



SSSP

Pro Bono



SSSP

Fall 2013

VOL .19, NO. 2

2012-2014

Law and Society
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Content

Notes from the Chair	1
2014 Conference Panels	3
Announcements	4
News from around the division	5
Feature by Abigail Andrews	6
Member Publications	9



Notes From the Chair

Greetings from the West Coast and happy fall to all division members! The newsletter follows a particularly eventful summer in our discipline, not only with a successful and widely varied conference in New York in August, but with some landmark changes in the socio-legal landscape thanks to the Supreme Court. In June, in two widely anticipated landmark rulings the Court expanded considerably the availability of legal marriage to same-sex couples. In *Hollingsworth v Perry*, the Court denied standing to the parties appealing U.S. District Court Judge Vaughn Walker's decision invalidating Proposition 8 in California (which had banned same-sex marriage by constitutional amendment), essentially reinstating the right to same-sex marriage in California that existed for six months prior to the passage of Prop 8. The California Attorney General took swift action in directing the counties to begin issuing marriage licenses to couples pursuing them. Even more far-reaching was the Supreme Court's decision in *U.S. v Windsor*, which struck down the federal Defense of Marriage Act, thereby extending federal benefits to those couples who are legally

Continued on page 2

married in their home state. It is estimated that over 35% of the U.S. population now lives in states where same-sex marriages are legal (or recognized and honored if performed in other states).

It was not all good news from the Supreme Court, however. Just days before these momentous marriage equality decisions, the Court decimated the core of the civil rights-era landmark Voting Rights Act in the case of *Shelby County v Holder*. Critical Race Scholars poignantly pointed out the contrast of the two decisions and explained “why we can’t celebrate”. The *Shelby* decision effectively crippled the ability of government to remedy and prevent racial discrimination in voting, and, when paired with the same court’s *Fisher* decision upholding but considerably narrowing affirmative action, represented a blow to underrepresented groups, in particular African Americans. It is clear, from both the victories and the defeats of this term, that there is much work to be done by socio-legal scholars. It is my hope that division members will take up these important issues in the coming year’s meetings in San Francisco.

Before closing I want to extend my thanks to all of those who have lent their time and expertise to the vision. Thanks to those who chaired panels for the 2013 meetings in New York: **Jay Borchart, Kathy Asbury, Kristen Budd, Nancy Mezey, Lloyd Klein, Steve Morewitz, Patrick O'Brien, and Tim Berard**. I want to especially thank **Lori Sexton** for contributing her considerable talents and intellect to the division in her first year as Vice-Chair; Lori has been an enormous asset to the division just since beginning her term earlier this year. I also wish to thank all of those who have volunteered to serve on awards committees and organize panels, including **Sarah Smith, Michael Smyth, Abigail Andrews, Lloyd Klein, Steve Morewitz, Sonye Goshe, Kathy Asbury, Jay Borchert, and Judith Gordon**. Finally, I thank Abigail Andrews, last year’s Lindesmith Award winner, for her compelling piece of research appearing in this newsletter, as well as our new newsletter editor **Kristen Maziarka**, for stepping in on very short notice; my deepest gratitude to you all!



The Society for the Study of
Social Problems 64th Annual
Meeting August 15-17, 2014
The San Francisco Marriott
Marquis
San Francisco, CA

Law and Society Panels for 2014

SESSION TITLE
Critical Dialogue on Law and Poverty (Thematic)
New Directions in Law and Society
Punishment and Culture
Violence and the Law
Poverty, Crime and Punishment (Thematic)
Reform and Progress: Law, Crime and Delinquency
Deviance and Crime in Sports
Race, Civic Participation and Law
Human Rights and Aging
Law and Sexuality



Announcements

CALL FOR NOMINATIONS FOR DIVISION CHAIR

Nominations and an election for the position of Division Chair will be held in early 2014. The new chair's term will begin at the 2014 SSSP meetings in August, and last two years. Please consider nominating a colleague or yourself for this office. Nominations should include a brief description of the nominee's involvement in the SSSP, the Division, and other relevant experience. Please send nominations to kdreichman@usfca.edu by **December 15, 2014**.

At our last division business meeting the division decided to adopt and transition into a new model of leadership whereby the position of Vice Chair will also serve as Chair-Elect, so that officers will serve a two-year term, the first as Vice Chair and the second as Chair. This will allow more continuity in leadership and on-the-job training for the Chair-Elect, and will reduce the number of elections the division must hold. This change will go into effect in 2015 at the conclusion of Lori Sexton's term as current Vice Chair (an election will be held in 2014 to fill the position of Vice-Chair/Chair Elect to start in 2015).

Lindesmith Graduate Student Paper Competition

Deadline: 1/31/14

The Law and Society Division announces its 2014 Lindesmith Graduate Student Paper Competition.

Papers may be empirical or theoretical, and they may be on any aspect of law and society. To be eligible, a paper must have been written during 2013, and at the time of submission, it may not be published, accepted for publication, or under review for publication. Papers which have been presented at a professional meeting or accepted for presentation at a professional meeting are eligible. Papers must be student-authored; they can be single-authored or co-authored by students, but may not be co-authored by a faculty member or other non-student. Please submit in MS Word. There is a 25-page limit, including all notes, references, and tables. Submissions should use 12-size font, one inch margins, and double spacing throughout. Send papers and a cover letter specifying that the paper is to be considered in the SSSP Law and Society Division Lindesmith Graduate Student Paper Competition to Dr. Sarah Smith. Submissions should be submitted electronically to: sarah.smith@elmhurst.edu. The winner will be announced in Spring 2014. The winner will receive a \$50 stipend and is eligible to present the paper at the 2014 annual meeting in San Francisco with SSSP membership and conference registration paid by the division.

Sutherland Book Award Competition

Deadline: 1/31/14

The Law and Society Division announces its 2014 Sutherland Book Award Competition.

The primary purpose of this award is to focus on excellence in scholarship within the study of law and society. Eligible books must have been published in 2012 or 2013. Authors may nominate their own work and multiple-authored books are acceptable. All nominees must be members of the SSSP. Please email Dr. Lloyd Klein, lklein@york.cuny.edu, to arrange for shipment of three copies of the nominated book and submission of a letter of nomination.

News around the Division

- Judith Gordon of the Yale School of Medicine, Department of Psychiatry represented the International Alliance of Women at the UN General Assembly High Level Open Ended Working Group on Ageing; Protection of the Human Rights of Older Persons. She is also the IAW representative to the Subcommittee on Older Women of the NGO Committee on Ageing.
- Judith Gordon also recently became a member of the SSSP Founders Committee.
- Jay Borchert, currently a PhD candidate in the Department of Sociology at the University of Michigan Ann Arbor, recently accepted a position as a Visiting Student Researcher at the Center for the Study of Law and Society at UC Berkeley through 2015. Recently awarded the Eva L. Mueller New Directions In Economics and Demography Fund Grant by the Population Studies Center at the University of Michigan to facilitate his research, Jay's dissertation focuses on the philosophies that guide the practice of Corrections in the United States to include how and why these knowledge frameworks may reshape and refine inequality for prisoners, those working in corrections, and communities. Over the last 4 years Jay has worked with professors David Harding and Jeffrey Morenoff, as part of the Michigan Study of Life after Prison research team, to examine the neighborhood context of prisoner reentry. In his current work, Jay is conducting interviews with high-ranking correctional officials nationwide. The goal of the project is to determine the effects of the Prison Rape Elimination Act of 2003, and its Standards or Final Rule of 2012, upon correctional orthodoxy and praxis, institutional culture, prisoners and correctional staff. For Jay, a major aspect of accepting the offer to join CSLS is the fantastic opportunity for continued training with Punishment and Society scholars Jonathan Simon and Malcolm Feeley at Berkeley. Jay is broadly interested in law and social change, punishment, citizenship, human rights and macro-level inequality with a sharp focus on prisons and prisoners as objects of legal and social negotiation and conflict. He can be reached at borjay@umich.edu or jborchert@law.berkeley.edu

The human dimensions of immigration law: How local enforcement practices shape undocumented migrants' senses of belonging and political agency

By: Abigail Andrews

Ph.D. Candidate in Sociology, University of California - Berkeley

*Abigail Andrews was the 2013 Lindesmith Award Winner

While scholars and the left-leaning public widely agree about the devastations wrought by the current system of migrant “illegality” at work in the United States, one thing remains puzzling. Given that all undocumented migrants face exclusion, why do some groups withdraw socially and politically while others demand greater inclusion? My work examines how migrants’ lived experiences of “illegality” – that is, social and political exclusion – vary across cities, as a result of distinct city- and county-level implementation of immigration enforcement.

Sociologists have long sounded alarms about the devastating effects of being undocumented for migrants’ economic, social, and political wellbeing. We know that unauthorized migrants remain isolated, deprived of rights, and confined to the nation’s most exploitative jobs. Many are trapped in poverty, ghettos, and emotional desperation. As a result, leading migration scholars such as Douglas Massey and Karen Pren (2012) warn, the contemporary U.S. system of “illegality” threatens to create “a large underclass that is permanently divorced from American society and disenfranchised from its resources, with little hope of upward mobility” (15).

Sociologists have also challenged folk logic that portrays the U.S. government as impotent in the face of “illegal immigration.” Rather, an emerging literature highlights the crucial role of the state in *producing* migrant “illegality.” Scholars like Nicholas de Genova explain that “illegal immigrant” is a juridical category defined by the state and put into effect by its coercive apparatus. This legal status provides the basis on which the state blocks undocumented migrants from representation and services and threatens violence against them. By rendering undocumented groups socially marginal, the state creates the conditions for their exploitation.

Nevertheless, empirical studies show that undocumented migrants’ experiences can vary dramatically within a given regime. While some feel abused and withdraw, others take pride in their capacity for hard work, express feelings of inclusion, and struggle for greater rights. In the late 2000s, even as deportation and anti-immigrant hostility escalated across the United States, subjecting unauthorized groups to a reign of terror, some of these migrants – particularly student activists and defenders of immigrants’ rights - launched unprecedented political mobilizations. How can we understand these variations in migrants’ legal consciousness, and their resulting political activism?

I trace unauthorized migrants’ subjectivities to the distinct logics of immigration control they ace at the local level. In the late 2000s, the Bush and Obama administrations have dramatically expanded deportation of “illegal aliens” and empowered local police to enforce immigration law. As a result, control over immigration enforcement has devolved to the state, county, and city level, bringing the threat of deportation into migrants’ everyday lives. While city- and county-level officials are ostensibly subject to the same federal policies, they have taken great leeway in interpreting, reacting to, and transforming the mandate to deport undocumented immigrants. On one hand, some local police have been *discerning*, declaring “sanctuary city” policies in which they refuse to turn migrants over to federal authorities unless convicted of crimes. In contrast, others have *arbitrary*, pursuing undocumented migrants during daily life, irrespective of criminal status. While numerous media and scholarly accounts have noted this local-level polarization between restrictionist and pro-immigrant approaches, few have explored the implications of these differences.

To understand how local policing shapes migrants as workers and political actors, I compare the experiences of undocumented groups from two, similar Mexican sending communities, one of which concentrated in Los Angeles County and the other in the rural area of North County San Diego (which includes cities such as Escondido, Vista, and Oceanside). I draw on 75 in-depth interviews and participant observation conducted between 2009-2011 in LA and North County to flesh out how local-level practices translated federal policies into different lived experiences of debasement.

These sites offer exemplary cases of discerning and arbitrary policing, with LA resisting incursion by federal Immigration Control and Enforcement (ICE) and focusing on deporting convicted criminals, while North County extended policing to all undocumented migrants. I focus primarily on police practices, because they represent the arm of the state about which migrants remain most consistently aware and informed. While unauthorized migrants typically avoid interacting with government institutions, they tend to remain abreast of police activities in the effort to avoid deportation. Furthermore, police threats condition migrants' willingness to access other state services.

Drawing on these interviews and observations, I argue that migrants can experience analytically distinct logics of "illegality," one of which I call "criminalizing" and the other of which I call "moralizing." Both of these logics make migrants feel excluded and subject them to exploitation, but in different ways. Through the moralizing type, which has been less discussed and which I will describe in a bit more detail here, migrants construct a partial sense of belonging even within a context of exclusion – with both productive and perverse implications.

On one hand, in the criminalizing logic– which I develop through the case of North County San Diego - fear and exclusion are the primary mechanisms behind the lived experience of "illegality." In this mode, police treat all undocumented migrants as criminals, detaining and deporting them arbitrarily without regard to their behavior (practices we may associate, for example, with contexts like Arizona or Alabama). In such contexts, migrants feel persecuted based on their immigration status alone. While significant recent research on "legal violence" and the "legal production of illegality" by scholars like Cecilia Menjivar and Leisy Abrego (among others) has highlight this logic of violence and powerlessness, I add that is not coercion *per se* that instills this fear, but rather its unpredictability. When migrants cannot control their deportability, they feel powerless, and it is the feeling that they have no agency which them from U.S. society.

In response, migrants under arbitrary regimes "exit" – either returning to Mexico, or "mentally exiting" by withdrawing emotionally. In this mode, the primary mechanism behind migrants' social and economic marginality is a stoic mentality. When migrants withdraw, they take the view that they are only temporary in the United States and whatever abuse they are currently suffering will not be a long-term thing. Even though many migrants do end up staying in the United States long-term, this stoic mentality perpetuates their tolerance of abuse and exclusion.

On the other hand, meanwhile, exists a *different* logic which I call moralizing and developed through the case of migrants in Los Angeles. While migrants' experiences in this mode are *also* defined by the expanding deportation of migrants nationwide, the general shift towards criminalization affects them quite differently from those in North County. In areas that tend towards the moralizing type, as does LA, police involvement in immigration enforcement focuses primarily on convicted criminals. As a result, instead of targeting undocumented individuals arbitrarily, migrants believe that the police divide them into "good immigrants" and "bad immigrants." According to this logic, migrants see deportation as a (deserved) punishment for "bad immigrants," while perceiving police and social service protection as rewards for "good" behavior. While migrants define "good behavior" in a variety of ways, most associate it with obedience to the law, hard work, and a refusal to rely on government programs and services.

For example, Mariela, a 36-year-old undocumented garment worker I interviewed, who had lived in LA for 15 years, reflected:

I think it [not having papers] is fine as long as we do what the law asks, follow the speed limits, the

steps they ask for, not go faster or slower, not drink, not do drugs. I say that as long as one is following the law, everything is fine. But if you go around messing here, messing there, not paying tickets ... If they [the police] see someone is going to work, well, [they say], 'How good, go ahead' – maybe a ticket and that's it. But if they see people drunk, or drugged, if they see them making a mess and a half, then let them take them [out of the country] as they should. That doesn't bother me ... I'm not afraid of the police, because they're doing their jobs. No, I'm not uncomfortable. On the contrary, we know we're protected by someone when we need it. I don't avoid them either. No, I feel free; I feel calm.

Mariela's statement illustrates the logic that many LA respondents attributed to the moralizing state. They associated police sanctions with breaking the law, while linking tolerance and protection to obedience and work. In turn, as long as they identify as "good immigrants," migrants feel "free" and "calm."

The moralizing logic of "good immigrants" and "bad immigrants" affects undocumented migrants very differently from the more arbitrary, criminalizing logic, because it gives them a sense of control. To the extent that migrants see immigration enforcement as discerning, they feel that they can *choose* to act either "good" – meriting services – or "bad" – meriting deportation. These apparent rewards and punishments motivate them to exhibit their legitimacy through uncomplaining hard work and obedience to the law. However, the good/bad binary is not just instrumental; rather, as migrants perform "good immigrant" behavior, they come to identify with the norms governing "good immigrants" and feel a sense of belonging. In some cases, when migrants feel such belonging, it leads them to accept their partial inclusion as legitimate or denigrate their own worth as workers or members of society. Nevertheless, the feeling of inclusion also motivates others to want *full* membership, sparking demands for inclusion such as those for which LA has become famous.

Andrea, a housekeeper in her early 50s who had lived in the United States 18 years, offers an example of the kind of self-denigration I saw in such a regime. Although Andrea had faced a litany of labor abuses she knew were illegal, from unpaid wages to refusal of rest breaks and summary firings, she identified very closely with hard work, linking it to her status as a "good immigrant." For instance, she insisted:

I like doing my work well. I'm proud of my work. ... When I go to work it's as if it were a party. I get dressed up. I go happy. None of this about being angry ... Sometimes people say to me, 'Why are you coming to work so dressed up, if you're coming to be in the dust [clouds in garment factories, from new fabric], you're coming to work?' But, I tell them, 'My work is like I were at a party, and I love my work.'

For Andrea, performing happily and without complaint was tied to a sense of pride and even "love."

As a final point, I would like to note that these two logics are not mutually exclusive or independent. Rather, any state or city combines aspects of both regimes, as its policies get forged in the battle between those who would criminalize "illegality" itself and those who want to link this criminalization to "bad behavior." Current federal policy also combines the two types, simultaneously expanding the criminalization of undocumented migrants and promoting good/bad binaries, like those President Obama has used to distinguish between "innocent" undocumented youth and their "guilty" parents. Meanwhile, city-level actors struggle against federal constraints as well as against each other. Thus, for instance, pro-immigrant advocates in Los Angeles may react against restrictive laws in states like Arizona. As a result, an array of combinations is possible in the real world. My point in highlighting the distinctions is to show how differently they can affect migrants and to begin considering how, together, they *co-constitute* migrant "illegality," cowing people into stoicism on one hand while inducing them to identify with the United States on the other.

These findings also allow help us reflect on the prospects for the nation's evolving policies towards undocumented migrants. While a path to citizenship would change the legal status of existing migrants, we must ask what kinds of conditions reforms would create for those who follow. Current proposals in Congress

would dramatically expand the power and extent of policing *all* immigrants, likely driving more city police towards arbitrary practices. If this were true federally – as it has been in the local-level expansion of policing in anti-immigrant states such as Arizona – we would likely to see further stoicism and withdrawal from U.S. society, as I observed in North County. If so, rather than alleviating undocumented migrants' suffering, the new laws could deepen the social alienation of “illegality” and compound its human costs.



Member Publications

If you have something you would like in the next SSSP Law and Society Newsletter, please contact the Newsletter Editor.

Arrigo, B. A., and Bersot, H. Y. (Eds.). *The Routledge Handbook of International Crime and Justice Studies*. New York: Routledge, 2014.

Arrigo, B. A., & Davidson, L. (Eds.) *Managing Risk and Marginalizing Identities: On Captivity and Citizenship*. Special Issue of the *International Journal of Offender Therapy and Comparative Criminology*, Thousand Oaks, CA: Sage (57[6]: 666-761, 2013).

Budd, Kristen and Scott A. Desmond. 2013. “Sex Offenders and Sex Crime Recidivism: Investigating the Role of Sentence Length and Time Served.” *International Journal of Offender Therapy and Comparative Criminology*. DOI: 10.1177/0306624X13507421

Joachim J. Savelsberg. 2013. “Highlights in the Sociology of Law: Globalizing Law and Penalizing Human Rights Violations.” *Contemporary Sociology*, Vol. 42, No. 2, pp. 167-176.

Joachim J. Savelsberg. 2013. “Review Essay on Aryeh Neier’s *The International Human Rights Movement: A History*.” *Law and Social Inquiry* Vol. 38, No. 2, pp. 512-37.

Joachim J. Savelsberg and Lara Cleveland. 2013. “Law and Society.” *Oxford Bibliographies Online: Sociology*, edited by Jeff Manza. Oxford: Oxford University Press.

Stephen J. Morewitz, lecturer in the Department of Nursing & Health Sciences at Cal State East Bay and founder of the first full-service forensic sociology firm in Chicago in 1988 (ASA Footnotes, February 1989, p. 5), has co-edited the first ever *Handbook of Forensic Sociology and Psychology* (Springer, August 2013) with Mark L. Goldstein, Ph.D. The Handbook can be used to develop new undergraduate and graduate forensic sociology programs and enhance existing ones.