

When Do Papers Matter?

An Institutional Analysis of Undocumented Life in the United States

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## Abstract

This article assesses how two key institutions differentially shape immigrants' relationship to their rights in American society. We draw on over 200 in-depth interviews to argue that there is a stark difference between how schools encourage undocumented youth to view themselves as equal members of US society and how undocumented workers are marginalized in the workplace. We find that even as schools track and stratify students, they also foster a culture of meritocracy between documented and undocumented youth. Schools ultimately render immigration status irrelevant as undocumented youth learn to navigate the primary institution of this stage of their lives. Conversely, immigration status is central to the experience of undocumented workers, who develop a particular set of survival skills that help them live and work successfully in the United States without being detected while also erecting a barrier between themselves and any additional rights they may be afforded.

## Introduction

Despite the policing of national borders, undocumented migration affects most every Western nation, as well as several key regional destinations in the global South (Sassen, 1999). According to recent estimates, there are between 30 and 40 million undocumented immigrants in the world today, comprising 15 to 20 per cent of the world's population (International Organization for Migration, 2008). In the United States, the unauthorized population numbers around 11.1 million,<sup>1</sup> including an estimated 1.1 million children under the age of 18, most of whom migrate with parents (Passel and Cohn, 2010).<sup>2</sup> The growth of a large, settled population of undocumented children and adults in the United States raises questions of how different segments of this population are being incorporated into American society and how they are experiencing life in the United States.

Host societies differ widely in their policies relating to immigrant populations. Studies of national immigration policy (e.g., Freeman, 2004), welfare eligibility requirements (e.g., Esping-Anderson, 1990), and healthcare access (e.g., Lasser, Himmelstein and Woolhandler, 2006) have found that policies in these areas strongly influence outcomes for immigrants. Legal status is often the single most important factor in determining immigrants' access to welfare benefits and healthcare (see, for example: Bloemraad, 2006; Portes and Rumbaut, 2006; Reitz, 1998). Undocumented status is a central obstacle to accessing benefits, such as food stamps, unemployment insurance and public housing. Nonetheless, a baseline of formal rights and protections exists for all Americans, regardless of their immigration status. These include workplace protections and K-12 public education.

The body of scholarship on immigrant incorporation has developed a sophisticated framework for understanding the effect of contexts, such as national policies, on varied sets of immigrant outcomes. In considering whether and how undocumented immigrants are able to access the rights and protections afforded to them under US law, it is also important to assess the ways in which institutions shape the processes by which undocumented immigrants become incorporated into host societies. In this article, we build on the important work of immigrant incorporation scholarship by engaging a parallel literature on institutions and policy implementation. Through a comparison of undocumented immigrant workers and students in California, we examine how US institutions differentially shape the experiences of those living in undocumented residency status. In particular, we evaluate the extent to which schools and workplaces differentiate on the basis of undocumented status, and we assess how these two institutions differentially shape immigrant experiences. We find that they stratify undocumented immigrants differently, teach them different lessons about unauthorized life in American society, and socialize them differently in terms of their place in American society and their future in the United States. In sum, we argue that workplaces and schools facilitate qualitatively different experiences of undocumented status that hold consequences for integration, the assertion of rights, and a sense of belonging.

## TOWARD AN INSTITUTIONAL ANALYSIS OF UNDOCUMENTED STATUS

**Modes of incorporation and the production of illegality**

Much of the contemporary scholarship on immigrant incorporation has moved away from a single focus on human capital (see Borjas, 2001) toward a fuller appreciation of the importance of the context of reception to a variety of outcomes (Bloemraad, 2006; Portes and Rumbaut, 2006; Reitz, 1998; Zuberi, 2006). More recent analyses focus on the interplay between human-level variables and the broader legal and community contexts, stressing that various factors channel today's immigrants and their children into different segments of society (Portes and Zhou, 1993). Portes and Rumbaut (2006) create a taxonomy of contexts, highlighting the importance of premigration variables, family structures, legal status, the host labor market and the host society's reception of newcomers as equally crucial influences on the diverse immigrant flow to the United States and the particular segments into which immigrants become incorporated. The categories in which immigrants fall within a country's particular immigration system—refugees, skilled professionals, undocumented workers—determine the extent to which they are entitled by law to participate in society. While certain designations allow immigrants to work, vote, receive benefits and travel outside of the country, other categories entail their legal exclusion and enforced vulnerability.

Alongside these assessments, there is an impressively interdisciplinary scholarship on the growing unauthorized population and its importance to advanced economies. As nations patrol their sovereign borders, Sassen (1999) and others argue, global economies drive migrants from their countries of origin and absorb them into host economies, albeit at the lowest rungs of the

economic ladder. And while global processes create the need for immigrant workers, the laws of the state shape the ways in which these workers are incorporated into the economy and society (Calavita, 2005; Menjivar, 2006).

Critical migration scholars have called for a shift from studying unauthorized migrants and migrations to a more deliberate study of the mechanisms that produce and sustain “illegal subjects” (Coutin, 1999; De Genova, 2002; Ngai, 2004; Willen, 2007). Immigration law and the hardening of national boundaries have created categories of exclusion with a flexible and pliant low-wage labor force. De Genova (2002) argues that immigration laws are the result of a history of intricate and calculated interventions—strategies, tactics and compromises—that nation-states implement at particular historical moments. Deliberate interventions in the law, De Genova maintains, have brought about an active process of inclusion through illegalization. Immigration laws and labor market demand work in tandem to produce a legally marginalized surplus of labor under conditions of extreme vulnerability. This is made possible through a construction of “migrant illegality”, whereby migrants are incorporated *en masse* into the economy of the nation-state while their social presence is criminalized (De Genova, 424). The construction of migrant illegality by law serves to create and sustain cheap workers through the reproduction of physical borders in everyday life and through the possibility of deportation. Over time, undocumented migrant labor has been criminalized as “illegal” and subjected to excessive and extraordinary forms of policing (Coutin, 1999). As a result, undocumented migrants are denied fundamental rights and many basic social entitlements; they are relegated to an uncertain sociopolitical status, often with little or no recourse for legal protection.

To be sure, undocumented immigrants face multiple levels of inequality, including that which arises from their racial and class status. Due to the severe restrictions the condition of

illegality places on individuals, it proves to be a *master status*, one that “outweighs and overpowers all other social characteristics” (Engelceren, 1999). As such, it shapes every aspect of their lives, determining how they are thought of and treated, placing them face-to-face with the limitations of the law, shaping their fates, channeling them in limited and limiting directions, and restricting their social mobility and life chances.

While immigrant incorporation scholars have uncovered clear differences in the experiences of authorized and unauthorized immigrants (e.g., Bean et al., 1988; Massey, Durand and Malone, 2003; Orrenius and Zavodny, 2005), less is known about the mechanisms behind *how* unauthorized status functions. The lack of scholarship pointing to how legal status shapes immigrant incorporation is understandable given the dearth of available systematic data. Even when it is available, particularly in quantitative studies, we still do not know enough about the ways in which legal status functions: we have not uncovered the diverse sets of undocumented experiences. This article moves away from the singular examination of individual outcomes to employ an approach that explores how laws and institutions structure lives and, in turn, shape these outcomes.

### **The importance of institutions**

As modern nations exert their sovereignty by patrolling territorial borders to enforce immigration laws, they also proffer rights to “citizen aliens” via immigrant policies that determine access to health care, education, housing and social services (Bosniak, 2006). Coutin (1993) argues, however, that as local and state officials interpret the laws regulating immigrants, they create spaces of restrictive immigration enforcement that limit the extent to which

immigrants are able to experience their rights in a variety of spheres of life; the daily lives of undocumented immigrants become saturated with restrictions. Indeed, while immigration policies are pivotal to shaping immigrant outcomes, it is institutions that mediate these policies in their implementation. The ways in which they do so has much to do with specific organizational cultures and broader societal ideologies.

A closer investigation of the two major institutions that are the focus of this article—work and school—reveals the radically different ways that formal protections are instituted for the undocumented population, even within the context of a uniform federal immigration policy in the United States. We focus on school and work for three main reasons: (1) these are two key institutions shaping American stratification (Mare, 2002); (2) school and work are hallmarks of two major stages of the life course: adolescence and adulthood (Settersten, Furstenberg and Rumbaut, 2005); and, (3) the Supreme Court has ruled explicitly on the rights afforded to immigrants in these two social realms (Fisk, Cooper and Wishnie, 2005; Olivas, 2005) and represents the institutional force of the law. An overview of the legal contours of labor and education for undocumented immigrants begins to reveal the ways in which these institutions interact with federal and state policies to shape immigrant experiences.

Although the rights of undocumented workers are not clearly spelled out in federal or state law, in practice, undocumented workers in the United States generally benefit from a wide access to workplace protections and are also protected from abusive employer practices, despite their inability to legally reside or work in the country. These protections, offered by federal and state labor standards, are the same ones afforded to the vast majority of nonunion workers.

There is, of course, a contradiction here: the law specifies undocumented workers in the United States, yet also outlines their formal rights under U.S. labor law. The high-profile 2002

Supreme Court *Hoffman Plastics v. NLRB* decision prevented undocumented workers who were fired unlawfully for union organizing from receiving back pay.<sup>3</sup> Yet, *Hoffman* ultimately affected only a small portion of the workforce, and it left in place the wide array of protections in other areas. Following *Hoffman*, every major labor standards enforcement agency issued a public statement that clarified the limited scope of *Hoffman* as it relates to their agency and reaffirmed their commitment to protecting the rights of all workers regardless of documentation status (e.g., California Department of Industrial Relations (CA DIR), 2009; Department of Labor Wage and Hour Division (DOL-WHD), 2007a,b; Equal Employment Opportunity Commission, 2002). In 2008, the Supreme Court affirmed the organizing rights of undocumented workers in *Agriprocessors v. National Labor Relations Board*.<sup>4</sup>

The extension of rights to undocumented workers is matched by the government's unwillingness to penalize those who employ them to the fullest extent of the law. The Immigration Reform and Control Act (IRCA) of 1986 instituted employer sanctions that made knowingly hiring unauthorized workers a criminal offense and levied penalties on employers who did so. The Immigration and Naturalization Service (now consolidated into the Department of Homeland Security) was entrusted with enforcing these provisions. Under IRCA, all employers are required to submit documents to establish the identity and work authorization status of new employees, but they are only required to verify that these documents seem reasonably valid. In conjunction with the tacit cooperation of employers and the virtual nonenforcement of employer sanctions (Brownell, 2005), undocumented immigrants have become well integrated into the American labor market, now comprising 1 in every 19 workers (Passel and Cohn, 2009).

Though undocumented workers are entitled to protection from the state, their unauthorized status blocks their access to justice, yet they need it all the more as they are concentrated in riskier occupations. Undocumented workers constitute one of the most vulnerable segments of the American workforce. Loh and Richardson (2004) find that foreign-born workers are disproportionately employed in riskier occupations and industries and that they contribute a disproportionate share of worker fatalities. The Department of Labor reports that the top wage and hour violators are concentrated in low-wage sectors commonly populated by undocumented immigrants, such as agriculture, restaurants, garment manufacturing and janitorial services (DOL-WHD, 2007a,b). Furthermore, a recent report by the AFL-CIO highlights the common practice of employers' threatening to call immigration authorities if workers pursue claims (Avendafio and Hincapie, 2008). This evidence is supported by other studies that have found similar patterns of exploitation (e.g., Foo, 1994; Gordon, 2007; Nissen, Angee and Weinstein, 2008; Valenzuela et al., 2006). As a result of undocumented workers' precarious existence, especially in times of economic recession, their immigration status becomes a defining element of their lives. Undocumented status blocks entry to significant parts of the formal workforce (though in practice the low-wage market has an open-door policy). It also prevents workers from easily upgrading career skills and switching jobs, and it fosters constant feelings of apprehension.

The legal right of undocumented immigrants to education, on the other hand, promotes the inclusion of undocumented children in the public schools. In 1982, the Supreme Court ruled in *Plyler v. Doe*<sup>5</sup> that children are "persons" under the 14th Amendment, and as such, states may not deny them access to public education regardless of their legal status (see also Olivas, 1986, 2005). This decision also pointed out the "pivotal role of education" in the life of a child and the

nation. In Justice Brennan's majority opinion, he noted that while education is not a fundamental right, denying K-12 education to undocumented children amounted to creating a "lifetime of hardship" and a permanent "underclass" of individuals.

Because of *Plyler*, tens of thousands of undocumented students graduate from high school each year. Yet, since the *Plyler* ruling, more than a quarter of a century ago, the US economy and the structure of the labor market have changed dramatically. In that time, college education has become much more consequential than a high school degree in securing access to the job market (Frum, 2007). Today, undocumented youth make up 16 per cent of the unauthorized population, with growing numbers reaching early adulthood. Attempting to respond to these changes, some states provide allowances for undocumented youth to pay tuition at in-state rates at public colleges and universities. In California, where perhaps the largest numbers of undocumented individuals reside, under Assembly Bill 540, undocumented students are exempted from paying out-of-state tuition if they attended a California high school for three years and graduated from high school in California.<sup>6</sup> While this ruling does not make undocumented students residents (it is based, rather, on high school attendance), the out-of-state tuition exemption has the practical effect of making a higher education more financially feasible for undocumented young people. This allowance has provided for an increase in enrollment of undocumented students in California's higher education system (Kaushal, 2008) and has given these students a less stigmatizing label that signals their legal permission on one hand and gives them a legitimized identity on the other (Abrego, 2008).

Thus, work and school teach immigrants very different lessons about membership in society. On the one hand, while undocumented workers are central to the American economic engine, comprising over 5 per cent of the overall civilian workforce (Passel and Cohn, 2009),

their participation in the workforce is affected by overarching prohibitions against the employment of unauthorized workers and the constant threat of deportation (Bosniak, 1988; Miller, 2005; Nessel, 2001). While blanket protections do exist for workers regardless of their immigration status, the status of undocumented workers promotes vulnerability over feelings of inclusion. On the other hand, though education in the United States is far from the equalizing force envisioned by Marshall (1964), undocumented students do enjoy the same constitutional rights as their documented and native-born peers in the K-12 system (Menjivar, 2008; Olivas, 2005). Their inclusion in the public school system provides undocumented immigrant students with the same social lessons their American-born peers receive about the ideals of meritocracy and American values of citizenship.

In short, both undocumented workers and undocumented students are technically subject to removal and considered unsanctioned members of society. Both undocumented workers and undocumented students also have institutional rights, admittedly limited, that have been formally upheld by the Supreme Court. Yet, these rights are shaped not only by formal legal protections but also institutional interpretations that create specific norms around legal status that differ substantially for undocumented workers and students.

## METHODOLOGY

This paper's institutional analysis of the differential ways in which school and work shape the experiences of undocumented immigrants combines data from two studies of undocumented immigrant incorporation in California. California is home to nearly 2.5 million undocumented workers, who make up a quarter of the nation's unauthorized population (Fix et

al., 2008; Fortuny, Capps and Passel, 2007), and the state has an even larger share of unauthorized students, about 26 per cent of the national total, at all grade levels (Batalova and McHugh 2010). Nearly 94 per cent of unauthorized men in California aged 18 to 64 were in the labor force in 2004, versus 84 per cent of legal immigrants and 82 per cent of native-born men. Since 1990, however, the share of 1.5- and second-generation children<sup>7</sup> in California has steadily increased while that of the first generation has steadily decreased. To be sure, in the future, California's workforce will include a larger number of 1.5- and second- generation workers. What happens to California's unauthorized youth today has profound implications for not only their futures but also California's economy and society.

We draw exclusively from undocumented workers and students in California. Data on the experiences of undocumented workers come from 45 interviews with representatives from labor standards enforcement agencies, union leaders and community-based organizations in Silicon Valley. We focused on those agencies and groups that have direct jurisdiction over, or are otherwise involved with, shaping the focus and direction of labor standards enforcement. In addition to representatives of government agencies, we also interviewed relevant nongovernment organizational actors. In order to identify these actors, we relied on directories of nonprofit organizations, as well as resources and referrals provided by respondents from government agencies. This group included low-income legal service providers, union leaders and participants in community and advocacy groups who focus on the immigrant community and labor or employment issues. The individuals we spoke to included agency leaders, among them directors, lead counsel and union business managers.

We also draw on 42 interviews with restaurant workers, 30 of whom were undocumented. Interview subjects were recruited at the work site and were approached as they

came or left their shifts or took breaks. This sample was drawn from middle-range “tablecloth” establishments where resources and information were likely available to workers; in small restaurants and ethnic enclave businesses, in contrast, workplace violations have been shown to be more common. Thus, the workers we spoke with, who were dishwashers, prep cooks and cooks, were in “best-case scenario” restaurant positions. We interviewed both documented and undocumented workers in order to isolate the effects of legal status. All but six respondents allowed us to tape record their interviews, and all but 1 of the interviews were conducted in Spanish.<sup>8</sup>

Data on the experiences of undocumented students come from a four and a half year study incorporating more than 150 semi-structured interviews with unauthorized 1.5-generation Mexican-origin young adults in the Los Angeles metropolitan area.<sup>9</sup> Interviews were supplemented with several forms of ethnographic research in various community-based settings, including high schools, continuation schools and college campuses. We accompanied respondents throughout their school or work days, spoke with former and current teachers and mentors, volunteered at local schools and community organizations, and sat in on numerous community or school-based meetings. Through these efforts, we located respondents across various community and educational settings, generated subsequent samples through snowball techniques, and identified important institutional actors within respondents’ networks and the community at large.

## FINDINGS

We find that workplaces and schools produce different experiences for undocumented immigrants in three important ways. First, undocumented students do not face the same obstacles

based on their legal status that workers do: whereas workplaces stratify immigrants by legal status (known or presumed), schools do not. Further, workplaces and schools teach their respective populations distinct lessons about their rights as undocumented immigrants, thus requiring divergent survival strategies. While undocumented workers learn to come to terms with and endure life “in the shadows”, unauthorized status is not emphasized as a central obstacle for students, thus rendering them ill-equipped for life in American society after graduation. Lastly, while the precarious nature of undocumented work forebodes a bleak future with which many undocumented workers must come to terms, undocumented students come to expect a future rooted in the United States that will afford them the same opportunities as their peers.

### **Stratification by legal status**

The experience of illegality colours the day-to-day lives of undocumented workers and keeps them largely in the shadows and in fear of agencies and authorities - even those that enforce their rights. Daniel, a cook at a downtown Italian restaurant in San Jose explained why workers like himself “conform” rather than come forward when a violation arises. “It takes a lot to get here without papers,” he said. Daniel believes that his boss knows his status, but he has never been overtly threatened. Though he often works overtime without pay and never takes breaks, he finds his current job to be superior to his last position where the workload was considerably harder.

Though wage and hour violations were rampant among the industries that employed our respondents, only one of the workers with whom we spoke had ever filed a claim with the local labor commissioner. Injuries also commonly went unreported among our respondents. Wariness

of the extensive paperwork involved was often cited as a deterrent, as was the fear that filing a claim might trigger added scrutiny. Workers were reluctant to pursue any procedure that might result in the disclosure of their immigration status, weighing the potential benefits against the cost of being discovered. A few workers even noted that the opportunity to purchase health insurance had been offered to them, but they had declined. In addition to being averse to paying the high premiums, they feared the accompanying bureaucratic scrutiny.

Undocumented status is also a self-regulating barrier to upward mobility within the workforce. Few workers recounted stories of overt intimidation from their bosses, and most even lauded their bosses' treatment of them. Yet when asked about pay raises, the undocumented workers with whom we spoke had seldom pursued the issue with their superiors. Fear of losing the job was always tantamount - a factor admittedly shared by all low-wage workers. However, workers who had been in their posts for years had seen less qualified employees supersede them in managerial positions. It was understood that their status made them un-promotable. One prep cook in a popular Italian venue recounted his long journey up from dishwasher to prep cook. "Currently, I can't earn more," he said. "The next salary step is manager".

Whereas undocumented workers are conditioned by their experiences to stay in the shadows, undocumented youth can legally attend school and do not need to develop the same heightened consciousness surrounding their unauthorized presence. The public school system has long been the primary vehicle through which immigrant children get funneled into the American mainstream (Donato, 1997; Gonzalez, 1990; Suarez-Orozco, et al, 2008). This process has not been without exclusionary practices, however: separate schools and classrooms were once the norm for Mexican schoolchildren in the Southwest. More contemporary systems of performance tracking have served to institute multiple levels of stratification and inequality in the school

system. While these practices certainly may disproportionately affect the foreign-born and racial and ethnic minority students, they do not make immigration status a primary differentiator. Students' predominant interaction with government representatives is in the form of teachers, counsellors and mentors for whom immigration status is a non-issue.

To illustrate this point, let us compare the experiences of Luis and Juan.<sup>10</sup> Both young men came to the United States before their seventh birthdays. Neither has been able to regularize his status to date, and both were undocumented during high school. Luis, however, was tracked into a specialized programme in high school. He enjoyed smaller class sizes and took advanced placement (AP) and honors classes, and he enjoyed excellent access to teachers and counsellors. Juan, on the other hand, was placed into a general track, took classes with 35 or more other students, and, when asked, could not name a single mentor in high school. Luis explained to us how he felt about the positive relationships he formed with school personnel:

I had help from counsellors, from teachers, from the principal. They were helpful; they were my mentors. Any resources, any help that I needed in terms of questions on writing, you know, my personal statement, or with my college applications, those were the people that I would always go to. I'm sure I would not have gone to college if they hadn't been there for me.

In direct contrast, Juan spoke of his difficulty in school and how he felt structurally locked out:

Not a lot of teachers focused on students. They were terrible. They wouldn't teach us. I wanted to go to college, but the counsellors didn't let me know the requirements for four-year colleges. I tried to go to see them, but they didn't have time for me.

The difference between these experiences is unmistakable, but it resulted largely from each student's placement within the hierarchy of the school stratification system, not from their immigrant status. We spoke with many other students along the tracking continuum, and none

had been negatively tracked (or positively tracked, for that matter) because of his or her immigration status.

### **Institutional lessons and survival strategies**

Overall, immigrants are positively selected compared to their nonimmigrant counterparts back home (Feliciano, 2005). Yet, they are consistently incorporated into the secondary labor market (Hudson, 2007). Flexible work arrangements make specialization difficult, and their unauthorized status makes mobility almost impossible. As a result, undocumented workers craft pragmatic expectations and become resigned to their current role as low-wage workers - at least for now. Their experiences in the labor market teach them that they must simply “hold out”, or “*tenemos que aguantar*”, as they repeatedly explained to us.

Hard work for undocumented immigrants like Beto involves long hours to support their families, and many have normalized the literal pain involved. Beto explained the pressure he is under to work long hours and endure tough conditions. Though he has purchased a home in San Jose - with the help of several boarders who pay rent - his ultimate goals are for his children. When comparing himself to nonimmigrant workers at his restaurant, Beto explained, “I don’t know if they are not used to working, if they just lead a different kind of life, but they don’t last long”. He went on to recount the various types of injuries that were commonplace in the kitchen (burns, falls, back injuries) with a near sense of pride in his ability to endure them. Repeatedly, workers minimized the gravity of their situation, explaining that good immigrant workers meet the challenges of hard work and risk without complaint.

When asked about their right to a safe work environment, many repudiated the view of workers' compensation as a benefit, instead emphasizing their own responsibility to “just be careful”. We asked Fermin whether he would access workers' compensation benefits next time he became injured. He replied:

It comes down to whose fault it is...On the one hand, it's good [to file a claim] because if I see that it's the restaurant's fault, that is the *manager's*, then yeah, I would file one. But if I see that the restaurant has supported me and given me a lot, and especially if it was an accident caused by my carelessness, then, because of that, then I would speak to the manager, and tell him “Look, just be careful with this, because next time I will”.

Rather than view workers' compensation as the no-fault benefit that it is, workers like Fermin see no automatic entitlement to these rights and may even have a sense of loyalty to an employer who has looked the other way when the issue of immigration status was raised. Direct intimidation therefore is not a requirement for undocumented workers to be prevented from coming forward to make claims on their rights.

The necessity of keeping a low profile also factors into this attitude. When I asked a young kitchen worker who did not agree to give his name about his ability to come forward at work when things go wrong, he explained:

They [the employer] are content with just quickly looking over your papers when they hire you, but you know that you are in this country using the [social security] number of someone else, may even be a family member or someone who is not ok with it...They can file a claim against *you* or your employer can decide to really check out everything...And if you use someone else's number, you know what you are getting into.

When we asked him whether workers had been fired at his job, he clarified, “*Fired*, no. But they'll tell you that your papers aren't good, suggest that if you have another opportunity, perhaps you should take it”. As a result, he chooses to keep a low profile. He compared his situation to those of many workers in the Twin Towers on September 11, 2001:

It was a total chaos that day, and everyone said “My son worked there,” “my uncle,” “my sister,” but *imagine* if you had been there in that moment and had had a sister or brother

[in there] without papers, what would you do? There were many who didn't come forward and make a claim, nothing.

When I pushed him to tell me whether he had ever actually filed a claim himself, he became irritated and responded, "You can see the craziest guy at work, but if he's legal, they're not going to fire him".

Whereas undocumented workers become accustomed to enduring hardship without complaint, the result of the school socialization experience is to empower undocumented youth to dream big irrespective of their immigration status. Rosalba explains how college was always a natural goal: "I never had any doubts...It was ingrained that my only obligation was to go to school...Teachers have expectations that you're going to go; they help prepare you...So for me, I didn't even think about not going". High-achieving students like Rosalba are rewarded for their merit, and their unauthorized residence does not present the same barrier to mobility that it does to their parents. School provides rewards for achievement, and students internalize the messages they receive from teachers and other school personnel that encourage them to aspire, dream, aim high. They think about and plan for their successful futures accordingly.

Nimo, for instance, aspires to earn a Ph.D. Even though he spends nearly four hours on the bus each day commuting to school, he remains optimistic, as though he can see his successful career waiting for him:

Nothing stands in my way. I don't think giving up is an issue...I kind of want to start doing internships before because then you have practice in the field, and then when you go on the real job, you are familiar with it. You need to learn how to plan for things.

Because of positive experiences in school, Nimo and other students like him feel *entitled* to a better future: like their American-born peers they feel that they have earned it. When asked whether there were any jobs he would ever refuse to do, Nimo explained that he likes to have "high standards": "I guess the lowest job I would do would be working in an office".

Many of the 1.5 generation students with whom we spoke echoed such sentiments. Take Brenda, for example:

Even though I didn't do so well in high school, I mean, with grades and all, well, I still thought I could have a career. You know, like get a job in an office, maybe as a paralegal. I saw my cousins do it. And their families really struggled financially. But, you know, they were born here.

Even young adults with more modest levels of education recalled their high school years as a time when they envisioned futures very different from their present realities.

### **Future orientation**

The final essential difference we found between undocumented students and undocumented workers is in how they have been socialized to think about their place in American society and in how this understanding conditions their expectations for the future. The aspirations of undocumented adults are often quite modest compared to those of their children, and few in our sample expressed definitive plans for the future in the United States. Armando, for example, emphasizes his desire to have the opportunity to work: "In my case...I don't want them to give me citizenship, [only] that they give me a visa and permission to come and go". Prior to an increase in border militarization during the 1990s, workers such as Armando would have been more likely to come and go (Cornelius and Lewis, 2007; Massey, Durand and Malone, 2002). Since then, undocumented migration remains high, but labor flows have become more circular and permanent. Nonetheless, many undocumented workers continue to believe that they will one day return home, though the evidence predicts this is unlikely to occur (Massey, Durand and Malone, 2003; Reyes, Johnson and Van Swearingen, 2002).

Most adult workers lack the educational opportunities that undocumented students possess and do not see many options for future mobility in the United States. They face the prospect of eventual retirement without pensions or Social Security income and the likely, albeit dreaded, possibility that their children will have to support them. Thus, they tend focus on working hard, sacrificing their own lives for their families while in the U.S., while concentrating their own aspirations and investments in their country of origin, where their citizenship is certain and their retirement less burdensome for others. Older individuals such as Roman have built a life in their home country and look back to it with nostalgia. He explains: “Sometimes it’s hard, I have everything in Mexico, I have my house, and even a snack store. It’s just my wife and I [here]. We plan on returning to stay and no longer imposing on our kids”.

Younger workers such as Eduardo, a prep cook in San Jose in his early twenties, also mentioned plans to return to Mexico after a few years to start their own businesses. Eduardo sees his position in the restaurant, where he works long hours for low pay, as temporary and necessary to build a future back home. While some workers we spoke to laud the efforts of immigrant rights advocates pursuing legalization programmes, many were unable to identify with these goals in the short-term. Marcos, another young kitchen worker in San Jose, plans to return eventually to his family: “No, I’m not married, I don’t have kids, what would they [papers] do for me? Nothing...What would they do for me?”. Undocumented workers like Marcos see their relationship to this country as rooted mainly in their labor function: they are explicitly rejected as permanent members of society, but tacitly accepted as workers.

Conversely, educational experiences encourage youth to envision a future anchored in the United States (Gonzales, 2011). For many students, immigration status rarely becomes an issue until they reach late adolescence.

As minors, students are rarely required to provide any documentation other than their school ID, as their immigration status is largely tangential. In many ways, schools allow youth to escape the constraints their parents labor under. According to Laura:

I loved high school. It was like another world. I had a lot of friends. I was very involved. People actually looked up to me. I felt free.

Students like Rodolfo and Laura identify as quintessentially American and do not look back to a past life in their country of origin, nor do they look forward to a future life anywhere but in the United States.

Positive tracking through honors, Advanced Placement or specialized academies provides students with environments that allow them to feel safe and supported and in which they can freely pursue academics. These environments also foster the development of social capital via peer relationships. Students can support, teach and compete with each other in ways that enhance their intellectual development and advance their academic pursuits. They develop groups of peers who may or may not be immigrants. High-achieving students especially interact with students with whom they share aspirations outside of their immediate community. Oscar told us about his experiences in honor classes with mostly Asian “elite” students who overwhelmingly went on to attend college. Sharing this drive, he enrolled in a private university in suburban Orange County and aspires to go on to attain his doctorate. He reminisces about the times he marched in the Rose Bowl Parade and envisions a future in the United States.

Many students described the benefits of having friends who pushed each other to do well in school. Among these friendship groups, moreover, students would tutor each other and study together. JD was the oldest of three girls. Her parents were very protective of them and insisted that they come straight home after school. In fact, JD did not go to a movie theater until she was 24. Because she did not have free time after school for clubs or friends, she had to maximize her

time and resources. She relied on her friends for information about academic opportunities. They devised a system and supported each other by sharing important information. JD explained:

It was more of just a group of people helping. I mean, we were friends. My friend Amanda, she was the one that whenever she would get one piece of information or she heard something I wasn't aware of, she'd let me know, "Hey, did you hear about this that's due?" "No, I didn't." Or we would help each other. There was someone from a different university coming in to talk. We would sign up and get information and give it each other.

JD and her friends benefited from the relationships they formed within their classes. They modelled positive habits, pushed each other to do more and to be better, and set up informal mechanisms for information sharing. They also found comfort in the support they received and provided for each other.

The ways in which immigrants are socialized to understand their place in American society affects their relationship to the law, as well. Few of the adult workers we spoke to described their experience of working with false documents as shameful; rather, they viewed it as a necessary act to support themselves and their families. When asked what he had to show to get his job, Fermin boldly explained:

No, we just get our I.D. at the Tropicana [a popular shopping center in San Jose known as a place to get fake documents prepared], a similar green card, like yours [referring to legal migrants]. And with that we can get a copy made, with the same imprinting and everything, and that's all they [employers] ask for. All the government cares about is whether you are working and paying taxes.

Several others detailed the strategies they use to get hired, cash checks and file taxes - without apprehension. This was a life they prepared for and chose, which brought with it inherent risks and challenges.

By contrast, Lupita, who grew up in the United States, was, upon graduation from high school, thrust into a new world she did not readily recognize. Reluctant to "break the law", Lupita felt ashamed to have to look for work without papers and often lied when asked about her

education. While in school, undocumented students exist in a virtual “zone of safety” that disappears upon graduation (Gonzales, 2011; S.I.N., 2007).

In contrast to workers who have had to learn to live with uncertainty, undocumented students, whose aspirations have been conditioned through the school system, feel like their future is intertwined with the future of immigration reform. Eva explains:

I’m still waiting for my papers...I’ve been here since I was nine. I’m twenty-six years old. It’s a big issue for me. It really affects my life, ‘cause I can’t really pursue my career. I finished a credential programme for a special ed teacher, like almost three years ago. And I can’t work. So I’m working, but it’s not what I really want to do.

For those like Eva, the dreams cultivated by the educational system seem more like surreal fantasies. Esperanza, whom we interviewed a year after she graduated from the University of California, described correcting her immigration status as a matter of survival. Unable to find work, her earlier dreams to be a journalist have evaporated in the face of her pure desperation to find a job. She explains:

I will clean somebody’s home, I will take care of them, I will clean up somebody’s saliva, like, I still can’t do that, I don’t think I will ever be able to do that, but umm, but more and more it is getting to the point where it is like, I don’t care.

Unlike the workers we spoke with who had spent years learning the strategies and networks necessary for getting a job, undocumented students like Eva and Esperanza are ill-prepared to compete in low-wage labor markets. It is this lack of preparation, combined with the very empowerment that their education instills in them, that is perhaps their biggest liability as they become adults. Lupita, for example, describes the jarring reality she faced when she turned eighteen and the need for an ID became pressing:

My world seems upside down. I have grown up, but I feel like I’m moving backwards. And I can’t do anything about it. I had much more freedom in school. Like, I had rights, you know. Now I can’t do anything by myself and it makes me feel so helpless.

In the workforce, Lupita must conceal her education, her perfect English and all the lessons a college-track education has given her in order to fit in. She feels out of place in the new sphere of undocumented life that she has no choice but to exist within.

Youngsters like Lupita are set up for disappointment by contradictory messages from schools, the labor force and immigration policies. While they are encouraged through school to dream about a future that is ultimately untenable, they are scarcely prepared to live lives as undocumented adults.

Even undocumented students who did not plan to go to college found the transition from school to the workforce difficult. Many of the available jobs require them to work long hours of physically demanding labor. In our conversation with Stella, she recounted a string of jobs she kept for less than a month each:

It's hard. I didn't like it. I would come home late every night and have to get up early in the morning the next day. So, I said, I want to have my life. But then I had to find another job. Then I got yelled at by my boss. He didn't like us, you know, Latinos, so he was always screaming. I couldn't handle that. And then I didn't want to be busting my butt every day for what? No money. I couldn't take it. I had a really hard time. I wasn't ready for this life.

For Stella and many others like her, the contradictions between education and immigration laws produced discontinuities they were not prepared to handle. The transition to adult lives meant retraining themselves to navigate institutions to which they had no legal entry and to condition themselves to exceedingly harsher contextual restraints.

## CONCLUSION

Immigration laws categorize and sort immigrants, and through various institutions, they also regulate and condition their activities and aspirations. As we examine the importance of

institutions in shaping immigrant experiences, we must take note of their varied effects across the life course. As immigration scholars debate the importance of various institutions or the incorporation of immigrants, more care must be taken to distinguish between the heterogeneous experiences that different groups of undocumented immigrants possess. In areas where rights possess. been expanded, such as education, clear limits to their exercise remain. Undocumented immigrants may increasingly be afforded particular rights - such as the right to an education, a safe workplace or to emergency health care - but they are ultimately bound by their lack of citizenship, a status that Arendt (1951) refers to as the overarching “right to have rights”. Margaret Somers evokes Arendt, writing: “Citizenship is about having ‘the right to have rights’ - not any single civil, juridical, or even social right, but the primary right of recognition, inclusion, and membership in both political and civil society” (25).

Adults who migrate without authorization to the United States do so with their eyes wide open to the risks they are undertaking, and they quickly learn how to navigate their position in US society. Their children, on the other hand, are welcomed into the educational system, and those who demonstrate merit are ushered into higher education along with their documented and native-born peers. However, the system cuts these young people off from outlet for their talents outside of education. Policymakers must take stock of not only a growing undocumented low-wage immigrant workforce that is increasingly at risk for exploitation, but also a growing class of undocumented students who have been trained and prepared for careers in the United States and who represent a significant investment of talent that this country may not be able to afford to squander (Gonzales, 2007).

This paper has interrogated what it means to have guaranteed protections without the “right to have rights”. De Genova argues that the production of migrant illegality works not to

exclude undocumented workers from labor market participation, but, on the contrary, to include them under a condition of “enforced and protracted vulnerability” (De Genova, 2002).

Unauthorized workers come to expect harsh work conditions and internalize an ideal in which “good” workers endure such conditions quietly, thus reinforcing their exploitation. While their workplace rights are protected, they seldom assert them. On the other hand an education in the absence of a pathway toward legalization prepares students for certain failure while leaving them unprepared for the day-to-day undocumented adult life that awaits them once they leave the protections of school. Survival requires them to mute the expectations and aspirations they developed in school and to learn how to get by in harsh labor markets. In essence, these students must prepare belatedly to join their parents as members of an exploitable labor force.

Traditional assimilation theory has been most concerned with the factors that determine assimilation into the mainstream. Human capital, scholars agree, is a key determinant for upward assimilation (Zhou, 1997). Our findings demonstrate, however that institutions construct an immigrant’s experience of illegality. As such, we find that the upward trajectory, theoretically fueled by high educational attainment, is pushed severely off course by undocumented status. Students who have been conditioned for years as high-achieving college-bound pupils are ill-prepared for the limited options that await them in the low-wage clandestine labor market. Unlike their undocumented parents and other adult counterparts, who migrate with a clear understanding of the sort of existence that awaits them, many undocumented students do not even identify with the immigrant experience and are only forced to view themselves as such upon graduation. Once their role as unsanctioned members of society becomes clear, the cognitive dissonance is often debilitating. Expectations for the future must be radically revised and survival strategies learned quickly.

This downward convergence has a number of implications. First, incorporating the context of reception into our analysis of immigrant incorporation requires not only looking beyond individual factors, but also acknowledging the variation in the institutional experiences that different immigrants possess. Specifically, in the case of undocumented students, immigration scholars must reassess the recipe for upward assimilation: access to education and a motive to succeed are not enough. Furthermore, this case calls to mind the meaning of American citizenship in an era of expanding rights for nonmembers. As our data on undocumented workers demonstrates, improvements to the well-being of vulnerable populations such as undocumented immigrants can not alone be achieved by increasing the provision of benefits and rights. Structural location in the economic and legal structures inevitably shapes the membership paradigms individuals subscribe to and, in doing so, mitigates full access to well-intended protections. As long as these two areas of governance - a restrictive immigration system and an expanding rights regime - remain disjointed, these questions will likely remain relevant to immigration scholars, as well as to those interested in the relevance of institutions.

Future research on the different incorporation patterns of undocumented immigrants should concentrate not only on comparisons across geography, but also on comparisons between institutions. Our laws and institutions may treat children and adults differently. But children become adults. Longitudinal studies of the undocumented 1.5 generation are imperative to gain a full understanding of the long-term effects of the steep fall high-achieving students face. Do their aspirations eventually dwindle into cynicism, like MacLeod (1995) suggests, or do these lessons carry them through and empower them to access their rights as workers? As immigrant replenishment continues (Jimenez, 2008), will the next cohort of 1.5-generation students temper their expectations? How will institutional practices shift in response? Furthermore, as efforts at

border militarization fail to stem the flow of undocumented workers, research is needed to understand how newer immigrants incorporate not only into restrictive policy contexts (as is the case presently in Arizona and other restrictive states), but also to investigate whether these individuals are realizing the full expectations of policies in more progressive contexts such as sanctuary cities. Education researchers would benefit from tracking the progress of K-12 students as they navigate college opportunities, and eventually the labor market. Scholars should also continue to follow earlier cohorts of workers to monitor whether and how their relationship to a decentralized rights regime changes. Given the continued flow of undocumented immigrants, as well as the trend toward increasingly state and local institutional responses to managing immigrant populations, these questions are likely to remain relevant for the foreseeable future.

## NOTES

1. Here, we use the term “undocumented” interchangeably with “unauthorized.” We use “illegal” and “illegality” as a condition of being in the world, created by processes we outline later in the paper.
2. Given the volume of unauthorized settlement in the late 1980s and early 1990s, and given earlier and larger estimates of the undocumented child population, there is good reason to suspect that the number of those who migrate as children and are now adults may add an additional 500,000 or more.
3. In this case, an undocumented worker who was fired for union organizing was awarded back pay by the National Labor Relations Board. The employer, in turn, appealed the decision to the US Supreme Court, which found in a five-to-four decision (led by Chief Justice Rehnquist) that in fact the Immigration Reform and Control Act of 1986 prevented the NLRB from awarding back pay to an undocumented individual who had never been legally authorized to work in the United States.
4. *Agriprocessor Co. v. NLRB*, US, No. 08-21, *cert. denied* 11/11/08.
5. 451 U.S. 202, 215 (1982). This ruling has since been challenged but remains law, thus enabling thousands of undocumented students to graduate from high school each year.
6. California Assembly Bill 540 amended the California Education Code section 68130.5 to create a new exemption from payment of nonresident tuition. Nonresident tuition at California State University and California Community Colleges, Cal. Edu. Code § 68130.5.
7. A 1.5-generation immigrant is one who emigrates just before or during adolescence.

8. All interview quotes are presented here translated into English.
9. The Los Angeles metropolitan area is made up of five counties: Los Angeles, Ventura, Riverside, San Bernardino, and Orange.
10. See Gonzales, 2010 for a longer explanation of these particular comparisons.

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