Law & Society REVIEW

Conceptualizing Semi-Legality in Migration Research

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What is semi-legality, and why does it offer a viable alternative to the legality–illegality binary divide? Semi-legality, as a heuristic device, is useful to frame the various "in-between" statuses and not resorting to illegality every time ambiguities arise as this casts the net of potential fraud far too wide. It could be viewed as a multidimensional space where migrants' formal relationships with the state interact with their various forms of agency toward the law. As a sensitizing theoretical perspective, it helps to explain why many neoliberal regimes, which claim that law and order are the main features distinguishing them from others, actually engage in perpetuating the legally ambiguous modes of incorporation. Delineating the conditions of semi-legality, I use data from 360 qualitative interviews with migrants in four European countries. I discuss: (1) "incomplete" responses to regularization programs (amnesties) – de facto fulfilling the legalization conditions, yet facing barriers to formally (de jure) corroborate this; (2) balancing between the temporality of residence in various EU countries—under-staying in some and overstaying in others; and (3) the nexus with employment—where migrants' residence in a country is lawful, but their work exceeds the restrictions permitted by their visas.

> [P]articular categories and assumptions, generally taken for granted in the law, may limit the possibilities of those whose lives are shaped by the law. Progressive struggle for social change . . . comes in part through resistance and transformation of seemingly taken-for-granted categories and terms. Bryant G. Garth & Austin Sarat (1998)

The most common way to define "illegal" or irregular migration is against the benchmark of migration law. A person who contravenes the law is ascribed an "illegal" or irregular status. This

I would like to express my deepest gratitude to Oliver Bakewell for his helpful comments on the earlier draft of this article. I would also like to thank the three anonymous reviewers for their very useful, sharp and rigorous comments and suggestions. Financial support from NORFACE research program on Migration in Europe—Social, Economic, Cultural, and Policy Dynamics is acknowledged.

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https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press

"method" seems dubious for at least two reasons. First, according to classical jurisprudence a person cannot be illegal. Acts are illegal. For example, driving in contravention of the Highway Code does not produce illegal drivers, but rather counts as illegal driving (Clayton 2010; Triandafyllidou 2010: 2–3). Second, the category of "illegality," as used analytically with reference to migrants, has recently become dangerously broad. Unauthorized, clandestine entry or overstaying one's leave to remain (Baldwin-Edwards 2008) is put under the same umbrella as much more legally ambiguous situations.

The category "illegal" or "irregular" is often stretched to include those who intend to make an asylum claim, but have not yet done so. Dauvergne (2008) argues convincingly that although refugees are not to be punished for extra-legal entry, if their asylum claim gets rejected and an appeal is launched, they find themselves in a legal limbo. Another example of the stretching of the "illegal" label is that in the majority of legal regimes it is acceptable to have legal permission to remain ("leave to remain"), but with restrictions on work rights; this is particularly common with some types of temporary residence permits such as student or tourist visas. Those working outside their visa restrictions therefore form another rather ambiguous category—like students working beyond the permitted 20 hours a week, or tourists engaging in paid employment (Ruhs & Anderson 2010a): "thus for 20 hours a day [*sic*] they are perfectly legal immigrants but for the remaining 3 hours they are clandestine immigrant workers" (Düvell 2008: 488). The Eastern Europeans, whose countries joined the European Union (EU) in 2004 and 2007 and migrated to one of the "old" EU member states, shared the rather ambiguous legal status for several years during the transition period. They were EU citizens with the right to enter and reside in another member state, but without (full) access to the labor market. This legal incoherence extended to over 73 million EU citizens in 2004, and by 2007 covered an additional 29 million.[1] For lack of a better term, legal scholars using the classic binary categories saw those migrants as legal residents, but illegal workers (Currie 2009; Triandafyllidou 2010: 4). Suffice to say, many of those "illegal" workers received contracts, paid taxes, and duly cleared their national insurance contributions.

The academic literature throws up many more such categories: in-betweens (Schuck 1998); mixed status households (Chavez 1998;

[1] Data according to EuroStat, http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database accessed on January 24, 2012. The restrictions for countries that joined the EU in 2004 expired on May 1, 2011. For Bulgarian and Romanian citizens they are still in place. The final date for lifting of the restrictions is January 1, 2014.

https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press

Ngai 2004); liminal migrants (Menjívar 2006); learning to be illegal (Gonzales 2011); deportees with unrecognized legal claims (De Genova and Peutz 2010); semi-compliant (Ruhs & Anderson 2010a); legally illegal (Rigo 2011); civically stratified (Morris 2002); precarious (Goldring, Berinstein, et al. 2009; Goldring & Landolt 2011); quasi-legal (Düvell 2008); a-legal (Lindahl 2010); or semi-legal (He 2005; Kubal 2009, 2012; Rytter 2012). The employment of these categories, however, is fragmented and they were developed largely in isolation from one another, somewhere on the outskirts of the mainstream migration illegality theoretical literature (Bacon 2008; Baldwin-Edwards 2008; Bloch, Sigona, & Zetter 2011; Cvajner & Sciortino 2010; Dauvergne 2008; de Genova 2002, 2004; Donato & Armenta 2011; Espenshade 1995; Portes 1978; Willen 2007).

The pursuit and conceptualization of semi-legality as a viable alternative to the highly unsatisfactory binary opposition between legality and illegality is still missing. This article attempts to make a first step toward filling this gap. I begin by discussing the theoretical limits to illegality with reference to migrants—especially those who are deemed to stand outside the state's legal system—demonstrating that the question of legality/illegality is never black and white, but woven with different shades of gray: this is the "in-between" statuses of semi-legality. In the second part of the article I focus on semi-legality to explain the complex and nuanced situation of many migrants trapped in legal ambiguity that is not only tolerated, but somewhat fuelled in many neoliberal migration regimes. Finally, in line with the tradition of sociolegal empirical research, I give voice to those whose "lives are shaped by law" (Garth & Sarat 1998), utilizing the data stemming from 360 qualitative interviews with international migrants in four European countries.

Methodology

This article is based on fieldwork among Ukrainian, Moroccan and Brazilian migrants in one or more locations across four European destination countries. The Netherlands and the United Kingdom were selected as representative of those receiving countries in Europe with established immigration histories and (recently) rather exclusionary migration regimes (Apap 2002; Engbersen et al. 2011; Ruhs & Anderson 2010b; Tom 2006). Norway and Portugal, on the other hand, have only recently started attracting relatively stable migration flows and were generally thought of as more open: Portugal for example had five migration

https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press

regularization programs between 1992 and 2004 (Fonseca 2000, 2001, 2004; Horst, Carling, & Ezzati 2010).

The data collection was conducted under the auspices of the THEMIS project (Theorizing the Evolution of European Migration Systems). THEMIS, focusing on migration to Europe from three origin countries—Ukraine, Morocco, and Brazil—aimed to explain the divergent migration dynamics and contribute to bridging the theories on initiation and continuation of migration (Bakewell, de Haas, & Kubal 2012). The focus on Ukrainians, Moroccans and Brazilians, with whom the material presented in this article has been gathered, was therefore dictated by the rationale of the project's research questions: to capture diversity of migration patterns. While Moroccans are by far the largest minority group in the Netherlands, significantly expanding over the last three decades, in Norway they form a very small group with less than 5,000 people. Similarly, Ukrainians have become the fastest-growing minority in Portugal in the early 2000s, posing a challenge to the strength of colonial ties and the steady growth of the traditional migration from Brazil.

This "random" selection of migrant groups also enabled me to respond to Coutin (2000) and others' (De Genova 2002; Gonzales 2011; Ngai 2004; Willen 2007) call to focus the research on migrants' relationship with the law (qua socio-political condition), without predetermining the specific groups in focus (as in research on undocumented migrants qua "illegal aliens," de Genova 2002). This allowed me to engage with the ethnography of the legal process rather than of a particular group (Coutin 2000: 23). In doing so, I turned away from studying unauthorized migrants to a more focused examination of (and ultimately a challenge to) the mechanisms that produce and sustain what many scholars term "migrant illegality"—as part of the politics of law, which involves controls over definitions and categories. My conceptualization of semi-legality is therefore a resistance against, alternative to, and transformation of seemingly taken-for-granted categories and terms (Garth & Sarat 1998).

The differentiated migration dynamics and the varied size of migrant populations inevitably resulted in certain ethical dilemmas. As in selecting our interviewees, we did not discriminate on the basis of one's legal status, this raised ethical concerns over anonymity particularly in destinations with small migrant populations. Analyzing the data from interviews with Ukrainians with ambiguous legal status in Norway was therefore much more challenging than in Portugal because of the numerical vulnerability of our respondents and the potential risks of identification. The data have therefore been heavily anonymized (including changes to certain facts, e.g., transit countries, occupation), which posed additional chal-

https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press

lenges for the comparative analysis. I discuss material resulting from 8 months of data collection, and stemming from 360 in-depth interviews with migrants, representatives of migrant organizations and key stakeholders, as well as a literature study. We relied on snowball sampling with strategically placed individuals from "different walks of life" so as to avoid staying within the bounds of one network only (e.g., highly skilled migrants, low-skilled, those with short migration experience, with long migration experience, with residence status, with ambiguous legal status). Each interview lasted between 1.0 and 2.5 hours. They were conducted in the language of their country of origin (Portuguese, Arabic Moroccan dialect, Russian, and Ukrainian), and were then transcribed and translated into English. The material was coded and managed using NVivo software (v 7.0, QSR International). In the empirical part of the article, I particularly draw on the section of the interviews relating to migrants' relationship with the legal system of the host country, their reflections on their legal status, its changes, knowledge of and responses toward legalization programs, and the role of migrant networks in their sociolegal integration (Kubal 2012).[2]

Theoretical Limitations to Illegality

Applying the most common method of defining irregular, illegal migration—with reference to migration law—all the examples of the rather ambiguous statuses presented in the introduction could, at face value, be termed as "illegal." There is however something highly unsatisfactory and disturbing about such crude division. I discuss two sources of such uneasiness: one conceptual (referring to illegality as a sociolegal construct) and one analytical (referring to illegality as an investigative category).

Nuancing the Concept of Illegality

Illegality has been conceptualized in many different ways by various migration scholars (Baldwin-Edwards 2008; Cvajner & Sciortino 2010; de Genova 2002; Donato & Armenta 2011; Düvell 2008; Espenshade 1995; Guild 2004; Portes 1978; Triandafyllidou 2010), which was often to its advantage—expanding the semantic borders of the term—but quite often also at the cost of its conceptual clarity.

[2] The intensity of these codes varied in the overall sample of 360 interviews. The questions of "illegality" were prominent in the sample 187 interviews, in 218 interviews I found helpful information on paperwork, formalities, legalization; 331 were dealing in-depth with the issues of legal status and its sociolegal context.

https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press

The law usually delineates who is "legal," leaving "the rest" as *potentially* illegal (Guild 2004: 3, my emphasis, cf. Couper and Santamaria 1984). As a result, the definitions of illegality, as they often appear in use, border on tautology. For example, Düvell (2008)—substituting illegal migration with his preferred term "clandestine migration"—then defines it in self-referential fashion by "clandestine exit, journey and entry, clandestine residence and clandestine employment" (Düvell 2008: 486). Other conceptualizations, in a more rigid manner, see formal illegality as "the product of immigration laws" (de Genova 2002: 439). However, illegality is not static: with or without formal changes in the law, people may move between different statuses with varying degrees of agency and expedience (Anderson & Rogaly 2005; Jordan & Düvell 2002). Cvajner and Sciortino observe that "irregularity is a status that may be both attained and left behind in different ways" (2010: 214) and as such, they argue, undocumented migration can take a number of different paths. Because it is a fluid and flexible status, and its assertion quite often pertains to the discretion of a law enforcement or immigration officer (Guild 2004), it begs the following question: how exactly does the law articulate the categories of differentiation that constitute individuals?

This question remains unanswered. In fact many scholars contribute to increasing the conceptual heterogeneity of the term, observing that:

> Bogus asylum-seekers, economic refugees or transit migration, became codes for illegal migration . . . the concept often overlaps with other controversial forms and practices of migration such as human smuggling, human trafficking, but also with the flow of refugees. (Düvell 2008: 484)

Further complications arise from identifying within the concept of illegality a plethora of conditions such as "illegally entering but residing legally," "illegally entering, illegally residing but in legal employment," "legally entering, legally residing but in illegal employment" (Düvell 2008: 488; Triandafyllidou 2010)—to name just a few. By adding new variables depending on accustomed discursive practices, political opportunity structures, or a researcher's definition of the subject, the concept "illegal migration" is in danger of becoming a sponge that soaks up every, even mildly aberrant aspect of the migration and law nexus relevant to the development of "unwanted" migratory movements, paying little or no attention to the legal ambiguities and nuances. Its usefulness becomes particularly challenged when confronted with the borderline, liminal cases, as I demonstrate in the second part of the article. Semantically, I am therefore calling for decolonization of migration discourse from illegality, when describing the not entirely compla-

https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press

cent responses to immigration regulations. My critique of illegality as heterogonous and conceptually unclear—thereby running the risk of focusing on people rather than specific acts—has exactly this role. Illegality, used flexibly, with stigmatizing power (as in *Illegal people* (Bacon 2008) or *Illegal Immigrants* [Sadiq 2008]) led to a witch-hunt for undocumented migrants, increase in deportations, and significant disruption of livelihoods (cf. Bloch, Sigona, & Zetter 2011; Hagan, Castro, et al. 2010; Hagan, Eschbach, et al. 2008; Portes 2007; Rodríguez & Hagan 2004; Yngvesson & Coutin 2006).

It does not mean however, that the conceptual problems around "illegality" have been left unattended or have not inspired a deeper reflection (cf. Guild 2004). De Genova (2002) in his theoretical exposition on illegality and deportability in the everyday life of migrants explains how:

> The term undocumented will be consistently deployed in place of the category "illegal" as well as other, less obnoxious but not less problematic proxies for it, such as "extra-legal," "unauthorized," "irregular," or "clandestine." Throughout the ensuing text, I deploy quotes in order to denaturalize the reification of this distinction wherever the term "illegality" appears, as well as wherever the terms "legal" or "illegal" modify migration or migrants. (De Genova 2002: 420)

This however offers a half-baked solution, which does not solve the conceptual problems of plurality of meanings. Surely, the debate should not be down to legal taxonomies, labels or nomenclatures pertaining to illegality, as much as closer scrutiny of the concept itself. The choice between calling migrants "illegal" or "undocumented" is of secondary importance and will not resolve—on the contrary it is in danger of clouding—the actual trouble with this category. Namely that "illegality" in migration (and its derivative, "less-obnoxious" categories) is used far too often and without proper questioning. They are applied far too easily, while they in fact denote many different legal statuses. I argue that resorting to illegality every time when ambiguities arise casts the net of potential fraud too wide. It too easily imputes all action that fails to conform to immigration rules to deception or criminal intent, even where such behavior may be seen as perfectly reasonable by many. (As a result, there are various examples of resistance against the state's attempts to enforce its migration policies, especially when it comes to removals and deportations.) While there is widespread concern about immigration and the abuse of immigration laws, when it comes to individual cases, the assumption of "illegality" and its conceptual operation is often seen as deeply flawed as it fails to

https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press

recognize and respect the different circumstances of the individuals concerned.

Reliance on such a heterogeneous and internally conflicting conceptualization of illegality in migration demonstrates its inherent problem: it promises to explain too much while it actually explains too little. Binary, black and white oppositions have little reference to real-life, empirical phenomena. By invoking semi-legality, I argue together with other scholars (Chavez 1998; Gonzales 2011; Menjívar 2006; Ngai 2004; Rigo 2011; Ruhs & Anderson 2010a; Rytter 2012; Willen 2007) that migrants are hardly ever just "undocumented," and one should look at the variety of semi-legal statuses scattered along a multidimensional space between the two poles "legal–illegal." This is not merely a discursive task or a quibble, but a closer reflection of the empirical legal reality. This seeming ignorance of the multiplicity of "in-between" categories and their indiscernibility in scholarly debates reflects that they have been "blissfully," albeit inappropriately, hidden under the "illegality" umbrella.

The Spheres of (Il)legality

The broad, un-reflexive use of the term "illegality" to modify migration and migrants (cf. De Genova 2004) provokes my analytical scepticism toward this category. In empirical reality, when conducting fieldwork with migrants in various situations and circumstances, the issues of status or legality very often take a central position only because they are placed there by us, the researchers (cf. van Meeteren, Engbersen, & van San 2009). As Coutin (2000) observes: "[o]n a day-to-day basis, their [migrants"] illegality may be irrelevant to most of their activities, only becoming an issue in certain contexts' (Coutin 2000: 40). What follows is an implicit general consensus that the adjective "illegal" does not belong to the descriptive domain of the whole of migrants' lives, but only to their relationship with states' actions (cf. Cvajner & Sciortino 2010: 395), and—as with citizens—it is a contextual relationship.

However, in the theoretical accounts of "illegality" with reference to migration, one can broadly distinguish two positions assigning different degrees of importance to this interaction. One argues that the relationship with the state is the defining position that has consequences for any other relationships migrants form in the host country (cf. Menjívar 2000, 2006). The second asserts that illegality, as a partial category denoting one's juridical status, is "a preeminently political identity . . . that entails a social relation to the state" (De Genova 2002: 422), which should not pervade or transpose all forms of social interaction, as this is not its place, nor purpose.

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Representing the first position, Menjívar (2006) views society as being comprised of many different, semi-autonomous spheres (cf. Galligan 2007; Moore 1973) including market, family, work, social life, etc. She maintains that one's relationship with the state via immigration law affects one's relationships in all spheres of society, as migrants' interaction with the body of law which governs their immigration status impinges on many vital spheres of their existence, such as their social networks and family, the place of the church in immigrants' lives, and the broader domain of artistic expression (Menjívar 2006: 999–1000).

Therefore, while Menjívar views society as being comprised of different spheres, she identifies that there is a hierarchy of spheres, with immigration law asserting its dominant position. Illegality or exclusion from the sphere of immigration law has consequences regarding full or partial exclusion from one's membership in society (Menjívar 2006: 1004). This asserts the power of the nation-state in determining who stands inside, who remains outside and who is stuck "in-between" (Schuck 1998).

While Menjívar (2006) clearly makes a link between migrants' standing before immigration law and their relationships with the rest of the society, little evidence is provided to explain why and how migrants' exclusion by immigration law would necessarily, and in principle, be transferred to other spheres. Bolderson (2011), when discussing migrants' access to welfare, strongly contests this "transfer" altogether by making a normative point against the "blurring" of the various spheres of social policy realization and immigration law: "welfare policies need to be independent of other policies and this is not the case when migrants' welfare entitlements depend on status constructed by immigration policy" (Bolderson 2011: 223). Along similar lines it has been argued that while in certain legal contexts the doctrine of illegality may hinder migrant workers from standing up for their employment rights (for the United Kingdom cf. Ryan 2006: 45), this is not the case in other jurisdictions, where employment law takes a more proactive role superseding immigration law limitations (cf. Gleeson 2009, 2010). Finally, drawing on international human rights, the omnipotence of "illegality" as defining the status of migrants stands in clear contradiction with the spirit and letter of the Universal Declaration of Human Rights, which establishes in Article 6 that *every person* has the right to recognition before the law, and in Article 8, that *every person* has the right to due process (LeVoy & Verbruggen 2005).

Cvajner and Sciortino (2010), in turn, theorize illegal migration through the lens of differentiation theory. While they also view society as constituted by various interacting and communicating subsystems, they do not assume that their relationships are hierarchical (Cvajner & Sciortino 2010: 396). They agree that migrants'

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legal status is situated in the subsystem of state law; however, people's irregular immigration status may affect their social interaction in the other subsystems—to the extent that the migrant–state relationship limits one's agency in other spheres (Cvajner & Sciortino 2010: 397). With reference to an individual migrant: illegality before immigration law does not define the whole "self," but an aspect of it. Relationship with the state is just one aspect of all social relationships and transactions that migrants experience, therefore a migrant's legal status is significant, or relevant, to the extent and only if the legal reality constrains the relationships and actions of the actor (Coutin 2000). Cvajner and Sciortino (2010) seem astonished by their "discovery" of the seeming contradiction, known for years to legal anthropologists (Comaroff & Comaroff 2006) and sociolegal scholars interested in the structure of legality (Ewick & Silbey 1998) that:

> Sociologically speaking, the most interesting feature of irregular migration is the evidence it provides about the possibility of being fully excluded from the political system and still being able to carry on a great deal of social interactions. Irregular migrants are able, albeit with much more existential difficulties, to generate income through work, find places to sleep, fall in love (and sometimes reproduce and raise children), establish personal relationships, buy household appliances and even represent themselves in the public space. (Cvajner & Sciortino 2010: 398)

While migration scholars might still need to come up against the theoretical exhaustion that "the law is all over" (Sarat 1990), empirically driven sociolegal scholarship provides abundant analysis of the "network of human and nonhuman agents that, together, push back against" the orthodoxy of the social construction of law, and "in the process make their own moral—as well as material—claims known" (Maurer 2004: 848).

Just as with ordinary citizens, immigrants' experiences of illegality more or less depend on specific, situational contexts—that of a workplace, hospital, school (or other educational institution), or the courtroom—and only become salient when matched with experiences of exclusion (Gonzales 2011; Marrow 2009, 2012). The laws that define migrants are multiple, intersecting, and indeterminate (Coutin 2011). Their meaning therefore depends on the actions of the state and non-state entities charged with carrying out the law (Chauvin & Garces-Mascarenas 2012). This is why Bosniak observed that "status non-citizens are in fact not entirely outside the scope of those institutions, practices and experiences that we all call citizenship" (Bosniak 2008: 3). A migrant who entered as a student, but is working in breach of immigration conditions attached to his or her status, may continue to reside in the host country and access

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medical help or an educational institution "based on the facts of their personhood and national territorial presence" (Bosniak 2008: 3), but may experience vulnerability when it comes to standing up for his or her rights in an event of a dispute with the employer.

Similarly, the same contextual experience may be realized *vice-versa* with respect to legality. Undocumented work or work semi-compliant with visa regulations is often accompanied by legitimate tax and insurance contributions and undocumented immigration status would not prevent these people from receiving immediate medical assistance or having due process rights in criminal proceedings (Coutin 2011). Research demonstrates that in many U.S. states, access to education or in-state tuition fees are afforded without the recourse to a documentation check (Abrego 2008; Gonzales 2011). These, in turn, enable participation in various transnational, political, economic, and social spheres that generate new claims of substantive rights (Bosniak 2008; Coutin 2011). In Europe, after the rulings of *Metock [2008]*[3] and *Zambrano [2011]*[4] by the European Court of Justice (ECJ), and in the United States, after the 2006 social movements for regularization and the debates on the Development, Relief, and Education for Alien Minors (DREAM) Act, illegality of one's status produced as an effect of law, but also sustained by social discourse, seems to be less and less self-determining.

The closer reliance on semi-legality might therefore be viewed as shifting the focus from illegality to various forms of legality that exist concomitantly with one's immigration status and interact with it in multiple ways. My aim was not to trivialize illegality nor make it benign. On the contrary, the proliferation of various semi-legal

[3] Case C-127/08, Blaise Baheten Metock and Others *v.* Minister for Justice, Equality and Law Reform concerned a lawsuit of four third-country nationals who unsuccessfully applied for asylum in Ireland, but who married migrant EU citizens living in Ireland and applied for a residence card as the spouse of an EU citizen. Irish national laws made the right of residence for third-country family members conditional on prior legal residence in another EU Member State, and the applicants' requests were denied because the requirement was not met. The parties petitioned the European Court of Justice (ECJ). The ECJ ruled that the EU Citizens' Directive (2004/38) was in fact not conditional on the prior legal residence of third-country family members; it went even further establishing that it was irrelevant "when and where their marriage took place and . . . how the national of a non-member country entered the host Member State" (ECJ Press release 57/08 [2008]). The central importance of Metock is thus twofold: first, the ECJ's ruling establishes that EU laws take precedence over stricter immigration standards applied on a national level; and second, the court further extends the rights of third-country family members.

[4] Case C-34/09 Gerardo Ruiz Zambrano *v.* Office national de l'emploi (ONEm) is a landmark case concerning the third-country national (who unsuccessfully applied for asylum) allowing him to stay and work in Belgium on the basis that his removal would deprive his children, who were born in Belgium, had Belgian citizenship (and therefore EU citizenship) "the substance of the rights conferred by the virtue of their status as citizens of the Union [Para 42]." The ECJ also ruled that "a refusal to grant a right of residence to a third country national with dependent minor children in the Member State where those children are nationals and reside, and also a refusal to grant such a person a work permit, has such an effect" [Paragraph 43].

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statuses demonstrates that the "impossible subjects" (Ngai 2004) "hold on" to whatever there is available, and do whatever it takes to get closer to legality, in the sense of rightful and regularized status. Semi-legality therefore presents a more analytically promising avenue for unpacking the presumed "illegality" into the rich and multifaceted reality of various statuses, roles, relationships, and identities that constitute one's self.

Semi-Legality

Although the term semi-legality is not new and has been used in previous migration scholarship, there is a growing need to conceptualize it more explicitly. The need is made more acute by the inherent legal abstruseness of the term, the "messiness" characterizing all borderline cases—such as the situation of Salvadorans in Temporary Protected Status in the United States (Menjívar 2006); undocumented Mexican parents living with their U.S.-born children (Chavez 1998); or the "1.5 generation" of Latinos who discover their irregular status once they leave full-time education in the United States (Gonzales 2011).

In common usage, semi-legality has often simply been shorthand for "not exactly legal." The perceived irrelevance of the term for describing one's immigration status, because of its informality, as well as its de facto vernacular origins, has bred ignorance among researchers, which arises not from the strangeness of the object of investigation, but from its very transparency. Living with the concept, so thoroughly suffused with its assumptions (so much so that it is even hard to recall when we adopted it), one tends to lose the critical perspective that makes the investigation of migrants' relationships with the law more than simply a recital of what everyone already knows. The common sense of things, the knowledge everyone is sure to have, is precisely the starting point for the investigation.

I propose a twofold conceptualization of semi-legality; first, as a heuristic device to differentiate between the various forms of statuses, behaviors, and attitudes on the multitiered space between legal and illegal. Second, as a sensitizing theoretical perspective to critique the conditions posed by many neoliberal migration regimes where contradicting legal environments not only tolerate the semi-legal state but often fuel and perpetuate it.

Semi-Legality as a Heuristic Device

I argue that semi-legality should be viewed as a multidimensional space where legal status—migrants' formal relationship with the state—interacts with various forms of their agency toward the

https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press

law—their behavior and attitudes (cf. Kubal 2012). Metaphorically, one could imagine a variety of semi-legal statuses as scattered dots along multiple dimensions. Semi-legality can therefore denote a range of migrants' interactions with law, demonstrating that the divide between legal and "illegal" is not a strict dichotomy, but rather a tiered and multifaceted relationship with degrees of membership that distinguish beyond citizens, permanent legal residents, temporary legal residents, and "other" migrants (cf. Calavita 2006; Coutin & Chock 1995; Guild 2009; Menjívar 2011). Semi-legality pertains to the heterogeneity of the "other migrants" category. Paraphrasing Calavita (2006), the scholarship affirming the "conceptually clear [and] legally consequential" (Brubaker 1992: 21) distinctions between legality and illegality is generally based on a conceptualization of legality as a formal status conferring a set of legal rights. In contrast, much of the literature that undermines the legality/illegality binary invokes a broader conceptualization of substantive legality, that is: "legality in action" and finds that the boundaries around it are not as "conceptually clear [and] legally consequential" as the nominal definition of legality would suggest, particularly as applied to migrants, women and people of color (Calavita 2006: 416). Menjívar (2006), using the term "liminal legality," identified the multiplicity of "in-between," semi-legal forms of behavior that fall between full lawfulness and legal exclusion (at the opposite ends of the spectrum). She recognized such reality as "the grey area between the legal categories," characterized by conditions that are neither undocumented nor documented "but may have the characteristics of both" (Menjívar 2006: 1008), inveighing against the established distinction as concerns who ought to be where.

Semi-legality as an analytical construct is fuzzy at the edges, it reflects that borders between legality and illegality are: "difficult, if not impossible to locate" and it is clear that both citizens and migrants operate at times "as if the boundaries did not exist" (Benton 1994: 229). Plurality of human behaviors does not fall neatly on either side of the divide between legality and illegality (Lindahl 2010: 10), which calls into question the ways in which legal orders draw the distinction between the two. Given this coupling between the law's indeterminacy and its enforcement for citizens and immigrants alike, the quotidian "legality" often corresponds with a place where processes are fair, decisions may be reasoned, and rules known in advance, but at the same time, it is a space where justice can be achieved only partially—where public defenders do not show up, single mothers cannot receive income support (*Zalewska* [2008][5]), judges may act irrationally or disproportionally,

[5] Zalewska *v.* Department for Social Development [2008] UKHL 67 is the infamous case of Polish migrant worker, who had failed to register part of her employment in her first

https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press

and the "haves" come out ahead (Ewick & Silbey 1998; Silbey 2010: 476).

Finally, semi-legality is useful when interpreting and making sense of migrants' narratives regarding their own relationship with the legal system of their host country. Although the divergence between what people think and what people do is a well-documented paradox in social science (Kubal 2012), semi-legality casts more light on this gap between normative expectations and peoples' everyday experiences. Conceptualizing semi-legality subjectively, I drew on Michel Foucault and Michel de Certeau, whose work suggested that investigations of the law's power are most fruitful not at the level of institutions and the state, but at the level of lived experience, were the power is exercised, understood and sometimes resisted. Following from Foucault's conviction that power relations are most interesting to investigate at the sites of resistance (Foucault 1992), semi-legality is exactly such a site of contestation of the seemingly overwhelming power of the state to determine one's status. It is expressed via "popular procedures" and "ways of operating," by which migrants (as well as citizens) "manipulate the mechanisms of discipline and conform to them only in order to evade them" (de Certeau 1984: xiv). Legality, the law, "legal" at the level of lived experience are recognized, resisted and reconstituted by a wide variety of ordinary people going about their lives (Mezey 2001). The lived and expressed semi-legality brings to light the arguments invoked "by the dispersed, tactical, and makeshift creativity of groups or individuals *already caught* in the nets of 'discipline' " (de Certeau 1984: xiv–xxv, emphasis added).

Sensitizing Theoretical Perspective

Semi-legality as a term to denote ambiguous relationship with the law calls for a semantic shift from illegality to legality, when describing the not entirely complacent responses to immigration regulations. Moving the semantic boundaries toward legality also reflects that migrants' effective, but informal incorporation is often located within the law itself. Some elements of everyday life (e.g., paying taxes, engaging in education, establishing a business) can be subject to contradictory symbolic framings. Recorded contributions

12 months of working in the United Kingdom, contrary to the terms of the Worker Registration Scheme (Accession [Immigration and Worker Registration] Regulations 2004 [SI 2004/1219]). She left her employment following domestic violence and claimed income support for her and her child while residing in a women's aid hostel. Although she had actually worked for more than 12 months paying taxes and national insurance contributions, her application for income support was refused on the basis that she had not carried out 12 months registered work, as part of her period of work was unregistered.

https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press

enhance membership about as much as recorded benefits, however becoming more "formal" as a condition for present or future legal deservingness may also make migrants dangerously more visible to public authorities (Chauvin & Garces-Mascarenas 2012: 246). What makes the actions fall within one or the other category is often the very nature of discretion exercised by judges, street-level bureaucrats of civic deservingness (Provine & Varsanyi 2012). As migration and sociolegal scholars contemplate social control aimed at migration, semi-legality helps us to remain mindful of its various contradictions often reflecting how self-defeating laws and policies perpetuate injustices against vulnerable people who have few resources to defend themselves against cyclical although ambitious enforcement campaigns, often fuelled by moral panic, bigotry and racism (Welch 2003: 331).

Semi-legal space is constructed almost unanimously through very different societies. It has a particularly important symbolic role in the construction of a legal imagery of "developed" and neoliberal societies, which claim that law and order are the main political and moral features distinguishing them from others. There, semi-legality is not only tolerated, but somewhat fuelled by the tension between the international human rights regime and constitutional declarations to which many states are signatories (and therefore hold accountable to) and their "national" interests often formulated under pressure from the electoral base of the political parties in power and thereby subject to parochial constatations. While domestic practices diverge in many respects, a lot of countries recognize that foreign nationals are entitled to the same basic human rights as their own citizens. Some constitutions, such as Sweden's, expressly guarantee equal rights and freedoms to non-nationals. Other constitutions, such as Canada's, guarantee basic human rights to "everyone" as America's does to "persons" and has therefore been read to protect non-nationals living in the country. Italy extends fundamental rights, including due process and the freedom of speech and association, to all persons in Italy; even those who have entered "illegally" (La Constituzion, arts. 13, 14, 17–21, 24, Italy). Germany's Basic Law establishes "human rights" and "everyone's rights" that apply equally to all persons regardless of citizenship (Cole 2003: 374). While the United Kingdom does not have a constitution, it incorporated the European Convention on Human Rights (ECHR) into its domestic law (Human Rights Act 1998). The ECHR generally extends fundamental rights and protection to all persons in the territory of its signatory state irrespective of nationality.

These human rights and constitutional instruments that many developed states are party to, significantly limit their scope for action with regard to their often declaratory "battles against

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irregular migration," thereby "unveiling the ethics of contemporary states when it comes to the evaluation of difference" (Fassin 2005: 366). Therefore, semi-legality as a sensitizing theoretical concept helps to frame the unintended consequences and uneven migration policy implementations leading to the reinvention and reproduction of the long observed phenomenon: *why liberal states accept unwanted immigration* (Joppke 1998). If we look at uneven policy enforcement, the relatively low repatriation rates, the widespread use of direct or indirect, mass or case-by-case regularization methods, or simply the de facto tolerance of irregular presence (in conjunction with authorized work, for example)—this all points to a very low rate of actual enforcement of "illegality" (cf. Pastore 2004), and conducive conditions for semi-legality to prevail. This peculiarity was crucial in pushing Joppke (1998), Hollifield, Hunt, and Tichenor (2008) to focus on what has long been defined as the "liberal paradox"—a distinctive feature of many migration regimes in the global North. Under conditions of mass mobility and globalization, wealthy, neo-liberal states in the EU and elsewhere spend considerable energy trying to identify and record people, goods and information as they move around. At the same time, however, as global capitalism and entrenched inequality force (and enable) people to move, economic cycles, specifically the demand for labor, commonly dictate the (uneven) enforcement patters in immigration control.

Furthermore, the contribution of semi-legality stems from the fact that it provides a framework to understand the mode of migrant incorporation sui generis, because of distinct governmental concerns over public health, crime rates (rather than individual infraction), economic regulation, and population management. Its logic disrupts exclusion and repatriates migrants' actions back within the boundaries of the nation state and most significantly its labor market (Chauvin & Garces-Mascarenas 2012: 248). The recent EU directive on "employers" sanctions' (2009/52/CE) for employing irregularly resident migrants also lists a number of labor rights applicable to them. As exemplified in the United States: one of the main reasons why—in spite of highly publicized cases to the contrary—most local police forces still avoid getting directly involved in civil immigration enforcement, is a concern that undocumented residents would fear reporting crimes (Provine & Varsanyi 2012).

Conditions of Semi-Legality

Moving beyond the theoretical presentation of semi-legality, I now turn to its empirically observed conditions that come both

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from the literature and the empirical material gathered in Europe. Given the richness of the empirical, qualitative material (360 interviews), I resorted to the analytical tool of a (limited) typology. I distinguished three broad instances of semi-legality observable across all migrant populations in all four destination countries: (1) "incomplete" responses to regularization programs (cf. Hagan 1994, 1998); (2) balancing between the temporality of residence in various EU countries—under-staying in some and overstaying in others (cf. Rytter 2012); and (3) the nexus of residence and employment (Gonzales 2011; Kubal 2009, 2012; Ruhs & Anderson 2010b)—in which the resistance to the binary dichotomy legal/illegal was particularly helpful to account analytically for these legally complex situations. While not an exhaustive list, the three broad instances of semi-legality could nonetheless be understood as distinctive types of semi-legality if interpreted with reference to the European parameters of the fieldwork and the empirical material. Many other cases of semi-legality could be observed (cf. Kubal 2009, 2012; Marrow 2009, 2012) and more empirically driven enquires are needed to evidence them. I envisage this as a collective and long-term effort of which this article is but one.

"Incomplete" Responses to Regularization Programs

The literature suggests that one of the conditions of semi-legality stems from migrants' incomplete responses toward regularization programs (or so-called amnesties, cf. Coutin 2000; Hagan 1994, 1998). This is often the case when migrants essentially fulfill the criteria set out in the legalization legislation (e.g., length of stay, employment duration), but their access to change of status is hindered by a lack of formal proof, lack of information, or the intersectionality thereof with other structural conditions such as gender, age, or access to support networks. Hagan (1998) demonstrated that while the move to regularization instigated by the Immigration Reform and Control Act 1986 (IRCA) in the United States was "open" to Guatemalan women (and many of them could de facto fulfill the legalization criteria) on an equal footing with Guatemalan men, their isolated employment as live-in domestics, conditioned by gender roles, de jure locked them in semi-legality. This revealed how individual migrants' characteristics and their structural positioning became intrinsic features of semi-legality, demonstrating the highly hierarchical nature of legal prescriptions that created discriminatory tiers of belonging within migrant populations (Salcido & Menjivar 2012).

Our interviews showed that employment in the informal sector, usually associated with a strong gender role division, was indeed a decisive factor in constraining steps toward legalization. J, a female

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migrant from Brazil living in Portugal, speaks for many live-in carers. Although her employer insisted that J receive a social security number and partake in the ongoing regularization program, she refused to give her an employment contract, which effectively stalled the process:

> My boss called me last week and said "See me, we will try to clarify the social security number for you [to enable regularisation]." Then, I said to myself: "I do not have a contract . . . I never had a contract for looking after her father. If I have no contract, I am nothing." The employer told me that her accountant had not explained it this way and I tried to argue that to have the social security number I have to have a contract, but she disagreed. You see how difficult it is . . . (J, female, Brazil–Portugal)

In contrast, many male Ukrainian migrants to Portugal took advantage of earlier regularization programs as working on construction sites, in close spatial and cultural proximity with other Eastern Europeans they could rely on exchange of information. Although many of them also worked without a formal contract (evidence required for regularization), they developed an ingenious strategy of proving their employment in Portugal before the "cut off" date by going to local post-offices and taking proof of remittance transfers they made to their families in Ukraine. One respondent explained on behalf of his colleagues:

> Someone, don't remember who exactly, helped me to find the proof—by going to post office and looking for old logs of me sending money to Ukraine. By now I knew well those people working there, who confirmed that I had money sent. [They] called the post office and asked if they had proofs of the sent faxes. Then many other colleagues did the same . . . we all searched for our papers because we were already here before 2001. (V, male, Ukraine–Portugal)

However, aside from gendered employment roles that condition access to support networks, the empirical material also brought attention to other factors that stalled legalization and locked migrants in the status of semi-legality. One of these was the lack of information about a certain regularization program: not necessarily because of the migrants' limited access to information, but rather the authorities' interest in not popularizing it. The "legacy" program in the United Kingdom (2007–2011), which dealt with outstanding asylum case records made before the new asylum model took over assessing asylum claims in March 2007, is not common knowledge.

The "legacy" was defined as all asylum cases that were launched before March 2007, but remained either incomplete or had not

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been processed by regional asylum teams. In other words, the program dealt with a serious backlog of cases, giving consideration to "residence accrued" as a result of U.K. Border Agency (UKBA) delays. The reasons for the backlog were often quite embarrassing for the authorities. Under the Freedom of Information Act 2000, UKBA revealed that many of the outstanding asylum application cases were mishandled, where examples of mishandling included UKBA losing the file, losing the application, or failing to respond to correspondence. By September 2011, UKBA reviewed over half a million unresolved cases, out of which 36 percent were granted some form of leave to remain, be it limited or indefinite. One of our interviewees, an immigration lawyer in the United Kingdom, shared her experience with this "silent legalization":

> A: Well the majority of cases which I am handling are the legacy cases. But not many people know about it as the government is not coming forward with it. Officially there is no amnesty in the UK, you don't hear about it in the media, but this legacy it's like an amnesty for people who came before March 2007 to claim asylum. And in the majority of the cases, if the Home Office believes they have been here all that time, they haven't had any problem with the police; they get indefinite leave to remain. That's my experience.
>
> I: Why is the government not open about it?
>
> A: I think it's because of how many people are eligible for this amnesty, it may be 450,000. (S, female, United Kingdom)

The analysis of the empirical material suggests that such incomplete responses to regularization programs, as one of the defining conditions of semi-legality, are quite often part and parcel of law enforcement—the prevailing feature of the classical conundrum between the "law in the books" and the "law in action." It is particularly evident in the cases of regularization when the decisions to grant the leave to remain do not conform to a set of predefined criteria, but are usually situated within the discretion of a judge of civic deservingness (cf. Chauvin & Garces-Mascarenas 2012; Marrow 2012). One respondent summarized the situation in the following manner:

> From all of us here, migrants, there are those who have legal status, others who have not, but there is also a third group—many who have not legalised. (B, male, Morocco–Portugal)

On the Move: Between Overstaying and Under-Staying

This asymmetrical regularization, demonstrating the arbitrariness of borders between eligibility and exclusion as an important

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condition of semi-legality, is often accompanied by more explicit geographical volatility with the constant "on the move" experience of migrants. This condition of semi-legality particularly reveals itself in the European context: with some (national) borders removed, others strengthened, and others renegotiated. This important feature of semi-legality has been captured by Rytter (2012) with relation to transnational couples sharing their lives between their formal residence in Sweden and work and family life in Denmark. Rytter conceptualized semi-legality when studying migrants' family life as the "outcome of the differences between Danish and Swedish legislation . . . a condition when married couples move between legal and illegal states of being" (Rytter 2012: 97).

Rytter's ethnography demonstrated how migrant families responded to the social engineering of the Danish immigration regime in 2002, which aimed to curtail the number of transnational marriages and family reunifications. As a result, couples who were legally prevented from settling in Denmark invoked European law as a creative solution to restore "normal" family life. Nonetheless they always had to be vigilant not to transgress the certain legally defined periods of residence: not to "overstay" in Denmark or "under-stay" in Sweden (Rytter 2012: 98).

Three (out of the four) destination countries where we conducted research belong to the Schengen area with seemingly no internal borders.[6] This enabled me to take Rytter's condition of semi-legality as the starting point, and then elaborate on it, drawing on the richness of our empirical material relating to our respondents' experiences of navigating different European borders. Analogous circumstances—although no longer confined to the motives of family life—of overstaying in one country versus understaying in another, emerged from the interviews as another important and underlining condition of semi-legality.

Many of the at-face-value "undocumented" migrants, would have some form of identity documents attained in one or other EU member state:

> When I asked her whether her brother helped her moving to Norway she tells me that she did not need help. As she had a residence permit in Germany, she could go where she wanted to. The first two years she lived in Norway, she stayed here as a tourist, with German papers. (R, female, Morocco–Norway)

[6] The Schengen Area comprises the territories of 26 European countries that have implemented the Schengen Agreement signed in the town of Schengen, Luxembourg, in 1985. The Schengen Area operates very much like a single state for international travel with external border controls for those traveling in and out of the area, but with no internal border controls when traveling between Schengen countries.

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Frequently (although the scale of this phenomenon exceeded our estimates), when asked about migration status, our interviewees would point to their documents attained earlier on in their migratory experience. Portugal, in the sample of studied European countries, appeared as the country with the most generous history of regularization programs in the first half of the 2000s. This enabled many of the interviewed Ukrainians or Brazilians to attain temporary or permanent resident permits. However, when the economic conditions worsened because of the most recent economic downturn of 2008–2009, and employment opportunities in the Mediterranean became limited, many of the migrants decided to take Europe as the framework of their choice and move elsewhere in search of work.

According to EU law, the holder of a residence permit (or a long-stay visa, i.e., exceeding 3 months) obtained in one EU member state is entitled to move freely within other states, which comprise the Schengen Area for a period of up to 3 months in any half year (OJ L 85, 31 March 2010: 1). The recent Regulation (EU) no. 265/2010 of the European Parliament and the Council of 25 March 2010, amended the Convention Implementing the Schengen Agreement and Regulation (EC) no. 562/2006 regarding movement of persons with a long-stay visa to the effect that "the right of free movement . . . shall also apply to aliens who hold a valid long-stay visa issued by one of the Member States." The legislative changes therefore followed what has been constituted as practice by many "secondary" migrants leaving their "original" EU country of residence in search of work (McIllwaine 2011). This is the story of M, who resides in Norway with an Italian residence permit. He is a composite character—representative of those nameless migrants, who are ever vigilant not to overstay their presence in one territory and under-stay in another.[7]

M, upon obtaining residence documents in Italy in one of the regularization programs, was working as a construction worker. When the project came to an end he had to find new work, which was difficult in Italy at that time. In 2007, he boarded a plane to Norway. In one of the bigger Norwegian cities he found alternative employment; he is professionally valued in the local community and proudly shows many references. According to EU law M has to make sure however that he does not stay in Norway for longer than 3 months in any 6-month period: he has to make sure he returns to Italy for the remaining time in the year. Otherwise, in accordance

[7] Because of the Schengen-wide application and consequences of the time-limited, albeit still transferable, free movement provisions for third country nationals, the countries of Italy and Norway are of secondary importance here, and they could effectively be replaced by Spain–the Netherlands, Poland–Germany, Italy–Belgium.

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with Directive 2008/115/EC, he "should be required to go to the territory of that other Member State immediately" (OJ L 85, 31 March 2010: 2). Working in construction, balancing between various small and medium jobs, and traveling to Italy are not easy and obviously come at a cost. M, in fact, has been living under this temporary status in Norway for the last 5 years, and he admits that he hardly ever has any time to travel to Italy. We asked whether he has ever been challenged by the police or immigration authorities on the duration of his stay in Norway—he replied that because he had no stamp in his passport when he arrived in Norway the authorities could not really hold this against him:

> I: You have been living in Norway for five years now, have you ever been checked by the police or immigration?
>
> M: You know, I was checked only once . . . After some questioning they drove together with me to my place in order to check my passport . . . But it is not illegal to stay in Norway with an Italian residence permit. (M, male, Ukraine–Norway)

M admitted that he was trying to register his employment in order to give the residence in Norway a more permanent dimension. On several occasions he applied to the immigration authorities in order to obtain a work permit. He submitted evidence of vocational qualifications from Ukraine and a job contract. At the final stage he waited over a year to receive an answer, which was negative. With the rejection letter he received a note urging him to leave Norway within the next 48 hours. M challenged this decision:

> I asked them to show me in the law, in print, black on white, where does it say that as a Ukrainian citizen with residence permit in Italy I cannot stay in Norway. (M, male, Ukraine–Norway)

The immigration authorities could not satisfy this request. As a result M continues to lead his life in a semi-legal limbo between Norway and Italy to the detriment of his business. He pays taxes in Norway, yet to the authorities he is just a temporary resident:

> I am a Ukrainian citizen with a residence permit in Italy, and [I] stay in Norway as a tourist. (M, male, Ukraine–Norway)

Employment Beyond Visa Restrictions

The example of M and many other migrants sharing an unprotected status—feeling suspended between residences in two countries—is also illustrative of another condition of semi-legality. This was first studied by Ruhs and Anderson (2006) regarding the

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notion of semi-compliance with reference to Eastern Europeans working in the low-waged, low-skilled niche of the British labor market beyond the conditions specified in their visas or residence permits. In other words, while M's temporary presence in Norwegian territory might be indisputable even by the Norwegian immigration authorities, it is valid as long as he remains a tourist or person of independent means. This demonstrates another important condition of semi-legality, namely how it can be entangled with gainful employment.

Kubal (2009, 2012) demonstrated how Eastern European post-2004 EU Enlargement migrants—EU citizens—pursued employment in the United Kingdom in contravention of immigration (Accession 2004 Regulations) and certain employment regulations. Their semi-legality with regard to immigration law and the workplace was experienced in various forms, from working and fulfilling the general U.K. workplace regulations (personal National Insurance Number, payment of taxes), but generally in violation of immigration regulations (Workers Registration Scheme—WRS) attached to their status as "Accession" nationals; to residing in the United Kingdom fulfilling the immigration conditions (WRS), but working in breach of the general U.K. workplace regulations. The latter took various shapes: from steady employment with a contract to precarious employment; from taxes deducted to some or no taxes deducted; from engagement at a workplace that respects labor laws to the abuse of basic labor laws such as compensation or health and safety. Quite often—and contrary to popular understandings—formal legality with relation to immigration status was not congruent with substantial legality relating to their workplace, where migrants often experienced disadvantages in comparison with other workers (Kubal 2012).

Many such ambiguities concerning the relationship between residence and pursuit of gainful employment can also be found in our empirical material, attributing semi-legality with various local shades of the respective workplace regulations in different European countries. Many of the interviewed migrants who arrived in the United Kingdom, the Netherlands, Norway or Portugal with some form of visa or residence authorization, admitted to engaging in employment in spite of the official limitations of their permit:

> I came on a tourist visa for three months at a time, so my stay here was legal. But I was working and earning money. I did this four years in a row—coming to Norway on a tourist visa and working; the money I made during the three months in Norway would last me for the rest of the year in Brazil. (A, female, Brazil–Norway)

> I knew I could not work because it was clearly written on my visa. I was a bit nervous with that because I thought I was doing

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> something wrong, but I later accepted my situation . . . I was working but it was not a proper job, I was looking after a boy with a family, and they would pay me like £250 a month, I used that money to pay for my school. (S, female, Brazil–United Kingdom)

The majority of the respondents were aware of the limitations stemming from their residence permits; it did not mean, however, that they engaged in employment in an un-reflexive manner. The questions of legality and illegality suffused the interviews; migrants' elaborations ranged from contestation of the law through attempts to rationalize their choices, to practical acceptance of their conditions (cf. legal consciousness literature Abrego 2008, 2011; Ewick & Silbey 1998; Kubal 2009, 2012; Silbey 2010). Many of them demonstrated a highly specialized knowledge of the law and the changing conditions, often accompanied with examples of how their personal case has "fallen through the cracks":

> My brother obtained a tax number. With this he would work legally and he would even have paid taxes. These people are called "white illegals." They worked in "white" or legally but they resided in the Netherlands illegally. This was possible until 1991 so he got it at the very last moment because he only arrived in 1991. In 1998 a new law was passed, simply put, linking work to residential status. Files from immigration services and the tax department were linked. This meant that people like my brother could no longer work legally. They have a rather ambiguous legal status now. (A, male, Morocco–the Netherlands)

Semi-legality was often characterized by un-codified, yet often mutually beneficial employer–employee relations (Cobb 2005: 52), revealing the degree of agency that both semi-legal migrants and their employers have *vis-à-vis* legal frameworks of the state. This relationship—beyond the scope of state law—could be attributed to the fact that migrants, as temporary workers, display a target-earning strategy and distinctly different objectives from other workers (Cobb 2005: 57), but meet the expectations of employers in relation to maximizing their profits. This reflects what Motomura (2010: 1783) terms "a national ambivalence toward immigration outside the law." Many migrants who arrive on short-term visas do not have the same lifestyles as more established workers; they do not have family with them or obligations beyond work or studying. As a result, various statutory laws, such as those regulating working time and overtime payments, may not be of much use to those workers displaying target-earning strategies. Most of the semi-legal migrants worked longer than permitted by their visas, but with hours spread over two jobs, having to juggle between different shifts and work schedules, and formal and informal payment arrangements.

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This particular aspect of semi-legality—its entanglement with gainful employment—also challenges the overwhelming power and importance of one's formal legal immigration status, and the popular belief that once the legal status is ascertained, access to rights and justice will automatically follow. The evidence stemming from the interviews, particularly with Brazilian migrants legally residing in the United Kingdom, the Netherlands or Portugal (as permitted by their Italian, Spanish or Portuguese citizenships), reveals how they *de jure* complied with formal immigration conditions regulating their access to the labor market, but engaged in employment in partial contravention of the labor or tax regulations. The low-wage, low-skilled niche of the labor market, where migrant workers are overrepresented (Ruhs & Anderson 2010a) is well known for rather erratic law enforcement, with employers often "turning a blind eye" not only toward migrants with unknown residence status, but also toward a battery of other workplace regulations, including tax deductions, national insurance contributions, hours of work or health and safety provisions:

> [I was working in a] very posh restaurant, dance place, you know just on the Thames, and they have beers and they cost like £5, £6. Very posh! I was working 7 days a week, no days off, no minimum wage and I worked for 3 months and got paid only for two. 7 days a week, no Sunday, Saturday, you know it's too much, I said, no I'm going and then, I don't know if I went for something better but, one week later, I got a job in a corner shop, they were paying me £3.50 [per hour]. (T, male, Brazil–United Kingdom)

This was analogous to what Kubal (2009, 2012) observed with Eastern European migrant workers sharing the "3D" (dirty, dangerous, and demanding) work in the United Kingdom. Their undisputed legal status—as EU citizens—did not protect them enough from practices of unscrupulous employers or even discrimination (Kubal 2012).

The empirical material demonstrates, however, how semi-legality as an analytical concept challenges the stereotypical image of the victimized, undocumented immigrant facing the abusive employer (cf. Anderson 2008). It reveals that the interactions between migrant workers and employers that arise from these diverse employment strategies are far more complex (Kubal 2012) and range on a scale between opportunism and exploitation. Migrants engage in a significant trade-off when they enter into semi-formal relationships that undermine the protection they have been given by labor laws and yet they quite often perceive this trade-off as empowering—in their own interests and to their benefit. In this way, they challenge the institutional role of the state in enacting laws imposing restrictions on immigrants and they

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undermine the strong power of the state in its sole capacity to deprive migrants of their rights (Yamamoto 2007: 95).

Attitudes to Law: Asserted Although Fragmented Presence

The common theme that emerges from, but also bridges the exemplary categories found in migrants' narratives mentioned earlier, is the shared experience of presence in one context, but not in another. Our interviewees demonstrated how their claims of belonging in certain social spheres (e.g., education, labor market, housing) were combined with contextual experiences of liminality and exclusion in others, thereby posing an empirical challenge to the arguments of the hierarchy of spheres under the dominance of the immigration law (cf. Menjívar 2006).

The examples of "legitimate presence" (Coutin 2000) were commonly invoked in an attempt to ascertain as many elements of legality as possible, in the sense of rightful and authorized conduct, contesting and resisting the overwhelming "illegality" label resulting from the lack of valid residence documents:

> Frankly speaking, from the point of view of immigration services my residence might have not been entirely legal. But as for the tax law and social security I observed them very carefully. I had a Portuguese fiscal number, insurance, my employer paid taxes for me and I paid all required taxes. It was such a paradox. (A, male, Ukraine–Portugal)

The accounts of eligibility in many sociolegal contexts expressed through payment of taxes, possessing a driver's license, pursuing a course at university or having medical insurance were put forward in the interviews as if to compensate for a "visa expired" status. The local and seemingly insignificant social practices that contribute to the making and remaking of the large social structures (like the law) were informed and constrained by the meanings and opportunities that our respondents attached to those very structures (Ewick & Silbey 1998). Migrants in their narratives of their legal status readily invoked the "pieces of legality" that could qualify them "beside" and "above" the "illegal" to claim legitimate spaces for themselves (Abrego 2008; Gonzales 2008; Wong 2006):

> J: I have a contract for home, for a lot of stuff, I have social security record. But I do not have a contract [for work], so whenever the authorities call me it turns out I cannot legalise [apply for residence permit]

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I: And they never deported you?

J: No, never. They know everything. (J, male, Brazil–Portugal)

In a practical sense, it is therefore the everyday implementation of immigration law, more than formal legal proceedings, that situates individuals as subjects within legal categories. Legal status and immigration enforcement are integral components of a regime through which society's "others" might be excluded but also, sometimes, granted oblique membership (Coutin 2011; Getrich 2008; Motomura 2010).

These narratives stressing belonging and legality in different contexts, as points of identification and legitimization, were often accompanied with an equal emphasis on the fact of "breaking the law" only in part, when referring to remaining in the country without valid residence permits:

> I feel bad about my status. As if I broke some law. Well, actually I did break *a part* of it. But you know, except for it I don't do anything bad to people! (T, female, Ukraine-Netherlands; emphasis added)
>
> I have never done anything wrong neither in Brazil, nor here. I know I was here illegally *at some point* and that was wrong, but I never wanted to participate in anything that is not legal, like stealing for example. (M, male, Brazil–United Kingdom; emphasis added)

These accounts illustrate a clear break from the idea that illegality might determine perceptions regarding the moral worthiness of migrants (Dauvergne 2008: 16). Migrants themselves point to semi-legality as a viable alternative, helping them to ascertain their presence aside from their legal status:

> I must tell you at the beginning that my living in Norway was *not fully* official. I will be open with you. (A, male, Ukraine-Norway; emphasis added)
>
> I'm a person who is *not 100% correct*, but I pay taxes, have bank account, have health insurance, I have everything like a normal person. (M, female, Brazil–Portugal; emphasis added)

"Not fully official," "not totally legal," "not 100% correct" emerge from the interviews as dominant categories that the respondents not only feel more comfortable and more at peace with, but also that they believe more accurately reflect their situation. In that sense semi-legality moves conceptually beyond status and denotes a

https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press

dialectic composed of general normative aspirations and particular grounded understandings of social relations (Silbey 2010: 476).

Conclusion

This article has attempted to systematize the various and complex conditions of semi-legality, to "move beyond the binary categories of documented and undocumented to explore the ways in which migrants move between different statuses and the mechanisms that allow them to be regular in one sense and irregular in another" (Gonzales 2011: 605). It proposes a conceptualization of semi-legality as a heuristic device—a multidimensional space where migrants' formal immigration status interacts with various forms of their agency toward the law—to encompass a variety of circumstances that are neither undocumented nor documented, "but may have the characteristics of both" (Menjívar 2006: 1008). Semi-legality as a sensitizing theoretical perspective helps to explain why many neoliberal regimes, which claim that law and order are the main political and moral features distinguishing them from others, actually engage in perpetuating the legally ambiguous modes of incorporation sui generis (cf. Chauvin & Garces-Mascarenas 2012).

Drawing on empirical material, I employed the tool of a (limited) typology to distinguish three broad instances of semi-legality, which contest the "illegal" as a globally meaningful identity label (Dauvergne 2008: 18). First, semi-legality exemplifies the situation of migrants' "incomplete" responses to regularization programs: de facto fulfilling the legalization conditions, yet de jure facing problems or barriers to formally corroborate this. Second, it is a useful concept to help to understand and theoretically account for the situation of migrants (third-country nationals) in the Schengen area of the EU, many of whom have some form of legal residence in one member state, but remain "on the move" having to strike a balance between time-limited transferability of their free movement. Last, semi-legality can also cast more light on the relationship between immigration law and the labor market, in the context of migrants' gainful employment, where their residence in a country is lawful, but their work exceeds the restrictions permitted by their visas.

Semi-legality can also be found in the narratives of migrants describing their relationship with the legal system of their host country, where it presents itself as a site of contestation of the invincible role of the law in defining individuals. Semi-legality pushes back against illegality, which as Guild (2009: 15) observes happens to "someone, in respect of whose presence on the territory,

https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press

the state has passed a law making [their] mere existence a criminal offence."

References

Abrego, Leisy J. (2008) "Legitimacy, Social Identity, and the Mobilization of Law: The Effects of Assembly Bill 540 on Undocumented Students in California," 33 *Law & Social Inquiry* 709–34.

——— (2011) "Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for First- and 1.5-Generation Immigrants," 45 *Law & Society Rev.* 337–70.

Anderson, Bridget (2008) " 'Illegal Immigrant': Victim or Villain?," *COMPAS Working Paper Series*. Available at: http://www.compas.ox.ac.uk/publications/working-papers/wp-08-64 (accessed 16 May 2013).

Anderson, Bridget, & Ben Rogaly (2005) *Forced Labour and Migration*. London: TUC.

Apap, Joanna (2002) "Shaping Europe's Migration Policy New Regimes for the Employment of Third Country Nationals: A Comparison of Strategies in Germany, Sweden, the Netherlands and the UK," 4 *European J. of Migration & Law* 309–28.

Bacon, David (2008) *Illegal People: How Globalization Creates Migration and Criminalizes Immigrants*. Boston: Beacon Press.

Bakewell, Oliver, H. de Haas, & A. Kubal (2012) "Migration Systems, Pioneer Migrants and the Role of Agency," 11 *J. of Critical Realism* 413–37.

Baldwin-Edwards, Martin (2008) "Towards a Theory of Illegal Migration: Historical and Structural Components," 29 *Third World Q.* 1449–59.

Benton, Lauren (1994) "Beyond *Legal Pluralism*: Towards a New Approach to Law in the Informal Sector," 3 *Social and Legal Studies* 223–42.

Bloch, Alice, Nando Sigona, & Roger Zetter (2011) "Migration Routes and Strategies of Young Undocumented Migrants in England: A Qualitative Perspective," 34 *Ethnic and Racial Studies* 1286–302.

Bolderson, Helen (2011) "The Ethics of Welfare Provision for Migrants: A Case for Equal Treatment and the Repositioning of Welfare," 40 *J. of Social Policy* 219–35.

Bosniak, Linda (2008) *The Citizen and the Alien: Dilemmas of Contemporary Membership*. Princeton and Oxford: Princeton Univ. Press.

Brubaker, Rogers (1992) *Citizenship and Nationhood in France and Germany*. Cambridge, Mass: Harvard Univ. Press.

Calavita, Kitty (2006) "Law, Citizenship and the Construction of (Some) Immigrant 'Others'," 30 *Law & Social Inquiry* 401–20.

Chauvin, Sebastien, & B. Garces-Mascarenas (2012) "Beyond Informal Citizenship: The New Moral Economy of Migrant Illegality," 6 *International Political Sociology* 241–59.

Chavez, Leo (1998) *Shadowed Lives: Undocumented Immigrants in American Society*. Fort Worth: Harcourt Brace College Publishers.

Clayton, Gina (2010) *Textbook on Immigration and Asylum Law*, 4th ed. Oxford: Oxford Univ. Press.

Cobb, Carrie (2005) "Not Quite Formal: Theorizing the Informal Labor Market Experiences of 'Documented' Immigrant Workers," 1 *McNair Online J.* 48–73.

Cole, David (2003) "Are Foreign Nationals Entitled to the Same Constitutional Rights as Citizens?," 25 *Thomas Jefferson Law Rev.* 367–88.

Comaroff, Jean L., & John Comaroff (2006) "Law and Disorder in the Postcolony: An Introduction," in Comaroff, Jean, & John L. Comaroff, eds., *Law and Disorder in the Postcolony*. Chicago and London: Univ. of Chicago Press.

Couper, Kristina, & Ulysses Santamaria (1984) "An Elusive Concept: The Changing Definition of Illegal Immigrant in the Practice of Immigration Control in the United Kingdom," 18 *International Migration Rev.* 437–52.

https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press

Coutin, Susan Bibler (2000) *Legalizing Moves: Salvadoran Immigrants Struggle for US Residency*. Ann Arbor: Univ. Michigan Press.

——— (2011) "The Rights of Noncitizens in the United States," 7 *Annual Rev. Law and Social Science* 289–308.

Coutin, Susan Bibler, & P. P. Chock (1995) " 'Your Friend, the Illegal': Definition and Paradox in Newspaper Accounts of U.S. Immigration Reform," 2 *Identities* 123–48.

Currie, Samantha (2009) "Regular Migrants in the Irregular Workplace: Central and Eastern European Women in the UK after EU Enlargement," in Currie, S., H. Stalford, & S. Velluti, eds., *Gender and Migration in 21st Century Europe*. Aldershot: Ashgate.

Cvajner, Martina, & G. Sciortino (2010) "Theorizing Irregular Migration: The Control of Spatial Mobility in Differentiated Societies," 13 *European J. of Social Theory* 389–404.

Dauvergne, Catherine (2008) *Making People Illegal: What Globalization Means for Migration and Law*. Cambridge: Cambridge Univ. Press.

De Certeau, Michael (1984) *The Practice of Everyday Life*. Berkley: Univ. of California Press.

De Genova, Nicholas (2002) "Migrant "Illegality" and Deportability in Everyday Life," 31 *Annual Rev. of Anthropology* 419–47.

——— (2004) "The Legal Production of Mexican/Migrant Illegality," 2 *Latino Studies* 60–85.

De Genova, Nicholas, & Natalie Peutz (2010) *The Deportation Regime*. Durham: Duke Univ. Press.

Donato, Katharine M., & Amada Armenta (2011) "What Do We Know About Undocumented Migration?," 37 *Annual Rev. of Sociology* 529–43.

Düvell, Franck (2008) "Clandestine Migration in Europe," 47 *Social Science Information* 479–97.

Engbersen, Godfried, E. Snell, et al. (2011) *Destination Netherlands: The Evolution of Migration from Six Origin Countries to the Netherlands*. Rotterdam: Erasmus University. Accessed at: http://www.eur.nl/fsw/research/cimic/research/migration/.

Espenshade, Thomas J. (1995) "Unauthorized Immigration to the United States," 21 *Annual Rev. of Sociology* 195–216.

Ewick, Patricia, & S. Silbey (1998) *The Common Place of Law: Stories of Popular Legal Consciousness*. Chicago: Univ. of Chicago Press.

Fassin, Didier (2005) "Compassion and Repression. The Moral Economy of Immigration Policies in France," 20 *Cultural Anthropology* 362–87.

Fonseca, Lucinda (2000) "Portugal in the International Migration System at the End of the 20th Century: Challenge and Change," Paper presented by the Human Geography Research Unit of the CEG to the IGU Regional Conference - The Hague, CEG, EPRU, n°52, Lisbon.

——— (2001) "The Geography of Recent Immigration to Portugal," in King, R., P. de Mas, & J. M. Beck, eds., *Geography, Environment and Development in the Mediterranean*. Brighton: Sussex Academic Press.

———, ed. (2004) *New Waves: Migration from Eastern to Southern Europe*. Lisboa: Fundação Luso-Americana.

Foucault, Michael (1992) *Discipline and Punish: The Birth of the Prison*. New York: Vintage.

Galligan, Dennis (2007) *Law in Modern Society*. Oxford: Hart Publishing.

Garth, B., & A. Sarat (1998) *How Does Law Matter?* Evanston: Northwestern Univ. Press.

Getrich, Christina M. (2008) "Negotiating Boundaries of Social Belonging: Second-Generation Mexican Youth and the Immigrant Rights Protests of 2006," 52 *American Behavioral Scientist* 533–56.

Gleeson, Shannon (2009) "From Rights to Claims: The Role of Civil Society in Making Rights Real for Vulnerable Workers," 43 *Law & Society Rev.* 669–700.

——— (2010) "Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims Making," 35 *Law & Social Inquiry* 561–602.

https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press

Goldring, Luin, C. Berinstein, et al. (2009) "Institutionalizing Precarious Migratory Status in Canada," 13 *Citizenship Studies* 239–65.

Goldring, Luin, & P. Landolt (2011) "Caught in the Work–Citizenship Matrix: The Lasting Effects of Precarious Legal Status on Work for Toronto Immigrants," 8 *Globalizations* 325–41.

Gonzales, Roberto G. (2011) "Learning to Be Illegal: Undocumented Youth and Shifting Legal Contexts in the Transition to Adulthood," 76 *American Sociological Rev.* 602–19.

——— (2008) "Left out but Not Shut down: Political Activism and the Undocumented Latino Student Movement," 3 *Northwest J. Law Social Policy* 219–39.

Guild, Elspeth (2004) "Who Is An Irregular Migrant?" in Bogusz, B., ed., *Irregular Migration and Human Rights: Theoretical, European, and International Perspectives*. Leiden: Martinus Nijhoff Publishers.

——— (2009) *Security and Migration in the 21st Century*. Cambridge: Polity.

Hagan, Jacqueline M. (1994) *Deciding to Be Legal: A Maya Community in Houston*. Philadelphia: Temple Univ. Press.

——— (1998) "Social Networks, Gender and Immigrant Settlement: Resource and Constraint," 63 *American Sociological Rev.* 55–67.

Hagan, Jacqueline M., B. Castro, et al. (2010) "The Effects of U.S. Deportation Policies on Immigrant Families and Communities: Cross-Border Perspectives," 28 *North Carolina Law Rev.* 1799–824.

Hagan, Jacqueline, K. Eschbach, et al. (2008) "U.S. Deportation Policy, Family Separation, and Circular Migration," 42 *International Migration Rev.* 64–88.

He, Xin (2005) "Why Do They Not Comply with the Law? Illegality and Semi-Legality among Rural-Urban Migrant Entrepreneurs in Beijing," 39 *Law & Society Rev.* 527–62.

Hollifield, James F., Valerie F. Hunt, et al. (2008) "The Liberal Paradox: Immigrants, Markets and Rights in the United States," 61 *SMU Law Rev.* 67–98.

Horst, Cindy, J. Carling, & R. Ezzati (2010) "Immigration to Norway from Bangladesh, Brazil, Egypt, India, Morocco and Ukraine," *PRIO Paper*. Oslo: PRIO.

Joppke, Christian (1998) "Why Liberal States Accept Unwanted Immigration," 50 *World Politics* 266–93.

Jordan, Bill, & F Düvell (2002) *Irregular Migration*. London: Edward Elgar.

Kubal, Agnieszka (2009) "Why Semi-Legal? Polish Post-2004 EU Enlargement Migrants in the United Kingdom," 32 *J. of Immigration, Asylum and Nationality Law* 148–64.

——— (2012) *Socio-Legal Integration. Polish Post-2004 EU Enlargement Migrants in the United Kingdom*. Farnham: Ashgate.

LeVoy, M., & N. Verbruggen (2005) *Ten Ways to Protect Undocumented Migrant Workers*. Brussels: PICUM.

Lindahl, Hans (2010) "A-Legality: Postnationalism and the Question of Legal Boundaries," 73 *Modern Law Rev.* 30–56.

Marrow, H. (2009) "Immigrant Bureucratic Incorporation: The Dual Roles of Professional Missions and Government Policies," 74 *American Sociological Rev.* 756–76.

Marrow, Helen (2012) "The Power of Local Autonomy: Expanding Health Care to Unauthorized Immigrants in San Francisco," 35 *Ethnic and Racial Studies* 72–87.

Maurer, Bill (2004) "The Cultural Power of Law: Conjunctive Readings," 38 *Law & Society Rev.* 843–50.

McIllwaine, Cathy, ed. (2011) *Cross-Border Migration Among Latin Americans. European Perspectives and Beyond*. Basingstoke: Palgrave MacMillan.

Menjívar, Cecilia (2000) *Fragmented Ties: Salvadoran Immigrant Networks in America*. Berkeley, CA: Univ. of California Press.

——— (2006) "Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States," 111 *American J. of Sociology* 999–1037.

——— (2011) "The Power of the Law: Central Americans' Legality and Everyday Life in Phoenix, Arizona," 9 *Latino Studies* 377–95.

https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press

Mezey, Naomi (2001) "Out of the Ordinary: Law, Power, Culture, and the Commonplace," 26 *Law & Social Inquiry* 145–67.
Moore, Sally Falk (1973) "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study," 7 *Law & Society Rev.* 719–46.
Morris, L. (2002) *Managing Migration Civic Stratification and Migrants Rights*. London: Routledge.
Motomura, Hiroshi (2010) "The Rights of Others: Legal Claims and Immigration outside the Law," 59 *Duke Law J.* 1723–86.
Ngai, Mai (2004) *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton: PUP.
Pastore, Ferruccio (2004) *Che fare di chi non dovrebbe essere qui? La gestione della presenza straniera irregolare in Europa, tra strategie nazionali e misure comuni. sommersi e i sanati. Le regolarizzazioni degli immigrati in Italia*. Colombo, A., & G. Sciortino. Bologna: Il Mulino.
Portes, Alejandro (1978) "Toward a Structural Analysis of Illegal (Undocumented) Immigration," 12 *International Migration Rev.* 469–84.
——— (2007) "Migration, Development, and Segmented Assimilation: A Conceptual Review of the Evidence," 610 *The Annals of the American Academy of Political and Social Science* 98–118.
Provine, Doris M., & Monica W. Varsanyi (2012) "Scaled Down: Perspectives on State and Local Creation and Enforcement of Immigration Law. Introduction to the Special Issue of Law & Policy," 34 *Law & Policy* 105–12.
Rigo, Erica (2011) "Citizens despite Borders: Challenges to the Territorial Order of Europe," in Squire, Vicky, ed., *The Contested Politics of Mobility: Borderzones and Irregularity*. London: Routledge.
Rodríguez, Nestor, & Jacqueline M. Hagan (2004) "Fractured Families and Communities: Effects of Immigration Reform in Texas, Mexico, and El Salvador," 2 *Latino Studies* 328–51.
Ruhs, Martin, & B. Anderson (2006) "The Origins and Functions of Illegality in Migrant Labour Markets: An Analysis of Migrants, Employers and the State in the UK," *COMPAS Working Paper*, WP-06-30a.
——— (2010a) "Semi-Compliance and Illegality in Migrant Labour Markets: An Analysis of Migrants, Employers and the State in the UK," 16 *Population, Space and Place* 195–211.
———, eds. (2010b) *Who Needs Migrant Workers? Labour Shortages, Immigration and Public Policy*. Oxford: Oxford Univ. Press.
Ryan, Bernard (2006) "The Evolving Legal Regime on Unauthorized Work by Migrants in Britain," 27 *Comparative Labor Law and Policy J.* 43–5.
Rytter, Mikkel (2012) "Semi-Legal Family Life: Pakistani Couples in the Borderlands of Denmark and Sweden," 12 *Global Networks* 91–108.
Sadiq, Kamal (2008) *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries*. Oxford: Oxford Univ. Press.
Salcido, Olivia, & Cecilia Menjivar (2012) "Gendered Paths to Legal Citizenship: The Case of Latin-American Immigrants in Phoenix, Arizona," 46 *Law & Society Rev.* 335–68.
Sarat, Austin (1990) " 'The Law Is All Over': Power, Resistance and the Legal Consciousness of the Welfare Poor," 2 *Yale J. of Law and Humanities* 343–80.
Schuck, Peter (1998) *Citizens, Strangers and in-Betweens*. Oxford: Westview Press.
Silbey, Susan (2010) "Legal Culture and Cultures of Legality," in Hall, John R., Laura Grindstaff, & Ming-Cheng Lo, eds., *Handbook of Cultural Sociology*. London and New York: Routledge.
Tom, Aileen (2006) "How Stricter Dutch Immigration Policies Are Contributing to Rising Islamic Fundamentalism in the Netherlands and Europe," 5 *Washington University Global Studies Law Rev.* 451–68.
Triandafyllidou, Anna, ed. (2010) *Irregular Migration in Europe Myths and Realities*. Fanham: Ashgate.

https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press

Van Meeteren, Masja, G. Engbersen, & M. van San (2009) "Striving for a Better Position. Aspirations and the Role of Cultural, Economic and Social Capital for Irregular Migrants in Belgium," 43 *International Migration Rev.* 881–907.

Welch, Michael (2003) "Ironies of Social Control and the Criminalization of Immigrants," 39 *Crime, Law and Social Change* 319–37.

Willen, Sarah (2007) "Exploring '*Illegal*' and 'Irregular' Migrants' Lived Experiences of Law and State Power," 45 *International Migration* 2–7.

Wong, Carolyn (2006) *Lobbying for Inclusion: Rights Politics and the Making of Immigration Policy*. Stanford: Stanford Univ. Press.

Yamamoto, Ryoko (2007) "Crossing Boundaries: Legality and the Power of the State in Unauthorized Migration," 1 *Sociology Compass* 95–110.

Yngvesson, Barbara, & S. B. Coutin (2006) "Backed by Papers: Undoing Persons, Histories, and Return," 33 *American Ethnologist* 177–90.

Cases Cited

Metock [2008] Case C-127/08, *Blaise Baheten Metock and Others* v. *Minister for Justice, Equality and Law*. European Court of Justice.

Zalewska [2008] *Zalewska* v. *Department for Social Development*, UKHL 67.

Zambrano [2011] Case C-34/09, *Gerardo Ruiz Zambrano* v. *Office national de l'emploi (ONEm)*, European Court of Justice.

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https://doi.org/10.1111/lasr.12031 Published online by Cambridge University Press