

Documenting the Undocumented

Citizenship as a Tool of Political Oppression and Resistance

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Introduction

“When you become a journalist, you get a thing called a byline. So your name would be on the paper. So my naïve self thought, “If I can’t be here because I don’t have the right papers, well, what if my name was on the paper?” That was literally the only reason why I became a journalist, just so my name could exist somewhere so I could say that I’m really here.”¹

- Jose Antonio Vargas

The words on this page are an act of defiance, a testament to the grand irony that is the existence of the undocumented person in the United States of America. The undocumented person in America today lurks in the shadows of society.² He is invisible, disposable, undeserving. She seeks refuge, but many turn their back on her.

Documenting, bearing witness, reporting is so constitutional to our way our life that it became, in fact, the very first amendment. However, for the undocumented, documentation, or lack thereof, thrusts his entire political existence into a state of precarity. His political existence is thus an oxymoron. At once he is both without right and an object of total domination. In turn, his abject status unites his subjectivity into a manifestation of abjectivity. This degrades, dehumanizes, pushes him into the shadows, alienating him from his political, economic, and social relations. What’s left is not a man or woman or child, but an empty vessel readily available for exploitation, a corporeal reminder that trespasses against the state will not be forgiven. The undocumented are effectively the new second-class citizens. *This is our political intervention.*

¹ Eric Johnson, "Full Q&A: 'Dear America' Author Jose Antonio Vargas on Recode Decode," Vox, November 24, 2018, accessed April 1, 2019, <https://www.vox.com/2018/11/24/18109552/jose-antonio-vargas-dear-america-undocumented-immigrant-book-kara-swisher-recode-decode-podcast>.

² Sarah Freishtat, "'They're Throwing Us Back into the Shadows': Aurora Dreamers Advocate for Undocumented Immigrants," Aurora Beacon-News, January 29, 2018, accessed April 5, 2019, <https://www.chicagotribune.com/suburbs/aurora-beacon-news/news/ct-abn-aurora-daca-group-st-0129-20180129-story.html>.

Combining existent orientations of praxis such as assembly, the undercommons, weaponization of life, and abolition, I propose a new political intervention modeled specifically for the undocumented, a novel form of resistance that subverts civil society and the principles of democratic governance such as the First Amendment, university, and even the unalienable right to life to exact justice for this increasingly vulnerable political group.

In the first section of this paper, I provide a historical overview of citizenship and immigration in America. I track the changing modalities and definitions of citizenship since the founding era, through reconstruction, and up to the modern day. I conclude with the changes that occurred to the discourse of citizenship and immigration after the September 11th attacks.

In the second section, I position these historical developments in conversation with philosophical insights from Giorgio Agamben and Michel Foucault to create my own theory of the undocumented psyche that focuses on two central components: abjectivity and liminality.

In the third section, I reposition my model to critically engage with other theories, including theories of praxis and resistance. I conclude by discussing the variant modalities in political resistance, and while I do not endorse a specific regime of action, I conclude that the most practical one is at an intersection between praxes of assembly, the undercommons, abolition, and weaponization of life.

The Changing Modality of U.S. Citizenship and Immigration

An understanding of American citizenship would not be complete without first consulting the ancient civilizations who imparted on us the basic structure of citizenship.

Consider Aristotle's *Politics* who offers the most extensive ancient political theory on citizenship: "a citizen [is not] a citizen through residing in a place.... Someone who is eligible to

participate in deliberative and judicial office is a citizen.”³ In Aristotelian terms, a democratic citizen was someone who rules and is ruled, making citizenship conceptually inseparable from political governance.⁴ The liberty of the ancient Greeks was intrinsically dependent on this definition of citizenship. Citizens were expected to participate fully in the political community, and their private life was nonexistent. They made laws, ratified treaties, declared war, and judged in the courts. In turn, the survival of their political existence depended on the exclusionary dynamic of citizenship that consolidated their political power and ensured their sovereignty, and thus their personal liberty.⁵ This is where the civic-republican ideal originates, and its modern manifestation is the myriad of responsibilities one holds as a citizen—to vote, participate in public office, and enlist in the armed forces are among few examples.⁶

The Ancient Greek conceptualization of citizenship became untenable because its foundation was purely political. The rise of the Roman Empire and the imperial rule that generated from within gave rise to an entirely new conception of citizenship, one tied to relations of production and capital. Because participation in the Roman Assembly became increasingly meaningless as well as impractical for most people of the vast Empire, Roman citizenship became essentially a legal status comparable to modern nationality.⁷ It provided rights to legal protection, but no longer had any strong connection to certain practices of self-governance. This is where the citizen as Enlightened, liberal-individualist comes into full form. This molded a passive citizen

³ Aristotle, *Politics*, trans. C. D. C. Reeve (Indianapolis, IN: Hackett Publishing Company, 1998), 1275a5-6, 1275b18-19; see Martin et al. (2003).

⁴ Rogers Smith, "Modern Citizenship," *Handbook of Citizenship Studies* (2002): 105-116, London: SAGE Publications Ltd, doi: 10.4135/9781848608276.n6.

⁵ See Benjamin Constant, "The Liberty of the Ancients Compared with That of the Moderns," *Early Modern Texts*, April 2010, accessed April 13, 2019, <https://www.earlymoderntexts.com/assets/pdfs/constant1819.pdf>.

⁶ The active civic-republican is the tradition of the American primary and secondary education: allegiance to the flag, knowledge of American civic principles, basic history, and the promotion of political action.

⁷ J.G.A. Pocock, "The Ideal of Citizenship since Classical Times" in *Theorizing Citizenship*, ed. R.S. Beiner (Albany, NY: State University Press of New York, 1995).

whose claim to citizenship was equal protection under a rule of law framework; his liberty now depended on private pleasures in the conduct of public and private business.⁸

Classical political theory proved more consequential to the theories of statecraft of the early moderns who exploited the tension between these two modes of citizenship. I build off the arguments made by various scholars that “the great innovation of the early moderns was not in separating out these characteristics of active and private citizenship, but on the contrary in imagining a figure of the universal citizen – a figure within whom both sets of characteristics might be deployed in an uneasy tension.”⁹ I later theorize that this uneasy tension became a primary mode of governance in which sovereignty transitioned from a “classical language of politics to an early modern lexicon of *raison d’état*, in which the community based upon justice is replaced by rule based upon the fear of the sovereign.”¹⁰ This will prove crucial in understanding the evolution of the US state in its biopolitical and sovereign capacity, for the “exemplary modern opposition between active and passive modes of citizenship is a creation of modern political theory more than ancient politics.”¹¹

Citizenship in the US has never been uniform. I aim to provide a comprehensive historical understanding of the changing modalities of American citizenship. I divide this history into three parts: founding (1776-1864), reconstruction (1865-1965), and modern (1965-present). I first outline the trends and changes in immigration and citizenship up to 1965 to show that discourses on citizenship had been largely racialized to maintain a power structure that benefited white Americans and Europeans, while at the same time justifying its rejection of claims to citizenship

⁸ The passive, rugged individualist, coined by Herbert Hoover in 1928 who contrasted it against the soft despotism, paternalism, and totalitarianism of Europe, became a core principle of American citizenship. The liberal-individualist participated in the economy, paid his taxes, and enjoyed political and civil rights in his affairs.

⁹ Rogers Smith, “Handbook.” See also Viroli (1992) and Skinner (1998).

¹⁰ *Ibid.*

¹¹ *Ibid.*

by others under certain guises of national interest. Then, I connect the modern immigration system to this developing *raison d'état* and the rise of neoliberalism. Lastly, I explore the effect that September 11th, 2001 had on immigration and citizenship in terms of the state's biopolitical control and its enduring status as a state of exception.

Founding Era: Open Borders and Limited Citizenship

The founding era saw the establishment of the legal framework of the land, under which citizenship became sole jurisdiction of the state and naturalization of the federal government. The Declaration of the Independence declared that “all men are created equal,” yet the privileges and rights of citizenship were not extended to all.¹² The US Constitution granted Congress the power to “to establish an uniform Rule of Naturalization,” but it would not give a definition of citizenship until much later.¹³ As a result, citizenship in the founding era was restricted by states to property-owning, white men.

The adoption of the first Nationality Act in 1790 limited naturalization to whites. In 1795, a new Naturalization Act lengthened the time before immigrants could become citizens. Just three years later in 1798 would a Federalist Congress pass the Alien and Sedition Acts, the former of which made it more difficult for immigrants to become naturalized citizens and encouraged the detention and deportation of immigrants from enemy nations.¹⁴ Immigration control in the sense that it exists today was nonexistent, and it was not until 1819, with the Steerage Act, that a demographic account of immigrants was mandated by the government. The latter half of the

¹² Thomas Jefferson, et al, Copy of Declaration of Independence. July 4, 1776. Manuscript/Mixed Material. <https://www.loc.gov/item/mtjbib000159/>.

¹³ U.S. Const. art. I, § 8, cl. 4.

¹⁴ John R. Vile, ed. *American Immigration and Citizenship: A Documentary History* (Lanham, MD: Rowman & Littlefield Publishers, 2016), accessed May 1, 2019, ProQuest Ebook Central.

founding era encountered movements towards universal white male suffrage, with some retaining tax-paying qualifications, which consolidated and positioned political power against nonwhites, women, and poor whites.¹⁵ The claims to political representation were few.

The latter half of the era also saw an increase in internal migration as the country expanded westward into sovereign and indigenous lands. After the Louisiana Purchase in 1803 and the Mexican-American War in 1848, the US repatriated new citizens into the US from France and Mexico, respectively, while the Irish potato famine sent millions to the US.¹⁶ Citizenship during this time meant much more than voting rights. It also delineated the forms of political protections citizens could enjoy, including access to justice through courts. The 1857 Supreme Court decision in *Scott v. Sandford* ruled that blacks were not US citizens, and therefore was without standing to file a suit.¹⁷ Citizenship in the founding era faced an evolving landscape that required new tools for political and economic consolidation. With the eruption of the Civil War in 1861, that very landscape shattered.

Reconstruction: Changing Political and Economic Landscapes

Whereas the founding era created the Constitutional frameworks under which immigration and citizenship would function, the Reconstruction era radically changed these practices, establishing parts of the modern framework we see today. The Fourteenth Amendment defined

¹⁵ The election of 1840, for example, saw a voter turnout of 80.2%.

¹⁶ Dr. Karl Jacoby, Columbia University History Department, working project, May 2019: “Until 1912, New Mexico and Arizona remained territories and were governed by federally appointed officials instead of elected representatives out of concerns that the large ethnic Mexican population were incompatible with American democracy. The US’ efforts to extend claims of citizenship to ethnic Mexicans became entwined with a campaign of mass violence towards indigenous natives, and would later justify the military campaigns made against sovereign native nations and underscore the brutal dangers of being outside of the newly imposed US political and racial order.”

¹⁷ *Dred Scott v. Sandford*, 60 U.S. 393 (1856).

citizenship for the first time through birthright and naturalization.¹⁸ The Fifteenth Amendment saw, now universal and male, suffrage transition from a foundational political right to a core civil right.¹⁹ This means that the modality of citizenship had incorporated a civil element from a purely political framework. The civil element, central to the original tension, complicated efforts to consolidate political power. A rapidly industrializing and globalizing economy quickly necessitated the inflow of cheap labor, and racialized politics swiftly reorganized these powers to promote increasing internal and external control, as well as the panwhite migration movements of the early twentieth century.

Beginning in 1864 with the passage of the Act to Encourage Immigration, the first major piece of legislation to promote such an effort, more than ten thousand Chinese immigrated to complete the backbreaking work of laying tracks for the transcontinental railroad. However, in less than twenty years, “American opposition to extending [the freedom to immigrate] beyond the circle of white citizens and European emigrants proved extremely powerful,” and The Chinese Exclusion Act of 1882 was enacted.²⁰ Two years later, *Elk v. Wilkins* declared that Native Americans were exempt from the Fourteenth Amendment citizenship clause.²¹ By 1890, the US Census announced that the United States no longer had a frontier.²² By 1896, *Plessy v. Ferguson* had effectively legalized racial segregation, complicating equal protection claims under the new modality of citizenship.²³

¹⁸ U.S. Const. amend. XIV, §1: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

¹⁹ U.S. Const. amend. XV, §1: “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” It was not until the Civil Rights Act of 1964 that other forms of legalized discrimination, such as literacy tests to vote, were outlawed.

²⁰ Donna R. Gabaccia et al., *Freedom to Move: Immigration and Migration in U.S. History: People, Places, Politics: History in a Box* (New York, NY: Gilder Lehrman Institute for American History, 2012), 66.

²¹ *Elk v. Wilkins*, 112 U.S. 94 (1884).

²² Inspiring Frederick Jackson Turner’s “Frontier Thesis,” arguing that American Democracy was formed by the frontier.

²³ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

The beginning of the twentieth century saw a continuation of the racialized and politicized immigration practices that underscored the anxiety felt across American society. This era also sees the development of the national security state and stricter efforts to criminalize and bar immigrants from entering the country. The Immigration Acts of 1903 and 1907,²⁴ the Dillingham Commission of 1910,²⁵ the Immigration Act of 1917,²⁶ and the 1923 decision in *United States v. Thind*, which ruled that Indians could not be naturalized because they are not white, all point to a motive on the part of the US government in not only ensuring stable labor flows of “favorable” migrants, but also in regulating certain claims to political inclusion.²⁷ Vaishno Bagai was one who had his claim to American citizenship denied, and I will later engage with his political intervention in my theoretical discussion.²⁸ The enactment of the National Origins Act of 1924 established a quota-based system to reflect the nation’s existing racial makeup, and institutionalized the US Border Patrol. Japanese internment during the 1940s and “Operation Wetback” in the 1950s show the origins of the alarming state of exception—a state that functioned outside of a conventional procedural framework.²⁹

Modern Citizenship as a Tool of Biopolitics in the State of Exception

²⁴ These made certain classes of immigrants inadmissible due to fears of anarchism, following the assassination of President McKinley.

²⁵ The Commission presented a massive report to Congress, mostly discouraging more immigration, especially from southern Europe and East Asia.

²⁶ This Act imposed literacy tests.

²⁷ Women gained the right to vote in 1920 after the Nineteenth Amendment. By favorable, I mean immigrants from western Europe. *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923).

²⁸ Granted citizenship in 1921, Bagai, a successful businessman from India, was stripped of his citizenship following the Supreme Court decision. He later committed suicide in 1928 in protest, leaving a letter to the *San Francisco Examiner*: “I came to America thinking, dreaming and hoping to make this land my home.... Now what am I? What have I made of myself and my children? We cannot exercise our rights, we cannot leave this country. Humility and insults, who is responsible for all this? Myself and American government.” Vaishno Bagai, “Letter to the World from Suicide,” *San Francisco Examiner*, March 17, 1928, Library of Congress.

²⁹ “Operation Wetback” was designed to arrest and deport Mexican migrants who had been residing in the US without proper documentation after the Bracero Program of the 1950s, which granted temporary work visas, ended. See also Calavita (1992) and Massey, et. al (2002).

The modern immigration system began in 1965 with the adoption of the Immigration and Nationality Act. A system that had once allowed unskilled-labor flows from Mexico had now begun to favor the relatives of US citizens, as well as the wealthy and educated for an increasingly deindustrializing, service-based economy.³⁰ In 1980, a new provision of the 1965 law directed special attention to immigrants who were fleeing political or religious persecution, and by 1986, comprehensive immigration reform granted amnesty to four million undocumented immigrants, and coordinated new border security measures to prevent further illegal crossings. Ten years later, President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility of 1996, nicknamed “The Mexican Exclusionary Act,” further criminalizing immigrants without proper documentation. The rise in private migrant detention (what later becomes known as the private prison industrial complex) and foreign-based segregation in detention centers was not a coincidental development with the rise of neoliberalism of the Reagan and Clinton administrations.³¹ The Clinton law, arguably for private profit, made more people deportable and less people legalizable, creating the deportation machine that exists today.³² Modern claims to citizenship, unlike previous ones, were made illegitimate, illegal, and altogether, impossible. The creation of the undocumented immigrant is thus a fairly recent phenomenon.

September 11th, 2001 was a watershed moment for the US. Fresh fears of a nation under attack justified a resurgence in the old discourse on the powers of the federal government in the name of national security. On October 26, 2001, the PATRIOT Act gave sweeping powers to the

³⁰ Douglas S. Massey, Karen A. Pren, “Unintended consequences of US immigration policy: explaining the post-1965 surge from Latin America,” *Population and development review* 38, no. 1, 2012: 1-29. “In sum, illegal migration rose after 1965 not because there was a sudden surge in Mexican migration, but because the temporary labor program had been terminated and the number of permanent resident visas had been capped, leaving no legal way to accommodate the long-established flows.”

³¹ David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2011), 21, 33, 65: “Neoliberals are particularly assiduous in seeking the privatization of assets.”

³² Dara Lind, “The Disastrous, Forgotten 1996 Law That Created Today's Immigration Problem,” *Vox*, April 28, 2016, accessed May 5, 2019, <https://www.vox.com/2016/4/28/11515132/iirra-clinton-immigration>.

federal government in intercepting and obstructing acts of terrorism, including indefinite detentions and expedited deportations without due process.³³ By 2003, the historical arc is clearly evident with the abolition of the Immigration and Naturalization Service, formerly an agency of the Department of Justice, and the creation of the Department of Homeland Security (DHS) and its new agencies, the US Citizenship and Immigration Services, Immigration and Customs Enforcement (ICE), and Customs and Border Protection. No longer was immigration an issue of justice, but a problem of homeland security. The Real ID Act of 2005, along with other identification requirements of immigrants, has directly tied one's citizenship to his ability to produce documents, his papers, revolutionizing the state's ability to have complete control of its population.³⁴ Other efforts to achieve the same are evident in the state's regulation of driver's licenses, health insurance, education, employment, and other central tenets of ordinary, civil life.

The suspension of normal procedural protections for both citizens and noncitizens has created the state of exception in which we found ourselves today. The gridlock of Congress and the oversaturation of US immigration courts has left executive agencies like DHS and ICE with unprecedented powers over the lives of undocumented immigrants.³⁵ For example, just last year, in an effort to redefine the Fourteenth Amendment so that “anchor babies”—children born in the US to noncitizens—would not have an automatic claim to citizenship, President Trump said he

³³ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, 18 U.S.C. § 201-227 (2001).

³⁴ David Lyon, *Identifying Citizens: ID Cards as Surveillance* (Oxford: Polity Press, 2009), 23. See also Roberto Gonzales and Leo Chavez, “Awakening to a Nightmare: Abjectivity and Illegality in the Lives of Undocumented 1.5-Generation Latino Immigrants in the United States,” *Current Anthropology* 53, no. 3, June 2012: 262. “For those living in a condition of illegality, however, attempting to acquire such identification exposes them to government practices of control, surveillance, and punishment.”

³⁵ Catherine E. Shoichet, “The American Bar Association Says US Immigration Courts Are ‘on the Brink of Collapse,’” CNN, March 20, 2019, accessed April 5, 2019, <https://www.cnn.com/2019/03/20/politics/american-bar-association-immigration-court/index.html>.

could override the amendment with an executive order.³⁶ He cannot, in fact, do that, but this very declaration, new border control technologies, immigration enforcement tactics, and suspension of normal procedural rules reveal that the line between democracy and totalitarianism has been made, in fact, quite thin.³⁷

The discourse that inevitably developed since September 11th has oriented itself along the same anxieties that produced the immigration systems of the founding and reconstruction era, except only now the state has unprecedented tools in exercising total domination at the cost of the rule of law. The biopolitics of the state are now ubiquitous, all-encompassing, and infinite when it comes to controlling the lives of undocumented immigrants. Their claims to citizenship, similar to the immigration regimes of the past, have been radically criminalized, racialized, and exploited for profit. In maintaining control of their bodies, the state ostensibly imparts a technique of deterrence, but ironically produces its own insurgents.³⁸

Theoretical Discussions: Documenting the Undocumented through Abjectivity and Liminality

³⁶ Joel Rose, "FACT CHECK: 14th Amendment On Citizenship Cannot Be Overridden By Executive Order," NPR, October 30, 2018, accessed April 5, 2019, <https://www.npr.org/2018/10/30/662335612/legal-scholars-say-14th-amendment-doubt-trump-can-end-birthright-citizenship-wit>.

³⁷ The consequences of statelessness are all too familiar. See Hannah Arendt, *The Origins of Totalitarianism* (San Diego: Harcourt Brace Jovanovich, 1979), 287-290: "The nation-state, incapable of providing a law for those who had lost the protection of a national government, transferred the whole matter to the police. This was the first time the police in Western Europe had received authority to act on its own, to rule directly over people; in one sphere of public life it was no longer an instrument to carry out and enforce the law, but had become a ruling authority independent of government and ministries.... For the nation-state cannot exist once its principle of equality before the law has broken down. Without this legal quality.... The nation dissolves into an anarchic mass of over- and underprivileged individuals. Laws that are not equal for all revert to rights and privileges, something contradictory to the very nature of nation-states. The clearer the proof of their inability to treat stateless people as legal persons and the greater the extension of arbitrary rule by police decree, the more difficult it is for states to resist the temptation to deprive all citizens of legal status and rule them with an omnipotent police." For a discussion on master status as a border-control technology, see Roberto Gonzales and Edeline M. Burciaga, "Segmented Pathways of Illegality: Reconciling the Coexistence of Master and Auxiliary Statuses in the Experiences of 1.5-Generation Undocumented Young Adults," *Ethnicities* 18, no. 2 (April 2018): 178-91. doi:10.1177/1468796818767176.

³⁸ Bernard E. Harcourt, *The Counterrevolution: How Our Government Went to War against Its Own Citizens* (New York: Basic Books, 2018). "The counterinsurgency warfare paradigm has created a counterrevolution without revolution, a counterinsurgency without insurgency."

I theorize that the modern mode of citizenship that I described above still provides the tools needed to enact widespread change under the modern American democratic regime. Because the modality of citizenship now works in two extremes, on one side as a democratic tool for long-lasting political and social change, and on the other side as a sovereign tool for total domination, alliances and coalitions between citizens and the undocumented are essential for an effective political intervention. However, little is known about the undocumented subject, and literature concerning theories of the undocumented are scarce because, by definition, they are subjects without a political existence.³⁹ Some accounts are sociological and anthropological.⁴⁰ Others originate from the natural sciences.⁴¹ Economic theories can also be pertinent.⁴² Yet because the undocumented subject is elusive, hard to grasp and track, I utilize various accounts to build my own theory on the undocumented subject. I break down this model into two separate orders that define the psyche of the undocumented: (1) abjection and subjectivity and (2) liminality.

First, how does the undocumented person internalize his subjectivity? The framework of abjectivity, coined by scholar Sarah Willen from the separate notions of abjection and subjectivity, allows us to see how “Foucault’s notions of biopolitics and biopower, and Agamben’s ‘states of exception,’ frame abjectivity’s usefulness for understanding immigrant and racialized

³⁹ See Walter J. Nicholls, “Making Undocumented Immigrants into a Legitimate Political Subject: Theoretical Observations from the United States and France,” *Theory, Culture, and Society* 30, no. 3 (May 2013): 82-107, doi:10.1177/0263276412455953.

⁴⁰ See Gonzalez and Chavez, “Awakening.”

⁴¹ See Christopher Metchnikoff, Gregory Naughton, and Vyjeyanthi S. Periyakoil, “End-of-Life Care for Unauthorized Immigrants in the U.S.,” *Journal of Pain and Symptom Management* 55, no. 5 (May 2018): doi:10.1016/j.jpainsymman.2018.01.012; see also Messias Hilfinger, et al., “Undocumented migration in the United States: An overview of historical and current policy contexts,” *Nursing Outlook* 63, no. 1 (February 2015): 60-67, <http://dx.doi.org/10.1016/j.outlook.2014.10.006>.

⁴² See Ruth Gomberg-Munoz and Laura Nussbaum-Barberena, “Is Immigration Policy Labor Policy?: Immigration Enforcement, Undocumented Workers, and the State,” *Human Organization* 70, no.4 (January 2011): 366-375. See also David Stoll, “Comprehensive Immigration Reform and US Labor Markets: Dilemmas for Progressive Labor,” *New Labor Forum* 24, no. 1 (2015): 76-85, <http://www.jstor.org/stable/24718573>.

populations.”⁴³ For undocumented young people, who develop their abjectivity in tandem with their maturation as adolescents, this condition ultimately commands their entire personhood.⁴⁴ Older undocumented immigrants, who have likely developed a stronger sense of subjectivity from their home country, are unlikely to face the experiences that their younger counterparts do. Abjectivity thus underscores the way the state uses its biopolitical power not only in an active sense, but also passively. The inability of Congress to create a legislative fix to their status, or lack thereof, pushes the undocumented further into the shadows of abjection.⁴⁵ The effect of this on their subject status, ironically, produces acts of citizenship and political change. I theorize that the liminal space out of which the abjectivity of the undocumented psyche arises allows for the breaking of rules until they reach something beyond rules.⁴⁶

Undocumented immigrants exist in a political and economic limbo. In this condition, they are suspended, objects of alien forces, having little to no autonomy over the decisions that direct their lives. Scholars have dedicated special attention to the issue of liminality which predicates the relations undocumented immigrants have with political and civil society.⁴⁷ Liminality “refers to

⁴³ See Gonzalez and Chavez, “Awakening,” 256. See also Leo R. Chavez (2008) who “examined how the often vitriolic discourse about the children of undocumented immigrants in the United States, including the US- born (“anchor babies”), characterized them as abject, as unwanted and discardable.” See also Armando García (2019).

⁴⁴ *Ibid.*, 256, 267. “The practices of the biopolitics of citizenship and governmentality—surveillance, immigration documents, employment forms, birth certificates, tax forms, drivers’ licenses, credit card applications, bank accounts, medical insurance, and mandatory car insurance.... are central to the power of nation-states to construct identities and produce, in a perverse way, the “sweet sorrow” of a sense of belonging (to borrow from Shakespeare). Thus, abjectivity underscores the link between the mechanics of biopower and the lived experiences of those most vulnerable to the exercise of power.... The subjective experience of an abject status as related to illegality intersects harshly with issues of the economy, national policy, and power.”

⁴⁵ *Ibid.*, 258. “The constant vacillation between hope and despair engendered by the possibility of immigration reform and the DREAM Act is a major disciplinary practice that informs the subject status of undocumented young people.”

⁴⁶ *Ibid.*, 259. “Though lacking power, undocumented immigrants are not powerless. They have, as Saskia Sassen (2003) put it, a political *presence*. This becomes evident when we examine the political activism, what Isin and Nielsen (2008) call ‘acts of citizenship,’ of the young people examined here (Getrich 2008). Rather than falling into completely immobilizing despair and hopelessness, they often engage in personal acts of resistance (Butler 1997), which range from making small steps to improve their lives through education and training to political activism aimed at immigration reforms to provide a path to citizenship for undocumented immigrants.

⁴⁷ See Kara Cebulko, “Documented, Undocumented, and Liminality Legal: Legal Status During the Transition to Adulthood for 1.5-Generation Brazilian Immigrants.” *Sociological Quarterly* 55, no. 1 (2014): 143-67, doi:10.1111/tsq.12045.

the ambiguous space individuals occupy as they move from one key point in their lives to the next,” such as when people transition from society to another or the mere stage of adolescence.⁴⁸ The transition to illegality and into this liminal space, as undocumented young people come to realize their status through their inability to participate in certain rites of passage, such as obtaining a driver's license, “becomes a significant part of everyday life in adulthood. Adult freedoms and responsibilities collide with diminished legal options, resulting in lives stranded on the threshold to adulthood.”⁴⁹ This limbo is analogous to the shadows, a space in which the undocumented hide, pass, and come out only as a form of political intervention. I theorize that limbo, as it is constructed by the US state, paradoxically acts as an all-constraining, carceral-like condition while at the same time granting the liberation the undocumented seeks. I will explore this liberation later in the section devoted to modes of political resistance.

I argue that the liminal space to which political and civil life has relegated the undocumented person is analogous to the space in which the government conducts its practices of biopolitics in the state of exception.⁵⁰ Here, I build off my historical research to combine theoretical approaches to Andreas Busch’s conclusion “that the national security state has severely impacted on civil rights and the working of the democratic political systems, that its resource requirements have risen substantially, and that problems of controlling executive action in this area have become quite evident.”⁵¹ Giorgio Agamben, who theorized on the state exception, wrote, “If

⁴⁸ Roberto G. Gonzales, *Lives in Limbo: Undocumented and Coming of Age in America* (Oakland: University of California Press, 2016), 100.

⁴⁹ *Ibid.*, 95.

⁵⁰ Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press, 2005), 1: “Not only is such a theory deemed illegitimate by those authors who affirm that the state of necessity, on which the exception is founded, cannot have a juridical form, but it is difficult even to arrive at a definition of the term given its position at the limit between politics and law.” See also “Paradox of Sovereignty” in Giorgio Agamben, *Homo Sacer*, (Stanford: Stanford University Press, 1998), accessed May 2, 2019, https://soth.alexanderstreet.com/cgi-bin/SOTH/hub.py?type=document_details&browse=all&sourceid=S10023905&sortorder=docid, 15-29.

⁵¹ Stephan Leibfried et al., “The Changing Architecture of the National Security State,” *The Oxford Handbook of Transformations of the State*, June 2015, accessed May 2, 2019, doi:10.1093/oxfordhb/9780199691586.013.29.

the law employs the exception—that is the suspension of law itself—as its original means of referring to and encompassing life, then a theory of the state of exception is the preliminary condition for any definition of the relation that binds and, at the same time, abandons the living being to law.”⁵² The state of exception thus functions in this space for the same reason that the undocumented person exists in his own liminal space—to be a within and without, creating new possibilities for both domination and liberation. “The voluntary creation of a permanent state of emergency has become one of the essential practices of contemporary states, including so-called democratic ones,” argues Agamben. In this sense, the tools of the modern American democratic regime that offer great political and civil change are also the very ones with which the state operates its biopolitical control.⁵³

The theory of the undocumented person that I have attempted to model allows us to better understand the ways in which they engage in acts of political resistance within the limits of their status. As I have described above, abjectivity underscores the external mechanisms that shape the way undocumented people navigate political and economic circles, as well as civil life. Not only does abjectivity have the potential of driving the undocumented further into abjection, but it also can provide the possibility and inspiration of a new order. I will discuss these possibilities in the next section.

The condition of liminality, too, creates a framework in which the undocumented can resist notions of belonging. “Passing,” a long documented phenomenon in sociology, is critical to this

⁵² Agamben, “State of Exception,” 2. “In this sense, modern totalitarianism can be defined as the establishment, by means of the state of exception, of a legal civil war that allows for the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system.”

⁵³ *Ibid.*, 3, 4, 7. “Neither prisoners nor persons accused, but simply ‘detainees,’ they are the object of a pure de facto rule, of a detention that is indefinite not only in the temporal sense but in its very nature as well, since it is entirely removed from the law and from judicial oversight.... One of the essential characteristics of the state of exception—the provisional abolition of the distinction between legislative, executive, and judicial powers—here shows its tendency to become a lasting practice of government.”

framework, and highlights the ways in which undocumented people can exist within and without certain spaces, sometimes at their will. This grants the undocumented a form of power in their associations and pursuit of self-actualization. While these theories can provide invaluable insights into the lives of the undocumented, I aim to devote more attention to the forms of resistance that the undocumented practice while in these conditions of abjectivity and liminality.

Modes of Political Resistance: Assembly, Undercommons, Abolition, and Weaponization of Life

The question of political intervention by undocumented immigrants is an ostensibly contradictory one. If the undocumented hold no political existence, what is their claim to intervention. While they have no political existence, as Saskia Sassen put it, they have a political presence, and it is this presence that challenges the democratic regime that operates the tools for both their domination and their liberation.⁵⁴ Some have devoted themselves to the democratic principle of assembly in an attempt to reframe discourses on citizenship through anti-deportation activism.⁵⁵ Others have gone to university, engaged critically with the world of ideas, and, in doing so, have gained social and economic mobility to create other forms of long-lasting change. In situations of despair, many have also chosen to weaponize their lives as a tool against biosovereignty, participating in hunger strikes to challenge unfair and inhumane detention.⁵⁶ For

⁵⁴ Saskia Sassen, "The repositioning of citizenship: emergent subjects and spaces for politics," *New Centennial Review* 3, no. 2 (2003): 41–66.

⁵⁵ See Tania A. Unzueta Carrasco and Hinda Seif, "Disrupting the Dream: Undocumented Youth Reframe Citizenship and Deportability through Anti-Deportation Activism," *Latino Studies* 12, no. 2 (Summer 2014): 279, doi:<http://dx.doi.org/10.1057/lst.2014.21>.

<http://ezproxy.cul.columbia.edu/login?url=https://search.proquest.com/docview/1541922761?accountid=10226>. See also Maurice Stierl, "No One is Illegal! Resistance and the Politics of Discomfort," *Globalizations* 9, no. 3 (2012): 425–38, doi:10.1080/14747731.2012.680738. See also Helge Schwietz, "Transformations of the undocumented youth movement and radical egalitarian citizenship," *Citizenship Studies* 20, no. 5 (2016): 610–628, doi: 10.1080/13621025.2016.1182680.

⁵⁶ Michael Isaac Stein, "Detained Immigrants Organize Hunger Strikes," NPR, April 14, 2019, accessed April 22, 2019, <https://www.npr.org/2019/04/14/713195737/detained-immigrants-organize-hunger-strikes>.

a few, abolition is the only way to move forward.⁵⁷ In this section, I aim to explore these various modalities of political praxis with regard to the undocumented condition.

In *Notes Toward a Performative Theory of Assembly*, Judith Butler, under a framework of gender politics and the right to appear, concerns herself with the issue of precarity and how it “might operate, or is operating, as a site of alliance among groups of people who do not otherwise find much in common and between whom there is sometimes even suspicion and antagonism.”⁵⁸ She continues,

‘Precarity’ designates that politically induced condition in which certain populations suffer from failing social and economic networks of support more than others.... Precarity also characterizes that politically induced condition of maximized vulnerability and exposure for populations exposed to arbitrary state violence, to street or domestic violence, to other forms not enacted by states but for which the judicial instruments of states fail to provide sufficient protection or redress.⁵⁹

In this sense, precarity defines the undocumented condition, and its connection to a theory of gender performativity makes it an intervention of valuable political interest.⁶⁰ The liminal status of the undocumented allow them to “pass,” while at times, like queer folk, “come out” out of their own volition or are thrust out of that closet by force. This structural analogy between gender and undocumented performativity underscores the ways in which civil society can utilize alliances, coalitions, and assemblies to enact long-term political change.⁶¹ Calls to assembly, nonviolent

⁵⁷ Yael Webber, “I was arrested for protesting. ‘Abolish ICE’ may sound extreme or radical. It’s not,” NJ.com, July 17, 2018, accessed April 22, 2019, https://www.nj.com/opinion/2018/07/abolish_ice_may_sound_extreme_or_radical_its_not_opinion.html.

⁵⁸ Judith Butler, *Notes toward a Performative Theory of Assembly* (Cambridge, MA: Harvard University Press, 2018), 27.

⁵⁹ *Ibid.*, 33-34.

⁶⁰ Consider when Ellen DeGeneres “came out” on national television as lesbian. Positioning herself in a state of precarity, DeGeneres changed the normative (i.e. cultural) conversation around the nation. Like queer folk, the undocumented also face the stigma and challenge of “coming out.”

⁶¹ A valuable example of this would be the marches, protests, and boycotts which took place over two months in 2006 protesting an immigration bill that would classify the undocumented as felons. Another one would be “A Day without Immigrants” which happened on February 16, 2017.

action, and civil disobedience create a unique dynamic through which citizens can become accomplices, using the tools of a democratic regime to call attention to and subvert injustices.⁶² Because political rights have proven to be ineffective in protecting the undocumented, civil society can prove to be an effective backstop to government injustices.

Assembly as political praxis thus orients the tools of a democratic regime, namely the First Amendment, against the government itself. Another intervention that achieves this is through the university. Civil society at large, including private universities and colleges, have made it possible for many undocumented youth to gain higher education. *The Undercommons: Fugitive Planning and Black Study* by Stefano Harney and Fred Moten is one such conceptualization of political praxis, one whose very practice gives form to this project. The authors call on us to “abuse [the university’s] hospitality, to spite its mission, to join its refugee colony, its gypsy encampment, to be in but not of—this is the path of the subversive intellectual in the modern university.”⁶³ Once again, the undocumented adolescent liberates himself through the tools of civil society by participating in and subverting an underground space within the university, one that is also analogous to the liminality in which he has found himself his entire life. This facilitates his orientation to this form of political praxis; his life experiences tailor him to this very project of fugitive and criminal enlightenment.⁶⁴ What remains is

the beyond of teaching [which really is about] not finishing, not passing, not completing; it’s about allowing subjectivity to be unlawfully overcome by others, a radical passion and passivity such that one becomes unfit for subjection, because one does not possess the kind of agency that can hold the regulatory forces of

⁶² Notice that I prefer to use the word ‘accomplices’ than ‘allies.’ Citizens can utilize their distinctive privileges and claims to political rights, such as by risking arrest, to protect undocumented immigrants.

⁶³ Stefano Harney and Fred Moten, *The Undercommons: Fugitive Planning & Black Study* (Wivenhoe: Minor Compositions, 2013), 26.

⁶⁴ *Ibid.*, 28: “To enter this space is to inhabit the ruptural and enraptured disclosure of the commons that fugitive enlightenment enacts, the criminal, matricidal, queer, in the cistern, on the stroll of the stolen life, the life stolen by enlightenment and stolen back, where the commons give refuge, where the refuge gives commons.”

subjecthood, and one cannot initiate the auto-interpellative torque that biopower subjection requires and rewards.⁶⁵

However, while these interventions prove useful in subverting tools of civil life and a democratic regime, other interventions prove more salient to our historical and theoretical discussions about biopolitics and the state of exception. Here, I utilize Banu Bargu's "holistic understanding of the power regime in which sovereignty, biopolitics, and resistance are constitutively and irreducibly entangled with one another," in her book *Starve and Immolate: The Politics of Human Weapons*, to draw a connection to the practice of weaponizing life in the context of the undocumented condition.⁶⁶ Bargu argues that "biosovereignty is the novel amalgamation of sovereign power with the forces of discipline and security—a conjunction that marks the dominant characteristic of the contemporary power regime."⁶⁷ While Bargu studies the modality of resistance of political prisoners in Turkey, this case study and her theoretical groundwork provide great overlap with the historical and theoretical discussions I have already made concerning undocumented immigrants. Not only do the undocumented weaponize their lives through death-fasts, hunger strikes, and suicide⁶⁸ to protest unlawful immigration enforcement and detention tactics, but they also choose to put their lives and future at risks in other ways that might put them at risk of death. One such instance, I theorize, is the act of risking deportation as an act of political change. This transforms the body from a site of resistance to a site of insurgency by which deportation acts as a counterproduct to the state's control over life. Even the acts of desperate

⁶⁵ *Ibid.*

⁶⁶ Banu Bargu, *Starve and Immolate: The Politics of Human Weapons* (New York: Columbia University Press, 2014), 83.

⁶⁷ *Ibid.*, 84. "The politicization of life, both at the individual and aggregate levels, is both the modus operandi and the boundary that marks the limits of its operation. In biosovereignty, life is the object and objective of power; it is the supreme value of the system, even though the control and government of life is undergirded and maintained by sovereign power of life, exercised in the form of the power to kill.... As such, biosovereignty revolves around and legitimates itself through a highly complex discourse on life and death; its sanctity, inviolability, sacredness, security, purity, health, and quality, on the one hand, and its dispensability, violability, impurity, and dangerousness, on the other."

⁶⁸ Recall the story of Vaishno Bagai in note 26.

migrants to cross the border, oftentimes risking exploitation, abuse, and death for the future of their children, complicates the state's biosovereignty and its ability to regulate and control life. These acts of resistance by undocumented immigrants are valuable, tangible, and worthy of critical study.

Conclusion

In this paper, I first provided an in-depth historical grounding of the changing modalities in American citizenship and immigration to show how the modern American state often utilized citizenship—and its political and civil guarantees—as tools for the consolidation and monopolization of power under the veil of national security. I connected these developments to the post-September 11th response which evolved, as Agamben argued, into the state of exception. Next, I underpinned these historical developments to various theoretical discussions, ultimately modeling my own theory of the undocumented to notions of abjectivity and liminality. Finally, I connected these notions back to the dialogue between state and subject, exploring several modes of resistance. I conclude now by promoting an interplay between these several modes of resistance. My aim is not to endorse any specific mode of resistance, but to critically engage with them in order to create new normative discussions on best practices. While this very project can be seen as undertaking the intervention of the undercommons, I believe the most practical course of action is at an intersection between these various modes: abolishing ICE, creating coalitions and alliances in support of universal amnesty, and changing the legal frameworks of the immigration system and immigration law to better reflect procedural and substantive ideals.

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