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1-28-2015

Legality, race, and inequality: An interview with Ruth Gomberg-Muñoz

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Savage Minds Interview with Ruth Gomberg-Muñoz.

Legality, race, and inequality:
An interview with Ruth Gomberg-Muñoz (Savage Minds)

Link: http://savageminds.org/2015/01/28/legality-race-and-inequality-an-interview-ruth-gomberg-munoz-part-i/

Ruth Gomberg-Muñoz is an assistant professor of anthropology at Loyola University Chicago. Her 2011 book, Labor and Legality, explores the work and social lives of undocumented busboys in Chicago. Since 2011, Gomberg-Muñoz has been conducting ethnographic research with mixed status couples as they go through the process of legalization; a book manuscript based on that research is in the works.

Ryan Anderson: For decades many of the debates about immigration in the US focus on legality. Politicians and pundits often speak in terms of following—and breaking—the law. But in your work you talk about the "illegalization" of migrant workers. What do you mean by this?

Ruth Gomberg-Muñoz: Migration is only "illegal" when laws prevent mobility. Historically, U.S. immigration policies have encouraged migration of workers deemed essential to the U.S. economy, a long-standing practice of labor importation punctuated by deportation and restrictionist campaigns in times of economic downturn. For example, Mexican migrant workers were imported to the United States by the millions in the mid-20th century to help fill labor shortages brought about by World War II and an expanding U.S. economy. Laws were created, negotiated, and adjusted to allow U.S. employers access to these workers; a contract worker program was instituted, and Mexicans and other Latin Americans were exempted from the quotas that limited immigration from elsewhere in the world at the time.

In the 1960s, the laws changed. An explicitly race-based U.S. immigration system was altered to prioritize family reunification, and Mexican workers became subject to numerical restriction for the first time ever. Over the next four decades, widespread demand for Mexican migrant labor persisted, while free trade policies undermined the ability of millions of Mexican farmers and workers to make a living in Mexico. Not surprisingly, numerical restrictions did not ultimately curb the migration of Mexicans to the U.S., but they did make it far more difficult for Mexicans and other Latin Americans to migrate legally. In this context, barriers to lawful immigration have produced unauthorized migration by "illegalizing" long-standing patterns of migration at a time when workers needed them most.

Politicians and pundits who attribute unauthorized migration to migrants' "law-breaking" alone disconnect migration decisions from the complex social, economic, and political processes in which those decisions take place. This reduction is not merely overly simplistic, it also distorts the relations of power that shape a person's status in

society, renders law invisible and unassailable, and legitimizes inequality by dismissing "lawbreakers'" claims to resources and rights.

An attention to processes that "illegalize" migration, as Nicholas De Genova (2002, 2005) argues, illuminates the role of immigration policy in creating both legality and illegality. Rather than assuming "the law" as a given, then, we can explore policy-making as a dynamic cultural process that is deeply embedded in broader sociopolitical and economic contexts.

RA: At the end of your book *Labor and Legality*, you explain that undocumented labor isn't sought after because it's cheap, but instead because of its "inherent powerlessness". What does this tell us about the realities of immigration here in the US? Why isn't this issue of powerlessness a more dominant theme in the ongoing national immigration debate?

RGM: The undocumented busboys who I profile in *Labor and Legality* are not particularly low-paid relative to other working-class men in the neighborhood, a fact that intrigued me when I did the research. They are also not unique in this respect: A 2002 study by the Center for Urban Economic Development at the University of Illinois at Chicago (UIC) found that, while undocumented workers in Chicago earn less than their documented counterparts, most earn above the minimum wage and some even earn middle-class incomes. This appears to contradict the truism that employers favor undocumented workers for certain jobs because they can pay them less than lawful residents or U.S. citizens, and it begs the question: why do employers hire, and even prefer, undocumented workers when there are U.S. citizens who will do the work?

The short answer is that the price of labor is not determined by wages alone. Undocumented workers are more likely than documented workers to be victims of wage theft, denied workman's compensation claims, and to work in jobs that are seasonal, socially degraded, or otherwise insecure. Lack of documents truncates their occupational mobility, while ineligibility for programs like FAFSA, unemployment benefits, welfare assistance, Medicare, and social security makes them especially dependent upon work. Together, these constraints combine to funnel and keep undocumented people in jobs that U.S. citizens are likely to refuse if they have better options. Of course, most U.S. citizens do not have unfettered access to resources or opportunities, and probationers, parolees, welfare-to-work program participants, guest workers, and lawful immigrants, among others, share some of the vulnerabilities that plague undocumented workers.

Not coincidentally, wages and workplace protections increase for undocumented workers who are members of labor unions. This is an important point, because undocumented workers are often portrayed as "unorganizable," or powerless to the point that they are either unable or unwilling to join workers' collectives. This portrayal is belied by the participation of undocumented workers in labor struggles in Chicago, L.A., and elsewhere. Indeed, if I were writing *Labor and Legality* today, I would not describe undocumented workers as "powerless," but rather "disempowered," an

important distinction that leaves room for the capacity of people, documented and not, to influence the conditions under which they live and work.

Ryan Anderson: Earlier you made reference to the historically race-based nature of the U.S. immigration system. Race is an issue that many tend to avoid here in the U.S.— and this is definitely the case when it comes to immigration. Immigration debates often focus on crime, economics, competition over jobs, pressure on social services, taxes, and, of course, upholding the rule of law. It's almost as if many people bend over backwards to deny that race has anything to do with our current policies. What's this avoidance and denial all about?

Ruth Gomberg-Muñoz: I think that many people are unaware of the central role that race has played in shaping the U.S. immigration system. For example, the very first major citizenship policy in the U.S. limited citizenship to "free white men of good moral character," while the first immigration policy, 1882's Chinese Exclusion Act, prohibited immigration of Chinese nationals. The first comprehensive immigration bill, passed in 1924, was designed to curb immigration of "filthy" and "unassimilable" Southern and Eastern Europeans, and Asians were deemed ineligible for lawful immigration and U.S. citizenship until 1952. It was not until the Immigration and Nationality Act of 1965 that overt racial biases in U.S. immigration policy were eliminated.

After the 1965 Act, explicit mention of race has all but disappeared from immigration policy debates, and "illegal immigration" has become the chief target of punitive policy. As with previous periods, this targeting is conceptually and administratively tied to concerns about criminality, lack of assimilation, and "retaining" America's heritage, but now these map onto an immigration classification, "illegal alien," that is ostensibly divorced from ethnoracial associations.

There are two questions raised by this shift: 1. Are current U.S. immigration policies and practices actually race-neutral? 2. Is immigration status a better basis for discrimination and exclusion than race?

As to the first question, as Golash Boza and Hondagneu Sotelo (2013) show, U.S. immigration enforcement is permeated with racial, class, and gendered bias that especially targets Latino men. While immigrants from Latin America make up about 75 percent of the total undocumented population, they have accounted for over 90 percent of deportees since 2000. This disparity is partly due to the concentration of immigration enforcement on the U.S.-Mexico border, and partly due to racial profiling of Latinos by local police who cooperate with immigration agencies; in fact, in 2011, 93 percent of people deported via local/federal cooperation were Latino. And the overwhelming majority of deportees are men.

But racialized enforcement is not the work of rogue officers alone—U.S. policies target and criminalize undocumented people differently. For example, unlawful presence in the United States is a civil violation, and undocumented people who enter the U.S. with a temporary visa and overstay it have not committed any federal crime. But unauthorized entry and reentry are aggressively prosecuted as federal crimes. A 2014

Pew Hispanic Center study found that unlawful reentry, which is a felony, made up 26 percent of all federally sentenced cases in 2012. Nearly all of these migrants are sentenced to jail time—in 2012, prison sentences for unlawful reentry averaged 23 months prior to deportation. Further, three-quarters of prosecutions for unlawful reentry occurred in just five districts—all of which share a border with Mexico. The criminalization of unauthorized reentry and the concentration of criminal prosecutions on the U.S.-Mexico border overwhelmingly ensnare Latin American migrants, and the share of Latinos among federally sentenced offenders rose from 23 percent in 1992 to 48 percent in 2012.

Together, this (and other) evidence shows that "illegal" is not "illegal" in the same way for everyone. Instead, undocumented Latinos are more likely than other undocumented people to be targeted by U.S. immigration enforcement measures and subjected to incarceration, detention, and deportation.

The second question—Is immigration status a better basis for discrimination and exclusion than race?—is more complex. Certainly, many scholars and activists have challenged the idea that non-citizens should be denied rights, advocating for non-state or human rights-based approaches to citizenship. I would just add that, like racial categories, immigration categories are cultural inventions that have been (as racial categories were) codified in law. But legal codification does not make a practice morally legitimate, much less socially just. U.S. policies violate national borders and state sovereignty all the time, so why should migrants be punished for doing it?

I recently read a book foreword in which the author asserted that, "There can be no question about the right of every country to determine who is admitted, when, and how. This is the law, whose present necessity no one could reasonably dispute." I completely disagree. I believe our responsibility is exactly that: to question how rights, borders, and laws are established and controlled and why nationalist tropes of security and freedom sanction some "unauthorized" border crossings and criminalize others.

RA: Speaking of the laws and policies that shape border crossings, what's your take on Obama's recent [executive order on immigration](#)?

RGM: On November 20th 2014, Obama announced that his administration would implement a program called Deferred Action for Parental Accountability, or DAPA, to shield certain undocumented people from deportation. In a nutshell, undocumented parents of U.S. citizen and lawfully resident children will be eligible for a 3-year work permit and deferral of deportation as long as they have no "serious" criminal record and can prove that they have not left the United States since January 1, 2010.

Like most people I know, I have mixed feelings about the executive order. On the one hand, DAPA will provide much-needed relief from deportation for millions of people and their family members. Further, those who are eligible will be able to work legally and qualify for tax credits. These are real and meaningful benefits.

On the other hand, DAPA is severely limited in scope, scale, and duration. The majority of undocumented people in the U.S.—some 6 to 7 million—will not qualify for DAPA. Among them are people who are childless (including many LGBTQ people), parents whose children are also undocumented or [DACA](#)-eligible, anyone with a "serious" criminal record (likely including convictions for unlawful reentry), and anyone who cannot prove continuous residence since 2010. This last criterion is especially onerous for cyclical migrants and people who work in the informal economy (such as off-the-books domestic work) and may especially burden immigrant women.

The benefits provided by the program, its scale, are also limited. DAPA eligibility does not guarantee protection from deportation, but rather a promise to use prosecutorial discretion in a deportation case—a big difference. And even with work eligibility, program participants will not qualify for most public benefits, including health care under the Affordable Care Act, SSI, Medicaid (except for emergency care), TANF, or SNAP, though workers pay into those programs with their tax dollars. Finally, DAPA is neither lawful permanent residency nor a path to lawful permanent residency—it is merely a promise not to pursue deportation at this time. The economic and political vulnerabilities of DAPA participants may be reduced, but they will persist.

Finally, the duration of the program is limited—eligibility is only good for 3 years. At the end of that period, participants may be able to reapply if the program is still available; but executive action is not legislation, and it can be ended at any time. In the meantime, program participants will be subject to routine and prolonged state surveillance—kind of like parole. Those who remain eligible will be held in a state of permanent legal precarity, or, as Cecilia Menjívar puts it, liminal legality, which confers on them some legal recognition without any long-term security.

RA: And so, while Obama's latest action does have some positive aspects, the underlying problems persist, right? This seems to be a long-running theme in US immigration policy: we end up with one partial solution after another, but the underlying problems are still there. Meanwhile, we have all of these migrants stuck in various liminal states—whether legal, social, political, or cultural. Sometimes this means prison. Sometimes it means they live the "shadowed lives" that Leo Chavez detailed years ago. Often it means many of these people live in incredibly marginalized conditions. Every election cycle, politicians on both sides often talk about the need to "fix" the immigration system, but that never seems to happen. It's almost as if it's this massive, unsolvable problem. What's your take on this? Why are these problems with immigration so persistent? And, coming from this as an anthropologist—as opposed to an economist or political scientist—what can be done to move things forward?

RGM: The first thing to note is that immigration is not a "problem" for everyone. In fact, many people benefit not only from migration but also from the massive enforcement apparatus that has been built up around it. Employers benefit from having a disempowered work force; U.S. consumers benefit from low prices on food, goods, and services made possible by underpaid migrant labor; the U.S. government benefits from billions of tax dollars that flow into Social Security and Medicaid coffers that are paid, but cannot be claimed, by non-legal workers; enforcement agencies, government

contractors, and prison private corporations benefit from massive expenditures on detention, militarization, and enforcement; finally, politicians on both sides of the political "aisle" benefit from fanning the flames of immigration passions to win votes from constituents, as well as from campaign donations made by the companies that profit from immigrant detention. In fact, the private corporations that hold immigration contracts spend tens of millions of dollars on political lobbying and have been major campaign contributors to immigration hard-liners. In return, congress has mandated that 34,000 people be kept in immigrant detention, including children, every day.

In this context, it is perhaps not surprising that political winds seem to blow in favor of stagnation on immigration reform or toward policies that only reproduce the flaws of a "broken" system. But it is not clear to me that immigration policies alone are actually capable of preventing unauthorized migration, even if politicians were inclined to try. The build-up of bigger, badder national borders will never stem migration; only addressing the global inequalities that foster mass migrations in the first place can do that.

Anthropologists are working everyday with immigrant communities to push back against the enforcement juggernaut. I could never do justice to the scope of that work here, but anthropologists help craft policy, offer legal counsel and moral support to detained and deported immigrants, do advocacy work with community organizations, and provide nuanced and complex analyses of migration in our classrooms. Anthropology is especially well suited to help students develop a contextualized and "long view" analysis of migration and the forces that shape and define it in specific ways. This is a significant endeavor given the broader dehumanizing and decontextualized rhetoric that tends to accompany immigration discourse in the United States.

RA: Your latest research follows mixed status couples as they attempt to move through the process of legalization. What does the process of legalization look like from an ethnographic vantage point? Where is your most recent work leading you?

RGM: In the beginning, I envisioned my latest project as a sort of sequel to *Labor and Legality* that would explore what happened to undocumented workers when they became "legal." Would constraints on workers' upward mobility be largely removed, as many workers in *Labor and Legality* believe, or would workers continue to face restricted opportunities and limited financial security as newly legal immigrants? That is, I was mostly interested in the degree to which legalization transforms workers' lives. I did not anticipate that the journey would be a story unto itself.

The first thing I learned is that almost none of the undocumented people who I know can change their immigration status—even those who have lived in the U.S. for many years and have U.S. citizen relatives. I ended up focusing on mixed status couples because marriage to a U.S. citizen is one of the few relationships that can put some undocumented people on a path to legal status. But even eligible spouses of U.S. citizens face a gauntlet of onerous criteria, complicated forms, expensive fees, and, in some cases, indefinite separation to reach—if their luck holds—lawful permanent residency at the end. Only half of the couples who I profiled made it to lawful residency by the end of

my 3-year field season. The others live separately or have relocated together outside of the United States.

I also found that the process of legalization largely diverges according to mode of entry into the United States. Undocumented visa-overstayers with U.S. citizen spouses can typically change their status at an immigration office within the United States. People who enter unlawfully, on the other hand, must leave the U.S. to be processed at a U.S. consulate in their country of origin. All but a few trigger a 10-year bar on their return. Because undocumented Latinos are more likely to be border-crossers than undocumented people from elsewhere, they are also more likely to face these higher hurdles to legalization.

Not only does this process require families that are already together to split apart, it also places U.S. citizens at the center of immigration petitions. This is because the 10-year bar can only be waived if the U.S. citizen would suffer "extreme hardship" in the event of a ten-year separation from his or her spouse. The pain and loss of family separation is considered regular hardship, not extreme, and U.S. citizens must be able to articulate their suffering in mostly medical and/or financial terms. In the process, they learn that their citizenship offers little protection from stigmatization, bureaucratic indifference, and vulnerability to prolonged family separation. Thus, immigration policies simultaneously uphold the value of U.S. citizenship and degrade U.S. citizens—a contradiction, I argue, that inevitably results when legal exclusion and lived inclusion collide.

I am writing about this process now; ongoing data analysis and writing will likely keep me busy for a few more years. In the meantime, I will be working with a legal clinic to process DAPA applications and using that time to think about the implications of this expanded tier of temporary status for the organization of inequality in the United States.