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**Labor and Legality: Unions as Ideological State Apparatuses within Bourgeois Law**

Unauthorized residents in the United States are alienated in two forms. First, undocumented migrants are excluded from the law, occupying a space of illegality due to the federal government’s unwillingness to recognize their citizenship and the inherent denial of rights that corresponds with their legal status. Second, undocumented workers are economically alienated, whereby migrants become the epitome of fully exploited laborers as under Marx’s exploitation theory of labor. What seems to be the simultaneous exclusion from the law and exploitation within the market, represents two facets of the same system of alienation from the institutions and processes of bourgeois legality. By utilizing social networks and apparatuses, such as trade unions, in the private sphere, ‘illegal’ immigrants hope to eventually become legal subjects. In search of a way to access citizenship within bourgeois law, undocumented and unauthorized persons living in the U.S. work to engage the state without being forced to leave.

This paper aims to achieve two things. Primarily, it serves as an analysis of the authorization process through which undocumented persons work to access citizenship. This process constitutes the law’s influence on the subjectivity of undocumented migrants who immigrate to the United States in search of better lives. Moreover, this analysis will explore what it means for ‘illegal’ immigrants to live outside of the law (i.e. bourgeois law) by discussing the United States’ extensive and flawed immigration policies and its history of limiting trans-border
flows in response to market conditions. This paper’s second objective is to analyze the role that labor unions play in ‘illegal’ immigrants’ interactions with the state apparatus, and the ways that unions act as a medium through which undocumented persons can demand greater recognition and protection of rights via wage negotiation and class solidarity.

To obtain information about the interactions between unauthorized persons, labor unions, and the state, I conducted ethnographic research on the Unite Here organization in a southern city in the United States. Unite Here is a national labor union with branches in urban areas across the country. The union aims to increase wages and workplace standards for service industry workers in the United States by staging demonstrations and protests, organizing meetings, infiltrating companies’ workforces through ‘salting’ methods, and recruiting a wide variety of workers in a wide array of sectors. My research centers around Unite Here’s inclusion and support for undocumented and unauthorized workers. In this way, I hope to establish a greater understanding of the interactions and power relations between those in a condition of ‘illegality’ and the labor union as a private ‘ideological state apparatus’.

**Alienated from Land and Labor; the Undocumented and Bourgeois Law**

I.) Labor in Commodity and Legal Form:

Over twelve million people reside in the United States without legal authorization (Gomberg-Muñoz 36). Their statuses are not a product of a natural condition or a predetermined subjectivity based on their ethnicity, nor are their statuses reflective of an unchanging affiliation with a certain nation-state. Instead, citizenship statuses in the United States are largely the result of a cascading sequence of policies, often in contradiction with each other, which are determined largely by market changes. In 1924, the U.S. ‘border patrol’ was a small unit of the Bureau of
Immigration, which worked under the Department of Labor, tying immigration and legality to the supply and demand of workers (Gomberg-Muñoz 37). Immigration control forces were never intended to stop all undocumented immigration, but to facilitate a flow of labor that could maximize corporate profits by decreasing the costs of production (Gomberg-Muñoz 37). These corporate interests have driven United States immigration policies for decades and resulted in periodic massive migrations of immigrants (predominantly from Mexico) into the United States to fill low-wage jobs during periods of economic growth. However, during periods of low economic growth, high unemployment and rising interest rates, Mexican labor migration to the United States was slowed, and when the United States and Mexico entered into an era of neoliberalism, pitting both countries into competition with each other for trade, the liberalization of markets was accompanied by a strict closing of borders and the subsequent legalization of immigrant workers (Gomberg-Muñoz 33). Ruth Gomberg-Muñoz, in her book, Labor and Legality: An Ethnography of a Mexican Immigrant Network, states that border policies “do not stop labor migration; rather, they generate inequality by assigning illegal status to a segment of the global labor force” (34). The legal subjectivity of unauthorized individuals who are at the behest of their fluctuating citizenship status is thus determined by their labor value.

Labor value and legality are fundamentally interconnected. In his article, “Commodity Form and Legal Form: An Essay on the “Relative Autonomy” of the Law”, Isaac D. Balbus uses the work of Evgeny Pashukanis, an early 20th century Marxist legal scholar, to argue that the law cannot be separated from the force of capitalism. Instead, Balbus offers a comparison between the commodity form, whereby an object of exchange loses its inherent inequalities of labor and use-value and is abstracted to where its value is solely based on its exchange-value, and the legal
form, whereby a subject is abstracted into the legal subject. The logic of legal form runs parallel to commodity form, but instead of commodities and exchange-values, the legal form deals with citizenship and legality (Balbus 575). In the same way that the use-value of a commodity is extinguished for its exchange-value in the market via a process of abstraction due to the object’s perceived value in terms of other commodities, the legal form abstracts ‘man’ from his social, economic and political condition to become a legal subject. Social, economic and political characteristics form the inequalities to which persons are subject, but the legal form presents a system of rules and guidelines that all subjects must adhere to, creating a sense of equality in their relationship to the same legal institution. This masking of the inequalities that form subjects in relation to each other is at the center of the ‘universal political equivalent’ (Balbus 576), and in the same way that the abstracted commodity becomes only its exchange-value, the abstracted ‘man’ becomes only a legal status.

Unauthorized immigrants who live in the United States must face the dual abstraction that occurs in both the legal form and the commodity form. As observed above, border policies are often interchangeable with economic policies, and immigration control is synonymous with labor needs. In this condition, the political determinants of citizenship are heavily tied to the market, and thus, the process that determines the subjectivity of millions of undocumented peoples in the U.S. is both a product and a determinant of capitalism’s exchange of labor and citizens. Equality under the law as an American citizen is “established and protected by the legal form… through the abstraction from the real social inequalities of capitalist… society” (Balbus 577), and the countless immigrants who arrive in the United States are exploited by the same system that protects Americans’ civil rights and liberties (as will be discussed further). The
intersection of the commodity and legal form in the lives of unauthorized Mexican immigrants helps to explain why the “Mexican” identity is associated with labor, and why the representation of ‘illegal’ immigrants is mired in images of uneducated, threatening laborers (Gomberg-Muñoz 106). The social alienation faced by undocumented Mexican immigrants is mirrored by their alienation from the universal economic and political equivalents. Balbus’s homology between commodity and legal form can thus be observed in the capitalist exploitation of unauthorized immigrants in the United States.

II.) Existing Outside of Bourgeois Law:

The homologous relationship between commodity form and legal form can best be described by what Jane F. Collier, Bill Maurer and Liliana Suárez-Navaz call “bourgeois law”, the “legal concepts and practices developed since the eighteenth century” which correspond to the spread of capitalism throughout the globe (Collier et al. 2). Where Balbus claimed that the legal form masks the inequalities of subjects in their relation to the universal political equivalent, Collier and her associates expand this to explain that bourgeois law demarcates what is inside and what is outside of legality. Bourgeois law declares everyone to be equal before the law, simultaneously establishing a place that is outside of the law (Collier et al. 2); as a critical component to the cultural logic of capitalism, bourgeois law’s paradoxical emphasis on equality and perpetuation of class inequalities means that exploitation is foundational to the legal process (Collier et. al. 5).

Although the inequalities that inherently divide and differentiate individuals are masked by this equivalent, in areas that are not covered by legal jurisdiction, these same inequalities are incredibly profound. Collier and her associates continue by claiming that those who are excluded
by bourgeois law must express their differences and ‘stress’ their similarities in order to join in ‘equality’, and even so, the legal processes under bourgeois law serve to “enforce and confirm” the inequalities between citizens and noncitizens alike (Collier et. al 2). This legal process of exclusion, identification, analyzation, and incorporation, has defined the history of American enfranchisement.

What constitutes the ‘illegality’ in ‘illegal’ immigration is the intentional exclusion of peoples without market value from political representation in bourgeois law. Undocumented Mexican immigrants in the United States occupy a realm outside of the universal political and economic equivalent, both as excess laborers in a country facing stagnant growth and high unemployment, but also as noncitizen aliens in a country that only protects legal subjects who are designated to receive citizen rights. This status designates undocumented peoples as illegal before the law, in the form of political and economic inequalities and society, and in the form of the portrayal and representation of ‘illegal’ immigrants to American citizens.

The capitalist ideology that governs who is included and who is excluded in bourgeois law produces reasons for its categorization of certain peoples, and constructs identities through a racialized process which exaggerates regional, ethnic, class-based and gendered backgrounds (Gomberg-Muñoz 106). Collier references Coutin and Chock’s analysis that, in the United States, newspapers reporting on the US Immigration Reform and Control Act arbitrarily categorized the characteristics of legal and illegal immigrants (Collier et al. 19). The newspapers separated both statuses by perceived traits, describing those who were deserving of amnesty as exemplifying the hard work, honesty and ambition necessary to improve the United States, and those who should be deported as untrustworthy, obtuse, and parasitic (Collier et al. 19). Although
they were excluded from US citizenship for almost entirely economic reasons, society portrays illegal immigrants as existing in opposition to American values and ideology.

Bourgeois law establishes legal boundaries in alignment with the ruling class’s interests, but justifies its jurisdiction by isolating the differences expressed by outsiders and demanding that outsiders make themselves compatible with bourgeois ideology in order to be included. Coutin and Chock argue that mainstream media’s account of the USIRCA (The 1986 United States Immigration Reform and Control Act) hid the social, economic, and legal processes that had produced illegal immigrants’ condition by constructing US citizens as diligent members of society, and undocumented persons as a detriment (Collier et al. 19). This bombardment of cultural expectations projects the image of a productive citizen as the correct legal subject in the United States, protected by the nation’s institutions due to his/her contribution to the efficiency and progress of the country and its axillaries. This projected image is frequently re-affirmed through corporate valuation as employers seek workers that acquiesce their labor and time in return for recognition and security. This representation simultaneously delegitimizes non-white and foreign labor since these populations are not integrated into the system of bourgeois law.

Seeking the same protections and inclusion in the American workforce and society as white laborers, unauthorized immigrants search for ways to fit the state’s constructed image of a legal person. With the threat of deportation, legalized persons cannot protest for fear of losing their jobs, homes, and families. Instead, the state’s offer of status rights encourage immigrants to focus on obtaining work permits and green cards that can help them engage with the labor market and become more productive (Collier et al. 20). The Obama administration’s Deferred Action for Childhood Arrivals (DACA) is another example of the possibility of
entering into an agreeable status with bourgeois law. By offering certain productive immigrants with a favorable background, the chance to renew their residency, and apply for a work permit, the state further incentivizes undocumented immigrants to seek out private ways to improve themselves and enter into legal subjectivity, albeit with certain conditions in place.

The next section will elaborate on the process of making oneself align with bourgeois ideology by pursuing social networks that allow one to engage with the state apparatus. As mentioned before, undocumented immigrants search for ways to project themselves as productive persons in society. Labor unions stand as a vehicle by which those designated as ‘illegal’ immigrants can enter the legal process, earn benefits and receive rights as legal subjects to bourgeois law. Hoping to escape the inequalities sanctioned by the legal form of bourgeois law, and enter the universal political and economic equivalent enjoyed by citizens in the United States, undocumented Mexican immigrants negotiate wages and workplace conditions within the organizational influence of trade-unions. My research on unauthorized members in the Unite Here branch that I studied will hopefully shed more light on the interactions between individuals, the union, and the state.

Legality and Labor Unions

I.) Unite Here, Bridge Between Labor and Legality:

Historically, unions have felt that their movements were threatened by large influxes of immigrant workers; with more foreign workers entering into the labor market, wages would decrease and unions would possess less bargaining power. Unions understand that undocumented workers are alienated from American economic and political equality, and thus are easily exploited in the workforce, victim to companies seeking to lower their labor costs by hiring
‘illegal’ immigrants at ridiculously low wages and without benefits. Employers can leverage their productivity against undocumented workers’ legal statuses, forcing immigrants to concede decent earnings in return for invisibility. However, despite the fact that unions have seen unauthorized immigration as a detriment to their operations, union organizers around the country have recently started to recruit undocumented workers at an alarming rate.

For many native-born union members, the inclusion of non-citizens is a process designed to overcome certain divisions in the labor force and increase collective bargaining power (Ludden 2008). On the other hand, they see undocumented workers as interested in increasing their earnings from previously unacceptable amounts to a livable wage. Organizers have made a purely economic case for the incorporation of immigrants into their unions by arguing that rank-and-file members should accept new immigrants in order to improve their own lives (NYT 2009). Yet, undocumented immigrants seek more than an increase to their base wages. They seek access to rights, and to engage the bourgeois state without fear of deportation or other repercussions.

Unite Here is among several labor unions that have instituted new clauses in their contracts to protect undocumented immigrants from employer status-verification procedures, and have publicly advocated for blanket amnesty measures (Lee 2015). Unite Here’s decision to adopt these protections come with the interest of organizing unauthorized workers in order to, among other things, stave off wage depreciation, but many undocumented immigrants that work with Unite Here understand that they can access greater rights in addition to higher wages. Under the National Labor Relations Act, undocumented union workers are permitted to receive the same benefits as nonimmigrant, or legal immigrant union workers. It is through this base
understanding of labor unions’ engagement with the law that unauthorized workers are increasingly seeking membership in the union, I will elaborate further in my account of Unite Here’s engagement with undocumented workers:

The branch of Unite Here located in the southern city that I conducted research represents over six thousand workers mostly in the airport concessions and inflight service industry, but it is expanding to include hotel workers as well. Attending several events with the organization, I have found that the union’s members include both citizens and non-citizens alike, with immigrant workers accounting for a large percentage of both the rank-and-file members and the union leadership. In my first experience with the union, I was grouped with native Spanish speakers where we were encouraged to talk about our ‘stories’, and presented life-narratives about challenges related to the workplace, and our identity. The woman leading the conversation, although not an unauthorized worker herself, spoke of the hardships she faces on a day to day basis, and the abuses that she and her co-workers, many of whom are undocumented, must endure. In a circle, the members of our group would present their lives, speaking about the alienation that each one faced on the job.

One man described his previous employment with a fast-food restaurant. He recalled a time when his co-worker dropped boiling oil on his hands and was refused medical expense assistance by his employer for unknown and unexplained reasons. As in his case, the conversation would return to a theme of ‘miedo’, or fear. Hispanic union members often explained that undocumented immigrant workers, whether themselves, their family members, or their friends, didn’t seek assistance due to their fear of law
enforcement, and particularly the Immigration and Customs Enforcement, or ICE.

However, the Latina union leader of our group’s conversation spoke of overcoming this fear. Her experience with Unite Here had given her the necessary connections, assistance, and more importantly, the power to confront her employers and demand better protections and wages.

I attended a second meeting several weeks later in San Antonio, Texas with other labor and advocacy groups to discuss methods of opposing the new Trump administration. At this meeting, I was introduced to the many forms of assistance that organizations like Unite Here offered to undocumented workers within their ranks. The first half of the meeting was designed to produce a mood of solidarity among the groups in attendance, adopting intersectional approaches to fighting against new policies proposed by the recently-elected president. In the second half, an attorney from the Corpus Christi Immigration Coalition was introduced and gave a presentation titled ‘conozcan sus derechos’ for undocumented workers at risk of deportation under new, harsher immigration policies. In this presentation, the attorney offered advice for avoiding ICE when going to the courthouse, identifying which officer uniforms are ICE, and steps to avoiding immediate deportation if apprehended.

Most memorable, was the attorney’s discussion of the force of immigration law. She stated that all laws related to immigration are “made up”, and stressed the importance of ending deportation and the arbitrary nature of status regulation. Nevertheless, she acknowledged the importance of maneuvering around the law by utilizing social
networks, and becoming involved with organizations and associations. In summary, she said that “connections affect cases”, knowing people and forging associations was key.

The undocumented workers in membership with Unite Here face social alienation, and, as discussed in the previous section, face exclusion from bourgeois law due to the nature of the inequalities they must endure without protections from the legal form of American procedural guarantees. Their method of obtaining this pseudo-inclusion, involves their association with private networks such as union membership in order to obtain various forms of protection that allow for them to receive particular benefits enjoyed by full legal subjects. Jeremy M. Campbell, in his book, \textit{Conjuring Property}, explains that social alienation removes the worker from his labor, and isolates individuals to prime them for exploitation. In his analysis of settlers in the western Brazilian state of Pará, he explains that large landholders will exploit wage-laborers, or pequeños (Campbell 91). These landed elites work to discredit the settler’s land claims and coopt their labor by forcing them to work on latifundia, isolating them as undocumented (without legal land-titles) workers. In much the same way, airline and hotel employers have exploited the labor of undocumented immigrants in southern citie, as described by the members of Unite Here.

However, as Campbell continues, laborers are acutely aware of their socio-legal alienation and seek to become integrated or receive equal rights and guarantees (92). Pequeños learned to use networks and documents in the same way that elites had, finding “policy justifications” for their presence and conjuring their own legality to fight for greater property protections (Campbell 92). Although they aren’t fighting just for property rights, the unauthorized immigrants in the city that I conducted research have, as observed in the Unite Here meetings that I attended, found ways to integrate themselves into private networks such as
labor unions, where they receive support, advice and training geared towards establishing their subjectivity as legal persons.

II.) Trade Union as Ideological State Apparatus:

Unauthorized workers’ utilization of labor unions to engage with the state and establish rights with the hope of entering the legal form represent what Louis Althusser refers to as ideological state apparatuses. In his article, “Ideology and Ideological State Apparatuses: Notes towards an investigation”, Althusser explains that the state, as an apparatus, is a function of state power, governed by the ruling class (i.e. bourgeois law) and repressive in its demand that legal subjects abide by certain rules or fit into certain categorizations via institutions like the government, courts, police, and prisons (1). Ideological state apparatuses, on the other hand, take the form of churches, political parties, schools, and labor unions. These apparatuses, rather than functioning through violence, as the repressive state apparatus does, function through Ideology, and more specifically, the ruling class’s ideology in bourgeois law (Althusser 2). For example, the education system, although repressive at times in instituting obedience among students, is most efficient at instilling a certain ideology of productivity, innovation, and competition. Schools offer procedural equality in education, supposedly treating every student in a similar way, and provide a medium through which students can become politically engaged, legal subjects (offering classes on government and the law etc.). Labor unions function as ideological state apparatuses in much the same way.

Ideological state apparatuses contribute to the reproduction of the ruling class’s relations of production by encouraging a certain behavior. Whereas the educational ideological state apparatus guides students to become workers, capitalists, academics, or repressive agents such as
policemen or soldiers (Althusser 8), the labor union ideological state apparatus guides workers to become visible and engaged laborers within the state's purview. Although it might seem contradictory that labor unions should work in parallel with the state, as they seem to act in opposition to bourgeois interests, unions provide a fundamental function in citizenship statuses and the projection of the “legal subject”.

The ideology that labor unions espouse reflects several things. First, labor unions provide a legal starting point under protections specified in the National Labor Relations Act. Second, unions function as social networks, supplying connections for unauthorized immigrant workers to become an active part of society, regardless of citizenship status. Lastly, as Coutin and Chock studied in newspaper reports after the US Immigration Reform and Control Act, they offer a characterization of productivity and social integration that immigrants can adopt by constructing an image of organized workers who coordinate their advocacies around their respectable labor. As Althusser claims, Ideology works by transforming individuals into subjects (19), and labor unions perform this task by offering methods for ‘illegal’ immigrants to become ‘legal’ persons, subjected to the state. Thus, ideological state apparatuses serve as mediums by which undocumented persons can enter into new subjectivities that are encouraged by hegemonic power structures such as the United States’ legal system and bourgeois law.

In my participation in Unite Here’s meetings between union workers and the union’s leadership, it was clear to see that the organization offered legal assistance to ‘illegal’ workers to become ‘as-if-legal’. The union’s encouragement for the undocumented new members to present their stories and reveal their identities functioned as a presentation of their subjectivities and hardships side by side. Group leaders, often men and women who were undocumented
themselves, would emphasize the difficulties of illegality in relation to labor, and rank-and-file members would frequently speak about the benefits that they would have if they were only recognized as legal persons. In addition to recognizing the legal differential that exists in the United States, these individuals also referred to the “miedo” that pervaded in most immigrant communities. The fear that they referred to extended to the legal system, to white employers, to daily activities that became nightmares, and the lack of protection and communication that existed in the space of illegality that they existed in. The racial, class, and gender discrimination that each person faced was exacerbated to an extreme degree as persons excluded from bourgeois law.

On the other hand, these men and women also actively sought ways that they could counteract the difficulties that they faced. Before even joining the labor union, community networks of undocumented persons operated to provide individuals with connections to other persons of undocumented status and allowed them to offer each other services and help. However, to face their fear of deportation and address their exploitation in the workplace, undocumented laborers work through the labor union to access legality through association with organized groups such as unions. The words of the attorney from the Corpus Christi Immigration Coalition (CCIC) exemplify this engagement. Her acknowledgement that immigration laws are largely arbitrary speaks to the constructed legal subject position that undocumented peoples reside within. As mentioned in the first section, undocumented subjects’ designation as ‘illegal’ reflects the effect of larger socio-economic forces that produce different identities which are subsequently hierarchized by bourgeois law to reflect productive virtues among dominant populations while simultaneously delegitimizing other populations as unproductive.
At the same time, unauthorized workers and allies in the Unite Here meetings were encouraged by the attorney from the CCIC to enhance their subjectivity through lessons on becoming connected through social networks and presentations on their legal rights as undocumented immigrants. Her advice to undocumented workers on avoiding areas with ICE presence, integrating into systems of communication between workers and advocacy groups, and making connections with organizations and persons that could provide assistance or influence legal decisions are very similar to the ways that ideological state apparatuses operate to form new subjects in relation to the state, broader society, and systems of law.

Legal form, like commodity form works in abstractions, where the individual is abstracted to become a legal subject. In relation to immigration and bourgeois law, legality is closely tied to labor value, seen in the plethora of immigration reform and border protection policies implemented in the last three decades. Those found outside of the law must endure inequalities that are otherwise masked by procedural equity via civil liberties and rights. Unauthorized workers and undocumented immigrants understand that they must alter their persons to become more aligned with the ideology of bourgeois law, and seek ways to integrate themselves in civil society. Labor unions, as ideological state apparatuses, provide the aforementioned ways to project oneself as a legal subject, as seen in Unite Here’s support for rights awareness and workplace protections for undocumented persons.

In his book *They Never Come Back: A Story of Undocumented Workers from Mexico*, Franz J. Schryer explains that the United States government has placed many roadblocks in front of labor unions, decreasing their power to an all-time low (148). However, unions’ willingness to assist and organize undocumented workers is a sign that, if they are successful in mobilizing
documented and undocumented laborers alike, they can play an essential role in enforcing safety standards and living wages by influencing public policy as Cesar Chavez did in the 1960s (Schryer 148). Although labor unions are categorized as ideological state apparatuses, the intersectional nature of undocumented persons’ involvement in unions can provide a way to criticize bourgeois legality. Bourgeois legality thus offers ways for people to undermine its assumptions, encouraging those excluded from the law to align themselves with bourgeois ideology, but simultaneously finding that this process of homogenization requires certain institutions that run contrary to the capitalist demand for efficiency and exploitation (Collier et al. 19). Labor unions, when paired with the experiences and forces of historically discriminated immigrant groups, might potentially offer this vehicle to undermining the exclusivity inherent in bourgeois law.

Despite the potential for undermining bourgeois law, labor unions as ideological state apparatuses nevertheless work to project ideas of productivity into representations of legality that are subsequently taken up by undocumented persons in their efforts to access the same benefits possessed by legal subjects. In the end, the same hegemonic ideology that relegates certain populations to inferior statuses and denies them rights and liberties as non-citizens also constructs the image of productivity and legality. Although they offer assistance to undocumented persons to access much needed services such as healthcare, legal advice, community, and higher wages, labor unions such as Unite Here are also immersed in the same subjectivation process that produces ‘as-if-legal’ subjects that can be more acceptable to inclusion in the United States’ bourgeois legal system, perpetuating this representation in the purview of the state.