

# Why We Should Use the Term Illegalized Immigrant

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## Introduction

The Associated Press (AP) recently announced an important change to its Stylebook: it “no longer sanctions the term ‘illegal immigrant’” (Colford, 2013; Morison, 2013). AP suggested alternative phrases, such as “person entering a country illegally” or “without legal permission” (Morison, 2013). While these phrases may be accurate, they are wordy, prompting AP’s Senior Vice President and Executive Editor, Kathleen Carroll, to project that suitable terminology will evolve “down the road” (Colford, 2013). In this *Research Brief*, I argue for the adoption of illegalized immigrant to fill the terminology gap.

The terms “illegalized immigrant” and “illegalizing” immigrants are occasionally used in academic writing, especially among scholars seeking to understand the processes that render some people “illegal” (Dauvergne, 2008; Wright, 2013). To these scholars, the term “illegalized” represents a scientifically accurate term that describes the societal phenomenon rendering migrants “illegal.” In this *Research Brief*, I build on existing scholarship to suggest that the term illegalized immigrant should be widely adopted beyond the scientific community for use in politics, media, education, and everyday conversation.

Language matters in public discourse and everyday exchange: terminology can imply causality, generate emotional responses, and transmit symbolic meanings. The term illegal immigrant, for example, implies that an immigrant has committed a crime, that she does not belong, and that someone else (often the speaker) has been wronged. These implied meanings and the emotional responses they elicit have real consequences, affecting the judgment and behavior of decision makers and voters, which can in turn inform policies and legislation. They also shape the way civic society, employers, and communities engage immigrants in everyday life.

My suggestion to change this terminology follows other similar changes that have been recently adopted. For example, the terms “race” and “racial minority” are being increasingly replaced by the phrases “racialized groups” and “racialized minorities,” which convey that racial categorization is a social and political process rather than a naturally occurring condition. In a similar way, the term “illegalized immigrant” shifts the emphasis away from the individual and toward a societal process that situates immigrants in positions of precarity and illegality.

The illegalization of migrants is a wide-spread international issue that is common practice in Europe, North America, and elsewhere (Balibar, 2000; Di Giorgi, 2010; Goldring & Landolt, 2013; Ngai, 2004). Although there are national and regional differences in the particular ways that people are illegalized, the term “illegalized immigrant” has potential for widespread international use.

## Problems with Current Terminologies

A core argument against the use of the term “illegal immigrant” is that a *person* cannot be illegal, only the *actions* of a person can contravene existing laws

(Nyers, 2010). This argument has prompted the AP to change its Stylebook to tell users that “‘illegal’ should describe only an action, such as living in or immigrating to a country illegally” (Colford, 2013). Moreover, as political scientist Peter Nyers (2010: 1356) points out, “The charge of illegality is meant to undermine the moral character of certain types of migrants... The term ‘illegal’ implies a breaking of the legal order, a violation of rule-following norms of behaviors, and an intention to commit a wrong.” Other scholars concur, arguing that people deemed illegal “are de-humanized, are reduced to non-persons, are nobodies” (Grimsditch et al., 2003).

Despite its problematic nature, the term “illegal immigrant” has become a normalized convention that is widely used in some political, public, and academic circles. This term is especially prevalent in the United States (US). Although “illegal” is grammatically an adjective it is now used as a noun (Dauvergne, 2008: 10), referring to illegalized migrants whom “we imagine ... as poor and brown and destitute” (Dauvergne, 2008: 16). In other words, using this terminology portrays illegalized immigrants as unwanted and non-belonging, as well as racialized outlaws. Critically-minded individuals and organizations therefore explicitly reject the term illegal along with its implied racist and colonial connotations.

In Canada and other countries outside the US, references in public discourse to illegal immigrants have diminished over the last decade and are increasingly being replaced with terms like “non-status” migrants (Nyers, 2010). Other adjectives that are frequently used to describe illegalized immigrants include “unauthorized,” “undocumented,” “irregular,” “non-status,” and “sin papeles/sans papiers.” A group of Canadian academics have recently made a case for the phrase “precarious status,” which illustrates the gradations of precarity that exist between status and lack thereof (Goldring et al., 2009; Goldring & Landolt, 2013).

Although these terms may be better suited than the term “illegal” to describe illegalized immigrants, they focus on “absence or lack: lack of documents (‘undocumented’), lack of established travel arrangements (‘irregular migrant’), lack of visibility (‘clandestine status’), lack of social status (‘shadow population’), lack of security (‘precarious status’), lack of humanity (‘alien’)” (Nyers, 2010: 132, parenthesis in original). Furthermore, these terms describe the *outcome* of the process of illegalization and thereby conceal the process itself. Conversely, the term “illegalized immigrant” is a more suitable term for acknowledging the legal and institutional processes that act on immigrants.

### **The Process of Illegalization**

People can be illegalized in numerous ways. One way would be to enter a country without legal permission to do so. This situation applies to a large portion of the illegalized population in the US. The US-Mexican border, for example, is selectively permeable. Although few Americans have problems entering Mexico, Mexicans who want to cross into the US require an immigrant or nonimmigrant

visa, which provides them with legal status in the US. The US government “illegalizes” those migrants who do not possess permission to enter by denying them legal status.

A second form of illegalization is seen when an individual enters a country as a refugee only to have their refugee claim rejected. As governments in North America, Europe, and elsewhere are tightening their refugee laws and policies, the success rates of refugee claims are declining. Meanwhile, countries of origin may not be any safer for refugees than before. By denying these migrants refuge, receiving states illegalize them.

A third form of illegalization occurs when a migrant initially enters a country with a visitor, student, or work visa or permit, but stays in the country past the expiry date. Canada, for example, has dramatically increased its number of temporary foreign workers in recent decades (Lenard & Straehle, 2012), and the labour of these migrants is obviously needed. Despite this need, however, migrants who remain and work in Canada past the expiration of their visa or permit are often illegalized when Canada rejects their visa or permit renewal, denying them a pathway to legal permanency.

According to Jean McDonald, “‘Illegalization’ refers to those processes that *make* people illegal: processes that *illegalize* certain bodies in particular spaces within the globalizing nation-state system” (2009: 26, italics in original). Legal scholar Catherine Dauvergne (2008: 2) concurs. She observes that “we are currently witnessing the ‘illegalization’ of migration,” and suggests that this process positions migrants as scapegoats for anxieties commonly experienced by populations of prosperous Western states concerning globalization, economic uncertainty, and a sense of loss of national sovereignty.

In a French context, philosopher Étienne Balibar (2000: p. 42, emphasis and parentheses in original) remarks:

The *sans-papiers* have shown that their illegality has not been reformed by the state but rather created by it. They have shown that such a production of illegality, destined for political manipulation, could not be accomplished without constant attacks on civil rights (in particular, personal safety, which proceeds from the non-retroactivity of laws to the respect of dignity and physical integrity) nor without constant compromises with neo-fascism and the men who promote it.

The term “illegalization” draws attention to the role that illegalized migrants play in global and national economies. They constitute a labour force beyond the protection of the law, to which labour standards, minimum wage legislation, and many other social and economic rights and protections do not apply. Their illegalization renders them vulnerable and exploitable, as evidenced by the meatpacking industry in the US. At a time of fierce competition, this industry requires a large, flexible, and easily controllable workforce. Illegalized immigrants comprise this workforce because their lack of status severely compromises their bargaining power vis-à-vis their employers (Champlin & Hake, 2006). The reliance on illegalized migrant workers is not only an industrial strategy but also a

source of cheap services for many households requiring nannies, gardeners, or caregivers. Industrialized economies and societies have long been dependent on this exploitable labor force (Bauder, 2006; Cohen, 1987).

The undervalued economic contributions made by illegalized immigrants are further undermined by unfair treatment by the state, which provides them with limited or no access to social welfare, employment insurance, or health care. Although illegalized immigrants work and live among citizens, sitting on the same subway cars and in the same baseball stadiums, sending their children to the same schools, illegalized immigrants are not formally recognized as members of society.

Scholars of criminology use the term “hyper-criminalization” to describe the process of illegalization (De Giorgi, 2010: 152; Aliverti, 2012: 420). They point out that the invocation of criminal law in cases of immigration offences serves mostly as a threat rather than to actually prevent the offense or persecute the offender (Aliverti, 2012). Criminalization and illegalization are forms of “punishment” that effectively discipline the corresponding migrant population (De Giorgi, 2010). Upon realizing their own “deportability” as illegalized immigrants, the migrant worker population becomes docile and fearful (De Genova, 2005: 215). Disproportionate exploitation and socio-political exclusion have thus made illegalized immigrants the “modern proletarians” (Balibar, 2000: 42).

## Conclusion

In this *Research Brief*, I have argued for the adoption of the term “illegalized immigrant” to draw attention to the systematic process that renders people “illegal” rather than blaming illegalized immigrants for the situation in which they are placed. Illegalization is a process created by governments and institutions enacting and enforcing migration and refugee laws (Dauvergne, 2008; Saad, 2013).

With its focus on process rather than outcome, I have argued that the term “illegalized immigrant” is sensitive to variable gradations of precarity experienced by migrants (Goldring et al., 2009). Thinking in terms of “illegalization” therefore overcomes the binaries of legal vs. illegal, status vs. non-status, etc. However, speaking of illegalized migrants is not entirely unproblematic. The terms “migrant” and “immigrant” carry connotations of colonization and racialization (Anderson et al., 2009; Sharma, 2006). Yet it *is* accurate to speak of illegalized migrants and illegalized immigrants under the assumption that people become migrants and immigrants when they cross state borders.

My emphasis on political and legal processes may raise the question of what is to be done to transform these processes in order to end the illegalization of immigrants. In this *Research Brief*, however, I refrain from making any concrete suggestions. There are numerous solutions that are proposed by activists and scholars. For example, no-borders politics target the root causes of the problem by seeking to abolish the very category of the migrant that can be



illegalized (Anderson et al., 2009), while calls for regularization address the problem in a practical way whereby “illegality is reconfigured through the regularization process” (McDonald, 2009: 65). My point in this *Research Brief* is to advocate for terminology that recognizes that the very process of illegalization by the state and institutional practices is problematic.

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