

from the observation that there is no single mode of migrant transnationalism: there is significant scope for research exploring heterogeneity, differentiation, etc. (Vertovec 2009). In any event, the concept itself is now firmly established in migration studies (as in other fields – see transnational corporations), with ongoing research that demonstrates increasing nuance and a healthy appreciation of limits. The concept of transnationalism has also been adapted for research on topics other than migration: a wide range of social processes are now understood to operate outside the confines of the nation-state, such that researchers need to transcend the ‘methodological nationalism’ that has long framed a great deal of social science (Amelina and Faist 2012).

See also: *Integration; Assimilation; Circular migration*

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39 Undocumented (Illegal) Migration

Definition: Migration that is not officially sanctioned by the state in the destination country; it results from clandestine entry or (more commonly) from overstaying one’s visa and/or engaging in activities (e.g. employment) not authorized by one’s visa.

The common-sense understanding of ‘illegal immigration’ available in most instances of public discourse (e.g. politicians’ speeches) on the topic is lamentably inadequate. In a ‘lay’ perspective, those who enter a country without authorization are in essence criminals, and the government has a responsibility

to 'do something' to address the threat they pose. That threat is taken to be dire in some quarters: among other evils, illegal immigration allegedly damages national security, undermines national identity, and embodies the state's loss of control over its borders.

The first difficulty with this perspective appears in a consideration of terminology. Governments and certain types of interest groups are content with the term 'illegal immigration', in part because it legitimizes the 'law and order' response these groups embrace ('illegal aliens', popular in the US, makes the point even more clearly). Others, however, believe it is unacceptable to describe *people* as 'illegal' (thus the slogan, 'no one is illegal', Cohen et al. 2003). An alternative term, 'undocumented immigration', suggests that some immigrants merely lack certain documents and signals a greater acceptance of immigration more generally, even when it is not legally authorized. Scholars might prefer to use neutral terms that avoid these political commitments, but it isn't clear that there *are* any genuinely neutral terms. Carens (2008) suggests that 'irregular' or 'unauthorized' are less loaded than 'illegal' or 'undocumented', but he allows that one can discern political or normative connotations for those alternatives as well. 'Clandestine' migration has some currency (e.g. Spener 2009), though it suggests furtive and thus perhaps shady behaviour. In addition, irregular migration (like all migration) is much more than a matter of individual behaviour: individual actions acquire meaning via social context, as when some irregular Romanian migrants in Western Europe stood to suddenly become 'regular' by virtue of Romanian accession to the European Union (Triandafyllidou 2010).

The demand for a 'law and order' response noted above has led in recent years to just that, particularly in the USA, with vast increases in expenditure on border-control efforts, a high-tech fence (actually a high metal wall in sections of the border with Mexico – the 'Iron Curtain'), etc. The phrase 'just that' in the previous sentence has a double meaning, however: there is much evidence that this response has been ineffective in deterring unauthorized crossings. Instead, it has driven migrants to cross in more remote desert regions, leading to thousands of deaths from heat exhaustion and dehydration (Johnson 2007). Reinvigorated border control (with its uniforms, gadgets, etc.) is perhaps better understood primarily as a form of political 'performance', a 'symbolic representation of state authority' (Andreas 2000: 8) that seeks to mollify voters (see Newton 2008).

The ineffectiveness of control efforts focused on the border is only one of the factors contributing to immigration described variously as illegal or undocumented. Many undocumented immigrants enter the destination country via perfectly legal means but then become 'undocumented' when they engage in activities not permitted by the visa allowing their entry: for example, students who abandon their studies and find full-time jobs, or 'temporary' workers who overstay their visas (e.g. Dauvergne 2008). Another route involves the failure of asylum seekers to leave when their applications for refugee status are rejected. The problem of illegal immigration is by no means solely a failure to control the border.

Another drawback of the 'illegal' terminology emerges in the fact that many countries do not in fact treat undocumented immigrants as criminals. Government

agencies typically approach detention and deportation as administrative rather than criminal justice procedures – in no small measure because they then require a lower burden of proof to satisfy ‘due process’ requirements (Carens 2008). On the other hand, the US government (perhaps recognizing limitations of border controls) in recent years has begun redirecting enforcement efforts to ‘internal’ sites, sometimes prosecuting (and then imprisoning) undocumented workers for identity theft, i.e., for having provided someone else’s Social Security number to their employer (Bacon 2008).

More attention is typically focused on ‘supply’ (the migrants) than on ‘demand’ (the employers), particularly in the USA (Andreas 2000; Kwong 1997). Some European countries, on the other hand, have long imposed significant penalties on employers of undocumented workers and generally experience lower levels of undocumented immigration, though sanctions are by no means a panacea (Freeman 1994; Martin and Miller 2000). Early American attempts to implement sanctions, in 1886, were conspicuously unsuccessful (e.g. Fix 1991); they were perhaps even counterproductive, in that employers, who were not required to verify the authenticity of documents presented by their workers, were protected from prosecution for merely having ‘checked’ them.

Political and moral debates about undocumented immigrants are unsurprisingly quite complex. Carens (2008) argues that lack of legal status does not justify denying migrants’ basic human rights such as emergency medical treatment, education for children, and work-related rights (e.g. minimum wages and safe conditions). Failing to guarantee these rights can be counterproductive with respect to the goal of reducing incentives for migration, insofar as it renders immigrants more exploitable and thus more attractive to employers. Some observers are particularly troubled by provision of education for undocumented children because it enhances their identification with the ‘host’ country, making departure/deportation both less likely and more traumatic. But Carens notes that the children cannot be held responsible for illegal entry and argues that uneducated children would only become marginalized adults, as the feasibility and legitimacy of deportation declines the longer they stay. California voters expressed their displeasure with these matters by approving Proposition 187 in 1994 (excluding undocumented children from schools and undocumented immigrants generally from a variety of public services and facilities), but its subsequent invalidation by a federal court demonstrated that liberal states (and their electorates) face substantial limits in their ability to deny basic rights to illegal immigrants. Even so, undocumented immigrants are typically quite vulnerable, unable or unwilling to access rights they formally have, out of fear that contact with authorities will lead to deportation (Bosniak 2008; Clark 2013).

The rhetoric of ‘illegality’ suggests that the destination country genuinely rejects the immigrants who carry this label: this migration violates the law, ostensibly the expression of the public will (at least in democratic countries). But some elements of the destination country plainly want illegal immigrants – and it is often their very illegality that makes them attractive (e.g. Bacon 2008). Again, lacking proper documents, the immigrants are vulnerable and thus more easily exploited; if they

complain, the employer might dispose of the problem by alerting the authorities (who can detain and deport), and so there are fewer complaints. In the USA, members of Congress, governors and others have sometimes interfered in federal enforcement efforts, forcing the Immigration and Naturalization Service (whose successor is now part of the Department of Homeland Security) to withdraw from workplace raids (Martin and Miller 2000). Large numbers of private individuals employ undocumented housekeepers, gardeners, nannies, etc., and some social movement groups embrace undocumented immigrants on humanitarian and civil rights grounds.

In addition, wealthy countries' policies on trade and other economic matters arguably displace workers in countries like Mexico, leading them to perceive no alternative to migration to the USA, where many employers prefer them to native workers (Johnson 2007). Some observers, highlighting the racial dimension of migration restrictions, argue that migration control regimes are a component of 'global apartheid', such that clandestine migration is a legitimate form of resistance (Spener 2009).

On occasion, some countries have in essence conceded defeat, offering opportunities for regularization (amnesties) to large numbers of undocumented immigrants. The USA in 1986 offered amnesty to more than 3 million people, and Spain has undertaken no fewer than five episodes of 'normalization' since 1984 (López 2008). As Newton (2008) shows, while 'illegal immigrants' are usually constructed as targets of demonization, more positive forms of political constructions do sometimes gain sway. Critics worry that these decisions only increase incentives for illegal immigration, and there is currently significant opposition (though some significant support as well) in the USA to proposals for another amnesty to address the situation of roughly 11 million undocumented immigrants. On the other hand, this opposition can be framed as an implicit decision to carry on living with this large number: deportation on this scale would be wildly unrealistic, many employers are happy to have them, and many migrants themselves would face difficult prospects upon return (though as noted in other chapters, many migrants do choose to return).

The experiences of undocumented immigrants show that there are limits to what some scholars describe as a human rights revolution in recent decades. While some forms of migration have led to an expansion and diversification of citizenship, this transformation has had only limited impact on the situation of migrants lacking legal status, with many experiencing increasing insecurity (Verduzco and de Lozano 2011). One sign of this limited scope is the fact that the International Convention on the Protection of All Migrant Workers and Members of Their Families, proposing to guarantee key rights for migrants regardless of legal status, has been ratified by very few countries. The major destination countries in particular have declined to adopt it – in essence confirming their position that legal immigration status is a precondition for holding many basic rights (Dauvergne 2008).

One commonly thinks of illegal immigration as a challenge faced by wealthy countries, potentially overrun or swamped by migrants originating in poor

countries – but this picture is incomplete (if not simply wrong). Other chapters have noted that migration flows among poorer countries are substantial, and many of these flows contain large numbers of undocumented immigrants. Individuals from wealthy countries can also become illegal immigrants, though usually without the same risks or stigma: Europeans living in another EU country are required to register their new residence but are not commonly considered illegal when they do not (Triandafyllidou 2010). One of the biggest groups of undocumented immigrants in Australia consists of Americans who have overstayed their tourist visas (Dauvergne 2008).

See also: *Human trafficking and smuggling; Deportation*

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