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Introduction to the Ethics of Illegality

As is the case with most small children, I grew up with a set of all-encompassing fears. Unlike most children, however, I grew up as an American citizen in a family and a community that was largely composed of Mexican immigrants. I therefore had three particular fears that were unique to my situation: *El Cucuy* (the Mexican version of the boogyman), *La Llorona* (the wailer), and *La Migra* (the border patrol). I remember growing up and hearing fantastic tales of all three. My parents would warn me, “si no te portas bien, se te va aparecer el Cucuy” (if you do not behave, the boogyman will appear before you). Of the three I’ve mentioned, I remember that as a child I felt sorry for *La Llorona* and the miserable fate that she had brought upon herself. According to the version of the tale told to me, *La Llorona* was a spirit doomed to forever haunt various waterways. She wailed after her lost children, who she herself had drowned in a moment of delirium.

As a child I never did encounter *El Cucuy* or hear the cries of *La Llorona*, but on various occasions I had experiences with *La Migra*. Sometimes, walking around with my mother, we would occasionally see one of their vans drive past us. At those moments my mother would tense up and say almost under her breath, “ahí va la migra m’hijo” (there goes the border patrol my son). She would then either wonder out loud where they might be going, recall a story of someone who got deported, or bring up one of the times she saw *La Migra* agents get on a bus, as buses were our main mode of transportation. When they were finally out of sight, my mother would then thank God that *La Migra* had simply passed us by, but I would find myself lost in a pervasive state of shock. It was not everyday that something

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at the ontological level of *El Cucuy* or *La Llorona* would drive by in a van.

Unfortunately, *La Migra* would not always drive by; it would, on occasion, stop. As a young child I had the experience of seeing and hearing about many people I knew, including friends and family, being deported—my father himself was deported three times. As a child it seemed to me that no place was safe, and that there was randomness with regard to who, when, and where *La Migra* deported people. Some of these deportations happened at work, others on the way home (e.g., raids of various forms of mass transportation), and, as happened with my father, right outside of our own house as my mother and I quietly listened to it happen. From my perspective, the affect that these raids had on our community was that they instilled a sense of constant fear. This fear is similar to a fear of natural disasters, as each raid brought with it great economic, psychological, and emotional hardships for all involved, especially for the immediate family of the recently deported.

I have since those days grown a lot older and many of my childhood fears have since disintegrated, but the lived experience of my childhood remains very vivid. It makes it very difficult for me to forget the terrifying experiences that my family, my neighbors, and my friends lived through—and that many communities today continue to live through. It is for this reason that I have begun this introduction in the manner I have. Not only did I want to show why the issue of immigration is especially important to me personally, but also, I feel that it is only through the human act of sharing lived experiences that one of the most important aspects of the immigration debate will begin to reveal itself. This is an aspect that in philosophy has typically fallen under the domain of ethics, or in other words, that special inquiry which deals with what it means to be human and to live a life well. In my opinion, this is an aspect of the immigration debate that, at least as far the mainstream debate goes, remains largely masked over. Furthermore, I believe that its absence in the mainstream debate is largely the reason that many Americans are so easily persuaded by anti-immigrant and nativist arguments that are constantly being put forward by various pundits and intellectuals.

The way the current immigration debate is framed can't help but remind any student of critical thought of what logicians call a fallacious argument—one suffering from both the fallacies of a false dilemma and a complex question. I say this because, as it is currently framed in mainstream discussions, the immigration debate is transformed from a deeply complex humanitarian issue, which has an

array of causes and effects, and reduced to a simple black and white dichotomy, which is then further simplified into a loaded question. Are you here legally (i.e., are you with us), or are you illegal (i.e., are you against us)? In its most crude form, this conclusion is most clearly articulated in a slogan made famous by the notorious “Minutemen Project.” The slogan, which can be found on an array of their t-shirts and stickers, asks: “What Part of Illegal Don’t You Understand?” My response to this apparently rhetorical question is, what I don’t understand is how this debate can continue without addressing the deeper ethical concerns that not only underlie but also call into question the economically-motivated forced displacement of human beings and the gross exploitation of those who are in the most vulnerable positions in our community.

Treatment of these ethical concerns, largely missing in the mainstream debate, should not be limited to what is inside and what is outside the law, but instead, should be concerned with a fundamental philosophical question: What justifies current immigration laws, and if these laws are shown to be unjust, what, in good conscience, ought one to do? When the mainstream debate on immigration does try to present a critique of the current situation, it is only of the most reactionary sort (e.g., Are our borders broken?), since it does not consider the ethical concern as central in this debate, but instead makes a fetish out of current immigration laws. This ethical concern, regardless of its absence in the mainstream debate, is, however, present at the core of the recent “Immigrant Rights Movement,” and we see its spirit most clearly manifested in the movement’s slogan, which is one that proudly affirms human life by stating that what needs to be understood is that “No human being is illegal!”

Some might find this slogan to be a little naïve, and they might argue that the label of “illegal” is simply a rhetorical marker that denotes a person who has come into or remains in the country in violation of immigration laws. According to this view, marking a person as “illegal” is nothing more than a simple legalistic truism. In reality, however, the denotation of “illegality” is a marker of a more pernicious sort; it is a marker that brands human life as both dispensable and a threat. We have seen evidence of how the marker of “illegality” functions not only in the recent hideous beatings and lynching of immigrants throughout this country by self-appointed vigilantes, but also in past, present, and current legislation. Take for example California’s notorious Proposition 187: one of its central provisions was to deny children marked as “illegal” from receiving an education and having access to healthcare. Or, consider some of the

more recent legislation that proposes to make it a felony for anyone to provide those marked as “illegal” with basic food, clothes, and/or shelter. Here I have in mind the recent legislation passed in Oklahoma, HB 1804 (Taxpayer and Citizen Protection Act of 2007), and the failed U.S. congressional bill H.R. 4437 (Border Protection, Anti-terrorism, and Illegal Immigration Control Act of 2005) which may be better known to most as the “Sensenbrenner Bill” in honor of its congressional sponsor Jim Sensenbrenner.¹ These are just a few examples of how the fetishization of law, as opposed to a truly ethical critique of laws, provides room for some of the most reactionary legal changes and allows for the continued sacrificing of human life.

In response to the fetishization of law, I hear many people today talk of how we live in a “post” world (e.g., post-modern, post-cold war, post- 9-11, and, after the 2008 election, post-race). This sense of living in a “post” world creates enough of a sense of distance and disassociation for some of us to wonder in disbelief and dismay at just how people in the past so easily could have allowed their own civil liberties to be violated in the name of some phantom menace and allowed the unjust persecution of vulnerable community members. Here I have in mind examples such as the Chinese Exclusion Act, Operation Wetback, and the Red Scare, to name just a few. All of these are examples in which immigrants were scapegoated, and which can’t help but take me back to when I was a child and my parents would continuously summon the threat of *El Cucuy* in order to put me back in line.

As many of us have witnessed during these past few years, the threat of the immigrant *Cucuy* has been resurrected once again. This time *El Cucuy* comes to us in the form of the immigrant narco-terrorist. In its wake we have seen the enforcement duties of immigration shift from the Department of Justice (DOJ) to the anti-terrorist bureaucracy of the Department of Homeland Security (DHS); this shift has led to a dismantling of the Immigration and Naturalization Service (INS) and to the creation of the new Immigration and Customs Enforcement agency (ICE). The big difference, and why this change is important to note, is that the original mandate of INS was for it to function strictly as a policing agency. ICE, on the other hand, functions as an auxiliary in the War on Terror, and therefore functions more as a military force—a very important difference that has not been lost on those who have recently

¹ Jim Sensenbrenner is a Republican congressman from Wisconsin and is also known for having introduced the Patriot Act to Congress in October of 2001.

experienced or witnessed ICE raids. Relating this all back to my childhood fears, I can say that I no longer fear *La Migra*, but I do fear for those who now live under the threat of the new and improved *Robo-Migra*.

And while the use of the immigrant *Cucuy* has historically shown itself to be a success in concentrating more power into the hands of the federal government, it should not be overlooked that this move has also been very profitable. Besides the raw exploitation of immigrant labor in the fields, processing plants, kitchens, and domestic homes, undocumented immigration has been a boon for government contractors, such as Boeing, General Electric, Lockheed Martin, Blackwater, the Corrections Corporation of America, and Halliburton. These companies are not only making money off the wars in Iraq and Afghanistan, but have also benefited and will continue to benefit from federal projects that deal with the so-called curbing of undocumented immigration (e.g., building more fencing and walls along the border, supplying weapons and technology to ICE, etc.) and the deportation process (e.g., building and maintaining detention centers). To give just one example of the type of money involved, the Secure Border Initiative (SBI) is set to receive more than two billion dollars for a new high-tech fence to be built along the U.S./Mexico border.²

So while the rhetoric might have changed, I argue that what we see happening to immigrants today (i.e., being scapegoated as a *Cucuy*) is not unprecedented. It is unfortunate that in this “post” world we are still repeating the mistakes of the past, but I hope this is not indicative of how the future will turn out. The recent successes of the Immigrant Rights Movement give me great hope that it might just not be. The key is going to be whether the future of immigration reform takes into account the ethical concerns underlying the immigration debate, or whether future reformers find themselves falling back into the same old black/white binary and lust for profit and punishment. The stakes in this debate are too high for us to fail, as failure would come at a great cost of human suffering and would also, in the eyes of future generations, condemn us to a fate similar to that suffered by *La Llorona*. Our generation will come to be seen as nothing more than another set of wailing ghosts of the past, hoping that someone will hear our cries of regretful sorrow—sorrow over how we once again

² Homeland Security, *DHS Announces \$12.14 Billion for Border Security & Immigration Enforcement Efforts*, Jan. 31, 2008, http://www.dhs.gov/xnews/releases/pr_1201803940204.shtm.

allowed ourselves to sacrifice the most vulnerable members of our community to the fetishized idols of profit and power. Let us therefore today stop being afraid of *El Cucuy*, no matter what form it threatens to appear in, and start being courageous enough to listen to the wails of *La Llorona*—wails which for us symbolize the collective historical memory of America's treatment of immigrants.