

Book Review of *Undocumented: How Immigration Became Illegal* by Aviva Chomsky

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Trainloads of Mexican laborers imported daily by American railroad capitalists, backed by the might of Congress . . . Sal, an Arizona high school graduate who was brought to the United States by his parents at the age of three, deported for the crime of jaywalking . . . Social workers at the border identifying migrants by their lack of shoelaces, anticipating that the Department of Homeland Security will have removed such suicide hazards . . . A deported Guatemalan woman's parental rights over her infant son terminated swiftly and obscurely, based on a tenuous legal theory of "effective abandonment" . . . A perverse and unconcealed alliance between the private prison complex and languishing border towns, feeding into the latest draconian outcomes of American immigration law. . .

Aviva Chomsky masters the power of imagery in her recent book, *Undocumented: How Immigration Became Illegal*.¹ In this gripping, easy-to-read work, Chomsky, a professor of history and an immigrant rights activist, paints the story of Mexican and Central American immigration to the United States from its historical roots to its modern-day reality. In eight chapters, shrewd analysis of legislative history is deftly interwoven with the emotional impact of sheer human drama, revealing the depth and subtlety of Chomsky's research. *Undocumented* poses a bold-faced challenge to its audience—the mainstream culture tired of immigrants "stealing American jobs" without "getting in line": that their fundamental conception of illegality as a black-and-white schematic is baseless and defective.

Chomsky's introduction, *What Part of Illegal Do you Understand?*, starts off by shattering the illusion that the United States' treatment of undocumented immigrants is justified by their intentional and spiteful crossing into a morally dubious category of criminality. She begins by challenging the false dichotomy between "legal" European immigrants who arrived before the twentieth century and the wave of "illegal" Mexicans and Central Americans arriving in the late 1900s—a dichotomy that gives Americans opposing immigration reform the tireless refrain that while the

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1. AVIVA CHOMSKY, *UNDOCUMENTED: HOW IMMIGRATION BECAME ILLEGAL* (2014).

United States might be built on immigration, their relatives entered "the right way." *Undocumented* proves this dichotomy is hollow.

As Chomsky argues, the U.S. government deliberately created the fiction of illegality in the last fifty years to exclude and exploit racial minorities while giving a "large wink"² to industries relying on low-wage workers needed to sustain American over-consumption. Chomsky argues that illegality is a recent fiction because there was no "right way" for European immigrants to enter the United States—at the time, there were no lines or legal processes to follow. Indeed, before World War I, the government excluded a mere one percent of the twenty-five million immigrants arriving at Ellis Island, mostly for health reasons (not counting the Chinese, who were excluded on grounds of "racial assimilability").³

From its very inception, the United States has openly racialized its conception of citizenship, despite its formal teachings on fairness and equality.⁴ Today, the deportation and deprivation of legal status of undocumented migrants, who are overwhelmingly Latino-American, is a "highly racialized crime"⁵ that follows the sordid history of U.S. citizenship law. But Chomsky does not stop at lambasting gross racial inequities in the system. Instead, she goes further and asserts that illegality was specifically devised to prop up an entire "system of legalized inequality."⁶ For Chomsky, this regime of legalized inequality represents the domestic reproduction of a global system that marginalizes low-wage workers by subsidizing wealthier consumers through a dual labor system.⁷

Chomsky's *Undocumented* is resoundingly successful despite the ambitious scope of her project. Whether the reader is unfamiliar with immigration issues or already a staunch activist, Chomsky's work dispels three key illusions that serve to undergird the mainstream's opposition to "illegal" immigration: (1) That the U.S. immigration system is relatively fair; (2) That employment opportunities are a zero-sum game between citizens and noncitizens; and (3) That the United States is merely reacting to global migration forces without having had a hand in shaping them.

Undocumented leaves readers with the unsettling realization that despite teaching children that the United States is the land of opportunity that rewards everyone's hard work, the current immigration system is, at best, unfair, arbitrary, and capricious. After a dangerous journey to the southern

2. *Id.* at 114.

3. *Id.* at 45.

4. See, e.g., U.S. CONST. amend. XV; Naturalization Act, ch. 3, 1 Stat. 103 (1790) (repealed 1795); Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882) (repealed 1943); Indian Citizenship Act, ch. 233, 43 Stat. 233 (1924); Nationality Act, Pub. L. 76-853 (1940). See also *United States v. Wong Kim Ark*, 169 U.S. 649 (1898); *Dred Scott v. Sandford*, 60 U.S. 393 (1857), superseded by constitutional amendment, U.S. CONST. amend. XIV.

5. CHOMSKY, *supra* note 1, at 15.

6. *Id.* at 14.

7. See *Id.*

border, migrants hoping for an ounce of humanity are completely let down. Chomsky describes deportation proceedings since "Operation Streamline," a border control program implemented by the Bush administration in 2005, as "somewhere between a kangaroo court and a slave auction," where migrants are shackled and tried in large groups before being detained in such overcrowded conditions that there is no room even to sit.⁸ As administrative proceedings, deportation hearings do not follow the strictures of due process and fairness that attend regular criminal trials, even though the consequences of deportation are often more severe than prison sentences since removal results in return to a place from which the migrant risked death to escape. Despite the stakes involved, 84 percent of Immigration and Customs Enforcement (ICE) detainees (93 percent of whom are Latino)⁹ are not represented by counsel.¹⁰ Those who are represented invariably receive inadequate counsel.¹¹

A series of Congressional stopgap measures impose arbitrary cutoff dates for legalization and offer temporary protected status to a miniscule proportion of eligible candidates. As a result, hundreds of thousands of immigrants are in a state of "permanent temporariness" or "liminal legality."¹² This lack of permanent status means immigrants face a "bewildering panorama" of limited privileges and benefits.¹³ Despite decades of activism, the efforts of immigrants and their supporters have stagnated. The only reprieve has been the "crumb [that] was thrown to immigrant rights supporters [in 2010]: prosecutorial discretion."¹⁴ Given the immigration system's "multiple contradictions,"¹⁵ the undocumented "face a veneer of ordinary life undergirded by permanent uncertainty," where the only thing they can do is "survive day to day and hope for the best."¹⁶

The uncertainties and inequities that plague the legal system are reflected in the economic system that undocumented migrants must enter into. Day in and day out, migrant laborers face accusations that they are unwanted for taking jobs from some U.S. citizens and driving down the wages and benefits of others. Citing example after example, Chomsky uncovers the inaccuracy of this portrayal. Simply put, there are types of jobs whose intensity, hours, physicality, and seasonality make them unpalatable to anyone but these migrant laborers. And while many activists point this out, it is Chomsky's rigorous research and fact-finding that persuades the reader it is true beyond a doubt.

Chomsky cites farmers who attest to the fact that American workers—even parolees—do not want seasonal harvesting jobs, and that when they

8. *Id.* at 6-7.

9. *Id.* at 107.

10. *Id.* at 103.

11. *Id.*

12. *Id.* at 90 (citation omitted).

13. *Id.* at 92.

14. *Id.* at 203.

15. *Id.* at 178.

16. *Id.* at 112.

do, they are not half as productive as migrant workers.¹⁷ Perhaps more poignantly, though, the United Farm Workers' "Take Our Jobs" campaign in 2010 quashed the idea that Americans want migrants' farm jobs. After three months, while 3 million people visited the website and 8,600 citizens expressed an interest in agricultural work, only 7 followed through.¹⁸

The "Take Our Jobs" campaign reveals the reality the agricultural industry has long since known to be true. Fearful of price increases if their cheap labor supply is cut off, the industry has managed to secure many explicit shelter provisions in various immigration statutes over the past few decades.¹⁹ The federal government has explicitly acknowledged its reliance on cheap migrant labor, a revelation apparently at odds with the goal of promoting U.S. job growth. Chomsky keenly points out a memorable example in the waiver of federal contractor wage standards issued by the government in the aftermath of Hurricane Katrina. Unsurprisingly, "undocumented workers formed the backbone of post-Hurricane Katrina reconstruction."²⁰

Ultimately, the results of factory raids by ICE officials speak for themselves. The underlying goal of these raids, at least on the surface, is to protect U.S. jobs by removing undocumented stand-ins. After Nebraska's 1999 "Operation Vanguard," shuttered plants, employers replaced deportees entirely with Burmese and African refugees. None raised wages or improved working conditions, and none were prepared to hire U.S. citizens.²¹ The infamous 2008 Postville raid in rural Iowa left a ghost town after ICE removed a third of the town's population, as if a "natural disaster had swept through," leaving "just silence behind it."²² Contrary to popular opinion, then, there is no zero-sum game between citizens and immigrants for employment. Operating in parallel worlds on a dual labor system, there is almost no competition at all.

The final illusion that Chomsky shatters is the notion that U.S. responsibility for the immigration crisis is purely reactionary. Pundits argue that civil strife and poverty in neighboring countries does not justify allowing dissatisfied foreigners to violate U.S. law in order to partake in opportunities within our borders. There is a process, they argue, implemented so that jobs are not unfairly taken from Americans. Chomsky, however, has already dispelled the myths of fair process and job competition. In her final act, she undercuts the image of beneficent amnesty that the United States claims to provide.

17. *See Id.* at 127.

18. *Id.* at 124-125.

19. For example, the "Texas Proviso" of the McCarran-Walter Act, enacted to satisfy various Texas business interests, explicitly stipulating that employment "shall not be deemed to constitute harboring" of illegal aliens. McCarran-Walter Act of 1952, Pub. L. No. 82-414, § 274, 66 Stat. 163, 229 (1952).

20. CHOMSKY, *supra* note 1, at 132, (citing *Study: Immigrant Workers Endure Hazardous Conditions, Abuse Post-Katrina*, USA TODAY, (June 7, 2006), http://usatoday30.usatoday.com/news/nation/2006-06-07-immigrant-workers_x.htm).

21. *Id.* at 136.

22. *Id.* at 137.

Instead, Chomsky argues, the United States has been complicit in creating the systemic inequities that spur global migration flows across our borders. From the railroad's early days, when U.S. employment agents scouted Mexican laborers, importing them by the trainload, to the Braceros program, to modern immigration law's "slap on the wrist" for employer violations, Chomsky convinces readers that migration from the south is as much conscientious and exploitative recruitment as it is the longing for improved opportunities. Long before 1965, the United States had already established the conditions that ensured a steady flow of migrants from across the southern border. That year, however, the United States flipped the switch, relying on notions of "illegality" to cut off access and restrict border crossings from Mexico. All the while, the United States has maintained policies that create a demand for low-wage workers at home, and, through its interventionism in Latin America, generated the insecurity that propels mass migration north.²³ Chomsky thus makes the case that congressional immigration reform would not be an act of charity but rather an assumption of moral responsibility after years of reckless policymaking.

Overall, while Chomsky makes a well-researched, compelling argument, *Undocumented* would benefit from clearer organization that better lays out the logic underlying the author's argument. Occasionally, Chomsky jumps between ideas without tying up loose ends, leaving pieces of her overarching argument interspersed throughout the various chapters. The book's greatest value lies in its rigorous historical analysis. Thus, the initial chapters could elaborate further, while chapter seven, on children and families, covers too much. Its exploration of the DREAM movement is not geared toward the author's main argument about the United States' construction of illegality; rather it lends a "sympathetic face" to the immigration movement.²⁴ Because it appears toward the end, the sympathy Chomsky tries to elicit in this chapter is not strictly necessary. She has already won her readers over with earlier stories about the trials undocumented immigrants face on a daily basis.

Perhaps because of chapter seven's intervening gap between Chomsky's argument and the conclusion, the optimistically titled "Solutions" chapter that concludes the work spends far too much time on summary rather than innovation. While Chomsky premises the chapter's overarching question as: "What can we do to change the situation?"²⁵ she dedicates only a few short pages to answer this important question.

Chomsky first proposes an attempt to abandon border enforcement, claiming that border sealing is largely ineffective. She argues that the number of undocumented immigrants only began to rise after the country

23. See *Id.* at 186-87.

24. *Id.* at 169.

25. *Id.* at 21.

began to seal the border, compelling migrants to stay.²⁶ Yet without citing social statistics that would point to a causal relationship between border enforcement and rising "illegality," Chomsky leaves a gaping question: "Can Americans truly stomach an open border?"

Chomsky quickly abandons the border question and points instead to the need to question our underlying assumptions about countries, nationality, and exclusion, and to "challenge the anti-immigrant culture."²⁷ Criticizing backdoor deals of years past, Chomsky calls for a "cultural strategy" that creates the necessary social capital to demand change. While her book deftly succeeds in contributing to such a strategy, Chomsky herself concedes that, "we also need to address the root global and economic factors that have contributed to today's problems."²⁸ It is up to readers, however, to determine how. While readers leave eager to do so, the final chapter remains something of a misnomer.

I highly recommend *Undocumented* to scholars of immigration law, general practitioners, and the public. Even though it is short on solutions, Chomsky's latest work must be lauded for its masterful account of history and unapologetic attempt to galvanize the current movement.

26. *Id.* at 205.

27. *Id.* at 206.

28. *Id.* at 208.