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IMMIGRATION, LAW, AND RESISTANCE

Susan Bibler Coutin

In recent years, immigrants in many parts of the world have increasingly come under attack, a situation that has intensified in the COVID-19 pandemic. Rising nationalism in many countries around the globe has fuelled xenophobia, with the result that those who have crossed national borders – or who are perceived as foreign even if they have not – have been denounced as outsiders who allegedly threaten economies and national values. Stiffened enforcement initiatives, whether located at borders or in countries' interiors, and draconian detention and deportation practices, have, paradoxically, been coupled with claims that the laws are 'lax' and need to be strengthened still further to bar migrants' presence altogether. Meanwhile, members of immigrant communities have had to contend with a host of indignities, including racial slurs, confinement, lack of access to legal counsel, denial of work authorization, exploitative labour practices, and precarious living conditions. Migrants' resilience in the face of such challenges is truly extraordinary.

This short article will introduce the concept of 'illegalization' to explain how the condition of 'illegality' results from state practices that situate members of immigrant communities outside of national polities, rather than from a particular act on the part of immigrants themselves. The article will then present a case study of how immigrant communities in Southern California in the U.S. have resisted illegalization in an effort to live with dignity.

Nationalist narratives that are critical of immigration frequently depict unauthorized immigrants as law-breakers who are intrinsically 'illegal' because of crossing a national border without authorization. This nomenclature is misguided, for several reasons: some individuals (such as tourists, students, or business people) enter a country with authorization and then stay beyond the expiration date of their visas, individuals sometimes gain and lose status as the conditions of their lives change so boundaries between authorized and unauthorized groups are porous, and this terminology treats legal status as an essential quality of personhood rather than as the product of state policy.

In contrast, the term 'illegalization' highlights the process of categorization to which individuals whose presence is unauthorized are subject. Individuals are constituted as unauthorized through state policies that bar their presence, so, paradoxically it is *law* that creates the condition of *illegality*. Moreover, practices that produce illegalization are diffused throughout societies, through everyday practices that deny rights and services to those who cannot present the correct papers. Examples include employers who deny jobs to those who lack work authorization, schools that do not allow individuals who lack citizenship or proper visas to enrol, officials who

prevent unauthorized immigrants from passing through checkpoints, clerks who deny licenses to drivers or those who wish to practice a trade. These everyday interactions are infused with power in that they formally constitute individuals as ‘unauthorized’ or as ‘illegal’, even without a formal court ruling or judgment to that effect. Moreover, justifications for illegalization are put forward through discourses of belonging and deservingness that link legal status to moral qualities, such as patriotism, individualism, and modernity, and illegality to foreignness, dependency, and disruption. Such dichotomous depictions of moral worth are deeply dehumanizing, so much so that the slogan ‘No human being is illegal’, originally coined by holocaust survivor Eli Wiesel, became an international campaign.

Illegalization is closely linked to two other processes: racialization, that is, constituting individuals as members of particular ethnic and racial groups, and criminalization, the over-policing of non-citizens coupled with criminally prosecuting individuals for immigration violations. Racialization is widespread and takes different forms in different countries. In Costa Rica, for example, immigrants from other Central American countries, especially Nicaragua, are regarded as racially and ethnically ‘different’ even though they are from the same region. Similarly, in Europe, racialization has religious overtones, as Muslim immigrants are often seen as the quintessential ‘other’. The U.S. is a particularly stark example of racialization, as individuals of Latin-American descent are often presumed to be immigrants even if they are native born U.S. citizens. Public anti-immigrant rhetoric, such as U.S. President Donald Trump’s allegation that immigrants from Mexico are rapists, often targets particular ethnic, racial, or national groups. Furthermore U.S. immigration policy enshrines racial distinctions through policies that impose more penalties on those – typically from Latin America – who cross a border without authorization than on those who enter the country as tourists – for instance, from Asia – and then stay beyond the expiration date of their visas.

The criminalization of immigrants is also a widespread and international phenomenon. Individuals who are deported are often presumed to have committed crimes, even if they may simply have been caught crossing a border or apprehended for working without authorization. In the case of those who have been convicted of crimes, deportation simply disperses individuals without addressing the underlying causes of offending. Furthermore, immigrants themselves are often victims of crimes due to their vulnerability to thieves, traffickers, organized criminal networks, and employers who violate labour law. The association between immigration and criminality is therefore belied by the many factors that make immigrants themselves vulnerable to victimization by others.

Illegalization, racialization, and criminalization combine to form a powerful nexus that ensnares immigrants. These processes underlie spatialized enforcement tactics that have been used in Australia, Canada, Italy, and elsewhere to ‘remove’ the spaces that migrants occupy from national territories for the purposes of restricting migrants’ access to legal rights. For instance, migrants who were encountered at sea have been detained on islands, in an effort to define them as ‘outside’ of the nations where they seek refuge. Borders have also been externalized, as when U.S. authorities enforce U.S. immigration laws in Southern Mexico in an effort to keep Central Americans from moving northward. Such immobilizing tactics keep migrants in a state of uncertainty, preventing them from ‘arriving’ at their destination and suspending time as they put their lives on hold. These harsh practices have embodied effects on immigrants who may experience extreme deprivation, even death, and who may also be harmed emotionally and psychologically by discourses that define non-citizens as potential security risks.

Members of immigrant communities have not accepted these measures passively. The remainder of this article draws on fieldwork within immigrant-serving organizations in Southern California and interviews with immigrants themselves to identify three strategies through

which immigrants – particularly those from Latin-American communities – have contested illegalization, racialization, and criminalization. Related strategies can be located in other parts of the world as well.

The first strategy used by immigrant community members is to construct *counter-narratives* that challenge illegalization. Counter-narratives can be articulated in private conversations or can be publicly proclaimed, for instance, through marches, through news media, or through organizations' publicity and organizing campaigns. Counter-narratives typically explicitly challenge the justifications for illegalization. For instance, immigrant community members can argue that they are in fact law-abiding, hard-working individuals who contribute to society. Such arguments put forward relatively expansive grounds for deservingness, basing deservingness in behaviour rather than on arbitrary factors such as how an individual entered or remained in national territories. A limitation of such approaches is that they allow anti-immigrant sentiment to set the terms of the debate, thus engaging in what has sometimes been termed a 'politics of respectability', according to which some individuals (for instance, those with criminal convictions or those who are unemployed) are deemed unworthy. One example of a counter-narrative used at an immigrant rights march in Los Angeles in 2017 was 'Immigrants Make America Great'. This slogan evoked U.S. President Trump's slogan, 'Make America Great Again', but inverted it, suggesting that immigrants are a source of rather than threat to 'greatness'. Another marcher's sign read, 'Illegal President Not Elected by the People, Very, Very Bad'. This sign turned language of illegalization back against Trump by highlighting his loss of the popular vote in the 2016 election and also mocked his speech style through the words, 'very, very bad'. Such signs and slogans assert immigrants' value and self-worth, accusing the state, rather than immigrants, of illegality.

The second resistance strategy identified in this study was to *practice legal craft* by submitting claims for legal status. Doing so allowed immigrant community members and their allies to re-interpret law in ways that defined immigrants as deserving of legal recognition. In the hyper-legalized context created by immigration enforcement activities, many unauthorized immigrants interpret the documents – check stubs, rent receipts – produced through daily life as potential evidence in a future immigration case. By saving such documents, immigrants – who are accused of being undocumented – may experience hyper-documentation. By preparing for the day when they can submit these as part of a legal claim, immigrant community members help to bring that day into being. Working with attorneys and legal advocates, community members sought to demonstrate the *normalcy* of their lives, demonstrating through their saved documentation that they had volunteered in schools, been employed, supported family members, and engaged in social activities. Having to prove what citizens could take for granted was a burden, but also enabled community members to push law to recognize the value of their family relationships and life goals. Of course, like counter-narratives, the strategy of filing for legal status in some ways reinforced the very system that underpinned illegalization. Nonetheless, taken collectively, these many individual cases staked a broader claim to presence, meaning, and the opportunity to have futures.

The third strategy noted by researchers was *community resistance*, such as advocating for localities to declare themselves sanctuaries in support of immigrant communities, or adopting local measures designed to promote social inclusion. The term 'sanctuary' has a long history, drawing on medieval traditions of creating sacred spaces that shelter those who are targets of state action. During the 1980s, sanctuaries were established in the U.S. for refugees who were fleeing civil wars in Central America and who being denied political asylum. In the 2000s, sanctuary has once again become a common resistance practice, as some U.S. cities and states have resisted federal pressures to instruct police to collaborate in immigration enforcement practices. 'Sanctuary' cities and states, in contrast, typically limit such information-sharing and even go further to

actively include immigrants in ways that produce localized understandings of citizenship. For example, the state of California issues driver's licenses and business licenses to individuals regardless of immigration status, as well as making educational opportunities more broadly available. Some Southern California immigrant community members were able to take advantage of these measures to mitigate impacts of illegalization. For instance, community members who secured local licenses could practice professions without having to be employees, and therefore did not need work authorization. Through community resistance, immigrants refused to allow legal uncertainty to define their lives.

Counter-narratives, legal craft, and community resistance engage law in complex ways. These strategies take up elements of law – such as the notion that presence in the U.S. confers at least minimal due process rights or that good moral character is part of a status claim – and interpret them in ways that challenge illegalization. Claims are staked through each of these strategies, whether through public media, legal processes, or city and state initiatives. Of course, such strategies can be challenged through media coverage that promotes narratives of illegality, denying or restricting legal opportunities, or adopting local measures that cooperate with federal immigration enforcement, as occurred when the state of Arizona passed legislation requiring police to check individuals' immigration status as part of routine interactions.

The nexus between illegalization, criminalization, and racialization is powerful and pervasive, infusing a myriad of government and private actions with immigration enforcement dimensions. Thus, when employers check job applicants' work authorization or when colleges and universities determine whether individuals have the right 'papers' to qualify for educational opportunities, immigration law is being enforced. Yet, these interactions also create opportunities to contest enforcement practices, and to redefine immigrant community members as deserving residents. These dynamics demonstrate law's complexity: law can be a powerful force that 'others' non-citizens, but it also sets out grounds for social inclusion. And sometimes, through the actions of immigrant community members and their allies, law's potential to promote social justice can be realized.

Further readings

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