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Toward a Redefinition of the U.S. Sweatshop

Jacqueline Hayes

A significant amount of policy and research is based on a definition of the sweatshop that understands it as a worksite in violation of multiple labor and safety laws. Based on an extensive literature review of research on neoliberalism, sweatshops, immigrant labor and immigration law this position paper argues that contemporary changes to the global economy and U.S. immigration policy require a reconceptualization of the U.S. sweatshop. A redefinition would allow policymakers and researchers to consider undocumented workers, farm work, domestic work and workplaces not currently protected by contemporary labor laws to be considered as potential locations of a new kind of U.S. sweatshop. A broader conception of the sweatshop would allow for policy solutions more accurately tailored to the problem with the potential for a more extensive impact.

A legalistic definition of the sweatshop currently prevails in the realm of public policy, an understanding based on an anachronistic conception of how workers are sweated; the U.S. government, many researchers and lawyers define the sweatshop as a workplace that violates multiple wage and safety laws.¹ This definition is concise and allows for easy identification of sweatshops but ignores shifts in the global and domestic economy that

1. For example, both the Government Accountability Office and the Department of Labor define a sweatshop as “an employer that violates more than one federal or state labor law governing minimum wage and overtime, child labor, industrial home-work, occupational safety and health, workers compensation or industry regulations.” (“Efforts to Address the Prevalence and Conditions of Sweatshops” U. S. General Accountability Office, November 2, 1994).

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determine who is sweated and how. At present, prevailing understandings of the sweatshop are inadequate to meet the complicated needs of undocumented immigrants who are not legally allowed to work, or workers in areas with scant labor protections. A new, historically informed understanding of the sweatshop which is able to see the interrelated impacts of neoliberalism and immigration on labor conditions in the U.S. is necessary in order to make visible these unprotected workers and sectors. Broadly conceived, the two most significant processes that have coalesced to transform the U.S. sweatshop between 1980 and the present are the scaling back of social protections in the U.S., as a result of neoliberal policies, and the heightening of immigration enforcement efforts nationwide.

Based on an extensive literature review of research on neoliberalism, sweatshops, immigrant labor and immigration law this essay argues that the contemporary U.S. sweatshop would not be recognizable to policymakers of prior decades because the sweatshop has now become a flexible *condition* that allows for profound exploitation at the hands of domestic and local employers. For example, instead of being a fixed site of industrial production the sweatshop may appear for a few months at a New York farm where workers spend grueling hours picking apples or for a few years in a Long Island home where wage abuse is prevalent amongst domestic workers. In order to account for these new forms of exploitation and their novel spatial distribution, this paper argues that the sweatshop should now be defined as the condition of being *beyond protection* because it allows for the recognition of the sweatshop as it moves beyond particular industries or locations and beyond traditional definitions. This paper focuses specifically on Latino undocumented workers because, according to *Pew Hispanic* (2013), they constitute a majority of the U.S. undocumented population. This reconceptualization, while informed by interdisciplinary research and literature, has implications that extend outside the realm of research into public policy.

Background

Since the 1970s, neoliberalism has transformed economic conditions in both Latin America and the U.S. in different, but connected ways, creating economic and social pressures that impel immigrants across borders in search of wage-labor. The appearance of a growing number of primarily

undocumented workers laboring in low-wage sectors in the U.S. has signaled this underlying transformation, yet policymakers have tended to separate immigration from labor issues resulting in uneven and contradictory policies. David Harvey (2005) describes neoliberalism as “a theory of political economic practices” characterized by “deregulation, privatization, and withdrawal of the state from many areas of social provision” (2–3), which has led to increased economic and social inequality and intensified migration from Latin America to the U.S. As Juan Gonzalez (2000) points out, migratory patterns in the Western Hemisphere have tended to coincide with U.S. interventions in Latin America; broadly speaking, as the U.S. encouraged the spread of neoliberal policies in Latin American countries, migration from Latin America to the U.S. intensified. In the particular case of Mexico, the nation of origin of 55 percent of undocumented immigrants living in the U.S., John Judis (2008) estimates that 2.5 million small farmers and workers dependent on agricultural jobs were driven out of work between 1993 and 2005 primarily as a result of NAFTA-WTO trade policies during this time (*Pew Hispanic* 2013). These migrants, recently dispossessed of a means of subsistence, migrated to the U.S. in historically unprecedented numbers in search of wage-labor. Yet, their migration coincided with the simultaneous enactment of neoliberal policies in the U.S., as well as significant shifts in immigration policy.

As Lynn Stephen (2007) argues in *Transborder Lives*, “States have been reorganizing themselves significantly to meet the needs of late capitalism, particularly in relation to supplies of low-wage labor” (27–28). On the domestic level, neoliberalization in the U.S. included the deregulation of wage, safety and labor laws, as well as significant cuts to spending on social programs, confirming Stephen’s characterization. Based on U.S. Bureau of Labor statistics, *Public Citizen*, a nonprofit organization that monitors global trade policy, estimates that the United States lost over one million net jobs between 1994 and 2005. They also argue that NAFTA put a downward pressure on U.S. wages, doubled migration from Mexico to the U.S., and increased income inequality. Alongside the loss of net jobs, the U.S. has witnessed a profound restructuring of employment in general leading to lower rates of unionization, a decline in employer-provided health insurance and employer-sponsored retirement, and an increase in low-wage jobs. The *National Employment Law Project* points

out that over the last decade low-wage job growth has outpaced mid- and higher-wage job growth in the United States. Recognizing this broader economic context allows policymakers to better understand the situation in which undocumented workers labor and live, and indicates the very real tensions that arise in relation to the growth of undocumented immigrants laboring in low-wage sectors.

The “War on Terror” and the Transformation of U.S. Immigration Enforcement

Federal immigration policy developed in tandem with the economic and social restructuring that characterized the turn toward neoliberal policies, making increased enforcement a predictable, albeit problematic, political path in the wake of 9/11. As David Burnham, the co-director of Syracuse University’s Transactional Research Access Clearinghouse said “After 9/11, the Bush administration tried to see immigration enforcement as a way to fight terrorism” (Hesson 2012). Consequently, the federal government began to devote a significant amount of federal dollars to increasing enforcement efforts and making penalties for immigration violations more severe. In the context of the “War on Terror,” people of Middle Eastern descent experienced increased racial profiling and race-based violence (Harris 2002). Yet, a lesser known consequence of anti-terrorist provisions was its impact on all immigrants and in particular the Latino community, the disproportionate targets of immigration enforcement in the U.S.² The shift toward framing immigration as an issue of national security mirrored a material change in the structure and agency of immigration enforcement: in 2003, Immigration and Naturalization Services (INS) was eliminated and its functions were transferred to the Department of Homeland Security.

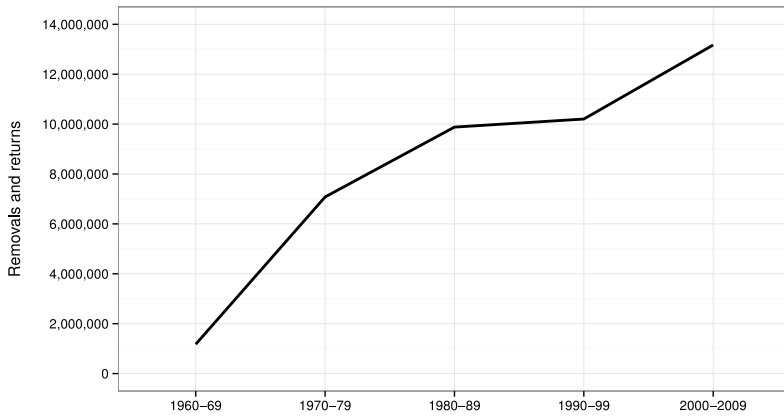
Within DHS, three agencies currently handle immigration law enforcement: U.S. Customs and Border Enforcement (CBE), U.S. Citizenship

2. According to *Pew Hispanic* (2011), in 2010 ninety-seven percent of those deported were of Latino descent. Further, in the context of the U.S., racial profiling is legally protected for immigration enforcement efforts because U.S. jurisprudence has established that a “Mexican appearance” is adequate justification for an immigration stop, meaning that Latinos in the U.S. are currently *not* entitled to the same rights against discrimination as other Americans (Johnson 2000).

and Immigration Services (USCIS), and U.S. Immigration and Customs Enforcement (ICE). The trifurcation of INS into separate agencies signaled an increasing specialization and intensification of immigration law enforcement and monitoring. One of ICE's major initiatives, the Secure Communities Program, works in conjunction with local law enforcement agencies to cross reference local arrest records with federal immigration databases. This seemingly insignificant development expanded ICE's jurisdiction to every locale participating in the Secure Communities program extending enforcement into almost every aspect of public and private life. The coalescence of neoliberalism and the "War on Terror" have created a condition where for most undocumented immigrants there are very few spaces that are safe from the threat of the enforcement of immigration law. Therefore an undocumented status is carried as an almost permanent identifier into places like the workplace, the school, the hospital, instead of being limited to a specific locality, such as the border, or temporality, such as the moment of crossing. The threat of enforcement and deportation directly impacts the job conditions someone will tolerate and their ability to access rights or protections.

The contemporary era is a unique period in the history of U.S. immigration: immigrants now labor under the persistent threat of deportation while the number of low-wage jobs has grown within the domestic economy. As a direct result of the adoption of neoliberal policies, federal and state governments, that previously had more tools to protect workers, have been transformed to an extent where national security is a primary objective. This is apparent in the current debate on immigration reform where national security takes precedence and is the precursor to any potential protections or pathways to citizenship (Slaven 2013). It is also apparent in Obama's record on deportations: the *New York Times* reported that to date President Obama has deported about 1.9 million immigrants, more than any other President in U.S. history. As illustrated in Figure 1,³ in the decade between 2000 and 2009, the U.S. deported more immigrants than

3. The Department of Homeland Security characterizes *removals* as "compulsory and confirmed movement of an inadmissible or deportable alien out of the United States based on an order of removal" and *returns* as "the confirmed movement of an inadmissible or deportable alien out of the United States not based on an order of removal" (2011).

Figure 1: Immigration Removals and Returns by Decade 1960–2009

Source: Department of Homeland Security, *2011 Yearbook of Immigration Statistics*.

during the previous three decades; a record made possible by increases in federal funding for immigration enforcement efforts. According to *Migration Policy Institute* (2013), after the formation of the DHS, immigration enforcement spending rose rapidly from \$6.2 billion in 2002 to \$14.2 billion by 2012.

Immigration policy has profoundly shaped the working lives of non-citizens because of the intimate connection between rights and citizenship. Most labor rights in the U.S. require citizenship status; immigration statuses that lie somewhere between non-citizen and citizen, like agricultural (H-2A) work visas, correspond with limited and weak labor protections. Therefore, all immigration policy, by extension, *is* labor policy.⁴ One can glimpse the intersections of immigration and labor policy clearly in sectors heavily reliant on immigrant labor. For example, in agricultural, apparel and domestic work labor rights are frequently and systematically violated.⁵ Exclusion from labor rights, in many instances, is codified

4. Some rights articulated in the Fair Labor Standards Act (FLSA) do not require citizenship status. Also, varying immigration statuses like the H2A, H2B, or worker visas entail some labor rights, but these are often limited.

5. For example, a national survey conducted by Domestic Workers United (2012) found that sixty-seven percent of domestic workers are paid below the state minimum wage and eighty-five percent of undocumented immigrants who had issues with their working conditions “did not complain because they feared their immigration status would be used against them” (37).

in law, outlined in the terms of the work visa or as a result of undocumented status, making labor exploitation a legally protected endeavor. Depending on the location, exclusion resulting from immigration status may not be limited to rights; social exclusion may follow as a result of an anti-immigrant social climate and the rigorous enforcement of immigration law. Various forms of exclusion can lead to a precarious position in the public sphere and consequently popular politics making policy recommendations rather tenuous without reconceptualizing the meanings and contexts of the sweatshop.

Reconceptualizing the U.S. Sweatshop

Currently, immigration enforcement is the principal tool used to address a problem that is fundamentally a labor and human rights problem. Many scholars and policymakers have devoted significant attention to the issue of sweatshops, yet oftentimes the research and policy solutions are limited by the definition and conception of the term. Laura Hapke (2004) explains that in the U.S. imaginary the ‘traditional’ sweatshop draws up pictures of exploited immigrant workers packed into a crowded tenement building or warehouse, crouched over Singer sewing machines (3). Hapke notes that the vestiges of long standing associations continue to cling to contemporary conceptualizations of the sweatshop stating “however broadly it is defined—for it comes in all shapes and sizes—the sweatshop retains its late-nineteenth-century association with the seamstress and the tailor” (2). This is apparent in contemporary studies on the sweatshop that focus specifically on the apparel shop in major cities and view the sweatshop as an anachronism (Louie 2001; Rosen 2002; Bender et al. 2003). In their review of sweatshop literature, Collins et al. (2008) date the reemergence of an interest in sweatshop studies to the 1970s. This literature coincided with what some termed “the return of the sweatshop” or notable increases in sweatshops both inside and outside the U.S. (Bonacich 2000; Ross 2004). While this new sweatshop literature brought significant attention to globalization, export processing zones, and the feminization of labor—many of the old ‘associations’ remained intact. These studies tended to track apparel or manufacturing shops in the global South—nation-states located primarily in the Southern hemisphere and characterized by high rates of poverty—without seeing how the major transformations that

brought about the appearance of a 'returned sweatshop' were actually indicative of broad sweeping changes globally, including within the U.S.

Jennifer Gordon (2005) is one of the first researchers to move the focus of study on the sweatshop from the shop itself to a group of workers, in Gordon's case to a group of primarily Latino immigrant workers laboring in various jobs in suburban New York. As Gordon rightly points out, "New kinds of sweatshops are emerging these days. . . . No barrier keeps sweatshop conditions—long hours, low wages, high rates of injury—in traditional sweatshop industries" (13). By focusing on a group of workers, Gordon is able to see the connection between multiple sectors like day labor, restaurant, and domestic work, and illustrate how forces outside the workplace shape conditions on the job. Following Gordon's innovative approach, researchers and policymakers should attend to the social dynamics that contribute to placing immigrant workers beyond protection like international and domestic economic policies, migratory flows and local responses to these global shifts.

Broadly speaking, while the enforcement of labor laws has waned in the wake of neoliberal reforms, the enforcement of immigration laws has intensified, making accessing rights on the job a challenge, particularly for workers without citizenship or those perceived to be undocumented. In order to see the racial, economic and legal dynamics of the twenty-first century sweatshop, key historical developments like shifts in the global economy, changes in U.S. immigration policy, and conditions facing the most recent immigrant populations coming to work in the U.S. must be brought to the forefront of our understanding. In other words, a strictly legal definition would exclude the day laborers and construction workers at the heart of Gordon's study from consideration because it does not cover working conditions that are excluded from the full coverage of wage and safety laws like subcontracted or temporary work. As is the case for many contemporary low-wage sectors, the violation of laws may not result in sweatshop conditions and sweatshop conditions may arise in workplaces that are compliant with laws. Similarly, anti-sweatshop action on the state level is shaped by the traditional notion of the sweatshop, a conception that is tied to a nineteenth century understanding of the world. For example, in New York State the majority of anti-sweatshop legislation is geared specifically to the apparel industry, a state industry rapidly dwindling in

the wake of neoliberal globalization, meaning that in the case of New York, the global economy is quickly outpacing any legislative attempts to bring even a shrinking sector into legal compliance, however limited.

While these policy tools may have been successful in responding to the nineteenth century sweatshop, they are ill-suited for contemporary conditions and do little to protect undocumented workers and workers in unprotected sectors or sectors characterized by precarious work. A reconceptualization would open the door to considering new and more appropriate policy solutions, including comprehensive ways to extend protections to a growing group of unprotected workers and sectors. It is important to note, however, that a reconceptualization alone will not reverse the impacts of over three decades of major economic and immigration policy shifts.

Policy Recommendations

Recommendation 1: Rethink the sweatshop in a way that makes it visible as an enduring problem that now includes the undocumented and under protected workforce.

Legalistic definitions limit policymakers and researchers to considering only those workplaces and workers that are currently regulated by the law. By adopting a more dynamic definition that makes worker protection central and that focuses on unprotected areas, it allows researchers and policymakers to respond to new conditions that initially evade the law and prior protections.

Recommendation 2: Expand federal worker protections to cover previously excluded sectors.

Currently the Fair Labor Standards Act (FLSA) and the National Labor Relations Act excludes particular sectors (e.g. farmwork, domestic service) and workers from basic work protections like minimum wage and overtime laws. These exclusions were based on historical circumstances that naturalized particular categories of work based on outdated notions of race and gender. As Perea (2011) argues, “the statutory exclusion of agricultural and domestic employees was well-understood as a race-neutral proxy for excluding blacks from statutory benefits and protections

made available to most whites” (96). They allowed for continued exploitation in excluded sectors therefore federal labor protections should include all sectors without exception.

Recommendation 3: Extend all labor protections to all workers regardless of immigration status.

In 2002, the Supreme Court decided that undocumented workers are not entitled to back wages if they are fired for forming a union, a right that citizen workers enjoy (*Hoffman Plastics v. NLRB*). Sugimori (2007) argues that the *Hoffman Plastics* decision has set a dangerous precedent; leading to employers challenging *all* labor and employment rights for undocumented workers (78). A significant variation in rights and protections among workers opens the door for exploitation; therefore labor protections should extend to all workers regardless of immigration status.

Recommendation 4: Adopt an expansive set of social protections that cover un- or under-protected people.

Lacking federal movement on immigration reform, immigrant and workers rights’ advocates have proposed a number of state and local level provisions that, while not comprehensive, would have a significant impact on the daily lives of workers. In 2013, New York City announced plans to pilot free legal representation for those facing deportation, other cities and states could offer similar programs. Similarly, state and local policymakers can offer local IDs, enact the Dream Act, opt out of the Secure Communities program, and legislate that the lack of a social security number cannot be used as criteria to bar someone from a homeless shelter. These seemingly disparate provisions would go a long way in making immigrant workers feel more incorporated into local communities, thus slightly ameliorating the impacts of anti-immigrant hostility and heightened immigration enforcement and paving the road toward increased equality.

Conclusion

Conceptualizing the sweatshop as the condition of being beyond protection allows us to consider undocumented workers, farmworkers or workers in export processing zones as working under similar conditions

and expands the study of the sweatshop out of the shop and into the social world in which Latino immigrant workers live. It allows for a textured, multidimensional understanding of the sweatshop that forefronts the workers own lived experiences over the State's official, and often over simplistic or limited, discourses. Further, it encourages the consideration of a broader scope of forces conditioning the sweatshop (e.g. economic, political and social), so that our understanding of agency within those conditions is more precise.

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