

"From the American Dream to Maximum Security Lockdown: The Muzzled Voices 'Illegal' Refugees in the 'American South'"

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In regards to either translating on behalf of, or offering perspicacious legal representation, to vulnerable non-native populations, I'd like to suggest a controversial point of departure that would take into account three principles that in my opinion underwrite the treatment of all at risk populations, especially foreigners.

- First, the single most important moment for vulnerable persons, notably asylum seekers or undocumented migrants occurs, in the initial interactions with authority, which tend to take the form of conversations with employers, civil servants, border guards, or enforcers of traffic laws.
- Second, it is in these initial verbal interactions that the so-called laws that govern relations with such categories of individuals as undocumented persons, Convention refugees, asylum seekers or immigrants, can be shown to be almost entirely arbitrary in conception and application, particularly if the dialogue occurs between a native and a non-native speaker of the national language.
- And third, the first two statements make it such that vulnerable populations experience the world as a constant violent conflict between themselves and the host population, effectively rendering their existence so stridently conflictual, that they should be considered as victims of an on-going war that is sustained by the host country for financial gain.

These statements apply to virtually all vulnerable populations, including individuals who live under the duress of poverty, homelessness, statelessness or even personal uncertainty brought on by strained domestic relations. But for the "foreigners" in these groups, the obstacles to justice and the concomitant strain brought upon them as a consequence is unfathomable, and needs to be considered if we are to offer some kind of legal remedy or otherwise recognizable assistance

for the long-term. My objective in naming these three obstacles to justice is to emphasize a crucial area of interaction that is seldom addressed: the initial encounter. Our advocacy, our legal work, and our desire for adequate interpretation on behalf of immigrant or refugee others will only encounter a tiny proportion of the vulnerable population if we don't consider ways of intervening at the most intimate levels of interactions between home and foreign populations.

By way of illustration, I'll draw specific examples of what all of this means for interpretative or legal settings from a research project involving undocumented migrants in the Southern United States. This study, which involved interviews with undocumented migrants, translators, public defenders, lawyers, law enforcement officials, medical personnel, and advocates from non-governmental organizations, from 2003-2007, was focused on the massive and growing problem of immigrant incarceration, particularly amongst the "illegal" or undocumented population in the United States.

In most cases the encounters between the domestic population and the undocumented immigrant are benign, and lead to both parties continuing along their paths, possibly illuminated by insights gleaned from interaction with people who experience our society from completely different standpoints. This is certainly how the system in the US works, at least officially, and if there is abuse on either side of that relationship, there is the possibility of legal redress or recognition. But the current system is set up quite specifically to abuse, manipulate exploit, and, for those who are actually more fortunate, neglect, the undocumented person, the "illegal". I am therefore suggesting that we need to consider the undocumented person is as vulnerable and at-risk as a combatant who has infiltrated enemy territory, and we need, if we truly care about vulnerable populations, to find ways of intervening at initial stages of their encounters with the domestic population and of taking away the incentives for nefarious encounters.

1. First encounters

The logic of legal remedies such as Convention refugee status or judicial appeals, is that wrongs can be righted in the second instance by authorities who have been provided with pertinent facts for the case at hand, communicated by highly-trained interpreters and lawyers to sensitive judges. Such an apparently obvious assertion is in fact erected upon fallacious assumptions, notably that the initial interactions that

lead up to the formal legal hearing can be either discounted, because those encounters almost always occur under duress and without satisfactory linguistic or legal representation, or reinterpreted by the formal instance in a way that adequately accounts for the inadequacies of the communicative setting that led up to the later hearings. Only in rare cases does the latter scenario occur, and the former is so unusual that if effected, it would actually challenge the grounds upon which the remedies to which we are party are built.

One example of front-line encounters between host country officials and outsiders is the interactions that occur each day between Americans and the twelve or so million “illegal immigrants” that work or live alongside or near them. This “illegal” population is a recognizably composite characteristic of the American landscape; it can be seen, usually in the form of Mexican or Central American workers, on construction or landscaping sites, in particular, but also in large factories, sprawling retailers including Wal-Mart, huge commercial farms such as those owned by Green Giant, agribusiness slaughter houses such as Tyson Foods, and amongst domestic workers in hotels and private homes. This is a visible population, by skin color, language and locale, and, depending upon the region of the country, it’s a population that Americans interact with directly and indirectly, through intimate relations or through the consumption of goods.

The reality of this blended population is that despite its mutual dependence, it is systemically conflictual, particularly over the long term. The very nomenclature of the illegal makes undocumented persons eligible for search, arrest, imprisonment and deportation at virtually every moment of their existence. This is not only a possibility, it’s a regular occurrence, in part because there are incentives for officials to entrap, coerce and trick people, particularly vulnerable people like illegals, for monetary gain. A lawyer explains the process:¹ “In this county, both the county and the city policemen, almost all have video, and with the homeland security crap they are getting digital. They have diddly going on, but they can record and then download each evening each stop on the computer. If you are lucky enough to be on such a stop, the cops might say: ‘Here’s your warning citation, I’m going to give you a warning citation because I’m a nice guy, when I could have

¹ Citations of interviews are all taken from transcriptions recorded in the course of that research and, as per Institutional Review Board guidelines, no other data about interviewees can be provided. Some of the interviews have undergone mild grammatical corrections to improve readability.

given you a ticket. Here's your citation. Oh, by the way, you don't have any contraband in the car, do you?' 'No'. 'Mind if we take a look?' Most vulnerable people will not say no, of course, because they fear the repercussions. But even if they do, says the lawyer, the police still have an incentive to continue the search, which they can do by bringing in the k-9 unit: "These dogs are full of shit. They are going to circle your car, and how many times have you seen in the last six months a story of a guy who buys a car at a government auction and the fuel tank ain't right, so he has the tank taken out and they find three kilos floating around in there, which are cutting the gas off, and then floating back. The bumper is full of pot. And nobody has never found it. Now with those damned dogs, they use it as an excuse.... and the dog doesn't alert off of the presence of narcotics, it works off of the scent of narcotics. The scent? Yah right. And so it alerts, well that's a pretty damn nebulous term too". A refreshingly irreverent lawyer like this one can help protect people from the dangers of that initial interaction if only he were present on each stop, but he also provides a clear sense of why the cards are so stacked towards abuse even though the law says that in order to search there has to be an articulable suspicion. "It's a racket", says the lawyer, because these stops yield profit for the local police department, and perhaps the police themselves: "They are investigating corruption? They ought to be investigating the cops. And they do multi-million dollar seizures lately around here, and whichever organization was participating in the bust will get a piece of that. And all of that money is controllable by the sheriff himself, not the county commissioner. We have four helicopters here in Knox county. That's more than Davidson, Shelby and Hamilton counties combined. [The police chief] there is spending like a drunken Japanese sailor".

For those who do land up getting trapped in these stops, the legal apparatus that could be brought to bear is a vicious and uncompromising system of mandatory prison sentences preceding mandatory deportation imposing mandatory felony charges for persons who return subsequent to deportation. A lawyer describes one case: "He came into the States years ago, and he did some kind of drug thing, got convicted, and then got sent back to Mexico. Then he came back, lead an exemplary life, got married, had kids, and this life went on for 10 years. One day he is walking down the street and because a car had been stolen nearby that day, the police pick him up and they notice by his driver's license that he is illegal. He didn't do a damn thing wrong, but

now he is in jail, in federal jail because he illegally re-entered after an aggravated felony conviction. He stands to go away for upwards of 8 or more years... and all the attorney would have to prove is that he is here illegally". So the point here is that no matter how competent the translator, how solid the lawyer, how sensitive the judge, the defendant is still going down because the system doesn't allow for any other options once it has gone beyond the initial encounter.

The virus that is spread in the course of these initial encounter is rendered more virulent by ranting talk shows like the O'Reilly Factor, who sees in illegals a vague and constant threats to the American nation. This link between illegal mostly rural poor Mexican workers and terrorism has made it such that the very worst prosecutor is federal, and indeed the higher one moves up the line from the traffic stop to the federal appeals court, the worse it gets. A lawyer described dealings with local and state officials aimed at leniency in egregious cases, but "you don't get that kind of thing in the state system, and the federal system is out for blood, and they ain't interested in working things down." For those of us who have worked in the refugee determination domain, this is an anomaly, because usually you're better off dealing with codified legal apparatuses, federally-certified interpreters and justice beyond the fields and freeways of backwoods Tennessee; but not here.

The antidote to this impending firestorm, ironically enough, is either the vast multinational corporation that loses precious cheap labor to upholders of the American way, or the local police forces who see little benefit in diverting precious resources from either solving crimes or from their bread-and-butter activities of issuing fines and citations. For this reason, the illegal immigrant living in the United States is most at risk from the normally benign population of civil servants, smalltime employers, or ranting but inactive call-in radio show xenophobes, because they can, and are indeed encouraged by Homeland Security and I.C.E. to report and denounce, setting into motion a process that is invariably draconian. They are also encouraged by seemingly marginal but in fact discursively effective propaganda exercises aimed at instituting "English only" in local, county and state legislation that spreads the idea that the 'foreign language', like the foreigner who speaks it, are doing to undo the American way unless he is stopped.

Sometimes incarceration is destined to happen without local denunciation, particularly amongst the less educated or more rural population that thoughtlessly engages in cultural activities that are acceptable back home but actionable here. For example, rural Latin Americans firing guns off in the air to celebrate at a party, as is the tradition in the Mexican countryside. But it can be made worse anywhere along the law enforcement line. On the one hand, there is some awareness of this in the immigrant community, so one lawyer did note that “there is a much greater percentage of the illegals who are here who never have contact with the legal system than amongst the domestic population”, which implies not only lower criminality but an active avoidance of officials. Nevertheless, he said, “you can take any population and there’ll be a certain number of them who drink too much, who use drugs, and who will be stupid, no matter what you do”. When immigrants to “act stupid”, the risks are monumental that they will get caught, “but it depends upon who is working in the jail as to whether, when you are looked up on the computer, that there’s a little line on the computer that says ‘Hold for I.C.E.’ When that happens, you are screwed,” because any infraction involving a firearm is a felony in the US, returning to the US after deportation is a felony, all charges involving drugs are felonies, -- and felonies mean hard time in federal penitentiaries with mandatory sentencing and subsequent deportation.

It is for these reasons that our dealings with illegals is akin to our dealings with a population that considers itself to be living through a constant violent conflict, akin to an invisible but nevertheless all-out war. The stakes in this war are as high as in any other, and include the proverbial midnight knock on the door, the arbitrary arrest, the unprovoked attack, the sanctified arrest, the stripping of rights, the confiscation of property, and, in more unofficial combat, sexual abuse, rape as instrument of punishment or coercion, and the possibility of unchecked and unreportable violence. Not even the most accurate or sensitive of lawyers or even judges can help in most of those cases.

We as interpreters, translators, immigration or refugee lawyers and public defenders can justify our professions by arguing that we have committed our lives to defending vulnerable populations such as illegals or asylum seekers precisely against the violations committed in the course of first encounters. But this would only be true if there existed a set of codified laws that would right the wrongs thereof, and in fact the inverse is true. This vulnerability is not limited to intercultural

miscommunications, false accusations, racial profiling or extortion; it is exacerbated in ordinary conversations when, for example, prison guards demand driver's licenses of those visiting loved ones who have been incarcerated. This is an act of aggression in itself because undocumented people aren't allowed to have regular driver's licenses, and yet driver's licenses are deemed the only admissible identification in most cases (bars, prison visitations, travel). And even those people who stay away from authority are also at risk because Homeland Security can perform random inquisitions of everyone in post offices or social security centers or shopping malls in order to ascertain status. But the most egregious actions occur on the shoulders of interstate highways, where old cars and brown skin are specifically targeted. It's in these more marginal spaces that immigration the 'law', or any parts thereof, tend to be most unevenly applied at the first stop, and then every step of the way subsequently:

The problem is, you can take 15 illegal immigrants out in this parking lot, put them in a van, and start calling the police on them, one after another over a twenty-four hour period. Some of them will be taken out, booked, make bond, and they're gone. Others will be taken out, get booked, and be picked up by INS, and it's only because Bubba came out on the midnight shift, and Bubba, who is making 15\$/hour to be a jailer, and the only reason you'd take that job is because you want to fuck with people, why would you want \$15/hour in a dungeon? You are indoors, you ain't seeing the sunshine, and you're dealing with unhappy miserable people who don't want to be where they are. Bubba don't like the fact that these damned Mexicans are walking around here anyway, so Bubba, if they don't speak good English, is calling INS. And there's no rhyme or reason. You get one guy on aggravated assault who gets a bond and goes home, you get another for driving with no license and he gets an INS hold.

So the infraction is not the real issue, it's the set of fictional laws that can allow anyone to denounce a foreigner at any time. In fact, they don't even need laws, and those who try to uphold them, or properly represent vulnerable people before them, don't stand a chance.

The consequences of the aforementioned risks is to make immigrants of all sorts avoid civic society at all costs. They would be well-advised as well to not buy a car, not visit institutions requiring identification, and not be out late at night. The problem is, that most illegals live in inexpensive and transient neighborhoods or rural areas that are seldom well-served, if served at all, by public transportation, and they tend to work long and unusual hours. To make matters worse, there's a system of federal incentives for denunciation, tied to the bogus 'war on drugs' that in its reach is one of the most effective methods for controlling the population. For immigrants, this is a particularly nefarious pathway of entrapment, as a lawyer describes:

Other than the driving while Mexican there's another sinister deal. Everywhere there's an interstate highway there is a grant to the local police to monitor that interstate highway for drugs. Easy enough to do that: 'Stop everyone who is brown. If we stop 'em all, we're bound to get someone soon!' I get these cases for speeding and no driving license... and on the affidavit, there are 8 police officers listed for a speeding with no driving license.... So I know what happened without even talking with him. They pulled him over, they got consent to search his car, the K-9 unit showed up, four other units showed up, and damn! This time they didn't find a thing, so they have to cut the poor bastard loose, for only driving with no license and speeding. I know immediately when I see this that when I look at all these cops... All they're doing is cruising around in unmarked cars, and they see [foreigners] and say 'This looks like a hit'. They call in the traffic unit, a marked car, and they say 'follow him until he, say, changes lanes without turning on his turn signals. Bang, we got you'!

The consequence for those interested in the discursive dynamics of the interaction between illegals and host country officials, including translators, public defenders or lawyers, is that undocumented people learn to become the worst kinds of clients. They are cagey, inconsistent, unreachable, and they tend to provide grounds for failure at later stages in the process. A lawyer commented that illegals tend "to be very careful about what they are saying and they frequently change their stories.

Some of them have speech impediments, some of them are missing teeth, some of them are so shy and nervous that they just will not speak up. More generally, there is there is a cultural barrier, for instance with Guatemalans, who tend to be very deferential, so they do not want to answer any question directly. Many of their answers begin with: 'Thank God that...', and then just continue along beginning at a point that is 2 years before anything happened. For a translator it's very difficult, because they want to just go all over the place, and the answer has nothing to do with the question". Coming from backgrounds in poor Latin American communities (otherwise they wouldn't have come in as illegals), they seldom understand the consequences of their early actions, which are likely to include efforts at bribery or the signing of confessions or the absolution of rights. Further, lots of these immigrants are independent, and don't therefore seek representation or even interpreters when they need them, and instead just sign confessions or they waive their rights, before any lawyer or public defender is even called. So logistically, we need to work at thwarting formal proceedings before they start, but we cannot hope to avert the disaster of Homeland Security or I.C.E. intervention because it would demand rapid intervention by large numbers of federally-certified professionals; but in light of the real issues facing millions of illegals, the work has to begin even earlier, even before that encounter on the side of the interstate, as for example was described by a Public Defender investigator who volunteered her time: "I would go into the community and bring a book, and I'd tell them this is how it works, this is what you do if you get arrested. If you don't have any money, you go to the Metro Public Defender, you apply for a lawyer. This is what you do if you get stopped by a police officer. I just gave them information on what to do if they get a citation, here is what you need to do and these are the places where you can get help for this or for that. And then doing that, you have to get to make all kinds of connections in the community". This is great, because when community outreach is effected by lawyers or public defenders, it's usually too late.

So by way of more serious resolutions, a longer term investment needs to be made, starting with what could only be deemed a revolution in American education: An interpreter provided a template: "We need to value bilingualism, and by extension, this would value the diversity that immigrants bring culturally to our city, to our nation. We also need to recognize, acknowledge, and disseminate the importance of quality

interpreting and translation and what that means. You do get what you pay for with interpreting and translation, and there is not sufficient appreciation for the skills required. All that is kind of the surrounding context of what it takes to improve translating and interpreting here.” This is most certainly a longer-term approach that will yield fruit in the coming generations; but in this debate nobody speaks of the obvious, of opening up the borders from North to Central to South America, perhaps on the European system. Labor flow would meet needs, needless border enforcement would be eliminated, capital would follow workers, and norms including safety in the workplace can be elevated for places of egregious violation and concomitant suffering. But we’re not even close to that discussion. We’re just trying to put them away, out of sight, the moment we don’t need them to clean up our filth or feed our families.

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