuals who are deported on criminal grounds and who then reenter can be imprisoned for 10 years, and individuals who are deported after having been convicted of an aggravated felony and who then reenter can be imprisoned for 20 years (8 USC § 1326). Making materially false statements can be punished by five years' imprisonment (18 USC §1001) and falsely claiming to be a United States citizen can be punished by three years' imprisonment (18 USC §911). Preparing fraudulent documents brings up to five years' imprisonment, and bringing in and harboring certain aliens can bring one to five years' imprisonment per alien (8 USC §1324). An interviewee who had been deported after being convicted of an aggravated felony (and who was interviewed in El Salvador) complained that deportation seemed like a sentence with no time limit. He commented, 'You can't just say, "You're expelled for life. You're deported for life." I mean, I hope not!'

Although US law establishes criminal penalties for immigration viola-

tions, these infractions are usually treated as violations of civil rather than criminal law. Individuals who are accused of civil violations are denied many of the constitutional protections (such as the right to a public defender) that are accorded to criminal defendants (Cole and Dempsey, 2002), and immigration officials' use of civil proceedings permits them to remove aliens more efficiently. Along the US–Mexico border, the US–Canadian border, and in airports and other ports of entry, immigration officials inspect entrants to identify those who lack authorization. Non-citizens who are detected attempting to enter without authorization are usually 'voluntarily' removed—that is, the individuals in question sign paperwork agreeing to forgo their right to an immigration hearing—rather than be prosecuted (Harwood, 1984, 1985; Heyman, 1995, 1998; Gilboy, 1997).¹³ This policy may simply delay rather than prohibit entry, as, along the US–Mexico border, aliens who are returned to Mexico may simply try their luck the following day (Heyman, 1995).¹⁴ Nonetheless, criminal prosecutions of immigration violations are increasing. A Bureau of Justice Statistics report attributes 14 percent of the growth in the federal prison population between 1985 and 2000 to increases in the incarceration of immigration offenders (Scalia and Litras, 2002). Improved apprehension and record-keeping techniques are giving larger numbers of illicit border-crossers criminal and immigration records (Heyman, 1999).

Unauthorized immigrants who are not apprehended by US immigration authorities are none the less excluded, to some degree, by policies that bar the undocumented from exercising certain rights and receiving certain services. Just as reporting requirements have made schools, homes and workplaces contexts in which violence is monitored, and just as increased reliance on drug-testing has led employers to monitor drug offenses (Gilliom, 1994), so too are social workers, public housing officials, Department of Motor Vehicle clerks, personnel offices, college admissions officials, bank tellers and others required to request particular identity documents and to thus 'monitor' individuals' immigration statuses. In theory, reducing undocumented immigrants' eligibility for public services—particularly the right to work authorization—eliminates the 'magnet' that leads them to immigrate in the first place (Glazer, 1985; Bean et al., 1990). Some have suggested, however, that the goal of US immigration enforcement is to regulate, rather than prevent, illegal entry (Kearney, 1991). Criminalizing, but not entirely preventing, unauthorized entry could create a pool of cheap and expendable workers who, due to their immigration status, are willing to work 'hard and scared' (Jenkins, 1978). Employers are not responsible for verifying the validity of the documents that employees use to prove employment authorization. This loophole enables employers to hire undocumented workers who have false documents and to argue that they were acting in 'good faith' (Calavita, 1990). Because illegal immigration benefits certain industries, some degree of unauthorized movement may be unofficially tolerated, particularly when the US economy is strong. As Katz predicts, 'If the official system for prosecuting tax cheating,

pollution violations, and even immigration fraud becomes too vigorous, pressure will build to reduce the prohibitory reach of the underlying laws' (1988: 318).

Although unauthorized migrants are rarely prosecuted for immigration violations, law enforcement strategies situate these immigrants 'outside' of society, in a domain of illegality. Migrants who are apprehended are set apart in detention centers, where they can be held without bail for lengthy periods (*Demore et al. v Kim*, 2003; see also Hamm, 1995; Human Rights Watch and the Sentencing Project, 1998; Welch, 2002). Those who are found removable are placed outside US borders. Demands for identity documents locate the undocumented in what I have elsewhere called a 'space of nonexistence' (Coutin, 2000). Thus, undocumented immigrants must often work illicitly in the secondary or underground economy (Sassen, 1989), and transact in cash rather than through checks and credit cards. They often live with friends, family members or employers instead of independently (Hagan, 1994); and avoid parks, checkpoints and other public places where their illicit presence could be detected. Consigned to work in settings in which labor laws are violated, to live in substandard housing and to lack access to the social support that public assistance and/or medical insurance would provide, undocumented people are in potentially life-threatening conditions. Terms used to refer to the realm occupied by the undocumented provide insight into the degree of social exclusion that they experience. Undocumented immigrants are sometimes said to live in the shadows (Chavez, 1992), an underground (Harwood, 1986: 20) or a 'nether world' (Hull, 1985: 14). Salvadoran immigrants told me that without papers, they felt as though they did not exist. One community college student who had obtained temporary legal status by applying for political asylum commented that without a work permit, 'you don't exist. Well, they know you are there, but they ignore you. They don't see you as like you exist. And this is the people who raise children, and you know, whenever they come, "Well, they're illegals"'.

Recent 'moral panics' over illegal immigration have further marginalized the undocumented (Welch, 2002; see also McRobbie and Thornton, 1995). During the recession of the early 1990s, undocumented immigrants were accused of undermining the rule of law, taking jobs from US citizens,¹⁵ draining public resources and failing to assimilate (Perea, 1997; Chavez, 2001). Rising anti-immigrant sentiment resulted in numerous changes to immigration law. The 1996 Anti-terrorism and Effective Death Penalty Act (AEDPA) expanded the range of criminal convictions that would make non-US citizens deportable and largely eliminated waivers through which such deportations could be challenged. The 1996 Welfare Reform Act made even legal immigrants ineligible for most public benefits. The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) stiffened border enforcement, and made most means of legalization more difficult. In the wake of the 11 September 2001 attacks on the US Pentagon and the World Trade Center, some 762 immigrants were detained as

potential suspects (Fainaru, 2003; Lichtblau, 2003). The 2001 Patriot Act restricts the civil rights that are accorded to non-citizens.¹⁶ As of March 2003, the US Immigration and Naturalization Service (INS) was reorganized as part of the US Department of Homeland Security. This reorganization defines immigration as a matter of security, and special alien registration programs have singled out non-citizens from Middle Eastern nations as particularly suspect. As Valier notes, ‘The discourse of faceless predators lurking in our midst . . . [is] deployed in the construction of asylum seekers as both violently criminal and as a grave threat to national security’ (2002: 322).

Although US immigration enforcement strategies have increasingly excluded undocumented immigrants from many aspects of civic life, the very logic of social exclusion suggests strategies for redefining the boundaries of illegality. By living and working in the United States, albeit clandestinely, unauthorized migrants create grounds for legalizing their presence.

Contesting criminality: the experiences of Salvadoran immigrants

Salvadorans who immigrated to the United States without authorization have, with some success, contested charges that they were illegal aliens who deserved to be deported. To do so, they have questioned whether their original entries into the United States should be considered illegal, claimed that the lives they have constructed in the United States warrant a grant of legal permanent residency and noted US complicity in the conditions that drove them from their country of origin. These strategies are made possible by societal ambiguity regarding the illegality of unauthorized immigration, spatial ambiguity regarding the presence of individuals who, legally, are outside US territory and legal ambiguity regarding distinctions between the actions of US officials and those who are alleged to have violated US laws. In drawing on these ambiguities, Salvadoran migrants have at times sought to distinguish themselves from other immigrants, at times claimed commonality with other long-term residents and, less frequently, have questioned the morality of laws that define some persons as ‘illegal’. Examining the tactics, alliances and distinctions through which these claims were made reveals how a group that was criminalized, socially excluded and politically subordinate can nonetheless secure policy changes that redefine group members as ‘law-abiding’ and deserving of legal status.

Salvadorans who immigrated to the United States without authorization or who entered legally but then stayed beyond their visa’s expiration date were initially regarded as illegal immigrants. Immigration from El Salvador to the United States increased dramatically during the early 1980s due to the outbreak of civil conflict between the Salvadoran government and guerrilla groups. The war, which lasted over a decade, was characterized by

massacres, assassinations, abductions and the torture of dissidents and, less frequently, their opponents (Americas Watch, 1991; Montgomery, 1995; Byrne, 1996). By the mid-1980s, 27 percent of the Salvadoran population had been displaced (Kaye, 1997), and reports estimated the Salvadoran immigrant population in the United States to be between 500,000 and 1 million (Ruggles et al., 1985; Aguayo and Fagen, 1988; Montes Mozo and Garcia Vasquez, 1988). Due to the difficulty of obtaining visas, most of these migrants entered the United States clandestinely, hiring alien smugglers or even crossing the border on their own. Still others obtained tourist or other temporary visas but then did not leave within the authorized period (Mahler, 1995). Neither method of entry gave these migrants documents authorizing their presence in the United States.

One of the few ways for Salvadorans to obtain such documents during the early-to-mid-1980s, though, was to apply for political asylum.¹⁷ The Reagan administration, however, generally opposed granting asylum to Salvadorans (Kahn, 1996).¹⁸ Instead, US officials, who were providing military and economic support to the Salvadoran government, downplayed human rights violations in El Salvador, arguing that Salvadorans, like other illegal aliens, had come in search of jobs, not political safety. As Assistant Secretary of State Elliott Abrams stated during a 1984 Congressional hearing, 'El Salvador . . . is a country with a history of large-scale illegal immigration to the United States' (House of Representatives, 1984: 67). Economic need, officials noted, was not a ground for granting legal status.

The claim that Salvadorans were illegal aliens who deserved to be deported was challenged by a powerful solidarity movement that sought to counter US foreign and refugee policy. The Salvadoran revolution captured the imagination of politically progressive groups that, disenchanted with the short-comings of socialist experiments in the Soviet Union and elsewhere, sought a truly indigenous revolution (Smith, 1996). Some Salvadoran migrants also organized political committees to publicize human rights abuses in El Salvador and to provide support for popular movements there (Coutin, 2000). Religious activists who were concerned about the plight of Salvadoran and Guatemalan refugees declared their congregations 'sanctuaries' and, in defiance of US immigration authorities, assisted migrants in entering the country, gave them shelter and transported them to places of safety around the country (Coutin, 1993, 1995). Attorneys who were interested in human rights organized legal services programs to handle Central American asylum claims, and filed class action suits against the US government on behalf of these asylum seekers (see Bau, 1985; Fiederlein, 1991; Coutin, 1993, 1995). These attorneys, activists, religious workers and Central Americans argued that, unlike immigrants from such countries as Mexico, Salvadorans' and Guatemalans' lives were in danger in their homelands. During an interview, one Salvadoran activist, for example, insisted:

We [Salvadorans] didn't want to be here just because we want to, [because] we love the United States, or just because you can go to Disneyland . . . So you came here for a necessity. Either, you leave your country, or you're going to be one of the statistics of the deaths.

Advocates argued that Salvadorans were not illegal aliens but refugees who, according to US and international law, deserved political asylum in the United States. In denying Salvadorans asylum, advocates contended, US immigration authorities were permitting foreign policy considerations to bias the asylum process, and thus were undermining the rule of law itself.

Advocates pursued multiple strategies to define Salvadorans and Guatemalans as refugees. Sanctuary activists refused to treat Central Americans as 'undocumented immigrants' but instead provided them with shelter, transportation, legal aid and assistance crossing the US–Mexico border. These actions turned the logic of social control on its head. US immigration laws, which prohibit aiding and abetting the illegal entry or presence of an alien, hold individuals accountable for the legal status of those whom they transport and shelter. Citizens are thus required to enforce immigration law by *not* transporting or sheltering undocumented immigrants.¹⁹ In effect, sanctuary activists used this 'enforcement authority' to interpret as well as apply the law. By acting in ways that defined Salvadorans and Guatemalans as refugees rather than as illegal aliens, sanctuary activists sought to establish the validity of movement members' interpretations of immigration law (Coutin, 1993). The US government responded by prosecuting sanctuary activists on conspiracy and alien-smuggling charges. When eight sanctuary activists were convicted in 1986, refugee rights advocates sued the US government. The lawsuit, which came to be known as *American Baptists Churches v Thornburgh* or 'ABC', sought to prohibit further sanctuary prosecutions, secure asylum or temporary legal status for Salvadorans and Guatemalans and prevent foreign policy issues from influencing asylum procedures. Advocates also lobbied the US Congress to pass legislation that would grant Salvadorans temporary legal status.

In the early 1990s, legal and political advocacy on behalf of Central American asylum seekers bore fruit. In 1990, spurred by the assassination of six Jesuit priests, their housekeeper and her daughter in El Salvador in 1989, the US Congress created Temporary Protected Status (TPS) and designated Salvadorans as its first recipient. At the same time, the Department of Justice agreed to settle the ABC lawsuit out of court. The settlement agreement gave Salvadorans and Guatemalans the right to apply or reapply for political asylum under special rules designed to ensure fair consideration of their claims. Some 300,000 Salvadorans and Guatemalans gained temporary status through these measures. Both TPS and pending asylum applications,²⁰ however, defined Salvadorans as 'outsiders'—aliens in need of refuge—rather than as members of US society. ABC class members and TPS recipients obtained legal documentation but remained

vulnerable to measures that targeted illegal aliens. The contradictions associated with temporary legal status were described eloquently by a Salvadoran college student who had immigrated to the United States in 1986 at age 4, obtained TPS and applied for political asylum under the terms of the ABC agreement. She said:

Well, I can't say that I'm a resident, and I can't say that I'm not a resident. And then, I have no memory [of El Salvador] . . . Even though I feel out of place [here], but at least I have home, at least I know this world. My family is real. This is where I belong. This is the only place I had to identify with. As long as my family is with me, I have a home, you know? But other than that, it's like there is nothing. There is nothing here, there is nothing there; it's a strange situation to be in. Because you can't [say,] 'Oh, I remember when this—.' I don't remember that either. Talking to people, I have no—it's like, for a minute you have no identity outside of your house. That's what it feels like sometimes. You're just walking around, and you're just, you're like invisible to everything else. Everybody else is solid but you're not.

After remedies that granted Salvadorans temporary legal status were created, changed circumstances led advocates who had focused on Salvadorans' need to escape political violence to instead emphasize these migrants' need to protect the lives that they had established in the United States. In 1992, peace accords were signed in El Salvador, making it more difficult for Salvadorans to argue that they could not return home. By this time, many who had originally viewed their sojourn in the United States as temporary discovered that they no longer wanted to repatriate. After having lived in the United States for years, these migrants had secured jobs, formed relationships, born children and created new lives for themselves. In short, migrants began to define themselves as immigrants rather than as refugees, and thus emphasized commonality with other long-term residents rather than differences in motives for migrating. This redefinition was made more difficult, however, by the increased criminalization of unauthorized immigration. During the early 1990s, recession fueled a national moral panic about the effects of illegal immigration on US society. Advocates of more restrictive immigration policies accused illegal immigrants of taking welfare, overwhelming schools and hospitals, failing to assimilate and disproportionately committing crimes. In 1993, California voters overwhelming approved Proposition 187, a ballot measure that required teachers, doctors and other social service providers to check clients' identity documents and report suspected illegal immigrants to US authorities. Although Proposition 187 was largely declared unconstitutional, immigration reform advocates took their battle to the federal level. With the passage of IIRIRA in 1996, Congress dramatically transformed US immigration laws, eliminating or substantially restricting the means of legalization available to long-term but unauthorized residents. Salvadorans who sought permanent legal status were in a bind. The temporary remedies that

they had obtained in the early 1990s were pegged to the political situation in El Salvador, and, in the post-civil war context, were less viable. Yet other possible means of immigrating, which now appeared more appropriate, had been drastically curtailed.

In January 1997, shortly after the passage of IIRIRA, Central American activists launched a campaign for permanent residency for ABC class members. This campaign sought to restore ABC class members' eligibility for a remedy—suspension of deportation—that had been eliminated by IIRIRA.²¹ Suspension of deportation allowed unauthorized immigrants to obtain legal permanent residency if they could demonstrate seven years of continuous presence in the United States, good moral character and that they would experience extreme hardship if deported. In seeking eligibility for suspension of deportation, advocates cited ABC class members' 'conventional' activities—living in the United States, establishing families, working, participating in community activities. They thus sought to distinguish ABC class members from the public's image of unauthorized immigrants. In so doing, advocates took advantage of social control strategies that use identity documents to distinguish legal from illegal residents. ABC class members, who had applied for political asylum, were issued Employment Authorization Documents (EADs) so that they could work while their applications were pending. Although work permits do not confer permanent legal status, advocates argued that ABC class members were *documented* residents. This argument was persuasive to at least some US authorities that had been handling ABC asylum claims. During an interview, an INS official in charge of processing ABC cases pointed out that asylum units had had ABC class members' files on hand for years, and commented, 'Basically, we knew this group of folks.'

Advocates who were involved in the campaign for legal permanent residency found powerful allies. The Central American governments, fearing that the 1996 legislation would produce mass deportations and cut off immigrant remittances, joined community groups in seeking relief. Immigrants' rights advocates, reeling from the 1996 reforms, took up their cause. Some Justice Department officials were sympathetic to claims that Salvadorans and Guatemalans had been denied fair asylum hearings in the 1980s. Conservative groups, including Cuban and Nicaraguan organizations, worried about the effects of IIRIRA on Nicaraguans who had immigrated while the United States was supporting the Contras in their fight against the Nicaraguan government. These groups were willing to join forces with advocates for ABC class members. And some US politicians, concerned about further alienating Latino voters, adversely affecting Central American nations and deporting long-term residents whose sojourn had been at least temporarily authorized by the US government, were willing to consider a remedy for ABC class members. At a press conference following a May 1997 summit meeting with the Central American presidents, President Clinton stated:

There is a separate category of our immigration law which says if you're, in effect, fleeing political disruption in your own country, you can stay in our country but you don't become a legal immigrant with the right to apply for citizenship after 5 years. But many of them have been there quite a long while . . . A lot of them have been in the United States so long that they have families there, they have children in school, they have lives that are intertwined with their communities . . . I think it's fair to say that everyone who studied this understands that the Central American countries—a number of them are in a very special category when it comes to dealing with the immigration laws.

(1997: 570–1)²²

The campaign for legal permanent residency resulted in the passage of the Nicaraguan Adjustment and Central American Relief Act (NACARA) in 1997. NACARA restored suspension benefits to ABC class members and permitted certain Nicaraguans to adjust their status to that of legal permanent residents—a disparity that became the focus of additional advocacy. To minimize this disparity, the Department of Justice issued regulations that granted ABC class members unprecedented concessions. The NACARA regulations permitted asylum officials to adjudicate ABC class members' suspension claims, thus streamlining the application process. The regulations also granted ABC class members a presumption that they would suffer extreme hardship if deported. The presumption of hardship virtually guaranteed that ABC class members' cases would be approved. Finally, the NACARA regulations enumerated the factors (e.g. working or having relatives in the United States) that could be considered relevant to hardship in a NACARA claim. Previously, hardship factors had been defined solely by case law. These factors implicitly acknowledge interconnections between illegitimate acts (unauthorized labor, underground presence) and legitimate ones (having a strong employment history, setting down 'roots'). The application process established by the NACARA regulations—much like suspension cases more generally—takes 'account' of immigrants' previously clandestine presence. To prove seven or more years of continuous presence, good moral character and that deportation would be an extreme hardship, applicants submit their income tax records, pay stubs, records of loan payments, children's report cards, documentation of church attendance, medical records, utility bills, financial accounts, letters from community members, copies of awards and certificates that their children received in school and work histories. Such documentation establishes the normalcy of applicants' lives, situating them in the domain of the licit. Through such documentation, legality enters into and reconstitutes lives that were legally ambiguous.

Though Salvadorans' efforts to legalize were, in certain respects, unique, the arguments that ABC class members used to advocate for legal permanent residency have been taken up by other unauthorized immigrants and their advocates. In 2000, the Latino and Immigrant Fairness Act (LIFA)

was proposed in Congress. LIFA would have granted additional benefits to Salvadorans and Guatemalans, permitted the legalization of immigrants who had lived in the United States since 1986 and allowed the beneficiaries of family visa petitions to adjust their status in the United States. Speaking at a rally on the capitol steps on 13 September 2000, Congressman Gutierrez urged:

Keep the pressure on the pressure on the Congress of the United States. They want to give 200,000 visas, they're ready today to give 200,000 visas so that we can bring more immigrants to work in the high tech industry. And I'm for that. That's fine. But what about the 2 million people *that are already here* working? *Simply because you're a doctor or a scientist, your work is valuable. But, you know what else is valuable? That gardener. Your work is valuable too. Someone who cleans hotels. Your work is valuable too. All jobs are valuable because all human beings are equal and we demand justice!*

(Emphasis added. Italic text was originally in Spanish, translation mine)

The argument that visas should be granted to 'those who are already here working', regardless of whether or not their labor is 'authorized', acknowledges the 'value' of immigrant labor and suggests that the 'aboveboard'—in this case, the US economy—benefits from the unauthorized. Congressman Gutierrez's contention that unauthorized immigrants who secure jobs and establish homes are already de facto residents was echoed by Senator Graham (of Florida) in the US Senate:

A little history: Central American and Haitian immigrants came to the United States, particularly in the 1980s, and were welcomed by Presidents Ronald Reagan and George Bush. They were fleeing civil wars or violent upheavals in their repressive governments. *They followed every rule.*

Over the past 10 or 15 years, they set down roots. They raised families; they bought homes, started small businesses. Then, with the passage of the 1996 immigration bill, they suddenly became deportable.

(Congressional Record, 20 September 2000, p. S8800, emphasis added)

Senator Graham's statement also suggests that Central Americans, who obtained temporary documentation by 'follow[ing] every rule' are in some sense, legal residents. Similarly, depicting unauthorized immigrants as within rather than outside of society, Senator Landrieu stated that LIFA

would resolve the status of so many valuable *members of American society*. There are an estimated 6 million immigrants in the United States who are not yet citizens. A majority of these immigrants have been here for many years and are working hard, paying taxes, buying homes, opening businesses and raising families . . .

Contrary to what our critics say, supporting this bill does not condone illegal entry into this country. I am proud of our historic value of the rule of law and territorial integrity. At the same time, I am equally concerned that once certain people have resided in this country for years and contributed to

our country's prosperity, some would have us uproot such valuable *members of our society*.

Let us not eject Honduran, Haitian, Guatemalan, and Salvadoran nationals, who have, for so long, *woven into the American fabric*, making American families, paying American taxes, building American homes and businesses, and working for American labor.

(Congressional Record, 2 October 2000, p. S9600, emphases added)

Although electoral politics in the year 2000 derailed the passage of LIFA and the subsequent war on terrorism made it difficult for advocates to revive the push for legalization, these statements by US legislators redefine the space occupied by unauthorized immigrants. Illegal presence, illicit labor and temporary legal status are transformed into setting down roots, working in American labor and following rules. The space occupied by undocumented migrants shifts from an illicit underground to an above-board quotidian existence. The fact that such shifts can occur has important implications for theorizing criminality.

Conclusion

It is useful to consider the case of illegal immigration when theorizing both criminality and its contestation. It is true that illegal immigration is a 'victimless' crime, and in that sense, is very different from such offenses as robbery, rape, assault and murder.²³ Nonetheless, the convergence of policies that target illegal immigrants and those directed at criminals more generally makes it useful to bring illegal immigration into the purview of criminology. Immigration law has increasingly been used in criminal matters. Due to expanded definitions of 'aggravated felonies' within immigration law, increased numbers of non-citizen offenders have been stripped of legal permanent residency, made ineligible for future legalization and deported to countries that they may not even remember. Detainees held in connection with the attacks of 11 September 2001 were charged with immigration violations rather than crimes, and therefore enjoyed fewer constitutional protections. Recent immigration reforms have followed a crime control model that increases penalties, makes greater use of detention and focuses on enforcement rather than on programs and services (Welch, 2002). There is also a sense in which immigration enforcement is a more extreme version of current penal strategies that attribute criminality more to persons than actions and that situate offenders 'outside' society, through incarceration and (post-release) social exclusion. The tactics used to enforce US immigration laws, as well as immigrants' responses to those tactics, are therefore increasingly relevant to criminology.

My analysis of Salvadoran immigrants' efforts to contest the claim that they were illegal aliens has identified three ways that criminality can be contested, each of which draws on societal processes that obscure distinctions between the 'criminal' and the 'law-abiding'. First, individuals can

challenge the claim that particular acts are illegal. Salvadorans argued that they immigrated to the United States out of necessity, to escape political violence in El Salvador, and that fleeing political persecution is not morally reprehensible. Sanctuary activists also argued that it was necessary, both morally and legally, for them to assist refugees who were at risk of being deported to places where they would be persecuted or killed. More generally, unauthorized immigrants have suggested that it is not illegal to seek a job or to support one's family, and have thus attempted to redefine 'illegal entry' as a legitimate social action. Similarly, the illegality of prostitution, drug use and doctor-assisted suicide has been challenged by those who believe that such actions do not violate social norms. This strategy uses societal ambiguity regarding the criminality of particular activities to redefine these activities.

Second, individuals can challenge policies and practices that situate offenders outside the social order. Unauthorized immigrants are excluded through detention, through deportation and through policies that make certain identity documents prerequisites for rights and services. Unauthorized Salvadoran immigrants, who could have been defined merely as illegal immigrants who had pending asylum applications, pointed to their 'conventional' activities as evidence of membership in US society. The NACARA process requires applicants to document their years of residence, family ties, work histories, community activities, schooling and so forth, and thus to prove that applicants were 'here', in both a legal and physical sense. Critics of current penal practices have used a similar spatial logic to challenge lengthy prison sentences and other forms of social exclusion to which offenders are subjected. Critics have noted that locating offenders outside of society bears social costs, including the separation of children and parents, political disenfranchisement and financial hardships for families and communities (Chambliss, 1994; Donziger, 1996; Zatz and Portillos, 2000). Exposing the high social costs of mass incarceration suggests the need for policies that recognize that convicts are also members of communities. Groups such as 'FACTS' (Families to Amend California's Three Strikes), for example, emphasize that felons are also brothers, fathers, sisters, daughters and sons. This strategy takes advantage of spatial ambiguity regarding the social location of offenders. If criminality is a product of particular actions, rather than a condition of personhood, then offenders cannot be located only 'outside' of society. Offenders' law-abiding actions and their memberships in social groups (e.g. families) also warrant legal recognition.

Third and most fundamentally, individuals can challenge the very grounds on which law and illegality are distinguished. Salvadorans pointed out that the US government, which forbid their presence and denied their asylum claims, funded some of the violence that forced them out of their homelands. Salvadorans, along with other advocates of broad-based legalization programs, have also noted ways that the US economy benefits from the unauthorized labor of undocumented immigrants. Some immigrants

have gone so far as to compare US immigration authorities, who charge fees for work permits and other immigration benefits, to alien-smugglers who profit from unauthorized movement (Hagan, 1994). Similarly, death penalty opponents have questioned the distinction between state executions and murder, and advocates of legalizing drugs have questioned distinctions between licit and illicit substances. Focusing on ways that legal systems resemble illegal practices highlights legal double standards, and suggests that distinctions between legal and illegal actions are sometimes arbitrary and therefore subject to change.

Examining contestations of criminality brings together and builds on trends in criminological theory. Labeling theorists have long noted that 'crime' and 'the criminal' are social rather than natural categories. Examining how such categories are contested further 'destabilizes' these categories, and provides an important corrective to those who would distinguish too sharply between law-abiding and criminal persons and acts. Critical criminologists have drawn attention to the power relations that inhere in definitions of criminality. Investigating how such definitions are contested can shed further light on these power relations. Critical geographers have studied the relationship between law and social exclusion. They have noted, in particular, the ways that the mere presence of socially marginalized groups (such as the homeless or teenage youth) in particular spaces can be defined as a crime (Cresswell, 1996). Contestations of criminality can challenge such spatial boundaries. Recent work on moral panics has called attention to the ways that so-called 'folk devils' make use of the media to challenge the ways that they are depicted (McRobbie and Thornton, 1995). Examining contestations of criminality furthers this project as well. Cultural criminologists have also noted ways that the activities of societal subgroups (such as youth or immigrants) are criminalized. Attending to contestations of criminality can show how such groups respond to such labels and to the practices (arrests, prosecutions) through which labels are made authoritative. Finally, analyzing contestations of criminality suggests that logics of social control create corresponding strategies for challenging social exclusion. Thus, the warehousing of individuals who are deemed 'high-risk' (Feeley and Simon, 1992) can be challenged by arguing that certain offenders are, in fact, 'low-risk' or by contending that exclusion bears risks of its own.

In short, attending to contestations of criminality promises to make understandings of offending more nuanced and to demonstrate that assessments of criminality are not always entirely devoid of the illegality that they seek to specify. The legalization efforts of (formerly) undocumented immigrants, who have been denounced as 'people who violate the law' (Congressional record, 27 September 2000, p. S9358) and claimed as 'deserving residents' (Congressional Record, 2 October 2000, p. S9600), exposes tensions that are fundamental to the criminal justice system's classificatory endeavor.

Notes

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1. Efforts to criminalize previously ‘acceptable’ behavior—ranging from drunk driving to hate crimes to domestic violence—have, however, been a focus of research (Green, 1989; Merry, 1995; Schneider, 2000; Jenness and Grattet, 2001).
2. On the relationship between law, space and social exclusion, see Sibley (1995); Cresswell (1996); Herbert (1997).
3. In other words, if social exclusion is incomplete (as is often the case), offenders can use their participation in ‘legitimate’ social activities to challenge their location in a domain of criminality.
4. For instance, drugs that can be obtained legally can also be abused, and illicit economies (such as black markets) can make money available for legal transactions.
5. Joan Petersilia describes one such alternative:

Ex-offenders should have an opportunity to show they are good risks through consideration of the circumstances of the crime, the severity of the sentence, or their rehabilitation. England’s Rehabilitation of Offenders Act provides a good model. That act allows for persons convicted of a crime and sentenced to prison for less than 2.5 years to have that conviction ‘spent,’ or ignored, after a period of time has elapsed if no felony convictions occur during this time period . . . The individual’s criminal history legally ‘expires’ after a given number of years.

(2003: 20)

6. Simon points out that super-max prisons are designed ‘to contain his [the individual’s] “toxic” behavioral properties’ (2000: 301). As ‘containers’, prisons bound and separate domains of legality and criminality. Petersilia (2003) points out that reentry has replaced ‘rehabilitation’ as a focus of penal reform. Unlike rehabilitation, which is supposed to transform a person, ‘reentry’ focuses on moving individuals between spaces.
7. Petersilia (2003: 228) cites research indicating that people who commit crimes can none the less provide positive parenting to their children.
8. According to labeling theory, labels are applied less on the basis of deviant behavior and more on the basis of social characteristics, such as the race, gender, ethnicity or social class of the person labeled. Labels are then said to contribute to secondary deviance, as individuals internalize their labels and exhibit the behavior to which they are believed to be predisposed—

though individuals can also contest their labels (Rogers and Buffalo, 1974). Moreover, individuals who are labeled as deviant are excluded from conventional activities, an exclusion that further reinforces labellees' alleged deviance. 'Deviance' that results from such exclusion may be structural in nature. For instance, if unauthorized immigrants are denied drivers licenses, they may commit the 'deviant act' of driving without a license. Such exclusion may constitute individuals as the beings that labels name. Thus, individuals are materially constituted as 'convicts' through incarceration, job applications that ask them about prior convictions, employers who consider it prudent not to hire them and so forth.

9. Cohen notes that:

criminalization is the process of identifying an act deemed dangerous to the dominant social order and designating it in law as criminally punishable. This fateful decision produces a peculiar illusion (peculiar because we know very well that it is an illusion): that acts of conduct were divided originally into positive/negative, criminal/virtuous . . . Unlike social norms that we know as subtle, continuous, and negotiable, we start to talk about a dichotomous variable, crime/noncrime.

(1988: 257)

10. And of course, some crimes—e.g. drug-dealing—are less likely to be officially identified as criminal if they are performed by middle-class youth.
11. Reminding readers of 'the contingent nature of "fear of crime" as an object of criminological inquiry' (Lee, 2001: 469), Lee points out that '*fearing subjects* are to be considered both the imagined objects of governmental regulation . . . and also the subjects of disciplinary analysis whose very subjectivity is imagined through the quantification of survey data and the like' (2001: 471, emphasis in original). The same could be said of 'the criminal'.
12. While recent changes in US immigration policy—particularly the 1996 immigration laws and the Patriot Act—have further criminalized immigrants, presumptions that immigrants may be criminals are nothing new. See Cole (2001) for a history of characteristics believed to indicate criminality.
13. According to Harwood (1984), the INS only requested prosecution on charges of violating US immigration laws when aliens were involved in smuggling or fraud rings, caused injury to others or were wanted on other charges. In plea-bargain agreements, aliens sometimes pled guilty to entry without inspection instead of to a more serious charge (Harwood, 1984: 541), and federal and state prosecutors sometimes prosecuted suspects on immigration-related charges when they were not certain that they could obtain convictions on more serious grounds (Harwood, 1984: 543). Prosecuting an individual solely for entry without inspection, however, is rare.
14. Several factors may explain the failure to arrest and prosecute illegal entrants. Within the INS, fighting 'real criminals' such as drug smugglers

was more prestigious and rewarding work (Heyman, 1995). Moreover, as undocumented workers are economically useful to certain industries, the INS was under political pressure to limit its efforts to prevent the entry of these migrants (Jenkins, 1978; Calavita, 1992).

15. Note that while employers may want to hire undocumented immigrants, other workers may resent competition from 'illegal aliens'. Until recently, the AFL-CIO opposed calls for a broad-based legalization program.
16. On post-11 September 2001 changes in US immigration law and policy, see Cole and Dempsey (2002); Human Rights Watch (2002); Lawyers Committee for Human Rights (2003).
17. Other methods of legalization included family visa petitions, employment-based visa petitions, suspension of deportation and the legalization program created by the 1986 Immigration Reform and Control Act (IRCA). In the early 1980s, few Salvadorans had US citizen or legal permanent resident relatives, employers willing to petition for them or the seven years of continuous presence required for suspension of deportation. Additionally, most arrived after 1 January 1982 and were therefore ineligible for legalization under IRCA. The earliest Salvadoran migrants were eligible for IRCA's amnesty program, however, and eventually, after becoming legal permanent residents themselves, were able to petition for the legalization of other relatives.
18. The Reagan administration did welcome refugees from other countries, such as Cuba, Nicaragua and the former Soviet Socialist Republics, whose regimes were considered repressive. The USCR reports that between 1983 and 1986,

[asylum] applicants from Iran had the highest approval rate . . . , 60.4 percent, followed by the Soviet bloc countries, Romania (51.0) Czechoslovakia (45.4), Afghanistan (37.7), Poland (34.0), and Hungary (31.9). Among the countries with the lowest approval rates were El Salvador (2.6), Haiti (1.8), and Guatemala (0.9).

(1986: 8)
19. These laws are directed against alien-smugglers, but, since 1986, employers have also been held accountable for the legal status of those they hire.
20. ABC class members' asylum applications remained unadjudicated for many years because US immigration authorities, who faced a huge backlog of pending asylum applications, delayed scheduling these hearings.
21. Suspension of deportation was replaced by a cancellation of removal, which required 10 years of continuous presence and established a higher hardship bar. Additionally, IIRIRA placed a cap of 4000 on the number of individuals who could qualify for cancellation annually, making this an unlikely remedy for the 300,000 ABC class members seeking residency.
22. The logic used in this statement reflects the strategies through which Salvadorans and Guatemalans contested illegality. Referring to Central Americans as a 'special category' suggests that Salvadorans' efforts to argue that they were an exceptional case were successful. References to the amount of time that these immigrants lived in the United States and to the

ways that their lives became 'intertwined with their communities' indicate that although these migrants were initially prohibited and situated in an 'underground', over time, they left this space, to a certain degree. Pulled from a domain of social exclusion to one of at least partial inclusion, these formerly 'invisible' migrants were able to 'appear' and be legally recognized.

23. Proponents of restrictive immigration policies might not see immigration as so different from these other offenses. Immigration reform advocates might argue that illegal immigrants are assaulting the United States, robbing US citizens of jobs and public benefits and destroying the nation.

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