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Amplifying the Voices of the Muted: Reinterpreting Rival Representations of Mexican and Central American Migrants and Refugees in American Migration Discourse

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Amplifying the Voices of the Muted:
Reinterpreting Rival Representations of Mexican and Central American Migrants and Refugees
in American Migration Discourse

Senior Project submitted to
The Division of Social Studies
of Bard College

by

Katherine M. Hopper

Annandale-on-Hudson, New York
May 2019

“To try to write love is to confront the muck of language: that region of hysteria where language is both too much and too little, excessive.” -Roland Barthes

DEDICATION

FAMILY

Hopper, Ann. How am I supposed to thank the woman who gave me life? How do I put into words my appreciation for all of the sacrifices you've had to make, especially the ones I don't know about. Even with your busy schedule, you always find time to do things for other people, like send me cards, just because. I've kept every single one. Thank you for loving me even, when I'm being the worst brat possible. I wonder how many times you've flown across the continent to endure the shittiest weather to watch me play. I don't know what kind of person I would be without you to look up to and be annoyed by. Thank you for being my mom, best friend, and biggest fan.

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“This is not to make a simple romantic argument about ‘giving the people a voice’; for one would find underneath the silence not a voice waiting to be liberated but ever deeper historical layers of silencing and bitter, complicated regional struggles over history and truth.” –Liisa H. Malkki

INTRODUCTION

Language is inherently restrictive. Letters are strung together and packed into sentences, trying to make sense of things going on around us. Although the words we use will never be exactly right, we are stuck with the words we have. Subject to the limitations of language, migration discourse inevitably fails – but the question is, who is it failing? The way that we define and use the term “migrant” in American migration discourse largely overlooks the very subjects at its heart: migrants. The way that terms, such as “illegal alien,” are typically used to describe migrants in the US strip migrants of their histories and humanity, silencing millions. Migrants, “illegal” or not, are forced into this silence, forced to live clandestine existences. They are talked over and hushed, stories rarely heard, let alone listened to.

This is not a conventional body of research, rather a comprehensive journey through the language used in America to define what and who a “migrant” is, but recalibrated using testimony and narrative. Migration discourse is incomplete without the voices of its focus. In order to complete the discourse, we must unmute the mouths of migrants and inject their vital testimonies into the discourse, thus refocusing around their narratives.

This is not meant to be an optimistic thesis about how we should all be better, kinder human beings, although that would be nice. This is a thesis about a discourse that is abstract, yet tangible; filled with terms with high stakes, shaping the lives’ of millions, including yours. Oscar Martínez’s *The Beast: Riding the Rails and Dodging Narcos on the Migrant Trail* and *A History of Violence: Living and Dying in Central America* are two central texts for why I chose to write about migration. From the introduction for *The Beast*, here is but one snippet of the power and importance of his work:

Why should people read this? Here's my reply. First, I think you should read it because it is about people who surround you. This book isn't about Martians. It doesn't chronicle the tragic life stories of distant, faraway people living in the wilderness, without the Internet, eating nothing but millet. It doesn't discuss people you will never see up close or see only on television. This book is about the lives of people who serve you coffee every morning. It tells the stories of people who cut your lawn and fix your plumbing. These lives are very similar to the lives of about 6 million people living in your midst. It tells the story of the more than 1,000 human beings who every day leave the three northern Central American Countries to try to enter, without permission, the United States and other countries of the North.¹

The words that we use to talk about six million people need to be thoughtful and understood in the context of their histories and development. These terms shape laws and regulations, but more importantly they shape the everyday lives of millions of people and families.

Historically, language has been one of the sharpest weapons around. Marguerite Feitlowitz's *A Lexicon of Terror: Argentina and the Legacies of Torture* traces the ways language was the smoking gun of Argentina's Dirty War, focusing on the reappropriation of everyday language to instill fear and encourage silence. Feitlowitz utilizes the testimonies of victims of torture:

This lexicon gives a detailed picture of daily life in the camps and the thinking that went into their creation. It is no accident that official "germ theories" concerning "subversion" yielded a host of tortures bearing medical names. The accounts are harrowing. But testimony fulfills the sacred obligation to bear witness, and however discomfiting it may be for us, our pain, though great, is minor compared with that of the victims. We lack the right to turn away.

After years of taking testimony, I am convinced that we will not be able to grasp what

¹ Martínez, Óscar. *A History of Violence: Living and Dying in Central America*. Verso, 2016, pp. XVIII.

happened in Argentina unless we gain a sense of how these words were *lived* [emphasis in original].²

Feitlowitz's book is terrifying. She talks about how silence was weaponized using phrases like, "Silence is health."³ And who better to fill this silence than the bad guy, "Hitler once said, without loudspeakers, we never could have conquered Germany."⁴ It is unimaginable how people throughout history carry out such gruesome atrocities on other human beings, but Feitlowitz insists that readers imagine or else we will forget, to fill the silence before it settles indefinitely.

This is about reflection – self-reflection, societal-reflection, and really thinking critically about the words we use and the history they bare. It's about noticing the danger in *not* noticing. It's about noticing why Donald Trump's rhetoric (both online and verbal) is so dangerous: "Official rhetoric displays all of the traits we associate with authoritarian discourse: obsession with the enemy, triumphal oratory, exaggerated abstraction, and messianic slogans, all based on 'absolute truth' and 'objective reality.'"⁵

THE PRESIDENTIAL TWEET

It is all too easy to find all of these traits of authoritarian discourse in just about every other sentence that escapes President Donald Trump's mouth. His simple, yet effective, "Make America Great Again" slogan *bleeds* authoritarianism and hits home to a lot of his followers. This is an essential and damaging aspect of migration discourse, and we must worry about his words because history repeats itself: "The Dirty War, though unprecedented in its extent and cruelty, did not erupt from a vacuum. Rather, it drew on a reservoir of beliefs, phobias, obsessions, and rhetoric that have filtered down through a variety of ultra-conservative movements, tendencies, and regimes."⁶

² Feitlowitz, Marguerite. *A Lexicon of Terror: Argentina and the Legacies of Torture*. Rev. ed., Oxford UP, 2011, pp. 58.

³ Ibid. 39.

⁴ Ibid. 48.

⁵ Ibid. 22.

⁶ Ibid. 22.

Trump's rhetoric easily draws on the public's pent-up racist beliefs, resonating with those who are quick to cry out "reverse racism."

It would be easy to write an entire, separate thesis linking Trump's rhetoric to the rise of white supremacy and white nationalism in America. The Dirty War had dictator Emilio Massera and we have Donald Trump:

The grand orator of the Process [the dictatorship] was admiral Emilio Massera, master of the majestic rhythm, learned tone, and utterly confounding – but captivating – message. As a young man, he studied philology, and language would remain a lifelong obsession. Here is but one of his darkly shining verbal jewels: "Unfaithful to their meanings, words perturb our powers of reason."⁷

Trump is no master of rhythm or tone, nor does he have darkly shining verbal jewels. Instead, he gives us rocks. Heavy, ugly rocks. Rocks to throw at people who look different or come from somewhere else. Rocks to protect *us* from *them*.

Trump's promise to "Build that wall!" was a much bigger part of his campaign than anyone would have expected and it continues to be his rallying cry. Trump's wall is an explicit call for a division where the Third World kisses the First – he hates this PDA almost as much he hates immigrants. Why does 40% of our country rally so easily and persistently to this message? Feeding on pre-existing prejudices, Trump's often maniacal Twitter is his sparkly white soapbox to shout racist sweet nothings. Pre-existing racist notions carry his weight all too easily.

Like a little boy roasting ants with a magnifying glass to the horrified glee of his friends, Trump channels these sentiments and watches them catch on fire. During Donald Trump's presidential campaign announcement, he exclaimed:

⁷ Ibid. 20.

When do we beat Mexico at the border? They're laughing at us, at our stupidity. And now they are beating us economically. They are not our friend, believe me. But they're killing us economically. The U.S. has become a dumping ground for everybody else's problems... When Mexico sends its people, they're not sending their best. They're not sending you. They're not sending you. They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people. But I speak to border guards and they tell us what we're getting. And it only makes common sense. It only makes common sense. They're sending us not the right people. It's coming from more than Mexico. It's coming from all over South and Latin America, and it's coming probably— probably— from the Middle East. But we don't know. Because we have no protection and we have no competence, we don't know what's happening. And it's got to stop and it's got to stop fast.⁸

He begins by calling the US a “dumping ground,” calling all Mexicans that come to the US trash. Trump separates *us* from *them*, saying “they're not sending you” not once, but twice. He praises his American listeners for being inherently “better” than noncitizens. He says that all Mexicans, except for *maybe* a few, that come to the United States are either drug dealers, criminals, or rapists. He says that Border Patrol tells him “what” we're getting, not who, dehumanizing Mexicans further although more subtly. He then brings in the Middle East and stereotypes that go with that, linking the danger unfortunately associated with the Middle East for emphasis. And lastly, he instills more fear by underscoring how little we know about who is coming into the US, implying it's a crisis using rhetoric of urgency.

Trump's unprecedented (and un-presidential) use of Twitter remains a hotly contested and studied phenomenon. His erratic tweets continue to shape much of the conservative discourse

⁸ Trump, Donald. “Presidential Announcement.” 16 June 2015. *Time Magazine*, time.com/3923128/donald-trump-announcement-speech/. Address.

surrounding immigration and immigration policies, namely that they are mostly, if not all, criminals. The following tweets are just a few of many that demonstrate Trump's dehumanizing anti-immigrant rhetoric that spreads like wildfire among his supporters and seeps into the media, normalizing this idea that all migrants are criminals. It is all too easy to find anti-immigrant tweets from the President of the United States. For example, on June 19, 2018, he tweeted, "Democrats are the problem. They don't care about crime and want illegal immigrants, no matter how bad they may be, to pour into and infest our Country, like MS-13. They can't win on their terrible policies, so they view them as potential voters!" and people took notice. His "language of exterminators" here is spine-chilling, and here's why:

The use of the word "infest" to talk about people is literally out of the Nazi/anti-Semites' playbook for talking about the Jewish threat. It was also a standard for talking about Chinese in the western United States and it remains part of the vocabulary for talking about Romani (Gypsies) in parts of Europe. This is the most hard-boiled kind of racist demagogic language, the kind that in other parts of the world has often preceded and signaled the onset of exterminationist violence. The verb "to infest" is one generally used to describe insects or vermin (rats), creatures which are literally exterminated when they become present in a house or building or neighborhood.⁹

Although this linkage between the language of the Holocaust may seem like a stretch, it remains eerily similar – dehumanization is Donald Trump's favorite pastime. In history class the question of, "What would you have done if you lived in Nazi Germany?" always comes up. The answers are usually along the lines of, "I would have helped save as many Jews as possible," or, "I would've spoken up! I definitely would have done something" Everyone *thinks* they would have acted

⁹ Kilgore, Ed. "Trump Uses Language of Exterminators in Attack on 'Illegal Immigrants.'" *New York Magazine*, 19 June 2018, nymag.com/intelligencer/2018/06/trump-uses-language-of-exterminators-about-immigrants.html. Accessed 7 Apr. 2018.

differently. But there is no knowing how things would have gone in the past— the past is the past and the only thing we can do is try to change the future. Trump’s rhetoric mirrors Hitler’s and although we aren’t rounding Jews up and shipping them off to concentration camps to be murdered, internment isn’t so far from American history’s rearview mirror. Just think of the detention centers, the separation of families at the border— these words matter. The red flags are waving too proudly to miss. Without noticing, it is just so easy for people to take stereotypes for reality and slide down along with Trump to the world of Aryan brotherhood.

Donald Trump always has a surplus of dehumanizing things to say, especially in the midst of the recent, widely publicized “migrant caravan.” One of the largest (but not the first) migrant caravans to come to the US, thousands of people from Central America rallied together to walk through Mexico to apply for asylum. Traversing thousands of miles, these people found safety in numbers. On October 22, 2018 in response to the caravan, Donald Trump tweeted, “There are a lot of CRIMINALS in the Caravan. We will stop them. Catch and Detain! Judicial Activism, by people who know nothing about security and the safety of our citizens, is putting our country in great danger. Not good!” A few days later, he tweeted, “To those in the Caravan, turnaround we are not letting people into the United States illegally. Go back to your Country and if you want, apply for citizenship like millions of others are doing!” In both of these tweets, Trump selectively capitalizes certain words to make the tweet stick in the reader’s mind. Most obviously, the word “CRIMINALS” is in all caps. If the casual Twitter user is scrolling through the app on their phone and gleans over this tweet, the word “CRIMINALS” will be the first thing they see, followed by “Caravan” and “Catch and Detain.” By first planting the “CRIMINAL” seed, *then* “caravan,” Trump intentionally ties the two phrases together; if a mother and her children are walking with a caravan, all of a sudden they transform into criminals. Lest we forget that criminals are people too, but not to Trump and his supporters. Criminals are referred to by the staff who deal with them in their real world

of incredibly restricted freedom as SO's (sex offenders) or Perps, or Cons or a million other shorthand ways of robbing someone of their humanity so you don't have to feel bad about robbing them of everything attaches to that rubric. The point is that what you are seeing with immigrants is exactly what you see with anybody that our nation wants to minimize and disregard.

In the latter tweet, Trump speaks dark volumes. He positions migrants in the caravan as dismissing the law ignoring the “norm” of properly applying for citizenship, and therefore criminals. He also paints the image invisible border as thick, drawing a harsh line between us US citizens and *them* – “Go back to your Country.” He also writes, “To those in the Caravan” as if they are checking their Twitter during their thousand mile trek and they surely aren't going to turn around because of a tweet.

Leading up to Trump's proclamation of the US-Mexico border as a national emergency, on January 11, 2019 Donald Trump tweeted:

Humanitarian Crisis at our Southern Border. I just got back and it is a far worse situation than almost anyone would understand, an invasion! I have been there numerous times - The Democrats, Cryin' Chuck and Nancy don't know how bad and dangerous it is for our ENTIRE COUNTRY...¹⁰

And then continues his thought in the next tweet:

...The Steel Barrier, or Wall, should have been built by previous administrations long ago. They never got it done - I will. Without it, our Country cannot be safe. Criminals, Gangs, Human Traffickers, Drugs & so much other big easily pour in. It can be stopped cold!

Again, intentional capitalization is at work here, especially “ENTIRE COUNTRY” and “Criminals, Gangs, Human Traffickers, [and] Drugs.” Trump tries to instill fear by using words like, “invasion!” or “bad and dangerous,” associating all migrants with criminal activity and leaves no room for the

¹⁰ Trump, Donald (realDonaldTrump). 11 Jan. 2019, 8:04 a.m. Tweet.

possibility any other alternative reason for going to the US, like fleeing gang violence. Instead, Trump posits that these migrants *are* gang violence.

In his “Presidential Proclamation on Declaring a National Emergency Concerning the Southern Border of the United States,” Trump recycles language from this tweet:

The current situation at the *southern border* presents a border security and *humanitarian crisis* that *threatens* core national security interests and constitutes a *national emergency*. The southern border is a major entry point for *criminals, gang members, and illicit narcotics*. The problem of large-scale *unlawful* migration through the southern border is long-standing, and despite the executive branch’s exercise of existing statutory authorities, the *situation has worsened* in certain respects in recent years. In particular, recent years have seen sharp increases in the number of family units entering and seeking entry to the United States and an inability to provide detention space for many of these *aliens* while their removal proceedings are pending. If not detained, such *aliens are often released into the country* and are often difficult to remove from the United States because they fail to appear for hearings, do not comply with orders of removal, or are otherwise difficult to locate... Because of the gravity of the current *emergency situation*, it is necessary for the Armed Forces to provide additional support to address the *crisis* [emphasis added].¹¹

This proclamation starts similarly to his tweet with the association of humanitarian crisis and the southern border. But to Trump it is only humanitarian for a fleeting moment and it transforms into a threat, a crisis of national security, and the “human” in humanitarian is lost: like pests or anthrax, “*aliens are often released into the country* and are often difficult to remove.” To Trump, migrants are poisonous parasites, ticks that latch on and need to be met removed with an army.

¹¹ Trump, Donald. “Presidential Proclamation on Declaring a National Emergency Concerning the Southern Border of the United States.” *White House*, US Government, 15 Feb. 2019, www.whitehouse.gov/presidential-actions/presidential-proclamation-declaring-national-emergency-concerning-southern-border-united-states/. Accessed 20 Mar. 2019.

Much of the anti-immigrant rhetoric woven throughout media and every daily life takes root in Donald Trump's words. Tweets like these cannot be taken for granted. They inform much of the American public as to how to talk about immigration. And for those who are anti-Trump, they inform exactly how *not* to talk about immigration, but there exists a gap: how do we talk about immigration into the United States? Therein lies two main problems.

The paradox of language is that although we are aware that our dictionary is finite and that the words we have will never quite cut it, we nevertheless attempt time and time again to cross this impermeable line, to try and find the right words. This line is thick in migration discourse, the tug of war of to be politically correct or not. One example is the controversy about how to talk about migrants in the US. What do we call them? Immigrants? Migrants? Refugees? Asylees? Illegal? Alien? Illegal aliens? Are there different levels of illegality? Is anyone from a foreign country an alien in America? Undocumented? Documented? Unauthorized? Did they come to America without documents or did they have documents and it expired? What if they have documents, but they're fake? What if they're citizens? What if they had documents, but they expired? Are they undocumented if they aren't carrying their documents on them at all times? What is the difference between a migrant and an immigrant? Each of these terms carry their own nuances that further abstract the terms. The fact is that most people don't know a lot about immigrants. Channeling this ignorance, Trump has effectively made up an issue and when he uses terms associated with immigrants he does it with snide inferences. We have yet to find the right words and until we do, we're stuck with phrases from "those who know better" use to introduce the topic to us, so when Trump calls migrants "illegal aliens," his supporters follow suit.

This brings us to the second major issue about the migration discourse into the United States. Immigration is framed as a "problem to be solved," centering on the *American* experience of immigration as a set of laws to control foreign visitors. When talk about immigration as immigration

strictly *into* the US, but not *from* somewhere else. What Americans neglect is the experience of the migrant, that migrants weren't always "migrants" and that once they were people living their daily lives, just like anyone else, at home. We neglect the journey from their country of origin, the countries that they had to travel through, the borders they had to cross, all of the the life changing decisions, big or small, that they had to make before they survived their trip to and across the US-Mexico border and into America.

One of the most prominent veins of American migration discourse, both liberal and conservative and in between, is that migrants come to the United States for better opportunities, better pay, and to work hard. In *The Working Poor: Invisible in America*, author David Shipler investigates people trapped "on the edge of poverty." A book full of narratives that "unravel the tangled strands of cause and effect that lead to their individual predicaments,"¹² Shipler writes in his preface:

The classic immigrant story still stirs the American heart, despite the country's longstanding aversion to the arrival of the "wretched refuse" at "the golden door," in the words etched on the Statue of Liberty. Even while resenting the influx of immigrants, we revel in the nobility of tireless labor and scrupulous thrift that can transform a destitute refugee into a successful entrepreneur. George W. Bush gave voice to the myth when he was asked whether he meant to send a message with the inclusion of two blacks, a Hispanic, and two women in the first senior appointments to his incoming administration. "You bet," the president-elect replied: "that people who work hard and make the right decisions in life can achieve anything they want in America."¹³

This way of thinking conceives of migrants not as people, but as machines. They're people second, callused hands first.

¹² Shipler, David K. *The Working Poor: Invisible in America*. Vintage Books, 2005, ix.

¹³ *Ibid.* 5.

Before migrants are subjected to the everyday bias they will face in America, before migrants have to listen to Donald Trump shout not-so-sweet nothings, many migrants face an immense amount of trauma – if trauma can be quantified. The hostile American “hello” only compounds this trauma. For some migrants waiting to be “legally” recognized as refugees, (asylees) this hostile “hello” is detention. Detention also functions as a hostile “goodbye” for migrants in deportation proceedings. One Salvadoran asylum seeker named Alexa in detention says, “They should help facilitate the asylum process so that one doesn’t suffer in detention centers. They shouldn’t be causing more harm.” Detention amplifies trauma, trauma from both country of origin and/or from their trek to the US. Alexa uses the phrase “causing more harm,” indicating a former experience of harm. It is likely that Alexa is a part of the estimated 90 percent of migrant women who are sexually assaulted en route – “there are many untold stories of trauma.”¹⁴

An important reality of understanding the trauma of others is recognizing that as an outsider, as someone who did not experience what these migrants experienced, we must consider the many degrees of separation between us and them. This is not positioning us *versus* them, rather us *and* them, as a collective working together to slowly heal the gaping wound we’ve gouged. It’s our job to do our best to understand, while also understanding that we will never fully understand or comprehend someone else’s experience. It’s also important to acknowledge that the when someone talks about their traumas, the person listening should be grateful and acknowledge that it’s a tender moment, one of vulnerability and trust. De León knows that his opportunity to speak directly to migrants is an important one and should be handled with care. It’s one thing talk about migration from the outside looking in – that’s easy. Talking about migration as a border crosser is to bare many burdens, physical and mental scars. Remembering is an entirely different kind of work:

¹⁴De León, Jason. *The Land of Open Graves: Living and Dying on the Migrant Trail*. U of California P, 2015, pp. 17.

If you are not a researcher working along the border, getting the opportunity to hear a migrant's story is rare. Many do not like reminiscing about their time in the Sonoran Desert hybrid collectif.¹⁵ Who can blame them? Even when their crossing is successful, the event can be traumatic and have lasting emotional, psychological, and physical effects. The act of remembering can conjure pain, fear, and despair. Among American families with undocumented members, it is not uncommon for the topic of their crossing to be a forbidden subject. A former undocumented woman once told me: "I came here illegally thirty years ago when I was about four years old. We are citizens now. My mom, brothers, and I crossed a river and my aunt came through the desert. It's a taboo subject in our household and never talked about."¹⁶

Putting experiences into words, especially traumatic experiences that have long-term effects, is difficult in its entirety. Memories are often painful to conjure and that cannot be taken for granted by those inquiring. Memory may get a bit jumbled and time may not feel linear, and stories don't always make total sense, but more on this later.

It's likely that when migrants are living in these moments of trauma that their own stories don't "make sense" to them either. Nora Strejilevich, for example, is an Argentinian writer who speaks as a survivor of a concentration camp and writes, "...incontrovertible memory is itself a fiction. Another is that not even trauma can be described without recourse to a narrative structure. Some testimonial writers – in the belief that fictionalization diminishes the impact of horror – insist that their accounts are genuine reflections of reality."¹⁷ Digging up "truth" from trauma is, in a way, counter-productive. Traumatic situations create their own horrifying reality, realities that are sometimes a mess to make sense of.

¹⁵ For more on De León's concept of "hybrid collectif" see *ibid.* in its entirety.

¹⁶ De León, 168.

¹⁷Strejilevich, Nora. *A Single, Numberless Death*. Translated by Cristina De la Torre, U of Virginia P, 2002, pp. 708-9.

TESTIMONY AND *TESTIMONIO*

One avenue for reclamation of self for survivors of trauma is the dynamic literary genre known as *testimonio*. *Testimonio*, like testimony and narrative, resists the rigidity of “truth.” It is a complex genre to try to define and while it translates directly to “testimony” in English, *testimonio* is much more than that. At the same time, even though its translation limits and confines the genre’s purposes and abilities, it is also a useful translation in the context of migration discourse. Soon, we will notice that testimony and migrant narratives functions in similar ways as *testimonio*, both fighting hegemonic histories and instead offering dynamic, alternative ones, grassroot histories. This parallel allows us to talk about *testimonio* as a genre, while *simultaneously* talking about testimony, as a way to frame the discussions to follow. After understanding how *testimonio* functions, we will catch a glimpse of the traumas migrants endure and read testimonies of different types of survivors; survivors of the migrant trail, survivors of sexual violence, survivors in the midst of surviving, survivors of this “fabled land of opportunity” that we so proudly call America.

John Beverley, author of *Subalternity and Representation* and *Testimonio: On the Politics of Truth*, offers the most widely accepted attempt at a defining *testimonio*:

... a novel or novella-length narrative in book or pamphlet (that is, printed as opposed to acoustic) form, told in the first-person by a narrator who is also the real protagonist or witness of the events he or she recounts, and whose unit of narration is usually a “life” or a significant life experience. *Testimonio* may include, but is not subsumed under, any of the following textual categories, some of which are conventionally considered literature, others not: autobiography, autobiographical novel, oral history, memoir, confession, diary,

interview, eyewitness report, life history, novela-*testimonio*, nonfiction novel, or “facto-graphic literature.” [emphasis added]¹⁸

Beverley admits that the act of trying to define *testimonio* and its form is “at best provisional, at worst repressive.”¹⁹ There is no way to define *testimonio*, but Beverley gets close. *Testimonio* is its own malleable and dynamic “genre” of text, one without specific, absolutely essential boxes to be checked in order to qualify.

Testimonio is produced in a variety of ways, some more autobiographical in the sense that the narrator is doing the writing, but is generally dependent on an interlocutor. This third party can further fragment our view of the storyteller’s tale – begging the question of how much of the *testimonio* is a result of the interlocutor’s decision to omit, include, or alter something? Are they trustworthy? What has been lost in translation?

This ambiguity can also illuminate the “truth” further because *testimonio* brings with it an assumption of “truth” upon the reader. This is comparable to how migrant narrative is collected, presented, reproduced, and disseminated. For example, a reader does not enter an autobiography with the presumption of falsehood: the expectation is that the narrator is being honest about their story. Beverley calls this a “peculiar truth-claim on the reader”²⁰ – when readers expect cold, hard “fact,” it undermines the role of *testimonio* as a vessel for change and neglects its capacity to heal and cope with traumas, traumas that may have obscured their reality of the experience.

Scholar and author of her own *testimonio*, Strejilevich’s has first-hand experience of atrocity and her own traumas. Her own *testimonio*, titled *A Single Numberless Death*, is a testament to how dynamic and unique to itself each *testimonio* is. Her book was her own personal attempt at understanding and putting trauma into words. After this process, she reflected on her experience of

¹⁸ Beverley, John. “The Margin at the Center: On Testimonio (Testimonial Narrative).” *MFS Modern Fiction Series*, vol. 35, no. 1, Spring 1989, pp. 12-13.

¹⁹ *Ibid.* 13.

²⁰ *Ibid.* 24.

producing her experience on paper and wrote an article about it. As a survivor herself and an exceptional writer, Strejilevich is able to capture the notion of a new kind of “truth” born in *testimonio* eloquently in her article titled “Testimony: Beyond the Language of Truth.” In this article, she focuses on testimony of witnesses in the context of a courtroom, rather than *testimonio*, where the expectation of truth is verbalized: “Do you swear to tell the the whole truth and nothing but the truth?” Strejilevich writes:

...how can “lies” be distinguished from “personal perspectives?” How can a rigid distinction between fact and interpretation be sustained? “Facts” are always already interpreted in human speech, and any given historical event is subject to multiple meanings. In the case of testimony, interpretation is part of the process because we are dealing with memories and with language.²¹

Testimonio as a genre and “testimony” in the courtroom are interchangeable. She argues against the common conceptions of truth and argues for perceived *experience*. While typically “testimony” is an oversimplified translation of *testimonio*, we can see how important parallels are born and as a result the word “testimony” here can readily be replaced by *testimonio* and shed light on the work that testimony does.

While writing style and presentation of *testimonios* vary greatly and are dynamic, there are a few key aspects that make it particularly unique, one being this *work* that it does and the urgency it bares. It’s an opportunity to make people listen, for there are lives at stake and lives that can no longer be saved. *Testimonio* exists to call attention to atrocious human rights violations. But the point of testimony isn’t to “accurately” document one person’s story in intimate detail, frame by frame. It is to find the melody of a group of in the single voice of a singer. This fluid song does not exist simply to be heard – there is no frivolity in these stakes.

²¹ Strejilevich, 707-708.

These stakes stem from *testimonio*'s role as the voice of a group of people or a community. The individual is the spotlight to draw fellow-sufferers into the light with them. It is not just a type of an autobiography, it's the broader story of a people, a collective narrative through a single lens:

Moreover, *testimonio* is not so much concerned with the life of a "problematic hero" ... as with a problematic collective social situation that the narrator lives with or alongside others. The situation of the narrator in *testimonio* is one that must be representative of a social class or group; in the picaresque novel, by contrast, a collective social predicament like unemployment and marginalization is experienced and narrated as a personal destiny [emphasis added].²²

For example, Alicia Partnoy's *The Little School* is a *testimonio* that draws attention to the "collective social situation" of Argentina's "Dirty War." She works through the atrocities and "disappearances" (a euphemism for kidnapping and then murder) in Argentina between 1976 and 1979. Named after the euphemism for the concentration camp where she was detained, *The Little School* is about drawing attention to these horrors and refusing to let the "disappeared" be forgotten. Partnoy seeks justice and "... not until justice is brought to cases like that of *The Little School* will there be a safeguard against the recurrence of these crimes in the future [emphasis added]."²³ With no other recourse for protection, Partnoy uses *testimonio* as a her weapon of choice, drawing international attention to her lived and survived experience of domestic human rights violations.

Partnoy takes a more poetic approach to *testimonio* in order to explore her suffering and heal. Contrary to Beverley's definition, Partnoy is not always the "real protagonist or witness of the events she recounts." In her chapter titled "Graciela: Around the Table" Partnoy imagines and immerses herself in the consciousness of her pregnant co-prisoner Graciela while she is being tortured. She

²² Beverley, 15-16.

²³ Partnoy, Alicia. *The Little School: Tales of Disappearance and Survival*. Translated by Alicia Partnoy et al., 2nd ed., Midnight Editions, 1998, pp. 11.

does not use the pronoun “she” to describe Graciela, rather, she is consumed by Graciela and the chosen pronoun is “I.” While this experience is not directly hers, this text exemplifies *testimonio*-hood because there is no one correct way that a *testimonio* is constructed or told. Just as there is no one “correct” way that memory finds itself while working through trauma, *testimonio* produces its own version of reality through lived experience.

Again, the point of a *testimonio* is not to say “this, that, and the other” atrocity occurred; it’s about the stakes at hand. It’s about the process of *creating* the text. It’s very production is a process of remembering and fighting dominant histories and systematic erasure:

Literary testimonies do not tell the story the way the witness had seen it or the way s/he had told it in oral accounts. We never say what we see, nor do we see what we say, neither do we write what we see and what we say. There is, rather, a confrontation between seeing, saying, and writing, and literary creation is always playing within these contrasts. What comes out of such a confrontation is an artistic endeavor in which ethics and aesthetics coincide.²⁴

Language and memory are inevitable hurdles in *testimonio* and any mode of storytelling. The right words never exist to explain just exactly how something happened and memory is never quite right. But that does not mean that someone’s experience is not “true.” The intersection of these limitations that produce this new kind of “truth.” There’s “what happened” and then there’s what *was experienced*, “Having witnessed the abyss of atrocity, survivors often find themselves reclaiming memories that resist the rigidity of the truth since they can no longer rely on knowledge or facts as the basis for thinking.”²⁵ And when we try to squeeze *testimonio* into a rigid box, we limit the work it can do, “The essential meaning of testimony is lost when defined as a means to provide information and knowledge based on facts.”²⁶

²⁴ Strejilevich, 710.

²⁵ Ibid. 704.

²⁶ Ibid. 703.

Strejilevich argues for a different type of “truth.” What Beverley calls the “truth-claim,” Strejilevich calls the “snare of objectivity.” She separates “truth” and “objectivity,” whereas Beverley equates the two in his attempt of defining *testimonio*. Through this separation, she expands “truth” to encompass personal experience, which objectivity cannot do:

... by falling into the snare of objectivity, testimony betrays itself. Testimony, again, does not contribute facts but rather incomplete memories that are often imprecise and shaped by fear. Since abuse, persecution, annihilation, and suffering are all true, testimonial discourse should focus on its capacity to transmit these certainties, thus enhancing its role, while confronting the assumptions that limit its power. In short, testimony should stress just truthfulness, not objectivity.²⁷

Essentially, she argues that when readers assume objectivity, it does not give the author or speaker any wiggle room. There is a phrase, a sort of slogan of millennials, that goes, “live your truth.” Cheesy as it may be, there is merit to it. Each person’s truth is dependant on their own experience – one person’s understanding of a situation will be very different than someone else’s experience of the exact same event.

Using Strejilevich’s understanding of truth as inclusive of interpreted experience and the capacity memory, she defies the rigidity of the common notion of “truth” and attempts to abolish “objectivity” in *testimonio*, an impossible prerequisite:

Objectivity is identified as the verifiable referent preceding discourse, although witnesses mostly do not refer to events that can be proven: the referent has vanished, since perpetrators of genocide systematically erase it. Testimony seems to become the proof of

²⁷ Ibid. 709.

what has happened, and this situation inspires narrators' emphasis on the objectivity of their accounts.²⁸

Although *testimonio* cannot be objective, that does not mean that there is not inherent value and truth in human experience and its interpretation. The beauty of *testimonio* is exactly that it isn't objective. The proof is in the telling of the story. The truth lies in the unpacking of this experience. The truth lies in *testimonio* as a whole, as its own experience, and not each individual word or moment – without it, the picture is incomplete.

This tension does not go unnoticed. While sometimes it may be a reader's fleeting thought – “I wonder how much of this is *actually* true” – *testimonio* and testimony offer alternative histories:

While historians work with documents, witnesses' truth does not abide by the rules established by the scientific/academic/legal apparatus, because, again, testimony does not belong to the realm of knowledge; it actually cannot speak without losing track of itself; since it names intolerable destruction.²⁹

Testimonio challenges hegemonic histories and narratives that come together to form the textbooks in our classrooms, histories that work to systematically erase grassroots histories.

In Chandra Talpade Mohanty's *Cartographies of Struggle: Third World Women and the Politics of Feminism* she strongly critiques the relationship between Third World women's texts (for example, *testimonio* written by women) and Western feminism. Chandra describes testimony as an avenue of an attempted correction of and addition these hegemonic histories. She claims that Western feminist movements take advantage of texts like *testimonio* to prove their “diversity” and to try to dismantle the idea that history is in fact hegemonic and Eurocentric. These “plural realities and experiences” are appealing to Western feminists, comforting even. They reassure them that the movement is “for everyone,” despite accurate criticism that it is not an intersectional movement. And there's

²⁸ Ibid. 709.

²⁹ Ibid. 706.

recognizable appeal of testimonies because they can be, in some twisted way, exciting from a distance, poverty porn. The border creates a safe distance from the realities that the pages house, tales of horrific and unimaginable oppression. The testimony is authenticated at the leisure of the white consumer, as Mohanty describes this dynamic thusly:

...often this demand takes the form of the search for more “exotic” and “different” stories in which individual women write as truth-tellers and authenticate “their own oppression,” in the tradition of the Euro-American women’s autobiography. In other words, the mere proliferation of Third World women’s texts, in the West at least, owes as much to the relations of the marketplace as to the conviction to “testify” or “bear witness.”³⁰

In addition to battling oppression on a day-to-day basis, Third World women often have to carefully mold their story into the tradition of Euro-American autobiography. In order to first have their text purchased, and their voices be heard, in order for change to happen their oppression must be “authenticated.”

But testimonies do not exist to ease the mind of the consciously exclusionary Western feminist. They exist because the stakes are high. They are not written for whom they are written about; they are written for audiences with the ability and circumstances to intervene not as they please, but as a responsibility of their privilege and membership in collective humanity.

The importance of *testimonio* and testimony cannot be forgotten: “...without stories, *without listening to one another’s stories*, there can be no recovery of the social, no overcoming of our separateness, no discovery of common ground or common cause [emphasis in original].”³¹ De León writes thoughtfully of this importance of storytelling and of the stories that will never be told:

³⁰ Mohanty, Chandra Talpade. “Cartographies of Struggle: Feminism Without Borders.” *Feminism Without Borders: Decolonizing Theory, Practicing Solidarity*, Duke UP, 2003, pp. 77.

³¹ Eastmond, Marita. “Stories as Lived Experience: Narratives in Forced Migration.” *Journal of Refugee Studies*, vol. 20, no. 2, 2007, pp. 261.

I am privileged to include their stories here along with images shot from their perspective, but it is important to note that millions of others have crossed the desert whose narratives will never be heard. Some died along the way, and many others don't want to recall painful memories, or their tenuous social position as undocumented people robs them of a public voice to tell their stories. Like other immigrant groups before them, Latino families may have to wait one or more generations before reaching a status in US society that allows them to vocalize their migration experiences without trepidation or shame. The worry, though, is that with the passage of time these histories may become sanitized, edited, or forgotten altogether.³²

De León utilizes archaeology to unearth “this clandestine social process” and “hidden narratives.”³³ Archaeology combined with ethnography are his weapons of choice in the fight against hegemonic histories and tainted discourses.

With that in mind, instead of archeology, we will now use testimony and narrative to unearth another glimpse at why migrants come/flee to America, the harsh realities of the migrant trail, and the harsh realities that remain even for those who arrive in the US. The text is meant to be read a communal story, yet tactfully in the image of the *individual*. Put yourself in their shoes, but do not let the collective intention of the text and the degrees of separation between narrator and audience disappear. It is, after all, an easier pill to swallow that one person is undergoing this than the reality of entire communities undergoing similar unimaginable trauma.

The goal here is not to reinvent the wheel, but rather to reconsider and reinterpret terms and ideas we take for granted and, more importantly, to take into account the experiences of the people that these words exist to talk about in migration discourse. In doing so, I choose to write in a less

³² De León, 168-170.

³³ Ibid. 170.

academic way, and a more accessible way because this information is for all of us – it should not and *cannot* be lost beneath big words, or else what's its purpose?

Before we begin, I want to note that I am writing from the perspective of a privileged white woman, sitting comfortably and safely behind my desk at the library, thousands of miles away from the horrors that migrants endure. I hope to close this gap through the experience of storytelling. I also want to acknowledge that in analyzing other representations that I am, in turn, producing my own form of representation. I hope that I do migrants enough justice in our fight for justice, so that one day this type of research won't be necessary.

PART ONE: MIGRANT

“Through ‘inclusive exclusion’ (Agamben 1988: 17), the undesirable persons – ‘illegal’ migrants, refugees and quasi-citizens – are positioned on the threshold of in and out. Their experience is indistinct from the operation of nation-state and their very existence is indistinct from the border (Raj 2006). Through rebordering politics, the sovereign power does not merely exclude the undesirable persons but penalises and regulates them by petrifying them into immobility in detention centres, by ignominious and terrifying forms of deportation, or by racialised internal border control – that turns the citizen into a quasi-citizen. As Balibar puts it ‘some borders are no longer situated at the borders at all’ in geographical or political senses of the terms (2002: 84). Borders have become invisible borders, situated everywhere and nowhere. Hence the undesirable persons are not expelled by the border, they are forced to be border.” –Shahram Khosravi

COMPETING DEFINITIONS

We begin our journey through migration discourse with the help of the Oxford English Dictionary because the dictionary is where all of our words end up. The word “migrant” can be used as both an adjective and a noun. As an adjective, it typically describes a person, a people, an organization, or different of types animals (especially birds): “That migrates; characterized by migration. Also (occasionally): wandering, nomadic.”³⁴ Migrate, as a verb, means, “of a person or a people: to move about, to move frequently; to move, either temporarily or permanently, from one place, area, or country of residence to another; to move *to* another place of residence or study, field of employment, etc.”³⁵ Movement is *the* key factor.

The earliest recorded usage of migrant as an adjective was in 1682: “Passenger and migrant Birds... whom no Seas nor Places limit.” Birds engaged in the migratory process, and people were not yet of interest. It wasn’t until 1807 that it began to be used as a term to describe humans: “And migrant tribes these fruitful shorelands hail.” Tribes were nomadic, hunter-gatherers who migrated to follow the food, yet another way to think about migration. As noun, it describes, “a person who moves temporarily or seasonally from place to place; a person on a journey” and, “a person who

³⁴ “Migrant, adj. and n.” *OED Online*. Oxford UP, March 2019. Web. 28 March 2019.

³⁵ “Migrate, v.” *OED Online*. Oxford UP, March 2019. Web. 28 March 2019.

moves permanently to live in a new country, town, etc., esp. to look for work, or to take up a post, etc.; an immigrant.”

Today, the term “migrant” is typically used as a noun and is often replaced carelessly with the term “immigrant.” However, immigrant is direction-specific, as it is, “a person who migrates *into* a country as a settler [emphasis added].”³⁶ Migrant is a more neutral term, having only movement as a prerequisite, not necessarily crossing any borders.³⁷ In the work that follows, the terms migrant and immigrant will, however, be used interchangeably³⁸ – but not carelessly. This is written from the perspective of a American, in America as a receiving country and this country’s skewed understanding of immigrants, particularly *from* Mexico and Latin America. Every individual brings with them their own set of experiences that shapes how they view something, it’s their own personal lens impacted by their own history. In this way, our view and understanding of the migratory process into the United States will forever be fragmented – our own lens peers through the lenses of others, at best comparable to peeking through a door’s peephole. The intention is to unpack this fragmentation and seeing the bigger picture clearly. The difference between an immigrant and a migrant in general is a notable distinction of the discourse that cannot be totally overlooked or ignored, yet the line is still not so important. While the dictionary definitions provide one understanding of what it means to be a migrant, they are far too general. To offer a more complete view of migranthood, other definitions are necessary. We begin our journey through migranthood with the United Nations’ understanding of the term and its nuances.

³⁶ “Immigrant, adj. and n.” *OED Online*. Oxford UP, March 2019. Web. 28 March 2019.

³⁷ Another term that is used, although less often, is “emigrate” or “emigrant.” The Oxford English Dictionary provides that “emigrate” means, “to remove out of a country for the purpose of settling in another.” Emigrate is to *leave* one’s country and to immigrate is to *enter* another.

³⁸ Even the auto-correct on my computer occasionally underlines the word “migrant” in a jagged red line to announce that “immigrant” is the word I surely must have been looking for.

THE UNITED NATIONS

The International Organization for Migration (IOM), a facet of the United Nations, offers an inclusive definition of migrant, showing how migrant is a term that can encompass both immigrant and migrant. In their “Key Migration Terms” section, the IOM defines a migrant as:

...any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.³⁹

To the UN, a migrant is a person who moves away from home, regardless of where, why, and or how long. What’s important is that a migrant is someone who moves, whether it’s to a house down the block, a neighboring city, or to a country on the opposite side of the globe. Crossing an international border is not necessary.

The UN’s “Key Migration Terms” page does not provide a definition of an immigrant, but does for immigration, defined as, “a process by which non-nationals move into a country for the purpose of settlement.” There are a few keywords here, namely *process*, *non-nationals*, and *into*. Immigration is strictly the process – the route, the journey – from one country (the country of origin or “sending” country) *into* another (the country of destination or the “receiving” country). This process might entail the crossing of other international borders (countries of transit) in order for a migrant to reach their final destination.

This brings us to the importance of the term “non-nationals” because it underlines the difference between immigration/ immigrants and migration/migrants: citizenship. Citizenship is taken into account in defining immigration, but is not in defining migration because citizens and noncitizens alike can move. In the UN’s definition of “country of nationality,” the term “national” is

³⁹ “Key Migration Terms.” IOM: UN International Organization for Migration, www.iom.int/key-migration-terms. Accessed 1 Apr. 2019.

elaborated on slightly, “the country of a person’s citizenship or country in which the person is deemed a national.” So, for the UN, an immigrant is someone who is a national or citizen in one country, but moves to another country for “resettlement.” Resettlement is a vague term, leaving room for both permanent residency and also returning to a migrant’s country of origin is still an option.

Given that the only prerequisite for migration is movement, what are refugees? Are they migrants? The United Nations High Commissioner for Refugees (UNHCR) 1951 Convention and Protocol Relating to the Status of Refugees outlines the most widely accepted and legally implemented definition of a refugee. While persecution is one of the main (if not *the* main) prerequisites for refugeehood, so is the physical location of the person claiming refugeehood because they must have already left home and crossed an international border. The UN demands the crossing of an international border for a person to be considered a refugee. Migrants, however, need not cross a border to still have migrated. We can now see that refugees can in most cases be considered a *type* of migrant, because even though their migration is not their choice (and would be more accurately characterized as fleeing), they are still moving. There will be a much more in depth discussion of the term “refugee” in part two, but what is essential for understanding migranthood is *movement*, regardless of destination and plans for returning. The UN’s understanding of what it means to be a migrant is an important aspect of migration discourse, but it does not yet reflect the stance that America takes. As such, we will now inject the Department of Homeland Security’s terminology of choice.

THE DEPARTMENT OF HOMELAND SECURITY

For the Department of Homeland Security, a migrant is, “a person who leaves his/her country of origin to seek residence in another country.” Their definition, unlike IOM, requires the

crossing of international borders. Similar to IOM, DHS is also ambiguous as to whether or not the departure from home was voluntary or not. Interestingly, under the term “immigrant,” DHS has no definition and instead provides a link to the phrase “permanent resident alien,” defined as:

An alien admitted to the United States as a lawful permanent resident. Permanent residents are also commonly referred to as immigrants; however, the Immigration and Nationality Act (INA) broadly defines an immigrant as any alien in the United States, except one legally admitted under specific nonimmigrant categories (INA section 101(a)(15)). An illegal alien who entered the United States without inspection, for example, would be strictly defined as an immigrant under the INA but is not a permanent resident alien. Lawful permanent residents are legally accorded the privilege of residing permanently in the United States. They may be issued immigrant visas by the Department of State overseas or adjusted to permanent resident status by the Department of Homeland Security in the United States.⁴⁰

DHS specifies that “legally” speaking immigrants are considered “aliens.” An “alien” is, “any person not a citizen or national of the United States,” in the US. If a migrant is in America “legally,” then they are not an immigrant and are referred to as “permanent resident alien” instead and “alien-ness” sticks to them until citizenship. DHS ties the terms immigrant and illegal intrinsically together, intertwines them, and does not allow for their separation. It is worth noting that with the phrase “the *privilege* of residing,” this definition positions the US as superior to the migrant’s sending country. Many anti-immigration groups use similar terminology as DHS, reflecting pervasive views across the nation that are active participants in the formation of migration discourse in America and therefore merit analysis.

⁴⁰ “Definition of Terms.” *Homeland Security*, Department of Homeland Security, www.dhs.gov/immigration-statistics/data-standards-and-definitions/definition-terms. Accessed 8 Apr. 1997.

FEDERATION FOR IMMIGRATION REFORM

One such group is the Federation for American Immigration Reform, and its (ironic) acronym: FAIR. FAIR is an anti-immigration group that would more accurately be described as an anti-*immigrant* group. FAIR pushes for the widespread use of terms that sterilizes the immigrant, characterizing them as beings that exist perpetually in an “illegal” space. As so, FAIR’s stance is as follows, “Immigration policies can determine what kind of America future generations will inherit – livable or overcrowded, successful or overburdened.” There’s already a lot to unpack here. This paints a picture of invasion, of immigrants overwhelming the US to the point that there’s not enough America to go around. In a nutshell, if *they* come, there will be less for *us*, they’ll eat up all of our wealth!

Not only does their philosophy dehumanize immigrants as unsuccessful leeches, but it also focuses on the experience of the American in immigration. They accuse the migrant as being inherently out of places, as mooches— ignorantly asking, “But, what are *we* getting out of this?” This completely neglects the experience of the migrant and leaves out all of their possible reasons for migrating, simultaneously positioning Americans as superior beings. FAIR continues and says, “While we see our obligations to help the less fortunate around the world, we also know that *irresponsible* border policies can *undermine* our own nation’s ability to be a successful change agent for the human race [emphasis added].”⁴¹ Are migrants not a part of the human race? Not if they’re “aliens.” Again, there’s a lot to unpack here, so let’s work our way backwards.

The phrase that stands out is “human race.” FAIR claims that the United States is a “change agent” for the entire human race, but *is it*? Or is it for a very particular slice of the human race, the white race? Founder of and board member, John Tanton has *explicitly* stated, “As Whites see their power and control over their lives declining, will they simply go quietly into the night? Or will there

⁴¹ “About FAIR.” *FAIR US*, Federation for American Immigration Reform, fairus.org/about-fair. Accessed 5 Apr. 2019.

be an explosion?”⁴² By keeping out people of color, the white majority will not be threatened or diluted – racial purity! Racial tension (if that is a strong enough phrase) rears its ugly head often in anti-immigration, anti-immigrant stances; in fact, it is the foundation of it. FAIR says that limited immigration is the “responsible” thing to do, but responsible for who? Is it responsible for the family struggling to put food on the table or the thirteen year old boy being followed home from school every day, receiving death threats? Or is it responsible for white people living in comfortably in all its sheltered ignorance? comfortably? FAIR recognizes their “obligation” to provide aid to the “less fortunate.” FAIR wants to help, but doesn’t want to help *too* many people, that might just undermine their power. Worse yet is that FAIR is recognized by the Southern Poverty Law Center⁴³ to be an extremist hate group. Yet their terminology is widely used by conservatives who so nobly fight being “PC,” just to spite the “whiny liberal snowflakes.” Cruelty is justified and vocalized time and time again by positioning it as opposite of sensitive Democrats. If *extremists* are rooting for this type of terminology, clearly we shouldn’t use it.

FREEDOM FOR IMMIGRANTS

On the other end of the spectrum, one pro-immigration/pro-immigrant non-profit, Freedom for Immigrants, consciously chooses to use a different set of terms:

Freedom for Immigrants denounces the use of degrading terms, such as “alien” and “illegal (immigrant),” to describe undocumented or unauthorized immigrants because it casts them as inhuman outsiders who come to the United States with questionable motivations. “Alien” is a term used in the Immigration and Nationality Act to refer to non-citizens, but it should be avoided unless used in a quote. The term “illegal immigrant” stereotypes undocumented persons who are in the United States and suggests that they have all committed crimes.

⁴² “Federation for American Immigration Reform.” *Southern Poverty Law Center*, www.splcenter.org/fighting-hate/extremist-files/group/federation-american-immigration-reform. Accessed 13 Mar. 2019.

⁴³ *Ibid.*

Under current U.S. immigration law, entering the United States without inspection or overstaying a visa is not a crime; it is a civil violation. Although “undocumented immigrant” is not ideal nomenclature, we use it, “non-citizen” or “non-status immigrant” for lack of better terms.⁴⁴

Both FAIR and DHS so eagerly use the hotly contested terms, “illegal” and “alien.” It’s hard not to picture a lime green, oval-headed creature with big black eyes upon hearing the word “alien.” Is that what a migrant looks like? Freedom for Immigrants fundamentally opposes both the term “alien” and “illegal” alike for their dehumanizing impact, despite the fact that law-breakers and criminals are human too – haven’t you ever rolled through a stop sign? There is no gray area in law and as a result the ability to contest the anti-immigration platform as whole is weakened because advocating on the behalf of the “illegals” is to advocate for people to break the law. The argument is that if “illegal” always equals bad, “illegal” always equals danger – but as America’s own shameful history proves, laws aren’t always *just*. Labeling human beings in terms of “illegality” or “alien-ness” needs to be avoided altogether, as the following will detail.

“ILLEGAL”

The terms “illegal” and “alien” are incredibly detrimental to migrants and their core humanity because it strikes fear in the American public. Hannah Arendt elaborates on the construction and use of the “alien:”

The reason why highly developed political communities, such as the ancient city-states or modern nation-states, so often insist on ethnic homogeneity is that they hope to eliminate as far as possible those natural and always present differences and differentiations which by themselves arouse dumb hatred, mistrust, and discrimination because they indicate all too

⁴⁴ “Glossary of Immigration Terms.” *Freedom for Immigrants*, www.freedomforimmigrants.org/terminology. Accessed 9 Mar. 2019.

clearly those sphere where men cannot act and change at will, *i.e.*, the limitations of the human artifact. The “alien” is a frightening symbol of the fact of difference as such, of individuality as such, and indicates those realms in which man cannot change and cannot act and in which, therefore, he has a distinct tendency to destroy.⁴⁵

When whole groups of human beings are labeled “illegal aliens,” they automatically become the target of destruction. There is no reading of the word “alien” that renders a happy image. Instead, we think of Will Smith, Bill Pullman, and Jeff Goldblum valiantly fighting an alien invasion in Independence Day – in the name of national security, all “aliens” must be eliminated.

EXCEPTIONALLY “ALIEN”

To be an “alien” is to exist in Giorgio Agamben’s “state of exception.” Anthropologist Jason De León’s book, *The Land of Open Graves: Living and Dying on the Migrant Trail*, studies the border zone as a particular state of exception and weaving this concept throughout his work. This exceptional space does not just swallow the border zone, but permeates all aspects of the clandestine migrant’s life:

...we live in an era when undocumented people increasingly exist in a “state of exception.” Immigrants are tolerated when they do the jobs that citizens won’t, but the American public has little interest in hearing their voices, preserving their history, or affording them any rights. This “exceptionalism” pervades all aspects of undocumented life and calls into question our country’s notion of democracy.⁴⁶

De León works hard using archaeology and ethnography to preserve the history in the making of border crossers fighting the strategic erasure of bleak modern histories, “Documenting these largely undocumented stories and giving the reader an up-close look at faces and bodies can perhaps help

⁴⁵ Arendt, Hannah. “The Decline of the Nation-State and the End of the Rights of Man.” *The Origins of Totalitarianism*, World Pub. Co., 1958, pp. 301.

⁴⁶ De León, 199.

us remember tomorrow that people lived and died in this desert today.”⁴⁷ He fights to remember the suffering of migrants at the hands of violent US border policies.

Freedom for Immigrants acknowledges that “undocumented immigrant” doesn’t quite cut it either. Although they do use it, ultimately for lack of a better word, they still prefer other terms like “non-citizen” and “non-status.” They also assert that “migrant” carries a more neutral point of view, agreeing that “immigrant” is specifically from the perspective of the receiving country. Freedom for Immigrants is thoughtful about their word choice and are aware of the deadly effects of the discourse, even with seemingly simple words like “illegal.” Violence and death that migrants from Central America and Mexico endure and sometimes fatally succumb to are just a few of these effects:

For many Americans, this [deceased] person – whose remains are so ravaged that his or her sex is unknown – is (was) an “illegal,” a noncitizen who broke US law and faced the consequences. Many of these same people tell themselves that if they can keep calling them “illegals,” they can avoid speaking their names or imagining their faces.⁴⁸

De León highlights the attitude that many Americans hold, the lack of urgency in both identifying the remains of fallen migrants and finding ways to prevent this senseless death. By slapping on the label “illegal,” Americans effectively absolve themselves of responsibility and lay blame on the migrant – they knew what they were getting into! “Illegal” strips migrants of humanity.

In everyday conversation and in the media in America, people don’t usually use the term “migrants.” As a receiving country, we typically use the term “immigrant.” And when we are talking about immigrants we are talking about immigration. And when we talk about immigration it’s usually in the context of it as a “problem” to be solved. We don’t really talk about or thinking too deeply about *why* people migrate, only selfishly thinking about how it's going to affect *us*. The US calls it

⁴⁷ Ibid. 5.

⁴⁸ Ibid. 26.

immigration law, not migration law. For that reason, in the context of immigration law, migrants will be in called “immigrants.” And, generally, people tend to talk in terms of “legality,” either “undocumented immigrants” or “illegal aliens.” Who uses what terminology draws a thick line between liberals and conservatives, respectively. In the media, because it functions to report, while simultaneously trying to get good ratings, the conversations about immigrants usually hinge on the debate of “legality,” dehistoricizing migrants, their motivations for movement, and the moment in immigration law when they were *made* “illegal.”

IMMIGRATION LAW

The history of immigration law in America shows that no one agrees on what “solving” the immigration “problem” really means or looks like. The slow and little evolution of US immigration law since 1990 reflects this. In order to understand current perceptions of migrants in America, we must work to rehistoricize migrants, detaching them from their sticky, stubborn labels as “illegals,” seeing the way that they were *made* to be “illegal” and that it wasn’t always this way.

Despite efforts to pass comprehensive immigration reform, since the Immigration Act of 1990 nearly thirty years ago, there have been no significant revisions. In 2015, Valeria Luiselli, author of *Tell Me How It Ends: An Essay in Forty Questions*, worked in the federal immigration court in New York city as a Spanish translator/interpreter for child refugees fleeing (primarily) Central America. Submerged into the bureaucratic nightmare that is and always has been immigration law, she writes:

Inside, the building branches vertically and horizontally into hallways, offices, windows, courtrooms, and waiting rooms. There are few signs and few people you can ask for assistance or directions, so it’s easy to get lost. The building’s labyrinthine architecture is, in a way, a replica of the U.S. immigration system. And, as in any labyrinth, some find their way

and some don't. Those who don't might remain there forever, invisible specters who go up and down elevators and wander the hallways, imprisoned in circular nightmares.⁴⁹

Immigration law in America is incredibly difficult to navigate. Immigration lawyers pay tens of thousands of dollars to go to law school to be able to guide their clients through this labyrinth, dodging its many dead ends. The pages that follow are somewhat of a light handhold through this labyrinth, a brief overview of its history that only skims the top. This shall summarize some of the complexities that continue to ensnare migrants today.

The foundation of modern immigration law is the Immigration Act of 1990, an act that is a revision in a long line revisions, the result of a trail of amendments to other amendments. Starting with the The Immigration Act of 1924 (the Johnson-Reed Act),⁵⁰ its amendments include: the 1952 Immigration and Nationality Act (also known as the McCarran-Walter Act), the 1965 Hart-Celler Act, the 1976 Western Hemisphere Act, the 1986 Immigration Reform and Control Act (the Simpson-Mazzoli Act), and a few others. Each of these acts have molded immigration law into the chaos it is today.

JOHNSON-REED ACT OF 1924

The Johnson-Reed Act of 1924 begins by defining an immigrant as, “any alien departing from any place outside the United States destined for the United States, except...”⁵¹ followed by a particular list of exceptions. The Johnson-Reed Act created new type of immigrant: a “quota immigrant.” It established a quota system based on nationality, with the goal of excluding eastern and southern Europeans. The quota is calculated as follows:

⁴⁹ Luiselli, Valeria. *Tell Me How It Ends: An Essay in Forty Questions*. Coffee House P, 2017, pp. 35-36.

⁵⁰ Before the Johnson-Reed Act, there was the Immigration Act of 1917 (the Literacy Act or the Asiatic Barred Zone Act) and the Chinese Exclusion Act of 1882, both whose content is largely self-explanatory. While these latter two acts are incredibly important in the development in US immigration law, impact following acts and merit their own extensive discussion, they center on excluding migrants from Asian countries and not Mexico and Central America, the countries in question here. Asian migration studies is not the focus of this lexicon. Therefore, the history of Asian migration will not be discussed, but is no less important than people (and their migration) from other countries.

⁵¹ United States, Congress. Immigration Act of 1924. *United States Statutes at Large*, 26 May 1924, (3).

(a) The annual quota of any nationality shall be 2 per centum of the number of foreign-born individuals of such nationality resident in continental United States as determined by the United States census of 1890, but the minimum quota of any nationality shall be 100.

(b) The annual quota of any nationality for the fiscal year beginning July 1, 1927, and for each fiscal year thereafter, shall be a number which bears the same ratio to 150,000 as the number of inhabitants in continental United States in 1920 having that national origin (ascertained as hereinafter provided in this section) bears to the number of inhabitants in continental United States in 1920, but the minimum quota of any nationality shall be 100.⁵²

In sum, part (a) looks at the numerical makeup of all of the different nationalities in the US using the census of 1890. Each nationality's quota will be two percent of whatever number that census produces. Part (b) is a bit more convoluted. Basically, it means that the people who are a part of the two percent quota allotted to each nationality, only a maximum of 150,000 total, regardless of nationality would be allowed into the US annually. For example, if two percent of the English population in 1890 was 150,000 they would take up every slot. To calculate proportions of this total 150,000 ceiling, the number of slots for immigrants from each country depends on how many people of the same nationality were in the country in 1920. Continuing the previous example, if in 1920 two-thirds (66%) of the population in America was English, then of the 150,000 Englishmen vying for a slot, only 100,000 would be able to immigrate. This leaves a slim 50,000 for every other nationality. As a result, most of the visas were given to the "desirable" countries of Britain, Ireland, Germany, and Scandinavia, as intended. In addition to the above provisions, the Act also banned *all* Japanese immigrants. This act put xenophobia into law. Not only are there "quota immigrants," but there are also "non-quota immigrants," immigrants from countries who did not have quota limits. Curiously, immigrants from the Western hemisphere were "non-quota" immigrants up until 1976.

⁵² Ibid. 11(a)(b), pp. 159.

McCARRAN-WALTER ACT OF 1952

Following the 1924 Act is the McCarran-Walter Act of 1952. The main goal of this act was to “protect” Americans from people deemed “immoral” or “subversive.” The excluded on basis of morality includes, but is not limited to the following:

(1) Aliens who are feeble-minded ; (2) Aliens who are insane ; ... (4) Aliens afflicted with psychopathic personality, epilepsy, or a mental defect ; (5) Aliens who are narcotic drug addicts or chronic alcoholics ; ... (8) Aliens who are paupers, professional beggars, or vagrants ; (11) Aliens who are polygamists or who practice polygamy or advocate the practice of polygamy ; (12) Aliens who are prostitutes... (23) Any alien who has been convicted of a violation of law or regulation to the illicit traffic in narcotic drugs...⁵³

This small section of the law says a lot about how America’s projected perception of immigrants in or coming to the US, reassuring American citizens that they are never *those things*. The act begins by defining the term “alien” as, “any person not a citizen or a national of the United States”⁵⁴ and a “national of the United States” as one of two things, “(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.”⁵⁵ The law then defines an “immigrant” as, “every alien except an alien who...”⁵⁶ followed by a list of particular exceptions. This is a simplified version of the 1924’s definition, leaving out the characterization of an immigrant as specifically US-bound and as having already arrived. In sum, legally, all immigrants are classified as “aliens.” But again, laws aren’t always just.

A theme in American immigration discourse is that the conversation often assumes that in the thousands of migrants that want to come to the US, there are enough “non-desirables” in the crowd that they need to be outright excluded, automatically positioning the American public as

⁵³ United States, Congress. Immigration and Nationality Act. *United States Statutes at Large*, 27 June 1952, pp. 182-184.

⁵⁴ Ibid. 101(a)(3), pp. 166.

⁵⁵ Ibid. 101(a)(22).

⁵⁶ Ibid. 101(a)(3) and 101(a)(15), pp.166-167.

superior moral beings. It tangles the word “aliens” with an entire *list* of “undeserving” and “non-desirable” traits, innate or not, framing migrants as a something to be protected *from*. This attributes these traits as true for all immigrants by default, a strategy Donald Trump uses to nurture anti-immigrant sentiments. This part of the law successfully depicts migrants solely as beings who *lack* – *lack* “morals,” lack clean mental health,⁵⁷ *lack* self-control. The main focus, however, of the 1952 Act was ideological. The act is remembered for its effort to keep Communists out of America, privileging refugees from Communist countries in turn shaping America’s understanding of refugees as political. In the midst of the Cold War, the list of “non-desirables” continues and excludes anyone with any ties, no matter the circumstance, to the Communist party. In the end, there was enough support for such a law that even when President Truman tried to veto it, citing its obviously discriminatory foundation, Congress voted to override it.

Additionally, the 1952 McCarran-Walter Act maintained the national origin quota system, but made it more restrictive. What had previously been capped at two percent of the national origin population in 1920 in America was now cut in half to a mere one percent. It also gave preference to immigrants with particular skills, and privileged family reunification.

HART-CELLER ACT OF 1965

The Hart-Celler Act of 1965 amended the 1952 greatly, abolishing the system of national origins system. The annual allowance was 45,000 per quarter, but 170,000 total immigrants per year from the Eastern Hemisphere, and only 20,000 visas per country. This act also set the first quota for countries of the Western Hemisphere at 120,000.⁵⁸ There was no per country limit on the Western Hemisphere’s quota until the 1976 amendment, capping it at 20,000. Prior to the 1965 cap, there

⁵⁷ This also highlights America’s lack of support and resources, at the time, for people in the US with these characteristics.

⁵⁸ The act still held preference for skilled immigrants and family reunification, but immediate relatives and minors were not subject to the quota.

was no “illegal” immigration from the countries now most associated with the phrase, Mexico in particular. This law was praised for its effort to move towards equality. Emanuel Celler, one of the sponsors of the bill (hence the name), exclaimed, “With the end of discrimination due to place of birth, there will be shifts in countries other than those of northern and western Europe.”⁵⁹ And just like that, discrimination was solved! Unfortunately, that was not the case.

This new cap on the Western hemisphere had a huge impact on the thousands of people who has been coming to the US for years. Suddenly, migrants outside of this 120,000 quota were deemed “illegal.” At the same time (between 1965 and 1967), a work program for migrant workers (the Bracero Program) ended:

In short, as a result of shifts in US immigration policy between the late 1950s and the late 1970s, Mexico went from annual access to around 450,000 guestworker visas and a theoretically unlimited number of resident visas in the United States (in practice averaging around 50,000 per year) to a new situation in which there were no guestworker visas and just 20,000 resident visas annually.⁶⁰

This means that in from an average of 500,000 annual immigrants *from Mexico alone* was reduced drastically to a mere 20,000 in the 1976 amendment. The other 480,000 immigrants found themselves abruptly and so pleasantly labeled “illegal.” “Illegal” immigration did not suddenly climb – in fact immigration remained fairly the same – rather there was no longer a legal way to continue to immigrate the same way immigrants had been for years.⁶¹

Now deemed “illegal,” the rise of anti-immigrant sentiment seeped into American immigration discourse, with the help of nasty media portrayals:

⁵⁹ “The Legacy of the 1965 Immigration Act: Three Decades of Mass Immigration.” *Center for Immigration Studies*, 1 Sept. 1995, cis.org/Report/Legacy-1965-Immigration-Act. Accessed 3 Apr. 2019.

⁶⁰ Massey, Douglas S., and Karen A. Pren. “Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America.” *Population and Development Review*, vol. 38, no. 1, 2012, pp. 3. Accessed 14 Apr. 2019.

⁶¹ Ngai, Mae M. *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton UP, 2004.

The rise in the threat narrative occurred during a time of increasing income inequality, and as social psychologist Susan Fiske (2011: 89) has shown, “feeling individually deprived... may alert a person to feeling collectively deprived...[and] this collective feeling leads to blaming out-groups (immigrants, rich elites, the party in power).”⁶²

This sounds awfully familiar, echoing current theories of how Trump, against all predictions, was elected. Historically, immigrants have been convenient scapegoats and continue to be so today.

Just as we have seen by just blazing a handful of Donald Trump’s anti-immigrant tweets, immigrants are often characterized in terms of water: pouring in, flooding the border, or even the highly derogatory term “wetback.” After the “illegalization” of hundreds of thousands of immigrants, there was an increase of usage of the terms “flood,” “crisis,” or “invasion” alongside “Mexico” or “Mexican immigrants” (see figure 1). What’s interesting is that at the time this Act was signed into law, immigration was not yet a salient issue.⁶³ But once hundreds of thousands of

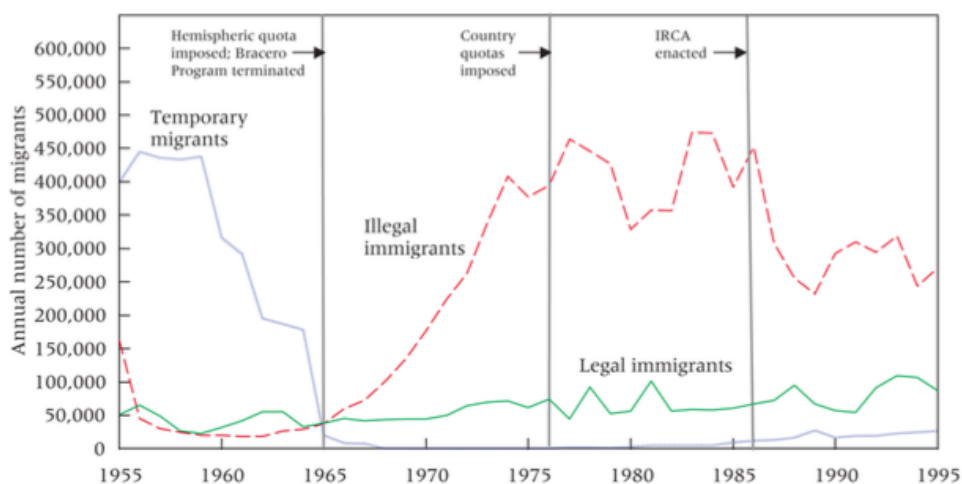


Figure 1: 1955-95 Mexican Immigration to the United States

Source: Department of Homeland Security 2012 in Massey, Douglas S., and Karen A. Pren. “Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America.” *Population and Development Review*, vol. 38, no. 1, 2012, pp. 1-29.

migrants were made “illegal,” immigration took over the headlines. The phrase “illegalized migrants” acknowledges that migrants from Mexico, Central America, and other countries from the Western

⁶² Massey, 4.

⁶³ *Ibid.* 14.

Hemisphere were not always “illegal,” that with the stroke of a pen, hundreds of thousands of people found themselves existing in a space of “illegality” and forced into clandestine-hood. From his own perspective as a border crosser, in Shahram Khosravi’s auto-ethnography, “The ‘Illegal’ Traveler,” he writes, “‘If I take a step,’ I thought, ‘I will be somewhere else. When my foot touches the ground on the other side of the road, I will not be the same person. If I take this step I will be an “illegal” person and the world will never be the same again.’”⁶⁴ One small step for man, one giant leap for migrants.

After 1965, especially its 1976 amendment, there were limited ways for the 500,000 people who had always been coming to the US to do so “legally.” The perceived “surge” in “illegal” immigration was not that there was any more migration. Instead, aside from the lucky 20,000 quota immigrants, the remaining 480,000 were still going to come to the US. Migration to the US was a generational way of life for many that wouldn’t be put to an end by something as simple as some law. Now that Western hemisphere immigrants were “illegal” their existence was automatically deemed “bad” or “wrong.” This gave rise to a new era of the “Latino threat”⁶⁵ and the portrayal of the US-Mexico border as a warzone, utilizing “crisis” rhetoric to justify consequent actions as necessities – flip on the TV and skip to any news channel to see for yourself (see fig. 2). This perceived threat led to increasingly restrictionist immigration policies: “After the late 1970s, in other words, anti-immigrant sentiment increasingly fed off itself to drive the bureaucratic machinery of enforcement forward to new heights, despite the lack of any real increase in illegal migration.”⁶⁶

⁶⁴ Khosravi, Shahram. “The ‘Illegal’ Traveller: An Auto-ethnography of Border.” *Social Anthropology*, vol. 15, no. 3, 2007, pp. 321.

⁶⁵ Chavez qtd. in Massey on pp. 4.

⁶⁶ Massey, 6.

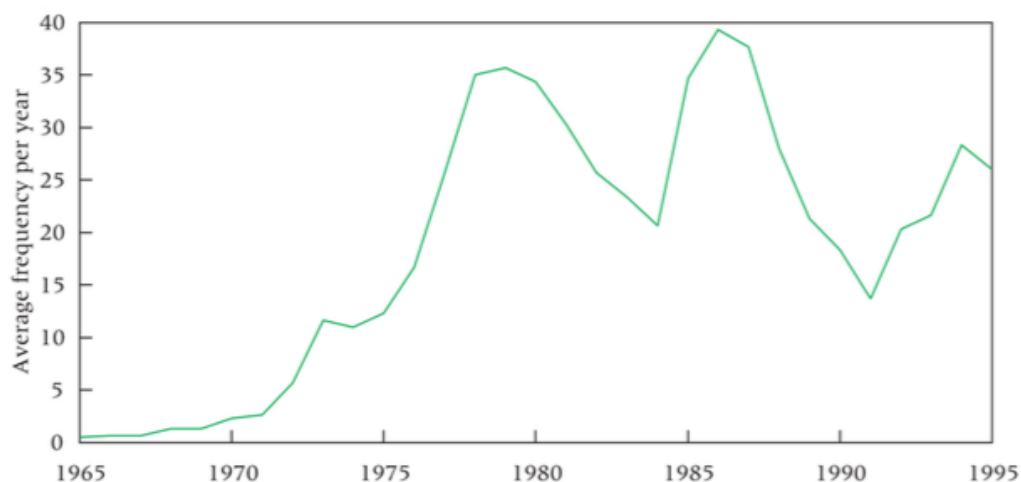


Figure 2: “Frequency of pairing of the terms ‘flood,’ ‘crisis,’ or ‘invasion’ with ‘Mexico’ or ‘Mexican immigrants,’ in four leading US newspapers (three-year moving average), 1965-1995.”
Source: Proquest Historical Newspaper Files.⁶⁷

THE REFUGEE ACT OF 1980 & THE IMMIGRATION REFORM AND CONTROL ACT

In 1980, the first comprehensive refugee legislation made its way into law, revised later in 1994 and again in 1996. The Refugee Act of 1980⁶⁸ signaled a new nationwide respect for the status of asylee and refugees in America, while immigrants experienced the opposite.

Six years later, the 1986 Immigration Reform and Control Act (IRCA) was set in motion. First and foremost, the IRCA granted immigrants who had been “illegally” in America since 1982 amnesty if they met certain criteria, a major and important reform. It also introduced the first repercussions for employers who knowingly hired “alien” workers and heightened enforcement at both of America’s borders, although it is obvious that the magnifying glass under the sun was precisely oriented to set southern border crossers aflame.⁶⁹

⁶⁷ Massey, 19.

⁶⁸ See part two for a comprehensive analysis of the 1980 Act.

⁶⁹ “Immigration Reform and Control Act of 1986.” *US Citizenship and Immigration Services*, US Department of Homeland Security, www.uscis.gov/tools/glossary/immigration-reform-and-control-act-1986-irca. Accessed 3 Apr. 2019.

THE IMMIGRATION ACT OF 1990

Shortly after, the 1990 Immigration Act made its way into law with the goal of “improving America’s future” through more selective immigration policy. It aimed to “closing the back door illegal immigration” and admitting more skilled and educated immigrants, a process is some call “brain drain.” Annual immigration visas were set at 700,000 annually, decreasing to 675,000 five years later. There were three main categories of immigrants allotted visas: family-sponsored, employment-based, and diversity-based. Of these, the majority of the visas were allocated for family-sponsored immigrants at 465,000, but immediate relatives of US citizens were non-quota immigrants. Employment-based immigrants were allotted 140,000 visas and all of the rest of the visas were for children and spouses of those granted amnesty by the 1986 law and special transition program. Special transition visas were for immigrants from countries that were particularly adversely affected by the 1965 law, with forty percent set aside for Irish immigrants. They were allowed 55,000 slots and 40,000 visas respectively. In 1995, the numbers changed: 480,000 visas for family-related immigration, 140,000 for employment-based, and 55,000 diversity visas (reduced to 50,000 a few years later). The diversity visas were set aside for people from countries that had less than 50,000 immigrants come to the US in the last five years. The act also increased the annual per-country limit from 20,000 to 26,000 to try to combat long waiting periods for countries with a high number of applications.⁷⁰ Chishti and Yale-Loehr of the Migration Policy Institute conclude their piece from 2016 with an accurate critique of the lack of progress since this 1990 law went into place:

An immigration policy that remains static for 25 years in an economy as large and dynamic as the United States represents serious neglect of the potential that immigration holds for economic vitality and competitiveness... For more than a decade, political stalemates have

⁷⁰ Chishti, Muzaffar, and Stephen Yale-Loehr. “The Immigration Act of 1990: Unfinished Business a Quarter-Century Later.” *Migration Policy Institute*, July 2016, www.migrationpolicy.org/research/immigration-act-1990-still-unfinished-business-quarter-century-later. pp. 2-3. Accessed 8 Apr. 2019.

stopped progress on a range of immigration laws. The critical lesson from the 1990 Act and from both the important milestone immigration laws that preceded it – the *Immigration Act of 1965* and IRCA of 1986 – is that they were achieved in a culture of greater political trust and bipartisanship than exists today, even though there were strong policy disagreements and divided government.⁷¹

From the 1924 McCarran Celler Act to the 1990 Immigration Act, there was an effort on both sides of the aisle to deal with the changing times. Unlike today, a time of strong political polarity where immigration reform becomes harder to pass with every passing second and little effort to cooperate.

ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

Up until the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA, sometimes called ira-ira), the language of the laws appeared to be neutral and not explicitly anti-immigrant. The anti-immigrant qualities were at least in disguise, and not the title. From 1996 on, immigration laws started treating immigrants like criminals. The law positions immigration as a threat that America needs to gear up for. Including the word “illegal” in its title, the act made it the official terminology of choice, demonizing hundreds of thousands of people in the process.

The laws focused on internal enforcement and the prevention and punishment of “illegal” activities, including “illegal” immigration, “alien” smuggling, and fraudulent immigration documents. Immigration became inextricably linked with criminality: deportation, improving Border Patrol’s equipment and technology, and pointing fingers at others to take responsibility for the violence that their policies produce. It increased penalties on immigrants, whether they had broken the law by being “illegal” immigrants or if they had broken the law as “legal” immigrants. Certain convictions or being apprehended 100 miles within the border meant no opportunity to argue an immigrant’s

⁷¹ Ibid. 15.

case before a judge. Not only were they not able to see a judge, but IIRAIRA held more immigrants in detention centers before deportation— as if it wasn't already hard enough to find and personally finance legal representation. It is un-American to bypass the courtroom entirely – guilty until proven innocent.

Deportation, a previously uncommon practice, was made much easier and removal proceedings were expedited – “people are not intrinsically deportable; rather they have to be *made* deportable.”⁷² Immigrants who had been in the US for six months “illegally” could be banished for a minimum of three years. If they were in the US for a year or more, they would be banished for ten years. This is often called the “3- and 10-year bars.”⁷³ It also made “illegal” immigrants ineligible for public benefits and driver’s licenses. It made it much more difficult to become legal, even through marriage of a US citizen.⁷⁴ A man named Mario Lopez, a deportee, shares his frustrating experience of detention as a result of the 1996 changes:

They wouldn't even let me see the judge. I requested it so many times. ... When the detective, officer, from INS took me to the headquarters of INS in Baltimore I told him, “I'm married to a US-born citizen.” He said, “We don't care. That's the way we work.” And we got there, [he] fingerprinted me. He said, “Would you like to see a judge?” I say, “Yes.” He said, “If my supervisor approves it, you're able to see [the judge].” He did not. They denied it. I would send letters from the detention center requesting a judge or a trial or something to fight the case. They would never respond. They would just be a pain to us. They even made you sign the papers without you [being] willing to sign the paperwork. I remember that, when I got in the detention center, they said, “We're gonna transfer you into

⁷² Bibler Coutin, Susan. “Falling Outside: Excavating the History of Central American Asylum Seekers.” *Law and Social Inquiry*, vol. 36, no. 3, Summer 2011, pp. 592.

⁷³ Lind, Dara. “The Disastrous, Forgotten 1996 Law That Created Today's Immigration Problem.” *Vox Media*, 28 Apr. 2016, www.vox.com/2016/4/28/11515132/iirira-clinton-immigration#. Accessed 7 Apr. 2019.

⁷⁴ United States, Congress. *Illegal Immigration Reform and Immigrant Responsibility Act of 1996. United States Statutes at Large*, 24 Sept. 1996. Public Law 104-828.

Phoenix. I said, “I want to fight the case.” They said, “No, you can’t fight the case.” And they just literally woke me up one day and said, “You’re getting transferred.” You didn’t get notice or anything. They would make new fingerprints, they would make copies of it, if you didn’t want to sign the papers. They would force you to sign your own deportation, saying that you are agreeing to get deported... So that’s what they’d say. “Okay, if you don’t want to sign, just stay here. You’re going to be here 12 years if you want to.” Sometimes they would just make copies of fingerprints. You would just ask them a question, say, “Can I file this? Can I file that?” They would just say, “I don’t know.” They would never give you an answer. And the treatment when you get deported is like you’re a dog. To them, it is like we are clowns. Almost like we are from another planet. That’s how they treat you.⁷⁵

Without the right to legal representation in immigration court, Mario was forced to be detained while he awaited the judge’s appeal. Mario lived his own “alien-ness.” Clearly the vague responses, disorganization, and dehumanizing practices were intended to drain all hope of successful appeal.⁷⁶ IIRAIRA set the stage for the Obama era of more mass deportations and effectively began the creaky closing of America’s Golden Door.

POST 9/11: THE PATRIOT ACT, THE HOMELAND SECURITY ACT OF 2002, THE REAL ID ACT OF 2005

The wake of the catastrophe of 9/11 ushered in a wave of security and terrorism prevention measures. The Homeland Security Act of 2002 and the Patriot Act (USA PATRIOT Act) in 2001 aimed at collectively ramping up security and improving interdepartmental communication. The Homeland Security Act was mostly bureaucratic reorganization with the intention of preventing future terrorist attacks, making the US less vulnerable, and having different agencies to deal with all

⁷⁵ Bibler Coutin, 588

⁷⁶ Ibid.

types of emergencies as they arise – immigration was deemed one of them. Technology was also to be utilized to monitor potential terrorist activity, including drug trafficking.⁷⁷ The Homeland Security Act was monumental in that it established the Department of Homeland Security. In doing so, it abolished the Immigration and Naturalization Service and absorbed their responsibilities under the umbrella of DHS. Making immigration an issue of “security” and not its own entity underscores the shift in the perception of immigrants not as people, but as threats, intruders – as “aliens.”

The Patriot Act’s official name is a mouthful: “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001,” clearly someone really wanted it to scream patriotism and made the acronym fit. Perhaps, like FAIR, misleading acronyms are a feature of anti-immigrant entities. The title, long as it may be, is quite telling. The title justifies its own actions as “appropriate” and “required” and to disagree with it would be “un-American” because it’s *only* for the good of America! It’s “uniting” and strengthening! But in reality, its implications were quite scary. This act was about *greatly* expanding the surveillance powers of the federal government has over citizens and non-citizens alike, “in the name of national security.”

It gave the Attorney General the power to detain any “alien” indefinitely on the basis of *suspected* terrorism. The law literally uses the phrase “terrorist aliens” as if it were in a bad science-fiction movie. This law is a bit tricky and the American Civil Liberties Union summarizes the implications well:

But there is no requirement that indefinite detainees ever be given a trial or a hearing in which the government would have to prove that they are, in fact, terrorists. Nor would other important procedural protections apply, such as the requirement of proof beyond a reasonable doubt (in criminal proceedings) or proof by “clear, convincing and unequivocal

⁷⁷ United States, Congress. Homeland Security Act of 2002. *United States Statutes at Large*, 25 Nov. 2002. Public Law 107-296.

evidence” (in deportation proceedings). Instead, indefinite detention would apply merely on the basis of vague and unspecified allegations of threats to national security.⁷⁸

This type of law is a poignant example of Agamben’s “*state of exception* – the process whereby sovereign authorities declare emergencies in order to suspend the legal protections afforded to individuals while simultaneously unleashing the power of the state upon them...”⁷⁹ Procedural protections – due process – are potentially indefinitely suspended based off of something as little as an inkling of suspicion.

Post-9/11, President George W. Bush made sure that security measures only continued to increase. This “security” targeted immigrants and the numbers speak for themselves:

Detention centers populations grew, the number of individuals removed from the United States increased, and migrants were increasingly prosecuted and sentenced to prison time for immigration violation, such as entry without inspection and reentry following deportation. In fact, a Bureau of Justice Statistics report attributed 14 percent of the growth in federal prison population between 1985 and 2000 to increases in the incarceration of immigration offenders (Scalia and Litras 2000), and by 2005, immigration offenses made up 25 percent of the caseload of federal prosecutions (US Department of Justice, Bureau of Justice Statistics 2005). Deportations to El Salvador skyrocketed from 4,736 in 2000 to 20,045 in 2007 (US Department of Homeland Security 2007).⁸⁰

Between 1985 and 2000, immigrant incarceration was already on the rise and 9/11 opened jail-cell doors even wider, welcoming its new inhabitants with a sinister smile as the noose of immigration law began to tighten.

⁷⁸ “How the Anti-Terrorism Bill Permits Indefinite Detention of Immigrants.” *American Civil Liberties Union*, 23 Oct. 2001, www.aclu.org/other/how-anti-terrorism-bill-permits-indefinite-detention-immigrants. Accessed 19 Apr. 2019.

⁷⁹ De León, 27.

⁸⁰ Bibler Coutin, 587.

Other security measures include the Real ID Act of 2005 increasing documentation and verification measures for drivers licenses, the 2006 Secure Fence Act added more fencing on the US-Mexico border and upped the Border Patrol's technology (including unmanned drones), and the 2010 Border Security Act dramatically increase the Border Patrol's budget by 244 million dollars and 3,000 agents.⁸¹ In 2008, Bush signed an amendment to the Trafficking Victims Protection Reauthorization Act of 2000, stipulating that children seeking asylum who arrive in the US from countries that share a border with the US – Mexico “and” Canada, but a clear focus the southern border – can be deported without going to court, without ever having the opportunity to plead their case in front of a judge, that is, if the Border Patrol officer says so. As involuntary as deportation is, this process is called “voluntary return.” A cruel and blatantly prejudice piece of immigration law, “This amendment was Bush’s last gift to American immigration law in his vast legacy of chingaderas, in urban Mexican slang, or nasty-shitty policies, in approximate English translation.”⁸²

PROGRAMA FRONTERA SUR

The Obama era brought with it mass deportations and an effort to curb migration farther away from the US-Mexico border. Thus, Programa Frontera Sur was born. Obama worked together with Mexican President Enrique Peña Nieto to pour 102 million pesos and the help of tens of millions of dollars from the US into stopped migrants in their tracks via surveillance, under the guise of “protection.” Its implementation, in fact, had the opposite effect on the safety of migrants:

In fact, since the program was implemented, the safety of immigrants has been compromised to an even greater extent, their lives put in a much more vulnerable situation. Anti-immigration strategies included in the program, mostly to be implemented along the routes of La Bestia, include drones; security camera and control centers in strategic location

⁸¹ Massey, 26.

⁸² Luiselli, 52-53.

(trains, tunnels, bridges, railway crossings, and city centers); fences and floodlights in the rail yards; private security teams and geolocation technology in trains; alarm system and motion detectors on tracks... Programa Frontera Sur is the Mexican government's new augmented-reality videogame: the player who hunts down the most migrants wins.⁸³

As if the trip wasn't already dangerous enough, as if migrants didn't already have enough knives at their throats (as we will soon see in more detail), the US poured tens of millions of dollars to add hurdles, paying the Mexican government "to do the dirty work."⁸⁴

These anti-immigrant policies effectively pushed the US-Mexico border farther and farther south.⁸⁵ At the same time, the danger at the internationally recognized US-Mexico border drastically increased. More and more migrants are dying at the hand of these increasingly restrictive immigration policies and border enforcement: "Between October 2000 and September 2014, the bodies of 2,721 border crossers were recovered in southern Arizona alone. Approximately 800 of these individuals are still unidentified,"⁸⁶ and this figure has only increased since. The state of exception has expanded and now swallows the border-zone whole, dehumanizing thousands of migrants who are stuck fighting their way through the already dangerous desert, vying for America's riches, opportunities, and relative safety:

Contributing to this dehumanization is the fact that the Sonoran Desert is remote, sparsely populated, and largely out of the American public's view. This space can be policed in ways that would be deemed violent and cruel in most other contexts. Just imagine how people would react if the corpses of undocumented Latinos were left to rot on the ninth hole of the

⁸³ Ibid. 77-78.

⁸⁴ Ibid. 79.

⁸⁵ "En Route," 199.

⁸⁶ De León, 29.

local golf course or if their sun-bleached skulls were piled up in the parking lot of the neighborhood McDonald's.⁸⁷

The abrupt “illegalization” of hundreds of thousands of migrants in 1965 and the rise of the “Latino threat” narrative that followed compounded and culminated in a series of anti-immigrant policies that ultimately resulted in the nameless deaths of thousands of migrants. The death toll only continues to rise, galloping into the sunset while holding Donald Trump’s tiny hands, spewing hateful rhetoric. America’s immigration policies morphed into measures to keep outsiders *out* instead of managing the migrants who will make it to America, regardless. The end result is a migration discourse where migrants are thought of in terms of “legal” or “illegal,” not as people.

To explore a new, better way to think and talk about migrants – “illegal,” “undocumented,” “unauthorized,” etc. – it is essential to listen to the very migrants who have been “illegalized,” *made “illegal.”* How migrants understand and perceive their own existence and precarious situations before, during, and after their journey to *El Norte* is an important piece of the puzzle that the UN, NGOs, and immigration law just don’t capture and don’t try to capture – leaving the faces of migrants largely out of the picture. It’s important to take the time to zoom in because statistics are often overwhelming and incomprehensible. It’s too easy to glean over a big number and simply move on because it’s hard to cope with the unfortunate and shameful realities of America’s past, present, and future. But unfortunately, that’s what most of us do – we glean over *two-thousand, seven-hundred, and twenty-one deaths*. In the era of mass shootings, we are so overwhelmed with tragedy that we don’t take the time or expel the emotional effort to even *try* to understand what’s really going on on an individual, human, and personal level. But in order to learn, grow, and move forward, we have to bear down and remember to fight future cyclical histories. Narrative can help us try to understand

⁸⁷ Ibid. 28.

and reorient the immigration “problem” around *real* problems, problems that migrants face every day.

Narrative forces us to remember that these numbers with lots of commas are talking about real people with families. To do so, we will now recalibrate competing definitions and histories of migranhood around the voices of migrants themselves as a way to re-think migration discourse in America. As De León seeks to do with his research, “Perhaps by humanizing that nebulous mass of humanity that we call the undocumented, we can begin to have a serious conversation about how to fix America’s broken immigration system.”⁸⁸

PREPARING FOR DEPARTURE: WHY MIGRANTS MIGRATE

An essential piece of the puzzle that we call “immigration” is *why* migrants migrate, why migrants come to a country that so readily labels them “illegals.” The 2014 influx of refugee children at America’s southern border was deemed a crisis, an “institutional hindrance, a problem that Homeland Security was ‘suffering’ and that Congress and immigration judges had to solve...”⁸⁹ And instead of asking the “immigration question” offensively, America rides on the defensive, even when the conversation is about unaccompanied child refugees: “The political response to the crisis, therefore, has always centered on one question, which is more or less: What do we do with all these children now? Or, in blunter terms: How do we get rid of them or dissuade them from coming?”⁹⁰ But the problems that pushed these children to flee are largely left out of the picture – what are they fleeing and why?

Hundreds of thousands of people – men, women, children, and unaccompanied children – from Honduras, El Salvador, Guatemala (the Northern Triangle of Central America or NTCA) and

⁸⁸ Ibid. 18.

⁸⁹ Luiselli, 44.

⁹⁰ Ibid.

Mexico are running for their lives – fleeing threats to their family, fleeing domestic abuse, and fleeing blood splattered streets as a result of rampant gang violence. In the global rankings for homicide rates, the countries of the Northern Triangle handily tops all: Honduras comes in first, El Salvador fifth, and Guatemala sixth. These same countries remain on the pedestals of death for global rates of female homicides as well: El Salvador first, Guatemala closing in at third, and Honduras seventh.⁹¹ Journalist Óscar Martínez’s book, *A History of Violence*, is an in-depth look into the lives of those fleeing one of the most dangerous regions on the planet, migrating through Mexico to the United States, or at least trying to. In his introduction, Martínez characterizes the NTCA in a way that is particularly striking:

In Guatemala, Honduras and El Salvador we have suffered an epidemic of violence for years. It has been established that if a country suffers from a disease that affects ten out of every 100,000 inhabitant, this country is experiencing an epidemic. By that standard, Central America is gravely sick. In the last five years not one of these three countries has averaged fewer than thirty-two murders for every 100,000 inhabitants. In El Salvador, the ratio is more than eighty. This month, the epidemic has been particularly bad, raging in a country of only 13,000 square miles, home to 6.2 million people, and yet averaging twenty-three murders a day. By comparison, during the sixteen-year Civil War, which ended in 1992, the average murder rate was sixteen. Today’s violence makes nonsense of the words “war” and “peace.”⁹²

Most of these homicides are symptomatic of competing drug cartels with tentacles that spread throughout much of Mexico, especially northern Mexico, and Central America.⁹³ The Sinaloa Cartel

⁹¹ Cardoletti-Carroll, Chiara, et al., editors. “Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico.” United Nations High Commissioner for Refugees, Oct. 2015, www.acnur.org/fileadmin/Documentos/Publicaciones/2015/10228.pdf. pp. 2. Accessed 9 Apr. 2019.

⁹² Martínez, *History*. pp. XIX.

⁹³ Luiselli, 73.

is the world's largest and most powerful drug trafficking organization on earth. Los Zetas takes the gold not only for being the most technologically advanced and organized, but also most dangerous.

Cartels operate like giant corporations – their main focus is bringing home the bread. As money making operations, cartels supply whatever is demand. They traffick both drugs (marijuana, cocaine, heroin, methamphetamine, etc.) and are big players in the sick business of human trafficking as they lick their chops as vulnerable migrant women walk right into their traps. Cartels dominate Mexico, but they also dominate trade outside of Mexico. The difference between gangs and cartels is that cartels are economic oriented first, networks that operate outside of the pail of law. The definition of a cartel is technically, “an agreement or association between two or more business houses for regulating output, fixing prices, etc.; also, the businesses thus combined; a trust or syndicate.”⁹⁴ Cartels are highly organized with a global reach, while gangs are more local, and smaller and their main function isn't necessarily to traffick anything. Cartels are the big guns that subcontract local gang, they're a part of this syndicate. There is a hierarchy between the two types of groups and cartels don't react kindly to insubordination.

Gang violence isn't necessarily related to cartel activity because cartels don't have always *full* control. Violence often results from factors that aren't economic and there are a lot of other reasons gangs exist – a sense of belonging, protection, safety in numbers, brotherhood, boredom, the thrill, status, etc. Cartels are automatically associated with drugs and are viewed as inherently violent. They are known for extreme violence, often performative in nature as a demonstration of their reign and power. For example, a 13-year-old Honduran Boy was abducted and, Gloria, from Honduras, told UNHCR that members of a criminal armed group abducted her 13-year-old grandson, and when his family “finally found his body, it was at the morgue. They had cut his head off, tied his hands and

⁹⁴ “Cartel, n.” *OED Online*, Oxford University Press, March 2019, www.oed.com/view/Entry/28279. Accessed 7 April 2019.

feet, cut him all over.”⁹⁵ They strike fear to let everyone know whose turf they’re on, and to keep everyone in constant fear. But in the end, after many gruesome homicides, cartels exist to to make profit.

GANGS AND CARTELS

Martínez outlines the makeup of the overwhelming gang presence in Central America. In El Salvador, for instance, there are two main gangs wreaking havoc. The first is known as M-18 or Barrio 18, short for 18th street gang, and the second is MS-13, or simply MS, short for La Mara Salvatrucha. Both M-18 and MS-13 were born in Los Angeles, California, formed by kids fleeing a war sponsored by the US. As a consequence of IIRAIRA in 1996, the US deported 4,000 gang members back to Central America, “But the policies backfired: gang deportation became more of a metastasis than an eradication. Now the gang has become a kind of trans-national army, with more than seventy thousand members spread across the United States, Mexico, and the Northern Triangle.”⁹⁶ Over the years, 4,000 has multiplied into an estimated 60,000 members and counting – and that’s in El Salvador alone.

Throughout all stages of the migratory process, migrants are often given ultimatums – cooperate or die. No one is untouched by gangs, eventually their “tentacles” will strangle those who try to run, but can’t hide:

It is about how you perceive reality, but the reality is of a very real death threat. It’s not the reality of the weatherman, whom you decide to believe and take a raincoat with you as you walk out the door or not believe and just head out in your T-shirt. It’s not the reality that

⁹⁵ Cardoletti-Carroll, Chiara, et al. pp. 21.

⁹⁶ Luiselli, 46.

someone might steal your car and so you better lock the doors. It's about perceiving the reality that tonight, in just a few hours, your family may or may not be massacred.⁹⁷

The reality is that the lives of thousands of people are being threatened every day and the US actively chooses to turn a blind eye. Many women have reported a simultaneous rise in both physical and sexual domestic violence.

Not only is there domestic violence at "home," but there is no reprieve once women exit their front doors and step onto the bloody streets. In a study conducted by the UNHCR on female refugees fleeing the NTCA and Mexico, a young Honduran woman named Nelly emphasizes this:

"The gangs treat women much worse than men. They want us to join as members, but then women are also threatened to be gang members' 'girlfriends,' and it's never just sex with the one; it's forced sex with all of them. Women are raped by them, tortured by them, abused by them."⁹⁸

Gangs are a part of everyday life in the NTCA. It's worth noting that 94% of the women interviewed by the UNHCR were in US detention centers at the time of their interviews. This makes the source of their narratives unusual because they have already been "legally" recognized as refugees, still a facet of migranhood.⁹⁹ Many women who flee similar situations don't apply for refugee status, perhaps out of fear or ignorance. Therefore, are technically migrants and not refugees, whether or not they face(d) persecution. To be a "refugee" is to have refugee *status*.

OPPORTUNITIES

Not all migrants who come to the United States are fleeing violence, but instead are looking for better pay and job opportunities. These migrants are sometimes referred to as "economic migrants." Labeling a migrant for their reason for migrating overly distills a complex decision

⁹⁷ Martínez, "History of Violence." pp. 244.

⁹⁸ Cardoletti-Carroll, Chiara, et al. pp. 16.

⁹⁹ Ibid. pp. 3.

making process into a simple two-word phrase. In *The Age of Migration* authors Castles, de Haas, and Miller offer “Theories of Migration” that they contend will continue to influence migration in the future:

There are several reasons to expect the age of migration to endure: persistent inequalities in wealth between rich and poor countries will continue to impel large numbers of people to move in search of better living standards; political or ethnic conflict in a number of regions is likely to lead to future large-scale refugee movements; and the creation of new free trade areas will facilitate movement of labour, whether or not this is intended by the governments concerned.¹⁰⁰

The title of this book, *The Age of Migration*, argues that we are in an era of migration, an era where migration is more salient than ever before. With globalization and as the widening gap between the wealthy and the impoverished, migrants will continue to want what’s best for themselves and their families.¹⁰¹ Castles, et al. continues:

But migration is not just a reaction to difficult conditions at home: it is also motivated by the search for better opportunities and lifestyles elsewhere. Economic development of poorer countries generally leads to greater migration because it gives people the resources to move. Some migrants experience abuse or exploitation, but most benefit and are able to improve their lives through mobility. Conditions may be tough for migrants but are often preferable to poverty, insecurity and lack of opportunities at home – otherwise migration would not continue.¹⁰²

While many migrants leave home for economic reasons, some are just looking for a generally better life, with better opportunities. For some, it's a combination of a variety of factors. Wages may be

¹⁰⁰ Castles, Stephen, et al. *The Age of Migration: International Population Movements in the Modern World*. 5th ed. pp. 7.

¹⁰¹ Not all migrants have families and there are migrants who don't have spouse or children to send remittances, but many migrants send remittances back home— *millions* of dollars in remittances, annually.

¹⁰² Castles, et al. pp 7.

lower or their job could just be unfulfilling or straight up *boring*. Other migrants are looking for some excitement, to make more of life than scraping by just to get food on the table. Every migrant's decision to migrate is a personal one and although it is a mass phenomenon, we cannot neglect each migrant's individuality and agency, and must fight the prevailing migration discourse as such.

DETERMINATION

The trip to *El Norte* is not an easy one – no migrant makes this decision lightly. They know that the trip could kill them in a multitude of horrific ways and that their bones may turn to dust, become a permanent fixture of the desert, never to be found. They know that they're probably going to be assaulted or raped in the process – an estimated *ninety percent* undocumented women are sexually assaulted en route.¹⁰³ They know that they could be kidnapped and held for ransom or forced into prostitution. The list goes on. And the list only grows the farther north migrants get. To top it off, arrival in the US does not put an end to hazards, only creates new ones. The US-Mexico border is no friendly hostess. And migrants know this:

Migrants know they are outgunned – literally and figuratively – when it comes to the border war. But they are also in on a little *secreto* that those standing watch at the gate refuse to believe. That secret is *la migra's* fancy equipment is no match for the sheer determination that propels hundreds of thousands of economic migrants toward to United States each year. As a deportee told me once while we ate tacos on *la linea*: “*Para los Mexicanos no hay fronteras* [For Mexicans there are no border]. We will keep trying until we cross. We have faith in *la Virgen de Guadalupe* to help us. Unfortunately, sometimes your body can't keep up with your faith.”¹⁰⁴

¹⁰³ De León, 17.

¹⁰⁴ Ibid. 163.

This unnamed migrant had already made the first decision to migrate and made it to the US. After making it, he was later deported. Knowing the risks of returning, he knows he needs to try, even if it means he dies trying because *sometimes your body can't keep up with your faith*.

A man named Ruiz was deported after being pulled over for “driving recklessly” and talks about why he is giving border crossing back into America another shot:

I just want to get there so I can see them and be with them; to give kisses to my sons; to find out where my children are. Maybe they think I left them behind. If so, I want to tell them that's not what happened. I want them to know I left because immigration got me because I didn't have any papers. I need to explain to them face to face what happened. I want to tell them not to be afraid and that I am here to help.¹⁰⁵

Ruiz is of the population of people who had been living in America for good whose “illegality” was discovered and promptly punished. For Ruiz and other migrants, there is urgency in getting to America. For Ruiz, he needs to see his family. Ruiz needs to let them know that they are loved, that he didn't abandon them, and that he will keep fighting for their welfare. Ruiz continues and says insightfully:

Everyone here is trying to get there. We are all over here in Mexico suffering. For me, I want to return and have another chance to see my family. That's what I want. There are times when I didn't do anything. They say there are things migrants do illegally but we don't all have the money. That is the difference. The white people [güeros] want us to enter your country legally. I know that it is their country, but they should have a little bit of heart and know what is happening on this side of the border. They need to see the differences. We are going there for our dreams. Sometimes the dream is only halfway realized. Sometimes

¹⁰⁵ Ibid. 142.

people return. I have seen people return in mourning because they lost a family member. It doesn't matter though; we all just try to keep moving forward.¹⁰⁶

The trip has *always* been dangerous and people will continue to come regardless because they have to. Migrants would not migrate if they did not think their lives would be better off by doing so, be it economically, physically, mentally, or emotionally, “you have to understand, / that no one puts their children in a boat / unless the water is safer than the land.”¹⁰⁷ There are an abundance of reasons for migration, but no matter the reasons the migrant trail is unforgiving and must be taken with caution.

EN ROUTE: SURVIVING THE MIGRANT TRAIL

No matter a migrant's point of departure, the odyssey ahead is a frightening one, “the formula they use is this: the closer to the Pacific Ocean, the more migrants, criminal organizations, human trafficking, prostitution, machetes, guns and contraband of all kinds. Then, heading inland, the more transnational cartels, assault weapons and political ties.”¹⁰⁸ Slim wallets are dripped dry and confrontation is inevitable. In 2010, in just six months, an estimate found 1,333 migrant kidnappings and abductions. And between 2006 and 2017, an estimated 120,000 migrants have disappeared in their attempt to make it through Mexico.¹⁰⁹

A lot depends on social networks, financial situations, and luck. The right *coyote* makes all the difference. *Coyotes* are technically “human smugglers,” a dirty word in America. Receiving countries preemptively acquit themselves of complicity in the deaths of refugees in transit by blaming smugglers and human traffickers. America decries the honest selfishness of smugglers while conveniently ignoring their quietly institutional disregard for the lives of these desperate travelers. If migrants die en route, Border Patrol jumps to blame smugglers, sometimes calling them human

¹⁰⁶ Ibid.

¹⁰⁷ Jones, Reece. *Violent Borders: Refugees and the Right to Move*. Verso, 2016. pp 25.

¹⁰⁸ Martínez, *History*. pp. 62.

¹⁰⁹ Luiselli, 26.

traffickers, who “endanger migrants in the desert.”¹¹⁰ Sometimes, that is the case. There are *coyotes* who abandon their migrants in the desert, leaving them to fend for themselves and some who hold them for ransom. It’s not uncommon for *coyotes* to overcharge their *pollos*, demanding surprise payments or else their work here is done. Migrants are exploited every step of the way to *El Norte*, but not all *coyotes* are the bad guys that Border Patrol tries so hard to make them out to be. This smuggler-blaming, responsibility-dodging rhetoric is common across the globe. Khosravi, an Iranian anthropologist and refugee, writes about border rituals and performances through his own lens as an “illegal” migrant:

According to immigration law, Homayoun was a human smuggler, a law breaker and a criminal. But in fact he saved my life in one of the most dangerous places, under the rule of ruthless criminal gangs, corrupt border guards and fanatic Mujaheddin. Needless to say, not everyone was lucky enough to have a good ‘helper.’ Later in Karachi I hear horrible stories of rape, homicide, kidnapping and blackmail of persons on the borders by their smugglers.¹¹¹

A successful border crossing has a lot to do with luck. Khosravi got lucky, but many others do not. In the end, border crossers can only truly trust themselves. Their precarity hides in the fact that migrants are forced to trust smugglers who may or may not have their best interest at heart, but because of their “illegal-ness” there is no safe alternative.

Like *coyotes*, everyone profits off of migrants – everyone except the migrant. The image of a migrant with carpet glued to their feet is almost a silly one, but the sheer determination – the willingness to try whatever it takes – with the help of a little bit of luck is what gets migrants to America. It is unlikely that any of these tactics are worth the investment, but the hope that maybe going the extra mile will be the difference between making it and dying or getting caught:

¹¹⁰ De León, 36.

¹¹¹ Khosravi, 324.

If the estimate that between 92 and 98 percent of all unauthorized border crossers eventually get through is even remotely accurate, it makes you wonder what the billions of dollars spent annually on boundary security actually does. If so many people weren't getting hurt or dying during this costly game of cat and mouse, you could almost laugh at these statistics. Those who do seem to be laughing, though, are the government contractors filling their pockets with cash after selling the United States government overpriced machinery and infrastructure that rarely does what it is supposed to. They are, however, not the only ones turning a huge profit. Besides the thousands of dollars per client that smugglers make, there is an entire underground industry dedicated solely to helping people avoid detection and survive the desert.¹¹²

The border is a performance, as Khosravi asserts. Many Americans shout, "Build that wall!" without asking if it will do anything. The billions of dollars allocated for largely ineffective restrictive border practices only force migrants to find another port of entry, one not so heavily armed by weapons. But, unfortunately for migrants, Mother Nature has her own set of knives, and Border Patrol knows this – what Mother Nature does is her business, plausible deniability! The Border Patrol is peacocks its "strength" with shiny technology and big guns, but what they don't account for is how persistent the migrant is. If 92 to 98 percent of migrants eventually get through the militarized border, why do we waste so much money? Because we're tough on crime! These are "illegals" coming in and we hate crime! See! Look! We're doing something! The border functions as a demonstration of sovereignty, simultaneously undermining it. This principle extends to America's efforts in the War on Drugs in Mexico and Central America, a similar type of performance:

"I don't understand why, if the criminal network remains, you even want to try and capture capos [drug lords] like Overdick or Lorenzana."

¹¹² De León, 160.

“Look,” the [Guatemalan] policeman responds, “it’s not about wanting to capture these people or not. The state is more scared of these people than they are interested in them. The ones who are interested are the gringos, and the gringos just want them as trophies, even though they know another [capo] is just going to fill the gap. They just want to send a message: ‘We’re working on it.’”¹¹³

Despite efforts to capture the biggest sharks, bigger, hungrier sharks will only swim in their place. When a notorious drug lord is captured, America basically throws a parade. Do we so easily forget who their best customers are?

BORDER CROSSING

The process of border crossing is a nasty game of Russian Roulette – try your luck. The odds of arriving in America are high, but the odds of avoiding assault are stacked against migrants, especially women.

An ‘illegal’ traveller is in a space of lawlessness, outside the protection of the law. This is the main aspect of contemporary border politics. It exposes the border transgressors to death rather than using its power to kill...¹¹⁴

As long as migrants are forced to live “illegal” lives, migrants are free game, prey waiting to be hunted. In fact, there are Americans who literally make a game out of “hunting” migrants who are crossing into the US. Throughout the entirety trip, migrants are left without any real, reliable protection:

The vulnerability of border transgressors is best demonstrated by their animalisation. The terminology used in this field is full of names of animals to designate human smugglers and their clients; *coyote* for the human smuggler and *pollos* (chickens) for Mexican border

¹¹³ Martínez, “History of Violence.” pp. 160.

¹¹⁴ Khosravi, 98.

crossers...; shetou (snakehead) for Chinese human smugglers and renshe (human snakes) for smuggled Chinese... Iranians usually use the terms gosfand (sheep) or dar poste gosfand (in the skin of sheep) to refer to ‘illegal’ border crossers. Represented in terms of chicken and sheep – two animals traditionally sacrificed in ritual – the border transgressors are sacrificial creatures for the border ritual [emphasis added].¹¹⁵

Pollos must rely on non-traditional forms of protection in an attempt to minimize vulnerability because no one else is going to protect them. There are shops in border towns that specialize in providing migrants with gear that will allegedly help them avoid Border Patrol. Some of migrant’s tactics include gluing carpet to the bottom of shoes to avoid leaving footprints or make any sound, wearing all black (despite the heat the color will absorb, making them more easily detectable by heat sensors), painting water bottles black to blend in at night, and drinking Red Bull to stay awake (despite its dehydrating side effects), to name a few.¹¹⁶ Migrants run around like *pollos* with their heads cut off, trying any fabled tactic with the hope of a successful, safe passage.

LA BESTIA

But before migrants even reach the border, in all its gory glory, they have to weed whack through all sorts of dangers in the brush. Migrants have to answer to the big guns – narcos. Migrants must pay their fees or pay the fatal price for their disobedience:

In 2009, the National Commission of Human Rights in Mexico (CDNH) interviewed 9,758 migrants crossing through Mexico who had been kidnapped by criminal groups– mostly by Los Zetas. The CNDH concluded from this report that the groups profited about \$25 million in just six months.¹¹⁷

¹¹⁵ Ibid. 324.

¹¹⁶ De León, 160.

¹¹⁷ Martínez, *History*. pp. 253.

Extortion is too profitable a game to stop. But narcos aren't the only snakes in the grass – there are all types of dangerous animals in the desert, especially in an area called La Arrocera.

In La Arrocera, *everyone* takes advantage of migrants. Knowing that migrants have little to no protection, migrants maneuver the migrant with flashing dollar-sign shaped targets on their backs. In this lawless territory, all migrants are up for grabs:

One hundred and sixty miles long, La Arrocera is a network of twenty-eight raches scattered among thick overgrowth that stretches between Tapachula, the first big city comes to on the migrant trail through Mexico, and the coastal city of Arriaga, which all migrants must reach to catch the train. At the end of this line of raches lies a large, abandoned rice cellar, which gives the places its name. La Arrocera means simply, The Rice Cellar.¹¹⁸

Known as “the place stained red by migrants,”¹¹⁹ violence in La Arrocera is virtually unavoidable for migrants who choose to take their chances on *La Bestia*, “The Beast.”

The Beast is a series of trains that start near the Mexico-Guatemala border, either in Tapachula or Tenosique (see figure 3). The Beast is the preferred mode of transportation for migrants who can't afford a *coyote* or a bus – they're “riding third class,” migrants insist. The Beast, “...the snake, the machine, the monster. These trains are full of legends and their history is soaked with blood. Some of the more superstitious migrants say that The Beast is the devil's intention. Others say that the train's squeaks and creaks are the cries of those who lost their life under its wheels. Steel against steel.”¹²⁰

¹¹⁸ Martínez, *The Beast*, 28.

¹¹⁹ Ibid.

¹²⁰ Ibid. 53.



Figure 3: Routes of *La Bestia*.

Source: Villegas, Rodrigo Dominguez. "Central American Migrants and 'La Bestia': The Route, Dangers, and Government Responses." Migration Policy Institute, 10 Sept. 2014.

The Beast shows no mercy, happily smashing off the legs of migrants who drift off for even a second. On this 3,000 mile journey, not only do migrants have to worry about holding on for dear life, they have to keep their tired eyes peeled for bandits and assault:

The train is a long series of uncertainties. Which cars are going to be leaving? Which one will take you to Medias Aguas and which to Arriaga? How soon will it leave? How will you duck any rail workers? To avoid an assault, is it better to ride in the middle or the back cars? What sounds signal you to jump on? When do you get off? What happens when you need to sleep? Where is the best place to tie yourself to the roof? How do you know if an ambush is coming?¹²¹

Anxieties hide in every corner, waiting to pounce. Anxiety, fear, and constant suspense transform migrants riding The Beast: "The group of thirty is composed of bricklayers, plumbers, electricians, farmers, laborers, and carpenters, all recently turned warriors."¹²² Martínez found that the best place to talk warriors was on top of The Beast because, "You're considered equal there. You're in the

¹²¹ Ibid. 50.

¹²² Ibid. 51.

territory and have, by boarding the train, signed a pact of solidarity.”¹²³ He also notes that talking helps passengers stay awake, but not it’s not always that easy.

While riding the rails, Martínez heard one migrant say, “The Beast is the Rio Grande’s first cousin. They both flow with the same Central American blood.”¹²⁴ Surviving The Beast takes skill and patience. A Honduran man Jaime clung to The Beast for a total of three days. Exhausted, the hot sun beating down, and with the ever looming threat of danger, Jaime had been holding on for dear life for eleven hours when he drifted off. Half a second cost Jaime lost his right leg, devoured by the jaws of the Beast. Jaime, torn to pieces alone in the desert, was lucky to have been found and taken to the hospital. Most people aren’t so lucky – if you can call this luck. Jaime reflects on this life changing moment and said, “The train will ruin you. Then you’ll never get to the United States,” Jamie said. ‘It’s better to arrive late than never.’”¹²⁵ If Jaime had fallen off in a more desolate area, he would have been long gone, another body swallowed by the desert and left to rot, another nameless piles of bones.

SHROUDED DANGERS

But losing a limb is just one concern of many. A man named Higinio Pérez Argüello, who goes by El Calambres (The Cramp), was charged of rape, arms smuggling, and assault in La Arrocera. The migrant woman who accused him of rape disappeared not long after, so he was only charged with arms smuggling. Before Martínez sat down with El Calambres, the prison director said, “He’s going to talk because it’s not like he’s accused of a serious crime. We don’t have anyone accused of serious crimes here. They’re accused of murder, rape, or robbery. Never of drug

¹²³ Ibid. 54.

¹²⁴ Ibid. 53.

¹²⁵ Ibid. 57.

trafficking.”¹²⁶ Apparently, the only “serious crime” is drug trafficking, as El Calambres tells

Martínez:

“There’s not just one guy working these trails. There are gangs. And not just one gang. Which means there’s never a pause. If somebody falls, someone takes their place right away. It’s a lot of land, and it’s remote, and maybe the law does go chasing the bandits. But the bandits who work it, they know the law too, they keep their eyes open, and they know the land even better than they know the law. The law just can’t cover it. The place is too big. And if the law does run into bandits, the bandits will shut it down. They have .22 shotguns, AR-15s, 357s. They even have bulletproof vests.”¹²⁷

How drug trafficking can be considered a worse crime than murder or rape is mind boggling. The incentive for fighting drugs is supposedly something like because they’re harmful to the people and can literally end someone’s life. But instead, *murderers* are lower on the police’s food chain. Migrant women are raped and left with permanent wounds – but it isn’t “serious.”

Corruption runs rampant not only through the police ranks, but also with migration authorities:

Of every ten migrants from Central America, six are apprehended and mugged by Mexican immigration authorities – a potential catastrophe for these guys who pocket, as if they were jewels, the \$50 their father sends from the United States every four days. They use this treasure to buy their one-a-day ration of tortillas and beans, which they eat quickly, hidden in thickets, before continuing their escape. And getting caught by Mexican authorities doesn’t just mean returning home with their heads down and their pockets empty. Their return

¹²⁶ Ibid. 39.

¹²⁷ Ibid. 41.

could cost them their lives, as could riding atop the train, which continuously throws migrants off its back, dismembering or maiming so many.¹²⁸

The perfect storm of these skewed priorities, corruption, and the vast land make it nearly impossible to ensure the safety of migrants, but not many people are trying. There are groups along the route that offer support for migrants and some people dedicate their lives to this type of work. While for some migrant shelters and other resources along the way can be lifesaving, others aren't so lucky. The help can only help so much, and, unfortunately, women are prime examples of this limitation.

WOUNDED WOMEN

Women are especially vulnerable on the migrant trail, but most women don't report violence or sexual assault and bandits know this all too well because "it's easy to rape someone if you know she's not going to report it."¹²⁹ Many women preemptively take birth control knowing that the odds are stacked against them – it's better to be prepared than pregnant.

Migrant women from Central America work hard to remain invisible because "illegality" slaps them far before they cross the US-Mexico border. For Yolanda Reyes, Mexico was not just a country of transit, but also her receiving country:

Migrant women play the role of second-class citizens. And they are an easy target. That was made very clear to us a couple days ago when we visited the migration offices of Tapachula and spoke with Yolanda Reyes, a twenty-eight-year-old who has lived there illegally since 1999. She made a life for herself in Tapachula and tried to live normally, but, even after so many years, something wouldn't ease her mind: she was still an undocumented Central American woman. She'd gotten legal residency the day we met her, after a long process of filing a complaint against her partner, a Chiapan police officer who, in a crazed tantrum,

¹²⁸ Ibid. 3-4.

¹²⁹ Ibid. 42.

slashed her eleven times (four times in the face) with a machete. “Whore, you fucking whore, you’re going to learn, you’re just a fucking Central American and you’re not worth a thing!”

Those are the words she remembers.¹³⁰

It took getting slashed with a *machete*, not once, not twice, but *eleven times* – four of which were to her *face* – for Yolanda to be “worthy” of any aid. Deemed “illegal,” Yolanda was unable to seek help until it was almost too late.

Migrants are told not to put up a fight in order to survive and women are forced to accept that will be treated like sex-objects:

For years undocumented migrants have considered robberies and assaults as the inevitable tolls of the road. God’s will be done, they repeated. The coyotes even started to hand out condoms to their female clients, while they recommended the men not resist an attack. For the past decade, in this hidden and forgotten part of Mexico, the stories of husbands, sons, and daughters watching women suffer abuses have been commonplace.¹³¹

For some women, like Yolanda, leaving their home country and just going *somewhere* is refuge enough. For others, there is no refuge, no respite. Poor women are more likely to be coerced into sex work: “Despite coming from vastly different places, most experts and studies agree that trafficking victims have one thing in common: poverty.”¹³² Women who take their chances riding *La Bestia* are at high risk of being kidnapped and forced into prostitution, “Train assailants, except in the kidnapping of women, which are orchestrated by highly organized gangs, are petty criminals – ranchers who live near the tracks.”¹³³

¹³⁰ Ibid. 43-44.

¹³¹ Ibid. 30.

¹³² Martínez, *History*. pp. 215.

¹³³ Martínez, *Beast*, pp. 58.

HUMAN TRAFFICKING

Trafficking looks differently than Liam Neeson movies, as Martínez writes, “Modern people trafficking, it turn out, is not the image many expect – a scar-faced man tending a cage of women. It’s a complex system of everyday lies and coercion that happens just behind our backs.”¹³⁴ Many migrant women trade the uncertain, dangerous journey ahead for the promise of financial security, no matter the physical or mental costs:

Though human trafficking is all around us, the victims are often invisible, and the victimizers may not even be on our radar. Often they’re first-time entrepreneurs in the world of crime, seeing dollar bills in a cocktail of enticing elements, including weak states and desperate victims. According to the United Nation Office on Drugs and Crime (UNODC), only one of every thirty cases of trafficking in this region ever goes reported.¹³⁵

This means that about 3% of human trafficking cases are ever accounted for, and that number is shaky, at best.

Forced into the shadows, into the space of “illegality,” migrant women bare unimaginable wounds that bandages cannot heal (were they provided):

The suffering that migrants endure on the trail doesn’t heal quickly. Migrants don’t just die, they’re not just maimed or shot or hacked to death. The scars of their journey don’t only mark their bodies, they run deeper than that. Living in such fear leaves something inside of them, a trace and a swelling that grabs hold of their thoughts and cycles through their heads over and over. It takes at least a month of travel to reach Mexico’s northern border. A month of hiding in fear, with the uncertainty of not knowing if the next step will be the

¹³⁴ Ibid. 69.

¹³⁵ Martínez, *History*. pp. 220.

wrong step, of not knowing if the Migra will turn up, if an attacker will pop out, if a narco-hired rapist will demand his daily fuck.¹³⁶

For women taking their chances on the migrant trail, threats are abundant and come in all different shapes and sizes.. They must work extra hard to conceal their presence. Living in the shadows, their secrecy must prevail even once they've arrived. Illegalized migrant women are forced lead invisible lives, with no expiration.

But it's not just atop The Beast that migrant women are at risk. The threat human trafficking breathes its hot breath down the back of their necks from the start. Central American migrants are particularly exposed:

Northern and Central America is a point of origin, transit and destination for victims of trafficking. While Guatemala has the greatest percentage of trafficking victims in Central America, many of the victims also come from Nicaragua, El Salvador and Honduras.

Because of the thousands of migrants they continuously produce, all four countries push a steady stream of their people into the hands of Mexican traffickers. The experts – NGOs, prosecutors, police, international organizations – explain that proximity to Mexico and the enormous flow of migrants walking through Guatemala make it an ideal place for traffickers to set up camp.¹³⁷

As migrants cross through Mexico to the United States, vultures watch and wait for the weaker ones – who looks the *most* vulnerable and *most* profitable? Traffickers see women in terms of paychecks. When they're cashed in, there is no insurance, no mental or emotional support.

Trafficking can be a twisted system of compounding traumas, former migrants recruiting other migrant women. Migrant women, now trafficked, are the ones doing the deceiving:

¹³⁶ Martínez, *Beast*. Pp. 43.

¹³⁷ Martínez, *History*. pp. 214.

Though solidarity among Central American migrants isn't unheard of, the world of migration tends to isolate people. The journey is hard; tender moments are rare. Those recruiting fresh bodies to work in the brothels are the same Central American women who, against their will, were tricked into prostitution and now, years later, are offered extra pay to trick other newly arrives girls by making them the same false promises they once heard: you'll become a waitress, you'll be well paid.¹³⁸

Many migrants make their way to America with the hopes of economic opportunities. When an impoverished woman is teased with financial stability and she's not even halfway to the American Dream with still so much hardship ahead, it's hard to say no. Poverty drives migrants to America, but poverty also swallows and digests migrants along the way. Martínez reflects, "Every day while en route to El Norte I saw, and began to understand, that the bodies left here are innumerable, and that rape is only one of the countless threats a migrant confronts."¹³⁹ For migrants who are able to avoid the sharp the clutches aching to slash their throats and wallets throughout the migrant trail, migrants that successfully cross the US-Mexico border are welcomed with an entirely new set of obstacles to overcome.

"ILLEGAL" IN AMERICA

Making it to America is the goal – it's the *dream!* The American Dream! A migrant finally makes it, and now what? Being in America is no cakewalk. The Golden Door is a heavy one, laced with barbed wire and its own set of dangers. A few unnamed migrant workers in Florida from the state of Vera Cruz, Mexico would echo this:

"I depend on everybody here for everything," one said. At home, "you have freedom," he added. "You can go there, you can go here. I don't have to be ten to fifteen kilometers

¹³⁸ Martínez, *Beast*. pp. 75.

¹³⁹ *Ibid.* 29.

outside of town. I feel pressured here for the money. It's like being in the house, all you see is the wall. Outside, the wall, it's like being in prison here. Truthfully, it's like a prison. We can't go to centers of fun, entertainment. We can't go together into a store because the immigration will take you away." Not a single one of the men would advise any other friends or relatives to make the journey to work in the United States. "My brother wanted to come, and I told him not to come," one said. "For my family, I would say that nobody else should come here," said another. "If they have work there, it's better for them to keep it and not come here."¹⁴⁰

The struggle has just begun. The struggle can be alleviated some by already established networks, people migrants can rely on, maybe even family. The constant threat of deportation restricts migrants in ways that they probably didn't see coming. Without connections or financial ability, migrants are trapped and subject to the generosity of others, which often proves unreliable.

Many migrants leave families behind and send remittances back home. This is a neat sentence, strings of letters with capitalization, spaces, and a neat little punctuation mark. But the reality of the weight that these letter bear is not so neatly constructed:

They all missed their families and yearned to go home to Mexico, each on a different, carefully planned timetable: next January, a year, two years from now. They sent home about 70 percent of the money they made, but the experience provoked reflections on where priorities lay. "I learned to value the family," one young man declared. "Here it's material and it's money, and that's not life. It's sustenance. It's like eating and clothing are the most important. The spiritual and the family, you can't buy it with money. That's the biggest thing there is."¹⁴¹

¹⁴⁰ Shipler, 109.

¹⁴¹ Ibid.

Separated by hundreds – if not thousands – of miles, a militarized border, an unforgiving desert, ruthless narcos, bandits, and gangs, many migrants don't know when or if they'll be able to see their loved ones. Families at home are left to pray for the success of the migrant, success that hinges on “legality,” hindered by it.

THE REALITY OF THE AMERICAN DREAM

But with the threat of deportation always looming in the back of “illegalized” migrants' minds, do they ever really *make it*? How does “illegality” shape the lives of migrants in America?

David Shipler, author of *The Working Poor: Invisible in America*, writes:

Being undocumented is precarious. Fearing deportation, you will think twice about contesting your wages or working conditions. You will be ineligible for government benefits except free school breakfast and lunch programs, emergency Medicaid, immunizations, and treatment for communicable diseases. And you'll suffer from less obvious inconveniences, such as the lack of a bank account, which will cost you in fees when you transfer money. In other words, American government and business gain financially from your inability to legalize your presence in the country.¹⁴²

As “illegal aliens” in America, migrants must maintain clandestine existences, under the radar, *invisible*. This often means giving up other rights, such a minimum wage, or staples of life that most people take for granted, like a driver's license. Seemingly simple necessities are a privilege that most citizens do not appreciate.

What's stopping clandestine migrants from accessing seemingly basic conveniences? The answer is a simple one— a piece of paper. Such simplicities require citizenship. But the reality that this piece of paper manufactures is grim. This prioritization of life based on citizenship is consistent

¹⁴² Ibid. 114.

throughout the divided world. For example, an *unarmed* teenage Mexican boy named Sergio Guereca was shot and killed by an American Border Patrol agent because he threw rocks at the agent from more than twenty meters away:

In April 2015, the Fifth District US Court of Appeals ruled against a civil suit by Sergio Guereca's parents because "a Mexican citizen standing in Mexico" has no standing in a US court. The Guereca family attorney, Marion Reilly, summed up the ruling: "So the court has ruled that it was appropriate for the agent to kill an unarmed teenager based on his nationality – don't kill him if he is a US citizen, but fire away if he is in a Mexican."¹⁴³

This case highlights literal and metaphorical wounds created by exclusionary border policies. As Sergio's family attorney points out, the only reason that the agent is not guilty is because Sergio Guereca is Mexican. Had it been a US citizen, the agent would have surely been found guilty of murder. But because of Sergio's citizenship status, the agent is free to continue killing unarmed Mexicans simply because he feels threatened. This a powerful example of citizenship and "legal" status trumping human life. It also reveals discrepancies in depiction of an event when talking about borders and immigration.. The media loves to portray the border as a war zone, when in reality this "war zone" is a teen boy with rocks up against a man with a gun who is trained to use it. Additionally detrimental, the "war zone" narrative contributes to spreading anti-immigrant notions throughout the United States.

It isn't enough that migrants, "illegalized" or otherwise, contribute immensely to the everyday life of all Americans and we don't even take the time to notice it. The invisibility cloak is somewhat intentional, only because "illegalized" migrants are forced to live in the shadows or they risk deportation. Does it seem fair that of America's 1.06 million farm-workers, 50 percent are

¹⁴³ Jones, 44.

“illegalized” migrants and we never offer any thanks?¹⁴⁴ Half of the food on a dinner plate was probably nurtured by migrants that many are quick to label “illegal.” But instead of being protected and having their rights protected, migrants only see a slice of the wealth America has to offer:

The migrants, so essential to America, journey along its edge, touching its wealth as tangents barely touch a circle, never penetrating, never looking out from the inside. And so they do not see themselves the way they are seen, and they do not apply to themselves the measurements that America applies to their suffering.¹⁴⁵

With agriculture and an economy so dependent on migrant labor, America asks migrants to be neither seen, nor heard. Wealth and opportunities aplenty, migrants have their precarious “illegality” to thank for their ability to only skim the top. But it shouldn’t be necessary for migrants to “work hard” to be valued – is it not enough that they are human? The Trumpian “invasion” rhetoric conceals their humanity – Trump eats *pollos* for dinner and pleads for Americans to take have a taste.

WIDE AWAKE

In their new lives in the “fabled land of opportunity,”¹⁴⁶ migrants soon live the limitations of the American Dream. Shipler writes about Maribel and Hector Delgado, a family of migrant laborers in the US:

These folks now seemed like the salt of the earth, the models of elemental striving through a hardscrabble life of incremental gain. The key word is incremental. If theirs was the beginning of the classic immigrant journey from penury to prosperity, it was hard to see. Maribel and her husband were doing the same work as her father, so there had been no intergenerational mobility there, unless the mere fact of moving to the United States could be considered advancement. She was satisfied with her children’s rural school, but whether it

¹⁴⁴ Shipler, 114.

¹⁴⁵ Ibid.120.

¹⁴⁶ Ibid. 5.

put them on a path to college was questionable. From their trailer on a shabby lane in Little Mexico, the horizon of opportunity looked very close and confining. They could not gaze out to an expansive distance of possibility. For most such workers, attainable progress occurs only within the enclave of farm labor: from field to hand tractor driver, from picker to supervisor, from migrant to *contratista*.¹⁴⁷

The Delgado family is a family of hard working immigrants, just the kind of immigrant we want – the “right” kind of immigrant! But they’ve reached the ceiling of their success. Their upward mobility was limited and their children will likely be struck by the same ceiling. The golden door slams in their faces.

As citizens of the US, their kids will enjoy privileges that were not afforded to Maribel and Hector. But, even still, they will struggle because “being poor in a rich country may be more difficult to endure than being poor in a poor country, for the skills of surviving in poverty have largely been lost in America.”¹⁴⁸ Now settled into America, the Delgados are forced to settle for this type of work. Upward mobility keeps its leash short. The Delgado children will likely be stuck in the same cycle of poverty as their “illegal” parents:

As a culture, the United States is not quite sure about the causes of poverty, and is therefore uncertain about the solutions. The American Myth still supposes that any individual from the humblest origins can climb to well-being. We wish that to be true, and we delight in examples that make it seem so, whether fictional or real... The classic immigrant story still stirs the American heart, despite the country’s longstanding aversion to the arrival of “the wretched refuse” at the “golden door” in the words etched on the Statue of Liberty. Even

¹⁴⁷ Ibid. 107-108.

¹⁴⁸ Ibid. 9.

while resenting the influx of immigrants, we revel in the nobility of tireless labor and scrupulous thrift that can transform a destitute refugee into a successful entrepreneur.¹⁴⁹

Americans don't understand poverty, nor its causes, yet we pretend we have the solutions – just work hard, or the classic “my grandfather came here with a just a penny in his pocket and he did just fine,” pull yourself up by the bootstraps, *just get a job*. The Myth is that if you just get a job, anyone can make it in America. We conveniently forget, or at least don't acknowledge, that “making it in America” is different for everyone. “Making it” doesn't look the same for an immigrants (especially “illegalized” immigrants) as it does for Brad, the “econ” major whose dad works on Wall Street. The expectations are different, the bars are set at different heights – much like the uneven bar in gymnastics. But we don't like to admit this because every man is born equal, right? Your gut is right to tell you, “We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights.”¹⁵⁰ And immigrants' rights are not at the forefront of America's mind, sharing our wealth makes us ill so we find ways to get around it. We set up obstacles and barriers (some subtle, some obvious) to make sure that upward mobility is possible, but limited. The American Dream only takes you so far – then you wake up.

These unspoken limitations of the American Dream are not lost on migrants. A byproduct of the nation-state, migrants in America are characterized solely by their “legal” status – never by their hopes, dreams, or aspirations unless they are “appropriate” or “realistic.” It's not totally clear either – a migrant can't help but wonder their place on the food chain. Our gut still sits heavy, leaning on the American Myth, still supposing it to be true:

When a migrant stops moving, however, he starts to enter America. He looks around. He settles in. Perhaps he opens a little store to sit incongruously on a North Carolina crossroads to stock jalapeños and other foods familiar to his countrymen. Perhaps, like Agustin

¹⁴⁹ Ibid. 5.

¹⁵⁰ Arendt, *Origins*. pp. 301

Baltazar, he just keeps working year-round on the same farm, and he begins to wonder how to see himself. Agustin was straddling the line, inside and outside. He and his wife and three children lived in a small white frame house, decorated with flashing lights and a lovely Christmas tree, owned by his boss, a chicken farmer who charged no rent. A handsome guy of thirty-three, Agustin had to spend every penny he earned. Nothing was ever left over. Yet he was not sure where to place himself in the hierarchy of classes.

Agustin came to America and is now a business owner. Great! He made it! The American Dream has been confirmed, it can now be referred to as The American Reality! But not so fast... Is living paycheck to paycheck living? Or is it surviving? Agustin's upward mobility has been stunted.

"I cannot say that I'm poor, poor, because I have a car," he explained. "The most important is that I have my children and my wife. I have a life that continues, so I can't say that I'm so poor. I also recognize that I don't have money. I have something to eat, and my children have their clothes and their shoes, and I feel good. If I say I'm poor, I don't know, maybe. If I say I'm really poor, it would be bad before God, and if I say I'm rich it would be too proud. So I cannot classify myself."¹⁵¹

We talk a lot about how people see, view, talk about, and understand migranthood, but how does a migrant see themselves? Where do I fit in? Agustin is working through Shipler's idea that it's harder to be poor in a rich country than poor in a poor country – not rich enough to be rich, but not poor enough to be poor. Agustin is well off only when compared to his previous poverty. But relative to his American neighbors, America is a wealthy country with more resources and as a result a higher standard of living. Agustin can see the wealth, but the riches will only glaze him.

¹⁵¹ Shipler, 120.

ON THE EDGE

When the American Dream ends and migrants yawn their way into the gloomy morning, unlucky migrants find themselves in exile: deported to limbo, not there, not here, nowhere at all. Memo, a migrant Jason De León befriended during his time at a migrant shelter in Nogales, Mexico, has been deported from America multiple times. De León asked Memo how he felt after so many crossings, interceptions, and deportations, before later finally making it to his family in Arizona:

It's something that I really value the experience. I always feel horrible for the people who come walking through the desert, who arrive beat up just to get ahead, to make progress. It's so horrible when they get detained, or assaulted, or killed. It's something so ugly. People get left behind and no one knows where. When you finally arrive here, it's like, "Thank God!" You are reborn. That's the point for me where you come back to life. For this reason we always go to church to thank God that we are OK and to keep moving forward with the people who come here to struggle. For me, my goal is to be here for a little bit and then go back to Mexico. But only when I have something that can help me survive. Right now it is very dangerous to cross... I keep this backpack as a memento of that last trip.¹⁵²

As an experienced border crosser, Memo reflects on his many trips and waiting for another shot at America when he thinks the time is right, a trip he will make with his fellow-migrant and friend, Lucho. The migrant shelter where De León met Memo only allowed recent deportees to stay for a maximum of three days, but thanks to Memo and Lucho's charm, they two wiggled their way into a longer residency on the condition they helped out. In his time working at the shelter, Memo has seen a lot of beaten up migrants. A beaten up migrant himself, he recognizes the sanctuary the migrant shelter can be for discouraged migrants stuck in limbo with him.

¹⁵² De León, 201.

THE WORK BORDERS DO

Memo has crossed the border so many times that he said it's hard to keep track. When some migrants fall, like Memo, they're able to get back up again. They may stay down for a while, killing time until their next attempt at that imaginary line we call the US-Mexico border. For others, deportation is the end of the migrant trail. Other migrants don't choose to stop trying, but rather are forced to and die a nameless death in the desert. Both deportation and the border are performative entities, functioning both as a demonstration of sovereignty, while migrants like Memo, who never stop trying to cross, simultaneously undermine it.

Migrants can get lost in this performance – the question of identity is an important and understudied aspect of migranhood. Hundreds of thousands of migrants go to America, knowing that it's a country that labels them “illegal,” “alien,” or as Donald Trump kindly says, “They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people.”¹⁵³ Migrants hear the things that the President of the United States are saying and are aware of their precarious existences in America, this type of rhetoric and opinion is lost on migrants. But their determination will trump Trump.

In Arendt's discussion of identity in refugeehood, writing from her own experience as a refugee, we can draw parallels with migranhood, “These unwritten social laws, though never publicly admitted, have the great force of public opinion. And such a silent opinion and practice is more important for our daily lives than all official proclamations of hospitality and good will.”¹⁵⁴ Unfortunately for illegalized migrants, silent opinion, practice, *and* official proclamations are working against them. Anti-immigrant rhetoric has clawed its way through America, so far as to reach

¹⁵³ Trump, Donald. “Presidential Announcement.” 16 June 2015. *Time Magazine*, time.com/3923128/donald-trump-announcement-speech/. Address.

¹⁵⁴ Arendt, Hannah. “We Refugees.” *Altogether Elsewhere: Writers on Exile*, edited by Marc Robinson, Harvest Books, 1996, pp. 116.

seven-year-old Benton Stevens. Benton decided that he would personally “Make America Great Again” by setting up a little hot chocolate stand. He made over two-thousand dollars to, as he put it “help Trump build the wall.”¹⁵⁵ As guests who have overstayed their (un)welcome, migrants are treated as less than human, as “alien” machinery. Even a seven-year-old boy who has internalized the rhetoric around him. Would little Benton still set up shop if he knew what was going on on the other side of his beloved wall that his seven-year-old heart longs so deeply for?

Border crossers often use humor to cope with the constant reminder that they are undesirable “illegals” and that the trip they’re embarking on is a treacherous one. Memo tells De León stories from his attempts at crossing the US-Mexico border and how he tries to stay positive:

Imagine that we are walking on a giant mountain. You can’t start thinking this mountain is going to be too difficult. I tell people you have to be positive; be energized to keep moving forward. You have to pretend that you are on a picnic. I just say, “Let’s go climb this little hill!” You have to have jokes while you’re doing it, to keep going, to persevere, to stay energized.¹⁵⁶

One unnamed Mexican man working as a fruit picker in California says, “We carry on like this – taunting and joking – to make light of things for a moment, to forget the problems of life for a moment – the toil, the struggle.”¹⁵⁷

But this humor is only a band-aid over a gaping wound. Estimates of the number of casualties of the desert (whether at the hands of The Beast or “narcoviolence”¹⁵⁸) are rough, rough estimates. The desert is too vast and Mother Nature’s appetite is too overwhelming to keep up with. Moreover, the body counts that are available do not account for consequential casualties at home:

¹⁵⁵ Stevens, Jennifer. “7-Year-Old Texas Boy Faces Backlash After Raising \$2K For Donald Trump's Border Wall.” *Narvity*, www.narvity.com/news/7-year-old-texas-boy-faces-backlash-after-raising-dollar2k-for-donald-trumps-border-wall. Accessed 20 Apr. 2019.

¹⁵⁶ De León, 93-94.

¹⁵⁷ *Ibid.* 92.

¹⁵⁸ See De León page 70 for more on the term “narcoviolence.”

To describe the suffering of a mother whose son has been murdered and disappeared, whose bones she'll never be able to bury – almost three years after that barbaric tragedy, Bertila still hasn't received Charli's remains – is a dangerous challenge. What adjective could describe Bertila's feelings? What adjective could approximate her pain? The only thing I can think to write is that Bertila doesn't wholly live in this world, that in her mind a terrifying dream plays and replays, disconnecting her from this world.¹⁵⁹

The impact of migration on the home – those waiting patiently for their loved one to return home in their country of origin or to arrive home in the US – is one an understudied aspect of migration.

The US Border Patrol relies on Mother Nature's hunger to murder and disappear for border transgressors. Instead, homicide has another name: Prevention Through Deterrence (PTD), an acronym only one letter removed from PTSD – what is it with these acronyms? Border Patrol funnels migrants into dangerous terrain, relying on the desert to do its dirty work, crying plausible deniability.¹⁶⁰ PTD does not actually “deter” migrants, it just re-routes them. When migrants have no other option than to take to unforgiving mountain ranges, exposed to the scorching heat, little food and water, and animals licking their chops, waiting for them to drop dead in defeat and disappear quietly. As Bertila would likely attest, “People whose loved ones have disappeared in this desert will tell you that it's the not knowing what happened to them coupled with the flashes of grotesque possibility that drive you insane.”¹⁶¹

Americans aren't completely ignorant of the death occurring around the southern border, some advocate for it. In fact, a few comments an article titled “Border Crossing Deaths More Common as Illegal Immigration Declines” offer a dark peek into the minds of a few anti-immigrant Americans:

¹⁵⁹ Martínez, *History*. pp. 208.

¹⁶⁰ Plausible deniability is an idea throughout De León's text.

¹⁶¹ De León, 25.

[1] I'm not condoning deaths or anything, and I do think it's cruel to let a human being die in pain, but in a way isn't it better? I mean after all some of these people are risking their lives because there is nothing better back home, and if they die on the way, at least they end their sufferings.¹⁶²

This comment justifies the best as humanitarian euthanization, framing death as a favor.

[2] Since it is a common practice to print indications on everything in the US, and since just printed indications will not deter people from entering the US illegally why not take some of those dried out corpses, hang them on the places where they are known to cross with a legend, "This may be you in a couple of days."¹⁶³

Both of these comments reflect extreme and terrifying anti-immigrant opinions, opinions that are more common than these two users who decided to comment. De León urges readers not to dismiss these comments as trolls on the internet, but as demonstrations of the "...disregard for the lives of undocumented people and the idea that dead bodies should act as a form of deterrence to future migrants are fundamental components of the US federal government's current border security strategy."¹⁶⁴

IDENTITY

There are a lot of moving pieces at and around the border. These moving pieces are impossible to capture all at once, leaving some to be studied more frequently than others. For example, the relationship of migranhood and the border that have yet to be thoroughly investigated. We don't know a lot about the internal mental processes that migrants carry out as a result of or in anticipation of border crossing and how that plays out in the construction of a migrant identity – what does it feel like to be told you're "illegal?" Khosravi helps us try to understand his own

¹⁶² Ibid. 27.

¹⁶³ Ibid. 27.

¹⁶⁴ Ibid.

“illegality” through his experience as an asylum seeker in Sweden, before he successfully attained Swedish citizenship:

For the first time since I crossed the first border, I was struck by the shame of my migrant illegality. Nowhere else had I experienced the border so tangible, powerful and distressing. Shame is a part of the punishment for transgression of the nation-state sovereignty. The worst was that I internalised the shame and for many years I lied about my route to Sweden. I pretended to be a quota-refugee, one of the thousands of conventional refugees the Swedish government *takes* to Sweden annually [emphasis in original].¹⁶⁵

Migrants from Mexico and Central America are allotted quotas in the US and “legal” migrant laborers are a quota all in their own. But there is still a vast population of migrants who don’t take the “legal” routes and don’t have to deal directly with immigration authorities, as Khosravi did in Sweden. Conceptually though, Khosravi’s experience is comparable to that of an “illegalized” migrant crossing the US-Mexico border. Donald Trump continues on wagging his little fingers, shaming “illegal aliens,” reminding migrants that they are *so undesirable* that only a wall could keep *them* out:

Shame is an experience of being exposed to the disapproving gaze of others. There is a risk that the illegal migrant, subjected to a gaze and treatment that divests him or her of humanity, internalises the shame – as I did – and understands the lack of travel documents and documentation as personal deficiencies and inadequacies. The importance and centrality of shame in the experience of migration is still unexplored.¹⁶⁶

To be human is somehow synonymous with “legal,” consequently reminding “illegalize” migrants they aren’t wanted, and that must do something to a person. Even worse is the “battle” cry to “Build

¹⁶⁵ Khosravi, 331.

¹⁶⁶ Ibid.

that wall!” But no wall is a match for the migrants who will not stop pounding on the Golden Door with such determination.

Even once Khosravi gained Swedish citizenship, he was treated as *other* by immigration officials around the world. They questioned the validity of his passport often because of the way he looked, “My status as a Swedish citizen disappeared at the border because of my face.”¹⁶⁷ Shame doesn’t simply disappear with “legalization” and documentation:

Border crossings can be experienced in terms of honour and shame (cf. Kumar 2000). A legal journey is regarded as an honourable act in the spirit of globalism and cosmopolitanism. The legal traveller passes the border gloriously and enhances his or her social status, whereas the border transgressor is seen as anti-aesthetic and anti-ethical (they are called ‘illegal’ and are criminalised). We live in an era of ‘world apartheid,’ according to which the border differentiates between individuals. While for some the border is a ‘surplus of rights,’ for others it is a ‘color bar’ (Balibar 2002: 78–84). The freedom of mobility for some is only possible through the organised exclusion of others (Cresswell 2006: 233).¹⁶⁸

The “world apartheid” hides in the heart of these feelings of shame. Through exclusionary policies based on notions of citizenship, the wealth of the elite is protected and the identities of the poor are in jeopardy as they struggle for both mental and physical survival.

This shame is symptomatic of restrictive borders. The underlying purpose of exclusionary border policies is to restrict the movement of the poor and maintain the wealth of the elite. Historically – as recently as the 1700’s – this was not always the case. Wealth was distributed evenly across the globe with inequality highest within countries rather than between them. But with the strong border enforcement, times have changed:

¹⁶⁷ Ibid. 332.

¹⁶⁸ Ibid. 331.

The ability of the majority of the people in the world to move freely, access opportunities, and participate in political decisions is still severely restricted – but now these restrictions are maintained between states rather than within them. While there are still substantial wealth gaps between the rich and the poor within countries, colonialism and capitalism have combined to produce phenomenal differences in wealth between states.¹⁶⁹

Within states, wealth continues to be concentrated among the elite. Not only does inequality run deep within countries, but now inequality between them is at a high and borders are intended to maintain this growing gap. The wealthy are extremely wealthy and the poor are extremely poor; the gap between the two is ever expanding with the help of violent borders. Racialized borders restrict equal access to opportunities, keep wealth confined, and privileges protected.

America, like other wealthy Western democratic countries, absolve themselves of most responsibility for issues abroad – poverty, political chaos, genocide – because they look different. The guarded borders of wealthy countries announce their decision to recognize basic humanity and human life, only to those that have the papers to prove themselves worthy of the right to life. In order to take responsibility for America's shameful histories, we must push public migration discourse to corners it hasn't dared to go, corners so human that it scares us:

Numbers and maps tell horror stories, but the stories of deepest horror are perhaps those for which there are no numbers, no maps, no possible accountability, no words ever written or spoken. And perhaps the only way to grant any justice – were that even possible – is by hearing and recording these stories over and over again so that they come back, always, to haunt and shame us. Because being aware of what is happening in our era and choosing to do nothing about it has become unacceptable. Because we cannot allow ourselves to go on

¹⁶⁹ Jones, 86-87.

normalizing horror and violence. Because we can all be held accountable if something happens under our noses and we don't even dare to look.¹⁷⁰

This philosophy brings us right to another type of migrant experience, the experience of migrants who seek asylum, migrants who are also refugees. As we will see, utilizing Refugees bare their own wounds at the hands of American immigration law.

¹⁷⁰ Luiselli, 30.

PART TWO: REFUGEE

“And once you’re here, you’re ready to give everything, or almost everything, to stay and play a part in the great theater of belonging. In the United States, to stay is an end in itself and not a means: to stay is the founding myth of this society. To stay in the United States, you will unlearn the universal metric system so you can buy a pound and a half of cooked ham, accept that thirty-two degrees, and not zero, is where the line falls that divides cold and freezing. You might even be to celebrate the pilgrims who removed the alien Indians, and the veterans who maybe killed other aliens, and the day of a president who will eventually declare a war on all the other so-called aliens. No matter the cost. No matter the cost of the rent, the milk, the cigarettes. The humiliations, the daily battles. You will give everything. You will convince yourself that it is only a matter a time before you can be yourself again, in America, despite the added layers of otherness already so well adhered to your skin. But perhaps you will never want to be your former self again. There are too many things that ground you to this new life.” –Valeria Luiselli

DICTIONARY DEFINITION

The word “refugee” is most commonly used as a noun, but it has also historically been used as a verb as follows, “many of his pupils were... negroes that had been ‘refugeed’ from the Red River country.”¹⁷¹ Refugee, when altered with a letter “d,” means “to give refuge to, shelter; to send to a place of refuge” or, “to cause (a person) to become a refugee.”¹⁷² Thus, to be refugeed is to be exiled and given another place of habitation – it’s the process of being *made* a refugee. The Oxford English Dictionary tells us that a refugee is “a person who has been forced to leave his or her home and seek refuge elsewhere, [especially] in a foreign country, from war, religious persecution, political troubles, the effects of a natural disaster, etc.: a displaced person.” The dictionary also offers the term as it’s used as a negative connotation, “a person who is fleeing from justice, deserved punishment, etc; a runaway, a fugitive.”¹⁷³ A refugee is someone who is seeking refuge and protection, but not by choice. This refuge is called “asylum,” generally defined as “a secure place of refuge, shelter, or retreat.”¹⁷⁴

¹⁷¹ “Refugee, v.” *OED Online*. Oxford UP, March 2019. Web. 22 April 2019.

¹⁷² “Refugee, v.” *OED Online*. Oxford UP, March 2019. Web. 22 April 2019.

¹⁷³ “Refugee, n.” *OED Online*. Oxford UP, March 2019. Web. 22 April 2019.

¹⁷⁴ “Asylum, n.” *OED Online*. Oxford UP, March 2019. Web. 22 April 2019.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

It's hard to talk about migrants and not talk about refugees – unless you're American. As the number of displaced people in need of a safe place to call home increases, exclusionary policies continue to constrict around the necks of refugees and migrants alike. The webpage of the United Nations High Commissioner for Refugee (UNHCR) has a slew of statistics readily available: 68.5 million people were forcibly displaced worldwide in 2017. They also provide another way to think about displacement, with perhaps more comprehensible figures that are no less terrifying: “One person becomes displaced every 2 seconds – less than the time it takes to read this sentence. That’s 30 people who are newly displaced every minute. 1 in every 110 people globally is either an asylum-seeker, internally displaced or a refugee.”¹⁷⁵ Just under 1% of people on earth is displaced.

While two-thirds of today’s refugees come from Syria, Afghanistan, South Sudan, Myanmar, and Somalia, the number of people fleeing Central America is anything but minuscule.¹⁷⁶ A “surging tide of violence” is forcing itself across the Northern Triangle of Central America (NTCA), a region made up of El Salvador, Guatemala, and Honduras. In the five years between 2011 and 2016, the number of people fleeing these countries rose 2,249 percent. In 2016 *alone*, nearly 400,000 people ran for their lives.¹⁷⁷ A 2018 survey of a group of Salvadoran migrants found that 52% were migrating for economic reasons, 18% because of violence, 2% for family reunification, and 28% said that it was a combination of these factors.¹⁷⁸ This means that in addition to the 18% that exclusively

¹⁷⁵ “Refugee Statistics.” *USA for UNHCR: The UN Refugee Agency*, <https://www.unrefugees.org/refugee-facts/statistics/>. Accessed 28 Mar. 2019.

¹⁷⁶ Cardoletti-Carroll, Chiara, et al., 2.

¹⁷⁷ “Central America Refugee Crisis: Families and Unaccompanied Children Are Fleeing Horrific Gang Violence.” *USA for UNHCR: The UN Refugee Agency*, www.unrefugees.org/emergencies/central-america/. Accessed 28 Mar. 2019.

¹⁷⁸ Meyer, Peter J., and Maureen Taft-Morales. “Central American Migration: Root Causes and U.S. Policy.” *Congressional Research Service*, 27 Mar. 2019. Accessed 23 Apr. 2019.

cited violence, the additional 28% that cited both violence and economic reasons means that at least 46% of the Salvadoran men were fleeing violence.¹⁷⁹

The division between “migrant” and “refugee” is a blurry one. Refugees are under the umbrella of displaced people: refugees, internally displaced persons, asylum seekers, stateless persons, and returnees. The UN draws particular distinctions between these groups of people in order to say whose rights are protected and when. But the main terms in question here, with regard to Mexican and Central American migrants, are refugee and asylum seeker. An asylum seeker is a person who has yet to be granted refugee status and must prove their case in their country of destination/refuge. They need to be refugees to be afforded certain protections otherwise not available. The asylum adjudication process decides who is a “genuine” refugee, who checks all of the boxes and who doesn’t.

In order to be granted asylum in America, asylees must prove that they meet the requirements laid out in the United Nations 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The Convention offers the most widely instituted and accepted definition of what makes a refugee a refugee:

...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹⁸⁰

¹⁷⁹ It’s safe to estimate that of the additional 28%, few people cited family reunification in addition to the other factors because it only accounted for 2% in the first place.

¹⁸⁰ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, *United Nations*, Treaty Series, vol. 189, <https://www.refworld.org/docid/3be01b964.html>. Accessed 30 April 2019.

Persecution for these immutable characteristics is the key *legal* distinction between a migrant and a refugee. The implication is that refugeehood is involuntary and forced and that migration is always voluntary – one is a “choice” and one is not.

Many “economic migrants” crossing the US-Mexico border are coming from impoverished countries. In the Northern Triangle, estimates of the percentage of the population living below the national poverty line are as follows: El Salvador at 29.2%, Guatemala at 59.3%, and Honduras at 61.9%.¹⁸¹ It is hard to justify fleeing poverty as a choice, as many “economic migrants” are characterized:

The brothers felt the purgatory of their country, they felt the force with which their country spit people out or dropped them dead (twelve murders a day in a country with only six million people). They packed their bags and started north, joining the pilgrimage of upchucked Central Americans. They dove into that stream of escapees. Those fleeing poverty, those fleeing death. Because poverty touches them all: the young and the old, the men and the women, the gangsters and the cops.¹⁸²

It isn't so much of a choice as it is a *necessity*, and it's hard to draw a line between choosing to do something versus choosing to do something that *has* to get done. While persecution merits its own set of protections, to assume migration for other reasons is a “choice” is to make too many assumptions.

Yet Americans insist that *all* people from Mexico and Central America in the US aren't really refugees – they're “just migrants,” despite epidemic violence. Historical precedence is likely the foundation for these perceptions. In the 1980s the US government denied asylum to Central American asylum seekers on the grounds that they were “fleeing economic conditions and generalized conditions of violence rather than targeted political persecution” in the Cold War era, an

¹⁸¹ Meyer.

¹⁸² Martínez, *Beast*, pp. 19-20.

era where political refugees (especially those fleeing communist countries) were given priority.¹⁸³ As a result, Americans don't really understand what it means to be a refugee, only that it implies vulnerability. But what many Americans do understand is that they don't want any more people of color:

The United States might be a nation founded by immigrants, but that was a long time ago. Countless citizens today suffer historical amnesia and draw stark divisions between the “noble” European immigrants of the past and Latino border crossers of today. How quickly they forget about the violent welcome receptions that America threw for the Irish, Chinese, and many other newly arrived immigrant groups. The benefit of the chronological distance from the pain and sufferings of past migrations is that many Americans today have no problem putting nationality before humanity.¹⁸⁴

This belief is self-evident in the discourse surrounding the “migrant caravan” of October 2018. Members of the caravan have time and time again emphasized the necessity of the trip – do or die. Yet, it is deemed a “*migrant*” caravan, not a “refugee” caravan. If the migrant caravan was a “refugee caravan” instead, the United States would have certain obligations that otherwise do not exist. It highlights the tension innate in the language of refugeehood.

A report by the Congressional Research Service titled “Central American Migration: Root Causes and U.S. Policy” carefully avoids the word “refugee” completely. Instead, it refers to its subjects of study as “people [whom] have left the Northern Triangle,” in terms of “apprehensions of unauthorized migrants,” and “many of whom are seeking asylum.” This omission is intentional because the status of refugee is, ironically, a privileged one for Central American and Mexican

¹⁸³ Bibler Coutin, “Falling Outside.” pp. 576.

¹⁸⁴ De León, 26-27.

refugees seeking safety in America. The omission of the word “refugee” frees the US government of the extra protections that come with it, protections that “migrants” are not allotted.¹⁸⁵

Refugee law in America is a facet of immigration law. Immigration law in the United States uses the same definition as the UN for the determination of who is a “genuine” refugee and who is not, but broadens persecution to encompass “past persecution.”¹⁸⁶ One key feature of this definition is the requirement a refugee’s fear of persecution to be “well-founded,” which the UNHCR’s understands as a “reasonable probability.”¹⁸⁷ It’s essential to realize that this is subjective and is often an *interpretation* of the person determining status. As such, this process is vague and allows too much space for discrepancies in the process of determining who “counts” and who doesn’t.¹⁸⁸ Proving persecution is the hard part because there must be proof both of, “serious harm (for instance, a serious human rights violation) *and* a State’s refusal or inability to offer effective protection.”¹⁸⁹ The US requires that “at least one central reason” for the persecution is that listed in the UN’s definition.¹⁹⁰ Domestic violence against women (“a particular social group”) can, in certain instances, qualify as grounds for refugeehood.¹⁹¹

The very production of refugees is a glitch in the global nation-state system, a system that fails to uphold both the right of the state to sovereignty and the rights of those who are without recourse to a sovereign territory of their own:

The fact is that the principle of territorial sovereignty of states remains the very foundation of our current international public law and includes the right to control the arrival and integration of outsiders and, if need be, to send them back. The truth is that industrialized

¹⁸⁵ Shacknove, 276.

¹⁸⁶ Cardoletti-Carroll, Chiara, et al., 34.

¹⁸⁷ Ibid.

¹⁸⁸ Ramji-Nogales, Jaya. et al. “Refugee Roulette: Disparities in Asylum Adjudication.” *Stanford Law Review*, vol. 60, no. 2, 2007, pp. 295-412.

¹⁸⁹ Cardoletti-Carroll, Chiara, et al., 34.

¹⁹⁰ Ibid.

¹⁹¹ Ibid. 35-36.

countries, altogether, tend to turn themselves into a fortress in order to protect themselves against large influxes of uncontrolled migration, which the disasters of the century have caused.¹⁹²

Friction arises between sovereignty and actual implementation of the 1951 Convention by its signatories, particularly when the discussion is about obligation. Since each state has the right to say who is allowed, the obligation to let people seeking refuge in when a state doesn't really want to runs counter to the promise of sovereignty. Countries stand like a deer in headlights because the authority to say just *whose* obligation these people are remains a series of finger-pointing and "not it!" And in respecting the sovereignty of other nation-states, factors that lead to the production of refugees cannot be stopped preemptively, "When refugees and orphans have been produced, then the site for intervention is visible. Otherwise, the matter is 'political' (or a 'domestic' issue in a sovereign state) and thus beyond the realm of humanitarian intervention..."¹⁹³ The refugee is a casualty of the nation-state system. If someone slips outside of it, no safety net is equipped to effectively catch them.

In an effort to combat (but not put a complete end to) finger-pointing and make refugees legally un-deportable the principle of "nonrefoulement" was created. Article 33, titled "Prohibition of Expulsion or Return ('Refoulement')," is broken down into two provisions:

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the

¹⁹² Ricoeur, Paul. "Being a Stranger." *Theory, Culture and Society*, vol. 27, no. 5, 2010, pp. 46.

¹⁹³ Malkki, 398.

country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.¹⁹⁴

This stipulation legally restricted states from forcing refugees to return to their country where they may be persecuted, and instead obliged them to resettle refugees. It requires nations to pull refugees back into the nation-state system – and resettlement is but one manifestation of this obligation.

The term resettlement describes the UN's systematic uprooting and grafting of refugees from one place to another. The act of resettling is the process by which refugees fight forced homelessness without a nation-state to call on to secure their rights. As Arendt points to in the latter half of this passage, paradoxically it's the systematic worldwide *reliance* on the nation-state system that makes refugeehood so disorienting:

The humanitarian framework, under which different practices of displacement are administered and varying forms of protection organized, obscures the political context that produces displaced people in the first place: the nation-state order and the violence its reproduction involves. The Geneva Convention defines the refugee in terms of a twofold lack in relation to the posited norm of the nation-state citizen: a lack of protection by a state order and a lack of political agency outside of a national community. Due to this methodological nationalism, the three “durable solutions” of the protection regime – repatriation to the country of origin, reintegration at the host society, or resettlement to a third country – all aim at transforming the ‘anomaly’ of refugees back into the ‘normalcy’ of nation-state citizens.¹⁹⁵

Arendt points that in “solving the refugee question” there is a pervasive tendency to ignore the root of their precarious situation: a rupture in the nation-state system. If there was no nation-state system to be expelled from, there would be no refugee.

¹⁹⁴ UN General Assembly, pp. 30.

¹⁹⁵ Casas-Cortés, Maribel, et. al. “New Keywords: Migration and Borders.” *Cultural Studies*, vol. 29, no. 1, 2015, pp. 71.

With the 1789 Declaration of the Rights of Man, human rights were deemed “inalienable” and therefore should exist without regard to government or the nation-state system:

The full implication of this identification of the rights of man with the rights of peoples in the European nation-state system came to light only when a growing number of people and peoples suddenly appeared whose elementary rights were as little safeguarded by the ordinary functioning of nation-states in the middle of Europe as they would have been in the heart of Africa. The Rights of Man, after all, had been defined as “inalienable” because they were supposed to be independent of all governments; but it turned out that the moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them.¹⁹⁶

While human rights are said to be self-evident, the question remains: if they aren’t protected do they really exist? This continues to be a salient debate, but the fact that refugees are spit out by the nation-state system and then no sovereign nation wants to be the first to step up and protect their rights is only further evidence of the failure of our beloved “human rights.”

Its lofty language and claims do not belie the simple fact that mechanisms for ensuring “universal human rights” are woefully inadequate. The actual protection of and support for universal human rights is weak in practice. Refugees are living, breathing proof of the failure of human rights, but no one wants to step up and say so, and Arendt would agree:

No paradox of contemporary politics is filled with a more poignant irony than the discrepancy between efforts of well-meaning idealists who stubbornly insist on regarding as “inalienable” those human rights, which are enjoyed only by citizens of the most prosperous and civilized countries, and the situation of the rightless themselves.¹⁹⁷

¹⁹⁶ Arendt, *Origins*. pp. 291-292.

¹⁹⁷ *Ibid.* 279.

Nowhere is the hypocrisy of the rhetoric that hijacks the ideal more obvious historically than in U.S. guarantees for its own citizens: “The US Constitution also guaranteed rights to citizens using the lofty prose of universal rights, but simultaneously limited the rights of large portions of the population by denying the vote to women and perpetuating the institution of slavery.”¹⁹⁸ WE will now see this hypocrisy in action in the American asylum system.

BORN INTO CHAOS: THE ASYLUM SYSTEM IN AMERICA

Products of the failures of the nation-state system, many refugees from Central America and Mexico head for the US to plead their case. But what they may not realize is how difficult that process is going to be. The asylum system is a maze without a clearly marked entrance or exit, a maze that only lawyers know how to navigate. As we have seen, historically immigration reforms (the Hart-Celler Act) were essential influences of the “illegalization” of migrants south of the US-Mexico border. The the asylum system has its own hand in this “illegalization.”

The asylum system in America is broken. It is and never was equipped to facilitate the vast number of refugees seeking a safe place to live. The asylum system, rooted in anti-immigrant immigration policy, is exclusionary and, in the end, racist. The way the system functions – choosing who is “deserving” of the status and who isn’t, in all of its complexity, with its rigid understanding of “fact” – it preemptively marks asylum seekers from Mexico and Central America as suspicious before they even have a chance to plead their case. Thus, the asylum system in the US, a system meant to provide refuge for those who need it most, actively “illegalizes” Mexican and Central American refugees, assuming migranhood and trying its best to deny refugeehood and its legal obligations.

¹⁹⁸ Jones, 81.

DISTINCTIONS: REFUGEE VS. ASYLUM SEEKER

In refugee law, there is an important distinction between “refugee” and “asylum seeker.” A refugee is someone who is screened, proves persecution, and is granted asylum and refugee status *abroad* by the US Government or the UN. That person comes to the US already having been deemed a refugee. Someone seeking asylum, an asylee, is someone who has not yet been granted the status of refugee, nor its protections. An asylee reaches US soil by their own devices, usually “illegal” routes, *then* applies for asylum. Notably, there is a controversial phenomenon called “interdiction,” a system whereby countries of asylum try to preemptively prevent people already on their way to avoid legal obligations to offer assistance. In order to be granted the status of refugee, all people applying for refugeehood abroad and those who seek asylum in the US must prove that they meet the requirements of the UN’s 1951 definition. This sounds nice on paper, but the difficulty in proving persecution undermines the very reason the option for asylum exists.

So then why does a system that is supposed to offer safe haven to the persecuted only inflict further damage to vulnerable communities? Why are asylum laws so difficult to navigate without the help of a lawyer or non-governmental organization? David A. Martin’s comprehensive history, from his unique perspective as a consultant in the drafting of key laws, will lay the foundation of our attempt to trace and distill the complex history of refugee law in America. In doing so, we will see how the asylum system was born into chaos, has not evolved much since, and in turn punishes asylum seekers for its own inadequacy and fundamental prejudices.

Since the 1950s, the asylum process has been separated into two processes: affirmative and defensive. The affirmative asylum process is for applicants that are not in the process of deportation. To become “affirmative,” these applicants have to report to the Immigration and Naturalization Service, prove their fear of persecution to asylum officers, and if they are successful, they get to stay in America and gain the title of “asylee.” They will then be able to work and receive other benefits.

After a one-year period of adjustment, they are officially eligible for permanent residency.

Affirmative applicants never talk to an immigration judge. Defensive asylum claims are applicants that are already in the process of “removal” from the US. The term “removal” is not new, nor is it kind, as Valeria Luiselli took note:

President Andrew Jackson’s Indian Removal Act, approved by Congress in 1830... brutally exiled Native Americans to reservations... Geronimo, Cochise, Mangas Coloradas, and the other Chiricahua Apaches: the last inhabitants of a continent to surrender to the white-eyes, after years of battle against both the U.S. Bluecoats and the Mexican Army... It’s curious, or perhaps just sinister, that the word “removal” is still used to refer to the deportation of “illegal” immigrants – those bronzed barbarians who threaten the white peace and superior values of the “Land of the Free.”¹⁹⁹

This brutal “removal” begins after an asylum officer has already denied their claim of having a well-founded fear of persecution and they want to appeal the decision. An immigration judge then handles their case in court.²⁰⁰

Asylum seekers are, “legally” speaking, still “illegal aliens” because to seek asylum means to arrive by personal, usually “illegal” means, leaving asylees subject to detainment, a considerably controversial aspect of asylum, especially today. The Global Detention Project found that in 2016, there were 44,270 asylum seekers and 59,170 unaccompanied minors in detention. In 2017, there were 323,591 immigration detainees.²⁰¹ The media has just recently started to draw attention to detention and its often brutal conditions.

There is no annual limit to the number of asylum seekers that can be admitted into the US.

While there is no limit, being granted asylum comes with obstacles that refugees (granted their status

¹⁹⁹ Luiselli, 17.

²⁰⁰ Martin, David A. “Making Asylum Policy: The 1994 Reforms.” *Washington Law Review*, vol. 70, no. 3, 1995, pp. 725-756.

²⁰¹ Baker, Bryan. “Immigration Enforcement Actions: 2016.” *Department of Homeland Security: Office of Immigration Statistics. Annual Report*, Dec. 2017.

abroad) don't face – it's much more difficult to be granted asylum than to obtain the status of refugee abroad. For refugees (not asylees), a quota *does* exist. The quota is determined through a consultation process, theoretically involving both Congress and the President (but in practice, the President is the one who finalizes the quota).²⁰² A report titled “Proposed Refugee Admissions and Allocation” outlines the refugee situation around the world, suggesting quotas and how the incoming refugees will affect the US demographically.²⁰³

It is important to note that throughout the entire process of asylum, applicants must pay for legal representation themselves. Those that are lucky enough to be afforded representation (whether by paying for it themselves, through a non-governmental organization, or pro bono) are four to six times more likely to be granted asylum than those who do not receive legal representation.²⁰⁴ But for most, after surviving *La Bestia* and dodging money-hungry bandits, asylum applicants are still expected to fund their legal representation – if they don't, they probably won't be granted asylum, and will be forcibly “removed.” One study found that for Central Americans seeking asylum in the United States, “the single most important factor in determining outcome is whether or not these individuals are represented in their court proceedings.”²⁰⁵

LASSOING SCATTERED PROGRAMS

The complexity of asylum law takes root in its a history as a series of scattered programs inconspicuously laced together. Martin, a shaper of immigration policy, offers a comprehensive history of the first refugee law in America: The Refugee Act of 1980.²⁰⁶ Before this, there was no

²⁰² Anker, Deborah. “The Development of U.S. Refugee Legislation.” *The International Migration Review: In Defense of the Alien*, vol. 6, 1983, pp.159-166.

²⁰³ Ibid. 162.

²⁰⁴ Schoenholtz, Andrew I.; Jonathan Jacobs. “The State of Asylum Representation: Ideas for Change.” *Georgetown Immigration Law Journal*, vol. 16, no. 4, 2002, pp. 739-772.

²⁰⁵ Cardoletti-Carroll, Chiara, et al., 47.

²⁰⁶ Martin, David A. “Refugee Act of 1980: Its Past and Future.” *Michigan Yearbook of International Legal Studies*, vol. 3, 1982, pp. 91-124.

single comprehensive legislation to manage intake of refugees. Refugee programs were scattered and primarily humanitarian, not legislation based.

In light of refugees fleeing communist regimes in the 1960s and 1970s, the US enacted the Migration and Refugee Assistance Act of 1962. This established federal funding for refugees from the Western hemisphere, namely Cubans. Between 1965 and 1973, the Cuban freedom flights brought 270,000 refugees to America. Later came The Immigration and Nationality Act of 1965, containing only *one* section about refugees. It limited admission to 17,400 annually, open only to refugees fleeing Communist countries or the Middle East. Refugees who were fleeing from non-Communist countries (outside of the Middle East) were admitted under use of the parole provision – a provision not at all originally intended for refugees.

In 1972, the Soviet Union allowed Jews to move to Israel. By 1978, two-thirds of those Jewish migrants headed to the US instead. As Saigon fell in Vietnam in 1975, 130,000 Indochinese refugees made their way across the Pacific and, although America didn't know it, there were more to come. As a result of this sudden influx, The Indochina Migration and Refugee Assistance Act of 1975 came to be. The act made the assistance programs enjoyed by the Cubans also available to refugees from Vietnam and Cambodia. As refugees poured in unpredictably, the US struggled to lasso their scattered collection of programs. Thus, the Refugee Act of 1980 was born.

THE REFUGEE ACT OF 1980

The 1980 act has separate provisions relating to refugees abroad and asylum seekers on US soil, but the following will focus primarily on domestic asylum provisions. The Refugee Act of 1980 offered America's first legal definition of a refugee, echoing the UN's 1951 definition:

...any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person has last habitually

resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.²⁰⁷

While the 1980 Act was revolutionary in the sense that it was the first comprehensive refugee legislation, many gaps were left to be filled – gaps that have since snowballed.

There were various accomplishments of the Refugee Act. In early 1979, Martin recalls that a draft of the act was ready for edits. The UNHCR read it and advised that the US pay more attention to asylum, not just refugees. This was the UN urging the US to reflect their commitment to the Convention in their domestic policy. As a result, the act now included the obligation to nonrefoulement, thus resettlement. The act also created a new immigration status for those granted asylum, which could ultimately lead to permanent residency. The provisions surrounding period of adjustment for refugees and asylees are different. For an asylee exclusively, if at the time of adjustment the conditions in their homeland have improved and there was no longer a “well-founded fear of persecution,” they would *not* eligible for permanent residency. It created an annual cap of 5,000 asylees receiving permanent residency, but no cap on the number of asylees that can be admitted. On the other hand, after a refugee’s one-year adjustment, they legally remain a refugee regardless of whether or not the conditions in their home country have improved. There is no cap on the number of refugees who can become permanent residents.

Refugees and asylees who have successfully secured asylum were now able to receive some federal benefits. This change signaled a new nationwide respect of the status of refugee and asylee in America. The act also supplied assistance to a finite number of asylum seekers in the process of adjudication, targeting Haitian refugees before 1979. Martin notes that this public

²⁰⁷ United States, Congress. Refugee Act of 1980. *United Statutes at Large*, 17 Mar. 1980, title II, 201(a). pp. 102. Public Law 96-212.

assistance measure was enacted restrictively because they were worried that *full* assistance would tempt fraud applicants to apply for asylum. This worry would be eliminated if when an application is denied, deportation was prompt, but as of yet, it is not. Refugees will continue to apply for asylum and be in need of federal assistance and that will not be possible until the adjudication process is prompt. If granted asylum, refugees need to receive full assistance. If denied, there would be no limbo, no benefits to claim, only timely “removal.” To the American public, the sluggish adjudication process is perceived as the asylees fault and is a reflection of the shame inherent in their “illegality.”

Martin stresses that one of the issues with the Refugee Act of 1980 is the different ways that the definition of a refugee is applied domestically versus its application abroad. In the US, having a well-founded fear of persecution, in particular, is highly scrutinized and enforced rigorously. Abroad, however, the definition is much more relaxed. If the definition were to be applied more relaxed domestically, reducing this scrutiny, it could make, for instance, general human rights abuses basis for eligibility, rather than the very specific type of violation that spawns refugees: persecution. This type of unintended consequences is an example of why that solution is not yet feasible. If the definition was applied equally as strict both domestically and abroad, it would require much more refugee-screening personnel abroad. It is already difficult to determine “credibility” in asylum claims and the available staff is already stretched thin. Therefore, this option is also, unfortunately, not yet feasible. A solution has yet to show itself.

Asylum, as an aspect of immigration policy, is particularly worrisome to the US government because it's the only provision that offers potential for US residency without going through the dreaded long process of applying for residency via other routes. Martin calls it a “wild card in the immigration deck.” Asylum offers this potential for residency for good reason – to protect those

being persecuted. But if getting this status is *too* easy, too many fraud applicants could come too easily – it’s a fine line that we haven’t figured out how to thicken.

Martin resents the UN Convention and Protocol for lacking guidance in the actual process of determining whether or not someone qualifies for asylum – there is too much room for interpretation. The process is therefore up to the person making the decision; there are no steps in particular that are required to come to final decision. There is, however, an emphasis on *who* makes the decisions – immigration judges, asylum officers, the State Department, and so on. This lack of transparency and no established system across the board for decision-making is a point of contention for many scholars and continues to plague the asylum system today. A study revealed that decisions vary greatly by individual adjudicator and office.²⁰⁸ Another study proved that state security, diplomatic, and economic concerns heavily influence asylum decisions, at all levels of the process.²⁰⁹ Deborah Anker notes that although the policy *formally* rid refugee admissions of ideological discrimination of Cold War era policies, the privileging of political refugees persists.²¹⁰

Martin joins the consensus that a clear decision-making structure needs to be established. He notes that although the type of asylum applicants are on a continuum, the process cannot be: applicants are either confirmed or denied.²¹¹ With both a decision-making structure and reliable enforcement in place, it would clear up the stacks of backlogged cases.²¹² This backlog feeds the American perception of asylum seekers as “illegal aliens” who “never get deported.” Anker calls directly on both the Executive and Congress for failure in implementation. Martin, however, does

²⁰⁸ Ramji-Nogales, Jaya. et al.

²⁰⁹ Rosenblum, Marc R. and Idean Salehyan. “Norms and Interests in US Asylum Enforcement.” *Journal of Peace Research*, vol. 41, no. 6, 2004, pp. 677-697.

²¹⁰ Anker uses statistics to highlight the ideological preference of refugees admitted in the US since 1980: between its enactment in 1980 and September 1982, 463,665 refugees were admitted. Of these hundreds of thousands, only 393 came from non-communist countries (Anker, 162).

²¹¹ Claims range from genuine to borderline, from unlikely fears to entirely fraudulent.

²¹² By 1990, the number of applications on backlog was 100,000. By 1993, there were 300,000.

not explicitly lay blame for these shortcomings, he merely says, “The taming of the asylum process remains the major unfinished business left by the Refugee Act of 1980.”²¹³

For former leading adviser to the UNHCR Arthur C. Helton, the lack of enforcement challenges the fundamental right to asylum in the US, especially in the era of Donald Trump. Aside from lack of enforcement, he finds that there are many other challenges that were left untouched by the Refugee Act, challenges that are poisonous to the right of asylum. These challenges include asylum being a low priority for the INS, lack of training for asylum officers,²¹⁴ ideological allocation, the influence of domestic policy, interdiction, detention, and lack of fair opportunity to prove claims.²¹⁵ Each of these challenges merit their own thorough investigation.

Six weeks into the enactment of the Refugee Act of 1980, it proved inadequate to handle any sort of sudden influx. No other system is prepared to 125,000 Cuban refugees coming on the Mariel Boatlift and this caught the media’s eye. But this attention was on asylum and the shock of mass influx, but not the actual regulations that were attempting to facilitate the adjudication of these refugees. Unfortunately for refugees, for the next ten years, public attention remained elsewhere.

THE 1990 REFORMS

Martin offers a particularly unique perspective on the 1994 reforms to the Refugee Act of 1980 because he was a consultant throughout its formulation. He discusses various events that necessitated its existence, followed by the long process of drafting the reforms.²¹⁶ The 1990 reforms came ten years and 200,000 newly admitted refugees after the Refugee Act. This was partly due to the lack of media attention on the issue. In 1981, Reagan took office and his administration had to start from scratch, trying to navigate and understand complex asylum law and procedure, which had,

²¹³ Martin, “Refugee Act.” pp. 16.

²¹⁴ By 1983, there had been *one* in-service training for asylum officers and none for immigration judges.

²¹⁵ All of these challenges necessitate separate discussion and research that will not take place here.

²¹⁶ Martin, David A. “Making Asylum Policy: The 1994 Reforms.” *Washington Law Review*, vol. 70, no. 3, 1995, pp. 725-756.

by then, lost its priority. Six years later, they proposed a new system that would rid the immigration judges of asylum claims entirely, creating specialist asylum officers. This did not sit well with advocates who were worried that without what was known as the “two-bite” approach, genuine refugees would be unfairly denied and then wouldn’t be able to appeal the decision to the immigration judge. The advocates fought hard and their wishes were granted: the jurisdiction of the immigration judge was expanded. The 1990 provisions did, however, create a corps of specialized adjudicators, a promising step towards a functioning system. The 150 specially trained officers had jurisdiction over 90 percent of claims filed, but were only able to meet a third of the caseload. To understand how huge this discrepancy is, Martin writes, “In the fiscal year 1991, when 56,310 new asylum applications were filed with INS, the fledgling office was able to complete only 16,552 cases. In 1992, the comparable figures were 103,964 filings against 21,996 completion.”²¹⁷ The percentages of completed cases is bleak.

Unfortunately, the provisions did not come with adequate funding and there was not nearly enough staff to deal with the continued growth in applications. With 100,000 applications already backlogged, the notorious *American Baptist Churches v. Thorburgh* case of 1985 (widely known as the *ABC* case) was suddenly settled. The *ABC* case was a long-standing case where many asylum seekers from Guatemala and El Salvador rightfully claimed, “massive defects in the process the Department of Justice had used to make asylum decisions for those two nationalities”²¹⁸ and that they were, “denied equal treatment under the law”²¹⁹ because of their countries of origin. The settlement allowed all Guatemalans and Salvadorans in the US before 1990 to re-apply for asylum, resulting in

²¹⁷ Martin, “Making Asylum.” pp. 731.

²¹⁸ Ibid. 732.

²¹⁹ Bibler Coutin, “Falling Outside.” pp. 578,

hundreds of thousands of potential new applications “on an untested system that had not yet found its sea legs.”²²⁰ And just like that, by 1993, a whopping over 300,000 cases were on backlog.

On top of this backlog, there was a hot debate surrounding the application for work authorization for asylees. In 1993, the procedure was to mail both the asylum application (Form I-589) and employment authorization documents (EADs, Form I-765) together to the asylum office and then applicants were assigned an interview (if capacity permitted) to determine if it was “frivolous” or not. However, applicants swallowed in the backlog of applications still needed jobs. As a result, if an application was pending for over 90 days, the applicant was automatically given authorization to work until they got to their case. In sum, if an application was not scheduled for an interview due to the office’s limited abilities, they were shelved. If they were not reviewed within 90-days, they would automatically receive EAD, valid for one year. Eventually, the office began automatically mailing EADs to shelved applications before the 90-days was even up. Migrants heard about this easy route to work authorization and asylum offices began to get overwhelmed with fraud applications, which to be known as “boilerplate applications.” It remained difficult to differentiate between who was a “genuine” asylee and who was merely looking for benefits.

Another issue here was how difficult it was to keep track of applicants’ addresses that applied for EADs. Asylum officers already had the authority to initiate deportation proceedings, called an Order to Show Case (OSC). When an OSC was issued via mail, there was no way to prove that the applicant had actually received it. Even when applicants were denied work authorization, they were not efficiently deported. Phyllis A. Coven, an experienced federal immigration agency administrator and lawyer, urged decoupling work authorization and asylum applications. Coven agrees with Martin that without a “credible capacity to deport” applicants that have been fairly

²²⁰ Martin, “Making Asylum.” pp. 729.

denied, the asylum system will remain weak.²²¹ The keyword here is “fairly,” because the steps of determining who was “genuine” remained unclear and subjective.

And by 1993, the media’s focus was back on asylum, what was being called an asylum “crisis.” Americans continued to grow less than pleased by the dysfunctional system that was letting just about anyone into the country, without as much as a background check. Incentive for new legislation grew out of this discontent.

THE 1994 PROVISIONS

Drafting of the bill began in the spring of 1993. After what Martin called a long, painful, and seemingly endless experience drafting the reforms, they eventually advertised it to the public as “expedited exclusion,” easing the public’s prejudicial anxieties. This draft was designed for speedy rejection at the border before ever facing a judge, a provision applauded by anti-immigrant groups. But by the time it was summer, the asylum “crisis” had lost its momentum once again.

At the time that Clinton revealed the expedited exclusion legislation, he also promised comprehensive reforms for the asylum system in its entirety. This triggered a positive, active response from those involved in creating it because now it was viewed as a priority. After cooperative collaboration, their plan was revealed in October of 1993. But, as urgency began to fade, the regulations weren’t proposed in March of 1994.

The final proposal maintained roles for both asylum officer and immigration judges and hoped to ensure efficient processing, especially when dealing with the backlog of cases piling up. This meant there had to be quick identification of the “good” cases that should be granted asylum and prompt deportation otherwise. To save time and make the most of the budget, since asylum office cases cost around \$600 per case and the immigration judge route cost twice as much, the

²²¹ Coven, Phyllis. “Comprehensive Asylum Reforms.” *The International Migration Review: In Defense of the Alien*, vol. 17, 1995, pp. 138-139.

“easier” and “good” claims would go directly to the asylum office for adjudication. If was it complex, it would be referred to immigration court, saving a lot of time and money, but only further confusing the asylum process for those trying to navigate it.

To cope the chaos of the work authorization process, the provisions took advantage of technology to automatically provide applicants a date to return to receive their decision (approval or denial of asylum claim) at the end of their initial interview. The incentive was self-sufficient because applicants wanted to know their status immediately. This way, applicants were either granted asylum or directed to immigration court, with a trial date enclosed. Martin stresses that the reform was not intended to solely speed up deportation. Affirmative applicants still had two forums to present their claims, but were now provided a warning that if they were denied that it wouldn't be an easy path to work authorization. Finally, there was a significant increase in funding for the staff, which reduced wait times and increased filing speed.

There were three major controversial pieces to the proposed reforms. First, the draft included a \$130 fee for applicants. Second, interviews were made discretionary, meaning some applicants would either be referred to immigration court or even granted without an interview. And finally, applicants now could not apply for EADs until 150 days after filing, followed by up to 30 days for Immigration and Naturalization Service (INS) to issue work authorization. In the final proposal, the latter controversial element was kept, but the former two were not. The reforms of 1994 finally took effect on January 4, 1995. With all of its ups and downs, Martin stresses its importance solely for the fact that it represents a serious effort to give genuine asylum seekers an opportunity for refuge and safety.

In 1996, Congress amended the law to ban an applicant from applying if they did not apply for asylum within one-year of entering the US. It did not matter if they were a “genuine” refugee or not – one-year was the deadline. A group of researchers set out to find out the effects of this strict

deadline. They conducted the first empirical study of this effect in 2010. The study found that since 1998, the Department of Homeland Security has rejected at least 15,000 “genuine” asylum applicants involving over 21,000 refugees. Over 15,000 applicants would have been granted asylum had there not been a one-year deadline to apply for asylum.²²² The one-year deadline is still in effect today.

ASYLUM AFTER 9/11

The asylum adjudication process felt the devastating blow of 9/11. One study analyzed and compared decision making by asylum officers and immigrations before and after 9/11. It found that post- 9/11, asylum officers found human rights abuses to be less of a factor in their decision making compared to immigration judges in own their process. And before the attack on the World Trade Center, judges were more likely than officers to grant asylum to people from countries that were “important” to US security and claims involving physical integrity abuses mattered more to officers than judges. Officers were also more willing to deny applicants from English-speaking countries, whereas judges were more likely to deny cases from Arabic and Spanish speaking countries. After 9/11, officers were more likely to deny asylum claims in general, physical integrity right violations carried less weight, and applications from Arabic-speaking countries were more likely to be denied as well.²²³ This study highlights the enduring inequities in the vague decision-making process in the asylum system and the growing core prejudices.

The USA PATRIOT Act was enacted in October of 2001, a little bit more than a month after the attack. Before this act, asylum applicants could be denied if they had some relationship or tie to terrorism historically, a self-explanatory and generally reasonable basis for denial. But the

²²² Schrag, Philip G., et al. “Rejecting Refugees: Homeland Security’s Administration of the One-Year Bar to Asylum.” *William and Mary Law Review*, vol. 52, no. 3, 2010, pp. 651-804.

²²³ Fariss, Christopher J., et al. “The Path to Asylum in the US and Determinants for Who Gets In and Why.” *The International Migration Review*, vol. 43, no. 1, Spring 2009, pp. 3-34.

Patriot Act made this basis much more broad – applicants with *any* ties, no matter how miniscule, to terrorist organizations or related activities would be denied asylum. This vague and retroactive development means that anyone can be denied asylum if they are connected (connected by choice or by coincidence) to terrorism, adding to the list of potentials to undermine the right to asylum entirely.²²⁴

THE CHAOS PERSISTS

The asylum process is extremely confusing. The current asylum law in the US is not obvious from a quick search on Google. If a refugee typed in “how to apply for asylum in the US,” they would be directed to the US Citizenship and Immigration Services website where they would find a twelve-page form to fill out in English. The actual laws that govern these complex specifics of the application is not evident and is derived from a series of amendments to previous laws. One defining feature of the asylum adjudication process is that an applicant is much less likely to be successful in their claim without legal aid. Asylum law has developed since the first comprehensive legislation, the Refugee Act of 1980, but uncovering the *current* law is much more of a treasure hunt than it should be – especially if an applicant’s first language is not English.

The backlog of pending asylum cases shows where America’s priorities lie. According to the court statistics of the Board of Immigration Appeals for the first two quarters of the fiscal year 2018, the total number of pending asylum cases in the US has reached almost 700,000 and counting. In the age of Trump deeming asylum a “loophole,” efficient and fair processing is not in the near future.

The asylum system is and has always been chaotic, confusing, and overwhelming. The US has never been prepared and the right to asylum is being compromised in the process. The history of asylum law is more complex than this rather brief overview reflects. While this offers a

²²⁴ Ibid. 7.

background on how the system is historically failing, it also highlights gaps in asylum law scholarship. There is a lack of comprehensive, chronological refugee and asylum law history, rather there is lots of scholarship about single acts, no timeline should connect the Refugee Act of 1980 to the 1990 provisions, to the 1994 provisions that are the foundations of asylum law today.

Since its enactment in 1995, asylum law has not evolved and remains inadequate. This inadequacy is felt deeply by the hundreds of thousands of applicants on standby awaiting adjudication. The pressure put on asylum seekers throughout the process of applying for asylum (if they ever make it out of the backlog) is immense. The laws continue to overlook both the people they exist for in the first place and also the hardships that the process further implicates. In a system where there is such a huge reliance on “truth” in a system whose whole purpose is to distinguish fraudulent applicants from “genuine” ones, the discussion of the decision making process and who decides what is “true” is shady. This brings us to how “truth” is experienced and communicated in the asylum process.

TRAUMA & TESTIMONY

An interesting divergence in the experiences of the migrant and refugee, or more precisely asylees, is the dependency on narrative. Migrant narrative is largely left out of the discussion of the migrant, especially because migration is deemed a “choice.” On the other hand, asylum seekers claims for refugeehood are entirely *dependent* on their legal testimonies – they have the burden of proof. This dependence puts an incredible amount of stress on asylees, especially when their testimony entails reliving traumatic horrors aloud. As applicants are forced to prove their pain and suffering, they are also expected to provide some physical documentation, paperwork that is unlikely to have made it across the border with them, if it exists at all.²²⁵

²²⁵ For more on the experience of the asylee during the asylum process see Bohmer, Cohen, D’Halluin, and Eastmond.

Interviews of women in detention in the process of asylum adjudication or having already been granted refugee status conducted by the UNHCR offer a slough of horror stories. From these interviews, they found that 62% of these women saw dead bodies in their neighborhoods.²²⁶ Some of these women said that not only did they see dead bodies on a weekly basis, but so did their children. And the bodies were placed there on purpose, “In the local market, the people from the cartel put the dead body of a woman on public display to strike fear into everyone.”²²⁷

Sexual violence and domestic abuse are key reasons many women flee. A woman named Norma was raped and explains that the trauma sticks to her like glue, “I feel dirty, so very dirty. This is why I wake up not wanting to live. I feel I have sinned, and this sin lives inside me... Sometimes, I wake up and think it was just a nightmare, but then I feel the pain and remember it was not.”²²⁸ Unfortunately, the horrors only persist. A Honduran woman named Gloria’s 13-year-old grandson was kidnapped, and “when we finally found his body, it was at the morgue. They had cut his head off, tied his hands and feet, cut him all over.”²²⁹ Another woman, from El Salvador, tried to get help and she was “standing in front of the police, bleeding, and the police said, ‘Well, he’s your husband.’”²³⁰ The bravery that women who have survived similar tragedies are forced to show in court is unimaginable. Instead of being welcomed to safety with open arms, they are greeted with suspicion and intense scrutiny.

This suspicion begins upon arrival. The first “refuge” that is granted is detention. There are many anxieties that migrants and refugees are left to deal with and process on their own, compounded in detention. A Mexican woman, whose name is not available, suffered from severe anxiety whenever the officers locked her in her detention cell. She echoes Alexa’s statement, “It is

²²⁶ Cardoletti-Carroll, Chiara, et al., 4.

²²⁷ Ibid. 16.

²²⁸ Ibid. 5.

²²⁹ Ibid. 21.

²³⁰ Ibid. 26.

better to be free and to die by a bullet than to suffer and die slowly in a cage.”²³¹ This is a woman who would rather *die* than be treated the way that she’s been treated as a result of cruel US immigration policies. Another woman pleaded, “Please remember that we are also human beings. I didn’t want to come here, but for me it was a question of life and death.”²³² Treated like animals, locked up in cages, told migrants internalize their dehumanization and must work to fight it by humiliating themselves, begging – *please remember that we are also human beings*. Some women who also had their children with them in detention, were so distressed in detention that they began to question whether or not they should even try to fight for asylum, just so that they could get their kids out of there.²³³

There has been a surge in unaccompanied minor refugees fighting their way through the migrant trail to the border. The experience of the migrant trail for children is similar to that of adults, only they are more vulnerable and valuable. Luiselli briefly outlines the general experience of children who make it to America to plead their case:

Children leave their homes with a *coyote*. They cross Mexico in the hands of this *coyote*. They cross Mexico in the hands of this *coyote*, riding La Bestia They try not to fall into the hands of rapists, corrupt policemen murderous soldiers, and drug gangs who might enslave them in poppy or marijuana fields, if they don’t shoot them in the head and mass-bury them. If something goes wrong, and something happens to a child, the *coyote* is not held accountable. In fact, no one is ever held accountable [emphasis added].²³⁴

Trauma incurred before and during their travels does not stop once they arrive in America. Asylum law and its history largely leave out the lived experience of the asylum process from the eyes of the refugee:

²³¹ Ibid. 47.

²³² Ibid.

²³³ Ibid.

²³⁴ Luiselli, 51.

The children who make it all the way to the U.S. border turn themselves in to Border Patrol officers and are formally detained. (Often by officers who say things like “Speak English! Now you’re in America!”) There they must start looking for their parents – if they have parents – or for relatives who will sponsor them. Later, they are sent to wherever their sponsor lives. And finally, they have to appear in court, where they can defend themselves against deportation – if they have a lawyer.²³⁵

Remember, legal representation makes a *huge* difference in asylum proceedings and without it, asylees are much less likely to be granted asylum. This means that after children survive the dangerous migrant trail, it may have all been for nothing. This brings us to lived experiences of the adversarial process that is asylum adjudication.

ADJUDICATION

Refugees who successfully survived the migrant trail and broke through America’s not-so-Golden Door now face another dangerous trip: the asylum process. The UN urges the US and its other members to have “comprehensive regional response with a balanced protection approach.”²³⁶ They detail what this protective approach should look like, knowing that most refugee and asylum procedures are less than satisfactory:

Such an approach should ensure that adequate screening procedures are in place in countries of asylum to identify the protection needs of all those arriving, that asylum procedures are accessible, fair, and efficient, and that effective protection is available to all refugees, including through the provision of adequate reception arrangements.²³⁷

²³⁵ Ibid.

²³⁶ Cardoletti-Carroll, Chiara, et al., 49.

²³⁷ Ibid.

Unfortunately for many refugees arriving in America, asylum procedures are not accessible, fair, nor efficient. The level of efficiency and fairness is not readily available to all refugees because both necessitate legal representation. Without it, they are out of luck.

Another example of how the process is unfair is the Obama administration's decision to respond to the declared refugee crisis of 2014 by implementing the priority juvenile docket. As a result of this legislation, the window to seek immigration relief was drastically reduced from one year to a mere twenty-one days – “What child can find a lawyer in twenty-one days?”²³⁸ Consequently, deportation proceedings sped up by 94%. This constituted another, different kind of emergency on the side of organizations and the legal representation they work to provide, now scrambling to help as many kids as they can. Luiselli soon realized that her job was “not the emergency at the border, detonated with the surge of arrivals, but the quieter, more bureaucratic, legal emergency created by the federal government's decision to create a priority juvenile docket in response to that surge.” Luiselli deems the priority juvenile docket as, “the government's coldest, cruelest possible answer to the arrival of refugee children. Ethically, that answer was more than questionable. In legal terms, it was a kind of backdoor escape route to avoid dealing with an impending reality suddenly knocking at the country's front doors.”²³⁹

As a Spanish translator for many child refugees seeking asylum, Luiselli has heard many horror stories. Her job is to ask forty-questions and based off of their answers, lawyers (some of which are doing pro bono work) decide whether or not the case has potential to be granted asylum and if they will take on the case or not. In her book *Tell Me How It Ends: An Essay in Forty Questions*, Luiselli eloquently narrates her experiences, with refugee narratives woven throughout it as its foundation. She details her first client:

²³⁸ Luiselli, 41.

²³⁹ Ibid. 38-41.

I recall every nuance of the first story I heard and translated in court. Perhaps because it was the story of a boy I encountered again, a few months later, and have ever since kept in close contact with. Or perhaps because it's a story condensed in a very specific, material detail that has continued to haunt me: a piece of paper that the boy pulled from his pocket toward the end of his interview, the creases and edges worn. He unfolded it gently, slowly, treated it with the same careful precision a surgeon might have when making a decisive incision. He laid it in front of me on the table. As I skimmed through it, still unsure about what he was showing me, he explained that the document was a copy of a police report he'd filed more than a year and a half ago. The report stated, in three or four typewritten sentences, all in capital letters and with some grammatical mistakes, that the subject in question raised a complaint against gang members who waited for him outside of his high school every day, frequently followed him home, and began threatening to kill him. It ended with the vague promise to "investigate" the situation. After showing it to me, he folded the document back up and put it in his pants pocket, rubbing his palm now and then against the denim, like he was activating a lucky charm.²⁴⁰

For this boy, this piece of paper could be the deciding factor in his plea for asylum and he knew it, he cherished it, protected it, and was lucky enough to be able to keep the document in tact, luck that many others never come across. Luiselli continues as she reflects on her first day:

When our first day of work in court was over, my niece and I took the A train back home. As our subway sped uptown, along dark tunnels, through stations, past ghostly strangers waiting on platforms, the image of that piece of paper came back to me, insistently, with the strange power of symbols. It was just a piece of paper, damp with sweat, eroded by friction, folded and tucked inside a boy's pocket. Originally, it had been a legal document, a

²⁴⁰ Ibid. 42-43.

complaint filed by a boy hoping to produce a change in his life. Now it was more of a historical document that disclosed the failure of the document's original purpose and also explained the boy's decision to leave that life. In a less obvious but equally material way, the document was also a road map of a migration, a testimony of the five thousand miles it traveled inside a boy's pocket, aboard trains, on foot, in trucks, across various national borders, all the way to an immigration court in a distant city, where it was finally unfolded, spread out on a mahogany table, and read out loud by a stranger who had to ask that boy: Why did you come to the United States?²⁴¹

This boy survived to tell his tale, a tale to be told to a stranger, soon deciding his fate. The circumstances of his *continued* survival rest on the forty questions Luiselli asks, the first of which is "Why did you come to the United States?"

Luiselli writes about the typical immigration hearing, which typically begins by outlining basic fact of the case, followed by the question, "How do you plead?" The response being, "We admit the allegations and concede the charge." From this guilty plea the proceedings can move forward:

Fundamentally, the child came to the United States without lawful permission and is therefore "removable." Admitting this charge alone leads to deportation unless the child's attorney can find those potential avenues of relief that form a defense against it. The admission of guilt, then, is a kind of door that the law holds half open. It is the only way for the accused to begin defending themselves against a categorical sentence and seek legal avenues to immigration relief.²⁴²

From the get-go, asylees are forced to admit their "illegality" to move forward. Immigration relief comes in a few forms, asylum is just one of them. Asylum is actually *not* preferred by lawyers,

²⁴¹ Ibid.

²⁴² Ibid. 58-59.

especially for kids, because not only is it more difficult to prove, but when it is successfully granted their client is no longer allowed to return to their home country of persecution *at all* without putting their immigration status at risk. The other option for immigration relief (exclusively for children) is called special immigration juvenile (SIJ). Both asylum and SIJ render the child “legal” and, as a result, they are now able to apply for permanent residency or citizenship – the ultimate crowns of “legality.” SIJ status is given if the court determines that reunification with a parent *and* repatriation are not options and would be harmful to the child. There are a few more options, the first being the U-visa which is for people who were victims of specific crimes. The T-visa, on the other hand, is exclusively for victims of human trafficking.²⁴³

After refugees overcome the life-threatening and traumatic hurdles of the migrant trail, many legal obstacles remain. An asylee must clear every hurdle without tripping in order to finish their race to refuge, a race that is seldom won. Refugees must testify on behalf of their experiences of persecution that forced them to flee to America. The process of telling their story is exceptionally difficult because “in many refugee situations, the outcome is far from given. Refugees are in the midst of the story they are telling, and uncertainty and liminality, rather than progression and conclusion, are the order of the day.”²⁴⁴ Refugee narratives are the foundation of their claims to asylum, especially because physical evidence is generally absent.

The act of telling a life story may seem easy to many, but that is not a universal truth – especially for refugees. A story is understood to be a sort of timeline: chronological and logical, with a beginning, middle, and end. Jessica Chaudhary’s article, “Memory and Its Implications for Asylum Decisions” thoroughly analyzes the role that memory plays in storytelling in asylum adjudication. She quotes John Kotre’s *White Gloves: How We Create Ourselves Through Memory* depicting memory as “alive and fluid:”

²⁴³ Ibid. 59-60.

²⁴⁴ Eastmond, 251.

You yourself probably can remember what you did this past summer; but you would have a hard time recalling the events of three or four summers ago, unless you thought of them, say, as vacations or projects or episodes in a faltering relationship. Few of us are calendar calculators when it comes to the long-term organization of our memories.²⁴⁵

Understanding that memory is “malleable and complex” and “not a fixed entity”²⁴⁶ is just one piece of trying to understand the puzzle that is a refugee’s personal experience.

Further complicating the testimony of refugees is the effect of trauma on memory – “traumatic memory... is ‘not a simple memory.’”²⁴⁷ The basis of their claim for refugeehood must take root in persecution they have faced, which is inherently traumatic in and of itself. Persecution, however, is a vague term that does not and cannot capture the cruelties refugees have had to face – cruelties that didn’t end once they crossed the US-Mexico border, cruelties that might not make sense to the person who experienced them, cruelties that now must be laid out neatly and cleanly. Unfortunately for refugees seeking asylum in America, their case is dependant on the “credibility” of their testimony. “Credibility” is subjective and dependant on the ability to recall and reorganize memories that trauma has undoubtedly shuffled, all while reliving horrors that may not be easy to talk about, especially in front of strangers whose job it is to determine the fate of their futures.

Post-traumatic Stress Disorder (PTSD) is a factor that cannot be ignored, although in proceedings all too often disregarded. Trauma disrupts; it shuffles memories, suppresses some, enhances others, and “defies logical sense; therefore, it can be difficult to compartmentalize and organize within the mind and subsequently difficult to recall consistently.”²⁴⁸ For refugees, trauma is abundant and “in the instance of trauma, there is a flood of sensory information that can be overwhelming to the brain. In this instance, the brain can store memory in fragmentary pieces as

²⁴⁵ Kotre page 86 quoted in Chaudhary.

²⁴⁶ Chaudhary, 40.

²⁴⁷ Ibid. 48.

²⁴⁸ Ibid.

opposed to story memory in a logical sequence.”²⁴⁹ PTSD and other psychiatric disorders compound inconsistencies in narrative, leaving their “credibility” to be questioned.²⁵⁰

But before an asylee can begin to plead their case, they have to prove their own identity, that they are who they say they are. Something as seemingly simple as a name can be a roadblock in this race to refuge. It is often the case that refugees, due to the persecution that forced refugeehood, had to destroy any papertrail of their existence as a precaution. Some simply did not bring them and other didn’t have identity documents from the start.²⁵¹

Persecution is hard to prove, especially when their testimony is “routinely framed by officials as ‘difficult’ and ‘problematic’ and is handled with suspicion.”²⁵² Not only are cases dependent on testimony, but they are also dependent on physical evidence as scars on the body. Aside from paperwork, such as the boy who so carefully revealed his police report, evidence of damage to the physical body can be the deciding factor in a claim:

An answer is “correct” if it strengthens the child’s case and provides a potential avenue of relief. So, in the warped world of immigration, a correct answer is when, for example, a girl reveals that her father is an alcoholic who physically or sexually abused her, or when a boy reports that he received death threats or that he was beaten repeatedly by several gang members after refusing to acquiesce to recruitment at school and has physical injuries to prove it. Such answers – more common than exceptional–may open doors to potential immigration relief and, eventually, legal status in the United States. When children don’t have enough battle wounds to show, they might not have any way to successfully defend their cases and will most likely be “removed” back to their home country, often without a trial.²⁵³

²⁴⁹ Ibid. 46.

²⁵⁰ Ibid. 9.

²⁵¹ Jacquement, 76.

²⁵² Ibid. 74.

²⁵³ Luiselli, 61.

As twisted as it is, the more harm done, the better chance the applicant has to be approved. The odds remain stacked against asylum seekers.

Refugees seeking asylum are already met with suspicion, their “credibility” waiting to be approved. It is not enough that refugees tell their story, but their bodies must bear the brunt of the testimony:

In [the refugee’s] case, wounds speak louder than words. Wounds are accepted as objective evidence, as more reliable sources of knowledge than the words of the people on whose bodies those wounds are found. So the ideal construct, the “real refugee,” was imagined as a particular kind of person: a victim whose judgment and reason had been compromised by his or her experiences. This was a tragic, and sometimes repulsive, figure who could be deciphered and healed only by professionals, and who was opaque even (or perhaps especially) to himself or herself.²⁵⁴

“*Compromised by his or her experiences*” – the prioritization of evidence based off of bodily injury over verbal testimony undermines the humanity of refugees, branding them with a legacy of distrust – “Watch out for those refugees, they don’t know what they’re talking about.”

While trauma does indeed need to be taken into account in trying to understand and piece together complex refugee narrative, it does not and should not render their “lived experience” null:

It means that, analytically, we need to distinguish between *life as lived*, the flow of events that touch on a person’s life; *life as experienced*, how the person perceives and ascribes meaning to what happens, drawing on previous experience and cultural repertoires; and *life as told*, how experience is framed and articulated in a particular context and to a particular audience (Bruner 1986). Past and present experience is always remembered and interpreted in the light of the present as well as by the way that the future is imagined. What is remembered and

²⁵⁴ Malkki, 384.

told is also situational, shaped not least through the contingencies of the encounter between narrator and listener and the power relationship between them [emphasis in original]...²⁵⁵

Acknowledging that the deterioration of “fact” in the process of remembering and narrating is inevitable and needs to be worked with as such is the first step of many in making the asylum process less adversarial for refugees who clearly already have enough to deal with.

Jacquemet suggests a shift from “accuracy to efficiency” and to “strive for mutual matching of referential practices through long sequences of turn-taking exchanges, rather than relying on selected statements ... to determine denotational accuracy, and hence the applicant’s credibility.”²⁵⁶ In order for this shift to take place, Jacquemet notes, is only feasible or even possible if America (and other countries of asylum) rethink their exclusionary, anti-immigrant immigration policies – “In other words, it’s not a simple matter of changing asylum agencies practices because these practices are linked to political agendas and contexts.”²⁵⁷

IDENTITY AND REPRESENTATION

Their “alien-ness” and numbers inspire logistical panic among the foreign states upon whose doorstep they crawl, as demonstrated in the whirlwind of a history that is American asylum law and its implementation. Unaccompanied child refugees are asked, “How do you like where you’re living how?”; “Are you happy here?”; “Do you feel safe?”²⁵⁸ But as Luiselli points out, these questions are mostly rhetorical:

It’s hard to imagine that these children, considered a hindrance to institutions and unwanted intruders by a large part of society to which they’ve just arrived, soon to face a judge and defend themselves against a removal order, indeed “like where they are living.” In the media

²⁵⁵ Eastmond, 249.

²⁵⁶ Jacquemet, Marco. “Asylum and Superdiversity: The Search for Denotational Accuracy During Asylum Hearings.” *Language and Communication*, vol. 44, 2015, pp. 80.

²⁵⁷ Ibid.

²⁵⁸ Luiselli, 44.

and much of the official political discourse, the word “illegal” prevails over “undocumented” and the term “immigrant” over “refugee.” How would anyone who is stigmatized as an “illegal immigrant” feel “safe” and “happy”? But the children usually respond yes to those three questions.²⁵⁹

It has to be hard to be happy in a country that works so painstakingly to keep migrants and refugees alike out, a country that continues to insidiously alienate these “aliens.” Individuals who find themselves fighting for the legal recognition as a refugee never intended to be so. These people once had full lives. They had families, homes, plans and dreams before the wheel of power and history rolled over their lives.

The headlines in the news aren’t about the many daily crises individual refugees face, both along the migrant trail and throughout the asylum process. Their desperation remains the private concern of the nameless horde. The shallow representation and perception of refugees is one of Agamben’s “bare life.”²⁶⁰

The bodies and faces of refugees that flicker onto our television screens and the glossy refugee portraiture in news magazines and wall calendars constitute spectacles that preclude the “involved” narratives and historical or political details that originate among refugees. It becomes difficult to trace a connection between me/us—the consumers of images—and them—the sea of humanity. Or, more precisely, it becomes difficult to trace a connection, a relationship, other than that of a bare, “mere,” more common underlying humanity: “We are all human, after all.”²⁶¹

²⁵⁹ Ibid. 44-45.

²⁶⁰ Agamben, Giorgio. *Homo Sacer: Sovereign Power and Bare Life*. Translated by Daniel Heller-Roazen, Stanford UP, 1998.

²⁶¹ Malkki, Liisa H. “Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization.” *Cultural Anthropology*, vol. 11, no. 3, 1996, pp. 388.

Malkki accurately contends that refugees are actively dehistoricized in their representation as a “sea of humanity,” deepening the division between *us* and *them*, removing any possibility of individuality.

Malkki continues:

But it is also possible and, indeed, useful to notice that in their overpowering philanthropic universalism, in their insistence on the secondariness and unknowability of *details* of specific histories and specific cultural or political contexts, such forms of representation deny the very particulars that make people into something other than anonymous bodies, merely human beings [emphasis in original].²⁶²

Unfortunately, refugees are torn from their histories, intentionally separated from the factors that lead to their refugeehood in the first place.

Mexican and Central American migrants and refugees are actively removed from their histories when they are labeled “illegal” and “alien.” This effectively distances American and its citizens from role we’ve played in the production of the masses, attributing refugeehood to “local problems” of “sending” countries:

No one suggests that the causes are deeply embedded in our shared hemispheric history and are therefore not some distant problem in a foreign country that no one can locate on a map, but in fact a transnational problem that includes the United States— not as a distant observer or passive victim that must now deal with thousands of unwanted children arriving at the southern border, but rather as an active historical participant in the circumstance that generated that problem.

The belief that the migration of all of those children is “their” (the southern barbarians’) problem is so deeply ingrained that “we” (the northern civilization) feel so exempt from offering any solution. The devastation of the social fabric in Honduras, El

²⁶² Ibid. 388-9.

Salvador, Guatemala, and other countries is often thought of as a Central American “gang violence” problem that must be kept on the far side of the border. There is little said, for example, of arms being trafficked from the United States into Mexico or Central America, legally or not; little mention of the fact that the consumption of drugs in the United States is what fundamentally fuels drug trafficking in the continent.²⁶³

We shout “plausible deniability”²⁶⁴ at those fleeing to our Golden Door out of “a kind of misunderstanding or voluntary ignorance.”²⁶⁵ And instead, turn a blind eye and bid them farewell with detention and deportation:

It is a historicizing (and politicizing) humanism that would require us, politically and analytically, to examine our cherished notions of mankind and the human community humanitarianism and humanitarian “crises,” human rights and international justice. For if humanism can only constitute itself on the bodies of dehistoricized, archetypal refugees and other similarly styled victims – if clinical and philanthropic modes of humanitarianism are the only options – then citizenship in this human community itself remains curiously, indecently, outside of history.²⁶⁶

Humanitarianism for the sake and obligation of doing “the right thing” simply because we are all human beings strips refugees of their hard-fought traumas and historical context, ultimately muzzling refugees.

Arendt describes her realization that receiving countries and their citizens see refugees only as vulnerable vessels, shells of human beings, “bare life” tirelessly begging for their help:

Our new friends, rather overwhelmed by so many stars and famous men, hardly understand that at the basis of all our descriptions of past splendors lies one human truth: once we were

²⁶³ Luiselli, 84-85.

²⁶⁴ De León.

²⁶⁵ Malkki, 398.

²⁶⁶ Ibid.

somebodies about whom people cared, we were loved by friends, and even known by landlords as paying our rent regularly. Once we could buy our food and ride in the subway without being told we were undesirable.²⁶⁷

Refugees are treated en masse: helpless, vulnerable, an effectively faceless and nameless people, “pure victims in general: universal man, universal woman, universal child, and, taken together, universale family (Barthes 1980).”²⁶⁸

In such a daily search the self must remain fluid and malleable. Comfort comes from the familiar no longer. The self’s original shape is imperceptibly lost. Their individual and collective histories are mashed together, forming one human blob with a heart beat:

...the degree of distinction that will rescue a man from the huge and nameless crowd. Only fame will eventually answer the repeated complaint of refugees of all social strata that “nobody here knows who I am”; as a dog with a name has a better chance to survive than a dog who is just a dog in general.²⁶⁹

As of yet, the only thing that would make “the refugee” fully human, fully recognizable as an individual with agency, a full personal history, and struggles and successes of their own is fame. Otherwise, refugees will continue to be treated as animals, locked up in cages until deemed “credible,” effectively rehumanizing them.

²⁶⁷ Arendt, “We Refugees.” pp. 115.

²⁶⁸ Malkki, 378.

²⁶⁹ Arendt, *Origins*. pp. 287.

“This mere existence, that is, all that which is mysteriously given us by birth and which includes the shape of our bodies and the talents of our minds, can be adequately dealt with only by the unpredictable hazards of friendship and sympathy, or by the great and incalculable grace of love, ... without being able to give any particular reason for such supreme and unsurpassable affirmation.” - Hannah Arendt, *Origins*

CONCLUSION

The very act of trying to define who a migrant is, like trying to define *testimonio*, paradoxical. By defining who a migrant is – as the UN, DHS, FAIR, Freedom for Immigrants, immigration and refugee law all do – we limit the different experiences of migrants and distill it into a singular entity we call “the migrant:” alone, uniform, homogenous being with no context.

We have to remember that saying “migrants” is to attribute a single experience of migration to hundreds of thousands of people. Generalization is sort of inevitable – the pluralization of the word “migrant” is even an act of generalizing. But the danger of overgeneralization cannot be stressed enough. Donald Trump became a viable Republican candidate for president of the United States when he infamously denigrated *all* Mexican migrants as rapists and thieves. His threat and promises of deportation force refugees and migrant workers from all non-US countries to live in the shadows. His base exults in his narcissistic selfishness mistaking it for “national pride” and “strength,” just like our deadly smoke screen of a border.

Just as Trump’s rhetoric does, borders and citizenship have normalized a global social hierarchy and lets the the stamping of a passport signal “superiority.” Arendt reflects on the internal impact and mental bloodshed that documentation and borders create:

I can hardly imagine an attitude more dangerous, since we actually live in a world in which human beings as such have ceased to exist for quite a while; since society has discovered discrimination as the great social weapon by which one may kill men without any bloodshed;

since passports or birth certificates, and sometimes even income tax receipts, are no longer formal papers but matters of social distinction.²⁷⁰

The value of a human being is established through a technical identity legally constructed by the state; citizens and non-citizens are treated accordingly – and this is what narrative works against.

There is a degree of difficulty in organizing and separating migrant and refugee narrative by step in their journey to America because differentiating where a narrative *fits* oversimplifies the experience, a whole experience, not just a snippet. Memo's story is one example of this. Memo is a migrant who has successfully penetrated America's borders, defeated the dangers of the desert, and started a life in America. But Memo has also had his life ripped out from under him, having to do it all over again. He's watched others in this process and had time to reflect on his own experiences and the risks that lay ahead if he decides to try again. He's weighed the pros and cons of migrating or not migrating, and everytime he comes to the same conclusion – migration is his best bet and he will have to relive experiences he thought to be in the past. The fact of the matter is that narrative doesn't "fit." All pieces of migrant narrative embody all of the different aspects, all of the moving pieces that make up the precarious situations that migrants face. No two migrants are exactly the same, yet there is some underlying, inextricable bond that ties them together. De León reflects on his efforts to capture life on *la linea*, a strip of land near Mexico's northern border, and shows how overlapping narratives can be:

Their stories come in and out of focus as if viewed through a twisting kaleidoscope. The people who open up their lives to you over a plate of cheap tacos one day will likely be gone the next, only to be replaced by new faces and stories. As the days progress, some narratives show themselves to be variations of well-worn motifs: "I was deported for driving without a license and I need to get back to my children." Other stories appear out of nowhere and are

²⁷⁰ Arendt, "We Refugees." pp. 118-119.

extraordinarily shocking, funny, sad, schizophrenic, or mundane. A thorough ethnography of what happens on *la línea* is an ethnography that by design is incomplete, sometimes chaotic, and always morphing. ... in the end, the migrant experiences I describe are relatively timeless and continue to happen to this day. Border writer Luis Alberto Urrea summed it up perfectly: “Anyone who knows anything about the border can tell you that Mexican border towns change radically every twenty-four hours, yet never—and will never—change.”²⁷¹

Each migrant is different. Saying “migrants” or “immigrants” and grouping hundreds of thousands of people under one word, one category is limiting and it’s an enormous and erroneous generalization to make and cannot be forgotten or lost in migration discourse.

IN SUM

America prides itself on being a country founded by immigrants – well, colonizers because we weren’t here first – yet works tirelessly to keep them out and restrict their freedoms if they arrive, that is, if they survive the migrant trail. Migrant narratives fight their own “illegalization,” reminding those that listen that migrants are people first – moms and dads, brothers and sisters – and migrants second. Migrants are much more than their immigration status or “legality,” but paperwork and lines in the sand continue to define, divide and deny migrants humanity:

... from the moment an individual is born to the moment they die, they live in a multitude of overlapping bounded spaces that affect every aspect of their existence... Although many of these lines are invisible and permeable, they affect quality of life in terms of the availability of public education, infrastructure, government benefits like health care or Social Security, the right to free speech, and access to economic opportunities.²⁷²

²⁷¹ De León, 128.

²⁷² Jones, 93.

So much of who a person is and where a life can go is determined by where he or she is born. And whether someone is born in America or in Honduras is all up to chance. Those of us fortunate to be born into prosperous countries must come to understand the cost incurred as a consequence of hateful anti-immigrant rhetoric and a comfortably defended national border. It is not the cost of a Trumpian wall. It is not paid for in taxes and budget items. It is paid in the blood, sweat, and agonies of the faceless crowds a green lady in New York harbor once promised to welcome. In order to get the whole picture, we must tie together competing definitions in migration discourse and inject migrant narrative – it is not enough to have one without the other.

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