Beyond Informal Citizenship: The New Moral Economy of Migrant Illegality[1]

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Over the past decades, citizenship studies have explored in detail the various forms of social and civic integration achieved by otherwise illegal residents in contemporary immigration countries. While a great deal of analysis has tended to rest on a dichotomy between formal exclusion on the one hand and informal incorporation on the other, recent studies have begun questioning this dualistic model by examining the formal circuits of incorporation followed by unauthorized denizens at various geographical and institutional levels. Taking cues from this emerging line of research, this article makes three interconnected arguments. First, in contemporary liberal democracies, the rising tension between the illegal status of new immigrants and their limited but effective incorporation does not always pit formal law against informal practices, but is often located within law itself. Second, as a dynamic institutional nexus, "illegality" does not function as an absolute marker of illegitimacy, but rather as a handicap within a continuum of probationary citizenship. An incipient moral economy sees irregular migrants accumulating official and semiofficial proofs of presence, certificates of reliable conduct and other formal emblems of good citizenship, whether in the name of civic honor, in the hope of lesser deportability, or in view of future legalization. Third, such access to formal civic attributes is simultaneously being made increasingly difficult by the intensification of restrictions and controls from immigration, labor, and welfare authorities, thus confronting irregular migrants with the harsh dilemma of being framed as "more illegal" for the very documentary and economic features also assumed to improve their present and prospective civic deservingness.

While the notion of citizenship has long referred to the full incorporation of political subjects into a national community, migration scholars and political theorists have since emphasized its exclusionary dimension, arguing that universalistic inclusion within nation-states is intrinsically interwoven with the subordination of those categorized as nonmembers, noncitizens, minors, or foreigners (Brubaker 1992;

Bader 1995; Yuval-Davis 1997; Joppke 1999; Isin 2002; Wallerstein 2003). Within this civically polarized context, undocumented migrants have been traditionally located at the most excluded pole. The intensified repression of illegal immigration over the recent period, along with the proliferation of internment spaces and "states of exception," has reinforced the equation of illegality with civic exclusion (Rajaram and Grundy-Warr 2004; Bigo 2007; De Genova 2007; Le Cour Grandmaison, Lhuilier and Valluy 2007; Fischer and Richard 2008; Schinkel 2009). Accounting for the condition of undocumented migrants, scholars have often referred to Giorgio Agamben's figure of the "homo sacer," that is, of individuals reduced to the "bare life" of pure dehumanized corporeity, excluded from juridical existence yet also devoid of sacrificial value (Agamben 1998). However, the type of normalized civic precariousness marking the daily life of irregular migrants cannot be reduced to the latter. This article analyzes the more ambiguous regimes of subordinate incorporation that they actually confront.

Over the past two decades, citizenship studies have significantly complexified social–scientific notions of civic membership and inequality in several ways. First, by bringing to light the "infrajuridical cleavages traversing the category of the citizen" (Spire 2003) and by showing that the distinction between citizen and noncitizen is not a dichotomous one, but rests on a continuous and reversible gradation often connected with ethnoracial and ethnonational hierarchies (Brubaker 1989; Deschamp 1997; Stasiulis and Bakan 1997; Gozdziak 1999; Morris 2002; Ngai 2004; Castles 2005; Noiriel 2005; Wacquant 2005; Sassen 2006; Nyers 2011). Second, by uncovering different dimensions of citizenship, whether they pertain to the categories of rights granted as a consequence of membership (Marshall 1950; Turner 1993) or to the various channels through which membership can be performed and actualized: citizenship as rights, legal status, identity, or participation (see Bloemraad 2000; Bosniak 2003; Bauböck 2006; Bloemraad, Korteweg and Yurdakul 2008). And finally, by emphasizing that sources and arenas of citizenship are diverse, both institutionally and geographically, and are thus not reducible to the central nation-state (Soysal 1994; Yuval-Davis 1999; Bauböck 2003; Novak 2003; Varsanyi 2006; Lewis and Ramakrishnan 2007; Gleeson 2008; Hurenkamp, Tonkens and Willem Duyvendak 2011; Provine and Varsanyi 2012).

These developments have helped underline the limited but significant set of rights formally granted to noncitizen residents in immigration countries (Hollifield 1992; Soysal 1994; Jacobson 1996; Sassen 1996; Guiraudon 1998; Joppke 2001; Aleinikoff 2003). However, most rights-based research has concentrated on the condition of legal denizens, and, in contrast, the integration of undocumented migrants has typically been articulated in terms of informal membership. Analyses of the civic condition of illegal migrants across Europe and North America have tended to rest on a dichotomy between formal exclusion on the one hand and informal incorporation on the other. The assumption has been that irregular residents mainly receive access to the latter. From this perspective, several studies have provided rich descriptions of the ways undocumented migrants integrate into mostly local environments, benefit from the humanitarian support of non-governmental organizations, and take part in myriad institutions such as schools, churches, ethnic community groups, art collectives, and political associations (Chavez 1991; Pincetl 1994; Holston 1999; Coutin 2000, 2005; Isin 2000; Van der Leun 2003; Engbersen, Van San and Leerkes 2006; Menjívar 2006; Kalir 2010).

This article seeks to look beyond such "informal citizenship" (see Sassen 2002:282). It points to the various channels through which undocumented migrants become integrated into key formal institutions of their societies of residence and explores the moral and political dynamics that have come to regulate such incorporation. In particular, we make three interconnected arguments. In the first section, we take our cue from a range of recent studies to show that the rising tension between the illegal status of new immigrants on the one hand, and

their actually occurring incorporation on the other, does not always pit formal law against informal practices or social resistance, but is often located within law itself. In the second section, we show that "illegality" does not typically function as an absolute marker of illegitimacy, but rather as a handicap within a continuum of probationary citizenship. An emerging moral economy of deservingness encourages irregular migrants to accumulate official and semiofficial proofs of presence, certificates of reliable economic and legal conduct, and other formal emblems of good citizenship, especially—but not only—with a view to future legalization. However, as we show in the third section, such access to formal civic attributes is simultaneously being made more and more difficult by the intensification of restrictions and controls from immigration, labor, and welfare authorities, thus confronting irregular migrants with the harsh dilemma of being framed as "more illegal" for the same formal documentary and economic features also assumed to improve their present and prospective civic deservingness.

The objective of this article is to capture a nascent rationality in the realm of migration management. This focus has three implications. First, we are not interested in *whether* a set of policies functions but in *how* it functions. Thus, we refrain from using terms such as loopholes, gaps, or inconsistencies (see Mosse 2004). Second, as a correlate, our analysis is not attempting to answer the normative question of whether undocumented migrants *should* be legalized or not. Rather, we examine how this question is already being answered by various institutional actors. We describe the effective consequences of these responses in terms of collective power relations. Finally, this article is not comparative in intent. Based on primary fieldwork from three European countries and the United States, as well as secondary data from a number of other national cases, we will insist here on the common horizon that these regimes seem to signal, rather than on where, how, and why they may differ (see Cornelius, Tsuda, Martin and Hollifield 2004).[2]

The Formal Sources of "Illegal" Citizenship

The civic exclusion of undocumented migrants at the national level has commonly encountered contradictory forces at the local and transnational levels. In this section, however, we argue that most of the tensions typically noted between distinct geographical levels of government have, in fact, not pitted formal law against informal practices, social dissent, or discursive resistance, but instead have involved separate dimensions of formality. Solely contrasting law with practice would concede too much coherence to "illegality"—and therefore to legality itself—by neglecting contradictions located within the law and tensions that simultaneously cut through law, policy, and practice. Moreover, while it is sometimes assumed that the national state is a homogeneous block, unambiguously excluding illegal migrants from the body politic, it turns out to be an ambiguous system involving significant inclusive mechanisms (see Bosniak 1988, 2006; Joppke 2001).

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[2]In the United States, Sébastien Chauvin conducted two years of participant observation researching the formal day labor industry and its mostly undocumented migrant workforce. He worked as a day laborer in the region's factories, volunteered for a local worker center, and participated in immigrant marches (Chauvin 2010). In France, he has taken part in a collective study of the working conditions and labor mobilizations of undocumented immigrant workers, in the context of the French government's mid-2000s policy shift to economic, "chosen immigration," and its more underground policy of employment-based regularization (Barron, Bory, Chauvin, Jounin and Tourette 2011). In the Netherlands, Blanca Garcés-Mascareñas conducted a study of the labor-market experiences of Ghanaian and Nigerian undocumented migrants. In Spain, she has done research on the formulation, implementation, and effects of migration policy, carrying out archival work and interviews with a broad set of stakeholders (government officials, employers' organizations, labor unions, migrant organizations, and NGOs) in 2007 and 2008. This latter research was part of a larger study comparing the cases of Malaysia and Spain (Garcés-Mascareñas 2012).

The Local Production of Formal Citizenship

Over the past ten years, key empirical studies have described the integration of undocumented migrants into the formal institutions of their societies of residence, despite their otherwise illegal status (for example, Coutin 2000; Menjívar 2006; Varsanyi 2006; Lewis and Ramakrishnan 2007; Jounin 2008; Barron et al. 2011; Laubenthal 2011; Bommes and Sciortino 2011; and Sadiq 2009 for developing countries). Such "bureaucratic incorporation" has often been connected with the humanitarian concerns of street-level bureaucrats, from school teachers to city hall workers, to local police. It has been attributed to those workers placing professionalism ahead of restrictive definitions of their legitimate constituency. But local incorporation practices have also reflected regulatory imperatives and worries over public safety, well beyond human rights motives. For instance, one of the main reasons why, in spite of highly publicized cases to the contrary, most local police forces in the United States still avoid getting directly involved in civil immigration enforcement is a concern that undocumented residents would fear reporting crimes (Lewis and Ramakrishnan 2007; Waslin 2007; Khashu 2009; Caps, Rosenblum, Rodríguez and Chrishti 2011; Tramonte 2011; Varsanyi, Lewis, Marie Provine and Decker 2012). Notably, enforcing immigration laws also represents additional work, which some understaffed police stations consider they do not have time for (Coleman 2012:180). In fact, the disregard of civil servants for citizenship and migratory statuses has not always amounted to bureaucratic sabotage. On many occasions, it has stemmed from an established division of bureaucratic labor between different levels of government (Wells 2004; Engbersen et al. 2006; Van der Leun 2006; Marrow 2009). Moreover, individual-level disobedience has frequently proved unnecessary when local and regional laws officially warrant the formal recognition of illegal migrants as legitimate—if second-class—members.

Sabotage can be formalized locally, as when a state or region orders its agencies to refrain from participating in certain enforcement programs decided at the national level. During the 2000s, several US states prohibited their police agencies from participating in the federal 287(g) program of collaboration between local police and Immigration and Customs Enforcement. Major American cities took comparable measures by declaring themselves sanctuary areas (Ridgley 2008). In the Netherlands, when in February 2004, the Dutch Parliament accepted the Minister for Immigration and Integration's proposal to expel up to 26,000 rejected asylum seekers over the following three years, several big cities opposed this policy, pointing to their settlement and integration into Dutch society. In countries such as France, where state structures are centralized to a greater extent, more symbolic strategies of legitimization took place. For instance, in the mid-2000s, local city halls marked their opposition to the Sarkozy government's repression of undocumented migrants by organizing "*parrainages républicains*" in which an individual French citizen would become the official sponsor—the French use the same word as for "godfather"—of an undocumented migrant from their local community.

More generally, "urban citizenship" appears more easily tied to the mere fact of "being here" than other scales of potential political membership (Bauböck 2003; Purcell 2003; Varsanyi 2006; Ridgley 2008). Most of the time, however, nonenforcement policies vary from place to place and institution to institution: local rights carry limited scope and cannot make up for the lack of national membership (Coleman 2012; Marrow 2012; Varsanyi et al. 2012). One could even argue, with Monica Varsanyi, that "until having (or not having) the status of nation-state citizen […] has power over the lives of individuals, urban citizenship is perhaps a means of maintaining marginalization […] and a diversion from a project which could instead challenge the present exclusions inherent to

nation-state citizenship" (Varsanyi 2006:239). However, the effect of such recognition is not always limited to the local environment. Official identification documents provided by local authorities can usually be used elsewhere in the host country with public and private organizations, including in cities and regions that do not grant such membership items to illegal residents. In some instances, local institutions can even be entrusted with national-level membership-granting powers. For example, by virtue of the German Alien Law, and despite exclusionary policies at the federal level, Germany's *Länder* and municipalities have been allowed to grant undocumented migrants exceptional leave to remain, which may later lead to legal residence status (Will 2008; Thiersch 2009). Moreover, implicit national or Federal tolerance for nonenforcement can turn into explicit legal action to actively maintain it, as illustrated by the recent case of Arizona in the United States (Schwartz and Archibold 2010; Campbell 2011).

National Inclusions

Although national-level policies are often presented as those most coherently directed toward the exclusion of unauthorized migrants, they have been shown to allow for the inclusion of illegal residents as well. National law or national-level court decisions usually prevent the exclusion of minors from primary and secondary educational institutions on the sole ground of their unauthorized migration status. Other provisions guarantee access to some form of health services. The Spanish case is paradigmatic in this regard: while not recognizing undocumented migrants as legal residents, national law requires them to register in municipalities. "Documented" illegals can then legally access health and education facilities. In other cases, irregular migrants are included in national welfare systems through special programs, according them comparable benefits through alternative procedures. In France, since 2000, the "*Aide médicale d'État*" has also been granting special access to standard health insurance coverage for undocumented migrants.

Labor law is another example of the extension of common entitlements to undocumented foreigners. In most European countries, labor law protects all workers irrespective of their legal status (Fodor 2001; Inghammar 2010). In France, the *Code du Travail* specifically states that illegally employed workers are entitled to the same guarantees as the regularly employed, including for the calculation of seniority pay. Workers on strike are traditionally protected from police intrusion (Barron et al. 2011). Although the recent EU directive on "employer sanctions" (2009/52/CE) is chiefly aimed at coordinating the repression of illegal migrant employment among member states, it also lists a number of labor rights applicable to illegally employed foreigners.

But the formal recognition of undocumented migrants does not only stem from their inhabiting a protective "sphere of territorial personhood that remains insulated from the action of membership principles" (Bosniak 2006:55). It is also based on distinct governmental concerns over public health, crime rates (rather than individual infraction), economic regulation, and population management (Foucault 1991; Scott 1998). Budgetary and political interests may play a role. In the United States, for example, individual states insist on counting all their population in the national census (including unauthorized noncitizens) so as to increase the Federal funds for which they are eligible—and, even more importantly, their number of seats in the House of Representatives (Roberts 2009).[3]

Officially or unofficially, tax policy has proved very inclusive as well. US fiscal residency for people devoid of valid social security numbers has been determined by a so-called "Substantial Presence Test," which makes no reference to

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[3]For a comparable issue in France, see Garat and Marleix (2010).

taxpayers' citizenship status. To be declared a fiscal resident and granted an Individual Taxpayer Identification Number (ITIN), one has to have been present in the United States for at least 31 days during the current fiscal year and for at least 183 days during the last three years. This last example illustrates yet another crucial logic of civic incorporation: although citizenship is made both of rights and duties, "benefits" and "contributions," access to duties usually proves to be less restricted in practice than access to rights. Such asymmetrical boundedness carries important implications. Duties and rights present distinct but converging incorporative potentials. Recorded contributions enhance membership about as much as recorded benefits. Although they hold opposite significance in terms of civic justice, from the point of view of mere recognition (and administrative trail-making), duties and rights appear practically equivalent. More importantly, by virtue of a "principle of reciprocity" (Carens 2008:177), duties can turn into potential sources of rights: they "open" rights or, at least, the political, and sometimes juridical, possibility of claiming those rights. This is the case, for example, of the right to access social welfare and retirement systems to which one has been paying contributions for years.

Finally, and most importantly, national-level membership is not limited to legal pathways. Undocumented immigrants may illegally attain some crucial dimensions of national citizenship, even when the latter cannot be acquired legally (see Vasta 2008; Broeders and Engbersen 2009). Contrary to a common conceptual confusion, illegal access to formal attributes does not make those attributes less formal. Moreover, considered diachronically, illegal migrants' documentary trajectories frequently display a virtuous chain of bureaucratic incorporation. Obtained through falsification (a social security number, for example) or not (an Individual Tax Identification number in the United States or a local identity card in Spain, for example), a first element of citizenship becomes the initial trigger for further civic inclusion, made of increasingly formal and increasingly genuine—although always precariously held—papers (Chauvin 2009; Vargas 2011).

State Transnationalism

While "transnational citizenship" is frequently associated with subjective consciousness, social and family networks, translocal ties, and communication technologies (Glick Schiller, Basch and Blanc-Szanton 1992; Glick Schiller, Basch and Szanton Blanc 1995; Faist 1998; Portes 1999, 2001, 2003; Ehrkamp and Leitner 2003), the action of sending-country states may also significantly contribute to producing an original type of formal–transnational civic space (Ezquerra and Garcés-Mascareñas 2008; Gleeson 2008; Rodriguez 2010). The role of formal "state transnationalism" in the generation and preservation of citizenship rights has proved to be as important as that of informal networks, family ties, and community social capital. For instance, Mexican consulates have been producing high-security versions of a matriculation card for use by Mexican citizens living in the United States, including those living and working there illegally. Consulates have successfully lobbied banks and public institutions so they accept those cards as valid identification: in June 2008, over three million such cards had been produced. They were accepted by more than 470 banks and financial institutions, 1,439 police departments, and 435 cities (Varsanyi 2007; Bakker 2011).

Other sending states protect their citizens abroad by refusing to issue re-entry papers in case of attempted deportation by their destination countries. In 2010, foreign consulates in France only accepted 35.7% of such requests on average—a rate that has diminished continuously since 2005. Rejections often result in the release of migrants when the maximum number of days in detention has been reached. Other governments have played crucial roles in the legalization of irregular migrants carrying their citizenship. For instance, in Spain, legalization is

made contingent on having no criminal record in one's country of origin. While some states have facilitated the procedures for obtaining the required certificate, others have made it impossible in practice. Take, for example, Nigeria. According to Nigerian law, such documentation can only be obtained, in person, from a police station. As undocumented migrants cannot go back to their countries of origin without compromising their ability to re-enter Spain or without losing their rights to regularize, this requirement made legalization for Nigerian immigrants in Spain impossible. After being repeatedly denounced by the Spanish Ombudsman, the Nigerian government consented in 2009 to set up a delegation to travel to different Spanish cities and issue this document, thereby facilitating the regularization of its citizens abroad (Garcés-Mascareñas 2012). Finally, interstate relations can provide a space for documentary citizenship in yet another way. In the European Union, the construction of a continental-level space of citizenship leads to the recognition of national identity papers issued by other member-states without allowing or imposing authenticity checks of the same robustness as locally issued residence permits. Therefore, renting an identity card from another EU state has become a new way in which Europe's irregular migrants can become "documented." Thus, whether it takes place at the local, national, or transnational levels, or at the interplay between the three, the definition of migrant legal status is never devoid of internal ambivalence. As a result, the gradation of belonging that defines citizenship also extends to "illegality" itself. Far from delineating a homogenous and impermeable condition, the latter appears as an extended and porous space of civic stratification (Morris 2002; Goldring, Berinstein and Bernhard 2009; Ruhs and Anderson 2010).

The Moral Economy of Illegality

The expression "moral economy of illegality" refers to the discourse–policy nexus regulating the construction of irregular migrants as more or less illegal. The notion aims to "unveil the ethics of contemporary states when it comes to the evaluation of difference" (Fassin 2005:366).[4] Yet it also seeks to capture the more immanent logics that generate the multidimensional scale on which migrant civic value is being agonistically defined and measured, by migrants themselves and by states, their supporters, and their detractors, within and beyond illegality (see Fischer 2009; Squire 2011; McNevin 2011; Nicholls 2012; Nyers and Rygiel 2012; and Schinkel 2010 for legal and postmigrants). In this section, we describe the operations by which unauthorized residents are being framed both as civic culprits to be punished and as civic minors expected to deserve present and future membership through good moral, economic, and bureaucratic performance.[5]

Being a Good Illegal

Several studies have convincingly argued that the projection of a particular legal system of civic inequality onto migrants results in them being viewed as per-

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[4]Although Didier Fassin primarily applies the notion to obviously "moral" cases in which humanitarianism, disease, compassion, and the body are mainly at stake, we employ it here in a deliberately broader sense. We argue that the space of deservingness extends well beyond traditional sites of moral investment, to involve the State as well as local bureaucracies, economic actors as well as fiscal institutions, employment reliability as well as neighborly conduct. See Fassin (2009) for a review of the heterogeneous uses of the expression "moral economy" in the social and political sciences over the last half-century.

[5]By analogy with the cases of children, free adult women in Ancient Rome, or women more generally in pre-1960s Europe, we use the notion of "civic minor" to designate individuals endowed with formal citizenship while being formally barred from certain of its attributes (voting, ownership rights, independent bank accounts, etc.). The term "minor" also suggests a probationary position within the political diachronics of citizenship

sonally or racially embodying illegality, beyond the diversity of situations and countries in which this status can be enacted (Calavita 1998; Coutin 2000; De Genova 2004; Inda 2005; Dauvergne 2008). In this section, however, we argue that the "illegality" projected does not itself convey a static structure of absolute exclusion. First—to take a prominent example—if the new "Panopticon Europe" is indeed designed to produce "people habituated to their status of the excluded" (Bauman 1998:13; quoted in Engbersen 2001:242), by definition this productive habituation represents a mode of incorporation *sui generis*. Civic exclusion is itself a mode of inclusion: its very logic disrupts "exclusion" and repatriates it as a subordinate stigma within the boundaries of the nation-state, most significantly its labor market (Calavita 1998; Samers 2003; De Genova 2005; Bosniak 2006; Jounin 2008; Chauvin 2010; Bommes and Sciortino 2011; McNevin 2011; Mezzadra 2011). Second, if the government of illegal immigration has undoubtedly taken a more punitive approach in the last decade, punishment has tended to function as the other face of redemption: undocumented migrants have come up inseparably as civic culprits and civic minors.

Jonathan Inda distinguishes between "technologies of citizenship"—by which states aim at remoralizing citizens framed as inherently reformable—and "anti-citizenship technologies," aimed at illegal residents viewed as "incapable of proper self-management" (Inda 2005, 19-22; see also Cruikshank 1999). Although this distinction has some conceptual merit, the hypothesis that illegal immigrants have been targeted exclusively by the latter must be qualified. Instead, following a probationary logic of inclusive subordination by which "citizenship technologies" extend to groups otherwise framed as "illegal," the good character of unauthorized migrants has been increasingly defined in terms of noncriminal conduct, economic reliability, fiscal contribution, identity stability, and bureaucratic traceability (paying taxes, registering at the city level, holding a job contract, maintaining the same forged social security number over time, etc.). Good character has determined migrant "lesser illegality" in two ways, combined differently from country to country: by decreasing the likelihood of deportation and by increasing the likelihood of legalization.

An important way in which undocumented migrants can make themselves "less illegal" is by avoiding crime. In the Netherlands, a country reputed for its harsh treatment of undocumented migrants, local police departments learn to make practical distinctions between the "*kale illegal*" (the "bald" illegal, a metaphor for law-abiding undocumented migrants), the "*overlastgevende illegal*" (one that causes "nuisances"), and the "*criminele illegaal*," whose capture is prioritized during regular police activity (Leerkes, Engbersen and Varsanyi 2012). In the United States, as a result of manpower shortages and limited prison facilities, recent Federal removal programs have specifically targeted illegal migrants who have committed serious crimes. Because raids by Immigration and Customs Enforcement (I.C.E.) officers have also given rise to the arrests of undocumented residents found in the immediate surroundings, families and neighbors have been encouraged to exercise collective control so that none of their members ever commit any infraction (Mendelson, Strom and Wishnie 2009). In the summer of 2011, I.C.E. and Department of Justice officials were formally advised to use "prosecutorial discretion" to suspend the deportation of deserving categories of "low priority" foreigners.[6] While the focus on "criminals" has helped construct the category of the "bad illegal," conversely irregular migrants have been encouraged to make

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[6]I.C.E. Memorandum (2011). Besides the absence of criminal history, "the person's length of residence in the United States," "the person's pursuit of education in the United States," or "whether the person, or the person's immediate relative, has served in the U.S. military" are to be taken into account. Varsanyi et al. (2012: 146) also reveal that local police and county sheriffs modulate immigration status checks of people they arrest (for other reasons), depending on the seriousness of the suspected violation.

themselves "good illegals" through positive promises of legalization. Over the last decade, the US Federal government has encouraged undocumented men, aged 18–25, to act as deserving noncitizens by registering with the Selective Service, the military agency responsible for identifying all inhabitants of the country who would be fit for combat in case of national emergency.[7]

A crucial condition for the future access of migrants to a legal status is that they "stay themselves" by ensuring their formal identification and administrative traceability (Torny 1998; Rosenblum, Capps and Yi-Ying-Lin 2011). "Irregular" migrants are encouraged to settle into a consistent paper identity obtained from official bureaucratic agencies. In particular, they must accumulate formal proofs of presence in order to be able to argue for their past existence when and if the time comes for legalization. Referring to the case of Spain, Suárez Navaz (2000:10) describes the increasing importance of these proofs as a "fetishism of papers," both in the sense of an inanimate object to which "magic" qualities are attributed and in the sense of having an intrinsic exchange value. Here, as in other cases, the thirst for individual dignity converges with the requirements of contemporary governmentality. As one undocumented janitor, working for a Paris contractor, explained during an interview in late 2008: "If you don't have traces, it's like every day you just arrived" (Barron et al. 2011). Despite their rather camouflaged life made up of forged documents, numbers, or names, often involving a disconnection between their "numbers" and their names, illegal migrants are thus encouraged to keep the same identities over time (Chauvin 2009).

Fiscal contribution is another example of civic requirement faced—and often proudly publicized—by "deserving" irregular migrants. Paying taxes while undocumented is commonly presented as a sign of good will, if not as a civic duty, allowing migrants to be on the good side of the law and perform incorporation before full incorporation can (if ever) be granted. In political discourse, such law-abiding practices can also be used to justify the later legalization of irregular migrants by framing them as contributive denizens. In France, since 2008, labor unions and non-governmental organizations have denounced the "racket" of the social security system which has seen workers who have made payroll contributions (subtracted from their wages) failing to receive all the corresponding benefits such as sick pay or unemployment insurance. In the United States, Social Security's chief actuary estimated that the compulsory payroll taxes paid by undocumented migrants alleviated 10% of the long-term funding need of the Federal Old-Age, Survivors, and Disability Insurance (Porter 2005).

Finally, being a "good" illegal typically requires economic reliability. Recent policy shifts in Europe have increased the importance of work as a factor in migrants' present and prospective deservingness (Menz and Cavides 2010). In France, as well as in a number of amnesty proposals in the United States, past stable employment —preferably with a single employer—has been framed as an asset, if not a condition, for legalization (Barron et al. 2011). But the requirement for economic reliability does not end with legal status. In several European countries the renewal of recent migrants' residence titles now depends on their maintaining a formal job. As migration permits become increasingly precariously held, the injunction to be a "good illegal" is followed by the need to remain a good legal migrant.

Civic Deservingness and Its Judges

As tightened citizenship regimes increasingly construct postentry legalization as an exceptional reward for good conduct, there arises the issue of who the judges

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[7]The official message stipulates: "You want to protect yourself for future U.S. citizenship and other government benefits and programs by registering with Selective Service. Do it today." Selective Service System, www.sss.gov. (Accessed March 9, 2012.)

of illegal migrants' deservingness will be. In France, some criteria for employment-based regularization have recently been formalized following contentious negotiations between the government and labor unions. New administrative guidelines recommend granting legal status to undocumented migrants who can prove a number of years of residence, have been working formally for the same employer, and can present a long-term employment contract. However, this has left considerable discretion for local *préfectures* to grant residence titles or not (Barron et al. 2011). In Spain, the regularization process has been further institutionalized. Since 2005, undocumented migrants have been entitled to regularize when declared "socially stable" (*arraigo social*), that is, when they are able to prove residence in the country for at least three years, have no criminal record either in Spain or in the country of origin, present a formal job contract for a minimum of one year, and have either family ties or a report from the municipality of residence attesting to their "social integration" (Garcés-Mascareñas 2012).

In the quest for certificates of migrant legal deservingness, some agents have acted as key granters and guarantors. In many instances, official diplomas and academic items provided by official educational institutions to irregular migrants under 18 can then be used as certificates of good citizenship and lesser illegality —often resulting in lesser deportability—when the latter become adults. Local NGOs have sometimes played a similar role by issuing, and even forging, *ex-post* traces of presence to serve as assets in legalization procedures. Currently in Spain, employers and municipalities are major providers of such proofs and guarantees. If a migrant does not have direct family members residing legally in the country, he or she is required to provide an "individual integration report," written by a particular social worker within a particular municipality.

In several countries, work has become a major pathway for legal recognition, reinforcing the role of employers and labor unions (see Watts 2002). In Spain, regularization programs have worked as a de facto entry policy since the early 1990s. While previously legalizations were mainly carried out on the basis of residence, from 2005 on they have been contingent on obtaining an employment offer. This shift was accompanied by a parallel change in terminology. Whereas in the past, regularization programs were aimed at "legalizing undocumented migrants," in more recent years they have been presented as a "normalization of workers," or even a "normalization of employers," with the objective of curbing the informal economy and consolidating the welfare state. For employers, legalization through a job offer meant they could easily regularize their own workers. Moreover, it placed them at the center of the process, so that undocumented migrants could be regularized only at the successful request of their employers. In the 1990s, labor unions had opposed such linkage between regularization and job offer, as they wanted to avoid placing migrants in a vulnerable position vis-à-vis their employers. However, in recent years, they have become key enforcers of this very policy, which they now see as a way to impose minimal labor standards.

In France, a contentious policy-making process took place in 2008–2010, during which the *Confédération Générale du Travail* (CGT) organized workers striking for their legalization (Barron, Bory, Chauvin, Fall, Jounin and Tourette 2009; Barron et al. 2011). Negotiating both with the national government and with local *préfectures*, it led the Minister of Immigration to temporarily come up with clearer rules. In particular, the central union produced a printed form on which all required documents had to be checked for each individual legalization application. This form was then used by its locals and informally recognized by *préfectures*, as a quasi-official preamble to their own bureaucratic work. Separate fast-track waiting lines were sometimes arranged at the *préfectures* for workers sponsored by the CGT. Accordingly, the rules helped endow employers with a central role in the assessment of migrants' civic value and identity. Many of those who

applied for legalization had been working for their employers under assumed or borrowed names. During the preparation of legalization applications, such falsification was initially listed by the union alongside other "anomalies" (the item was called "non-concordance"). After a few weeks, the "anomaly" was reframed into one more item required on the quasi-official checklist. The document was now dubbed "certificate of concordance." The union produced a template statement to be filled in by the employers of workers who had worked under aliases. The union-standardized employer statement would read: "I hereby certify that X worked for me under the name Y."

Conversely, employers have accepted unions as catalysts for the regularization of their workforce. After a moment of surprise or even defiance when faced with the first wave of migrant strikes in 2008, many employers eventually saw them as an opportunity. In early 2008–2009, it was not unusual for the French CGT labor union to see an employer walk into its Paris office with one or several of his or her undocumented workers in order to engage in a regularization procedure (Barron et al. 2011). This central role has been taken even further in Spain, where labor unions have become official actors in processing applications for regularization. Applications have been selected, filtered, and approved by unions in the name of workers and employers (Aragón Bombín and Chozas Pedrero 1993; Suárez Navaz 2000; Bruquetas-Callejo, Garcés-Mascareñas, Morén-Alegret, Penninx and Ruiz-Vieytez 2011).

Formality within Illegality: A Contradictory Injunction

The process described in the preceding section is far from providing undocumented migrants with a safe and linear pathway toward legalization—or even any clear and unambiguous set of criteria for lesser illegality. Two major obstacles hamper its contemporary realization and simultaneously structure its internal dynamics: employment precariousness on the one hand and increasingly restrictive migration controls on the other.

Demanding Decent Work in an Era of Precarious Employment

Migration policy's insistence on standard forms of employment has taken place even as economic policy has resulted in increased labor precariousness and, even more importantly, as the recent economic crisis has made formal and permanent jobs less accessible. In fact, "decent work" criteria imposed on foreigners have often been more constraining than those faced by nationals. For instance, in Spain, individual legalization is only accessible for undocumented migrants holding a full-time contract. This means that part-time contracts are considered "not decent enough" for a worker to qualify. In France, the total number of working hours indicated on the job offer accompanying a legalization application also has to equate to the monthly minimum wage, even though certain sectors such as cleaning make it very difficult to reach it in practice.

Requirements based on formal work have included the payment of payroll taxes and thus the contribution of immigrant workers to the financing of welfare state institutions. In France, years before the mid-2000 shift to "chosen migration" policies based on the economic selection of migrants, street-level bureaucrats already preferred formally employed immigrants to those considered "abusers" of the system (Spire 2008:58). In Spain, since 2005, a residence permit (whether an immigrant gets it on arrival or via regularization) only becomes effective once a worker has registered with Social Security. Moreover, the renewal of a permit is contingent upon the months of contributions paid during the validity period of the initial authorization. A comparable situation prevails in France, where legalization can be jeopardized if the employer has failed to make

consistent payments to payroll tax collection agencies, even if a formal employ-ment contract has been signed and formal pay slips have been issued.

The emphasis on payroll taxes is especially problematic in Spain, considering the magnitude of the informal economy in that country. Migrants working in undeclared work run the risk of not being able to get a permit or of becoming illegal again when their permit is due for renewal. In order to solve the difficul-ties created by the increased emphasis on formal work as a condition for legal status in the enduring context of an oversized informal economy, many immi-grants in Spain have opted to pay their Social Security contributions themselves. Some of them chose to work (and pay taxes) as freelance workers. But this status may mostly be used for renewal, not for legalization. Therefore, undocumented migrants who could not access formal employment have had to look for phan-tom (declared) jobs, for which they have been paying their "employer" to make social contributions in their name, while never receiving actual wages and continuing to work in the informal economy.

Finally, the two imperatives of formal permanent employment and the spon-soring of legalization applications by a single employer have posed problems to domestic workers, who tend to work many hours with multiple employers, often on an undeclared basis (Barron et al. 2009; Van Walsum 2011). There have been some attempts to resolve this situation. In France, the few domestic employees who were legalized in 2008 were allowed to add up part-time contracts with several employers until they reached the equivalent of a full-time appointment. However, this did not create any durable policy precedent. When such accumula-tion of different part-time contracts has not been possible, the emphasis on for-mal permanent employment has pushed domestic workers to be employed or to seek employment as live-in workers, thus placing them in a situation of greater vulnerability to exploitation and mistreatment.

When more formal means more visible... and more illegal

The recent hardening of citizenship regimes across Europe and North America, which has involved a stricter formalization of documentary procedures and a tightening of control practices, has also intensified two dilemmas at the core of illegal migrants' endeavors at civic deservingness—that of having to be more visible in an era of increased regulatory scrutiny and that of committing more illegalities in the attempt to make oneself "less illegal."

As becoming more "formal" has become a condition for present or future legal deservingness, it has often led migrants to make themselves dangerously more visible to public authorities. Indeed, producing more formal elements of membership has resulted in producing more formal evidences of illegal stay (see Castañeda 2010:254–258). In France, 60,000 undocumented parents of children enrolled in schools formalized their illegal social existence into application files for legalization in the summer of 2006, only for 90% of them to be denied by the French Government. In Spain, registration in the municipal census has been a requirement for legalization but it may also result in irregular residents becom-ing more identifiable and more easily targetable by the police, who have been granted access to census data since 2003. In these cases, the dilemma for undoc-umented migrants has been to succeed in making oneself "visible enough" yet without becoming "too" visible.

Moreover, the question of whether illegal elements of formalized membership will make people "less illegal" remains fundamentally uncertain. On the one hand, access to formal elements of citizenship has proved to enhance undocu-mented migrants' chances of legalization. On the other hand, in the context of stepped-up restrictions, such access has increasingly involved committing more and more infractions—forging more documents and more substantial ones,

borrowing, stealing, or buying other people's identity. To a certain extent, such ambiguity originates in migration policy itself. For example, the requirement to present a formal permanent job offer for commonly unskilled positions has implicitly required unauthorized immigrants to work illegally for their employer beforehand. This means either having worked without the required papers or, in more formalized economies, having forged or borrowed them.

This double bind has placed "deserving" undocumented migrants at constant risk of being framed as "more illegal" for the same documentary and economic features also assumed to increase their civic capital. Here, we do not just wish to point out the existence of "legally ambiguous lives" (Coutin 2005:20) that would comprise some illegal elements on the one hand (the illegal crossing of a border, for example) and some legal elements on the other (going to church, sending one's children to school, paying the bills). Instead, we want to insist that the *same* elements of citizenship can be subject to contradictory symbolic framings. In the 1990s, French NGOs were reluctant to include past salary slips in regularization applications, as they did not know whether such elements would play in favor or against the people in question. Only in the mid-2000s did these features become symbols of pride and proofs of formal economic integration. In the United States, the potential tension between formality and illegality led to a judicial battle in 2008–2009 to determine whether undocumented migrants who used false social security numbers to maintain formal and tax-paying employment were committing "identity theft," which is a criminal offense. The built-in political indeterminacy of illegal–formal citizenship does not, therefore, make it a coherent system for the definition of civic capital, but rather a major site of contention in which social and symbolic struggles over the meaning of civic inequality can be waged, won, or lost.

Conclusion

As a political institution, citizenship contributes to the subordinated inclusion of migrants under the stigma of "illegality." But illegal residents emerge from it as subcitizens rather than absolute noncitizens or instances of *homo sacer*. Moreover, their existence is legally and bureaucratically recognized by states and societies in ways that cannot entirely be encapsulated by the "informal citizenship" paradigm. Beyond informal incorporation, unauthorized migrants face an original type of formalized and normalized civic precariousness. The latter does not refer to a static condition but to a dynamic space in which migrant civic deservingness is being assessed and accumulated and in which the possession of traces of durable formal, bureaucratic, and economic integration has become a key asset. Within this moral administrative economy of illegality, irregular migrants have been framed not only as civic culprits to be punished, but also as civic minors to be redeemed. Noticeably, while in most countries the injunction for migrants to be "good illegals" is clearly linked to the expectation of legalization, the immanent economy of honor and dignity that provides its moral combustible is far from reducible to this perspective in the short term.

The increased fragility and reversibility of formal residence permits in the recent period has translated into a continuum of probationary citizenship, which does not offer a linear route. It provides a contradictory path made of divergent prescriptions, never guaranteeing access to lesser illegality in any univocal way. Ambiguity confronts both undocumented migrants and the state. From the point of view of migrants, the hope for legalization is inseparably a reasonable ground for self-discipline and a perilous justification for provisionally limited economic claims. But the moral economy of formal incorporation confronts states with a symmetrical conundrum. On the one hand, the state appears to validate breaches of its own sovereignty by recognizing people and processes seemingly

located beyond its control. On the other hand, such recognition "can be seen as an expression of an increasingly complex system of migration governance rather than an indicator of simple policy failure" (Kraler 2009:21). When states need to produce a "legible," assessable, permanently identifiable population, "easily administered" and hence "manipulable from the center" (Scott 1998:31–35), they prove more interested in regulating the actual population than in tracing boundaries between members and nonmembers. In those cases, registration becomes more important than deportation, prediction more crucial than eviction, but also taxation more urgent than authorization.

If "states must embrace societies in order to penetrate them effectively," then "individuals who remain beyond the embrace of the state necessarily represent a limit on its penetration" (Torpey 1998:244). While the "monopoly over legitimate means of movements" is often thought of as a condition for the state's "embracement" of its population, when these two requirements enter in conflict the state may favor embracement at the expense of the monopoly. The contradiction is only apparent. Indeed, state rationality is not limited to imperatives of "sovereignty." Away from apocalyptic caricatures, Foucault referred to "governmentality" as a regulatory logic by which state actors are not so much interested in the law-abiding conformity of individual behavior ("within the perspective of government, law is not what is important") than in the predictability of collective conduct, a mode of government not so much based on controlling particular subjects than on insuring overall governability. Its main target is not the "people" but the "population," its main space not the nation but the country (Foucault 1991:94–95). In this context, a moderate loss of sovereign "control" may be the price to pay for more efficient "embracement."

The incipient moral economy of (il)legality described in this article may well be the reflection of such rationality. Government agencies have a stake in seeing irregular migrants recognized and "taken into account." The modern state is "ensuring that they are not disciplined, but regularized" (Foucault 2003:247). Migrants take an active part in the process, whether as workers, tax-payers, or community members. In so doing, they are making the reasonable bet that the incorporative workings of governmentality can retroact onto the more exclusionary logics of sovereignty. Being part of the concrete, legal, bureaucratically existing population, they may, perhaps, more successfully and more legitimately claim a place among the people. Thus, while Marshall's seminal teleology of citizenship had made civil rights the initial springboard from which political rights could be obtained, both subsequently becoming the basis of struggles for social rights (Marshall 1950), the different dialectics of incorporation described in this article suggest that in case of contemporary undocumented migrants, social rights may come first, hence forming the precarious infrastructure of political agency and the contentious harbinger of civil equality.

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