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Book Review: Immigration Law and the U.S. -Mexico Border ¿Sí se puede?

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Book Reviews

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Johnson, K. R., & Trujillo, B. (2011). *Immigration Law and the U.S. -Mexico Border ¿Sí se puede?* Tucson, AZ: University of Arizona Press. 312 pp. \$19.95 (paper).

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Why does the United States lack a solution to immigration, specifically to the problem of migration across its southern border? After tracing the history of aggressive immigration laws that have targeted European, Asian, and Latin American hopefuls, as well as pre- and postslavery laws aimed at African Americans, Johnson and Trujillo cite the lack of provision for immigration in the Constitution as the root of piecemeal and ineffective federal and state laws that continue to the present day. They examine how the long territorial history between the United States and Mexico that includes “illegal aliens” on both sides gave birth to mistrust and pejorative policies and criticize post-September 11 national security concerns as a barricade to immigration reform. Their examination of the historical, legal, and political precedents of U.S. immigration law set within the social and cultural context of immigration persuasively argues that the “problem” of immigration from Mexico to the United States is largely a product of reactive U.S. immigration laws based on racial and cultural stereotypes.

The U.S. Constitution is silent on immigration because the framers failed to specifically address the issue for fear of alienating other delegates with an interest in maintaining the institution of slavery. Johnson and Trujillo point out that regulating immigration is not an *enumerated power* expressly authorized by the Constitution, “which reserves most governmental powers to the states” (p. 45). Nevertheless, the authors relate, this implied power has been gradually entrusted to the federal government through Article 1, Section 8 of the U.S. Constitution, which deals with the commerce clause, naturalization of foreigners, migration and importation (usually of labor), as well as war and foreign affairs powers. Because of these *plenary powers* the federal government enjoys, U.S. courts have stood idly by despite the discriminatory nature of

immigration laws targeting mostly people of color from certain nationalities. The authors describe how the plenary power doctrine that emanated from the Chinese Exclusion Case of 1889 was used in 2001 as the legal basis for the “war on terror” that included an increase in border enforcement and security measures that disproportionately affected innocent Muslim Americans and immigrants from Mexico and Central America. Among the examples of this collateral damage included the indefinite detention of immigrants in which the courts have allowed these decisions to stand without judicial review. This book clearly lays out how this doctrine has permitted the treatment of noncitizens “in ways that would be blatantly unconstitutional if they were U.S. Citizens” (pp. 49-50). For example, the passage of the 1996 Personal Responsibility and Work Opportunity Reconciliation Act effectively bars not only undocumented immigrants from all federal benefits but also “stripped lawful immigrant residents—including those who paid taxes—of eligibility for several major federal public benefits programs” (p. 123).

Although Johnson and Trujillo acknowledge that immigration policies have evolved from the late 1700s to the early 1950s when only individuals considered “White” were allowed to be naturalized, and Article VIII of the Treaty of Guadalupe compelled U.S. courts to categorize Mexican immigrants residing in the ceded territory as “White” for naturalization purposes regardless of color, multiple amendments to the Immigration and National Act of 1952 have gradually and disproportionately affected people of color, particularly immigrants from Mexico. Immigration personnel can deport people for shoplifting, forging checks, or urinating in public. Since 1996 congressional action has allowed border officials to return noncitizens to their country of origin without a hearing while they are kept in custody during removal proceedings. Despite criticism from human rights groups, expedited removals have increased by 70% since 2001, with “Mexican citizens composing almost 61 . . . and 65 percent of removals overall” (p. 137). In an ironic twist of history, although Mexico passed the Immigration Act of 1824 to stem the flood of Anglo immigrants—who today would be labeled “illegal aliens”—they continued to cross the border to settle in the northern Mexican territory. Johnson and Trujillo point out that “although ‘alien’ is the centerpiece of the Immigration and Nationality Act of 1952, ‘illegal alien’ is not . . . [but] rather is . . . a deeply pejorative term that implies criminality” which suggests that such persons “deserve severe punishment, not any kind of legal protection” (p. 8). As further evidence of the cultural component of immigration law the authors cite the 1975 decision of the Supreme Court in *United States v. Brignoni-Ponce* that granted the Border Patrol the authority to racially profile individuals based on their “Mexican appearance” (Johnston & Trujillo,

2011, p. 175). Even though the court reversed the criminal conviction on the grounds that it violated the Fourth Amendment rights of the accused, the language used in issuing its decision exacerbated stereotypes of Mexican Americans and Latinos in general as foreigners.

The authors point out that despite the best estimates available indicating the undocumented population that comes from Mexico amounted to approximately 50% to 60%, the court relied on the exaggerated numbers of 85% provided by the U.S. government as grounds to justify the racist language used to support its legal reasoning. Furthermore, the court's focus on the number of the undocumented population to issue its legal reasoning was flawed since it should have considered the percentage of the total U.S. citizens and lawful immigrants residing in the U.S., which amounts to approximately 80% who because of anti-immigrant rhetoric have to be "subject[ed] to the dignitary injuries caused by racial profiling in immigration enforcement" (p. 173). The authors make a persuasive argument that despite racial profiling being unconstitutional, this practice is allowed to stand when immigration laws are enforced. They express grave concern for the increase in the violation of immigrants' constitutional rights given the expected upsurge in the population growth of individuals of "Mexican appearance" in the next 40 years.

Johnson and Trujillo assert that since 9-11, U.S. immigration policies have cracked down on undocumented immigrants rather than on terrorists, have done little to improve national security, and have not reduced the number of undocumented immigrants crossing the border. If Congress is serious about resolving this challenge, they must take a different approach to address the country's demand for unskilled labor. The authors argue that current policies have aggravated the situation since the militarization of the border has forced undocumented migrants, who in the past returned to their respective countries at work's end, to remain in the United States to avoid an expensive and perilous journey of being smuggled back into the country. The authors report that immigration laws have become so extreme that "in the name of fighting terrorism, the Department of Justice announced that it would begin enforcing a rule allowing for the deportation of immigrants who fail to report their change of address within ten days of moving" (p. 229). Despite the rhetoric of securing the U.S.-Mexico border from potential terrorists, the authors argue that none of the 9-11 attackers came into the country through the southern border. In fact, they claim that most of the perpetrators used the legal channels currently available to enter the United States such as overstaying the terms of their visa.

The lack of a national policy on immigration has led to state laws such as California's Proposition 187, which attempted to prevent undocumented immigrants from accessing public services such as education and health care,

and Arizona's SB 1070, currently under review by the U.S. Supreme Court, which would give Arizona law enforcement officers the authority to stop, detain, and arrest individuals based on reasonable suspicion of their unlawfully residing in the United States. Other states including Alabama, Georgia, Indiana, Utah, and South Carolina have passed anti-immigration laws that have also been declared unconstitutional by the federal courts except in Alabama where a federal judge upheld most of that law's anti-immigrant provisions ("Times," 2011). The authors also describe the controversial 287 (g), a provision in the Immigration and Naturalization Act that allows cooperation between federal, state, and local governments to enforce immigration laws. This provision as well as the Secure Community Program, which allows FBI fingerprint information of anyone arrested to be shared with the Department of Homeland Security for potential immigration violations, has caused outrage in the Latino community in large part because a large percentage of those arrested under these programs have turned out to be "noncriminal aliens." For example, statistics from Immigration and Customs Enforcement indicated that 33% of immigrants from the State of Illinois deported under this program had no criminal record; this has resulted in California, Illinois, Massachusetts, Maryland, and New Jersey withdrawing or threatening to withdraw from their agreements to cooperate with the federal government to enforce immigration policies. In order to appease these critics, the Obama administration has issued orders to halt deportation of undocumented immigrants with "clean records and strong ties to the community" (Preston, 2011, 2012). The authors express disbelief that 1, 500 local and state law enforcement agencies throughout the United States have agreed to perform duties within the purview of the federal government with plans to expand the program nationwide by 2013 (Preston, 2011). These types of policies have led to a record 1.1 million deportations in the last 3 years of the Obama administration, the "highest number in six decades" ("Times," 2011). Despite the exponential growth of deportations, immigration restrictionists claim the Obama administration has used accounting gimmicks past administrations have used to boost deportation figures (Becker, 2010). This accusation is repudiated not only by the Obama administration but also the authors of this book.

Citing and comparing statistics is a tricky business. While on the one hand the authors use statistical analysis of data from the U.S. Census and the Pew Hispanic Center to debunk the myth that the undocumented come to the United States in hopes of taking advantage of public services and stealing "good American jobs," they do not provide hard numbers that would give the reader a real assessment of the contributions they argue that undocumented immigrants make by paying into the system in the form of sales, property, and

excise taxes that amount to more than what they receive in education, health care, and other public services. Johnson and Trujillo do make important recommendations to address the problem of undocumented immigration including the liberalization of immigration policies that mirror those of the European Union that would enable the migration of labor to flow more easily among the three countries (Mexico, the United States, and Canada) that are part of the NAFTA agreement. Also, the authors address the potential for a mass movement such as Occupy that cuts across class and racial lines to coalesce around immigration and other issues of social justice.

Revealing the social, cultural,—and particularly the questionable constitutional—underpinnings of U.S. immigration law as it has evolved over the last 200 hundred years alongside its neighbor presents a compelling argument that the “problem” of immigration from Mexico to the United States is largely a product of reactive U.S. immigration laws based on racial and cultural stereotypes. With the presidential election in full swing and immigration a hotly debated topic, *Immigration Law and the U.S.-Mexico Border ¿Sí se puede?* should be a required read for introductory courses on immigration, Chicano Studies, and Mexican American Studies; for educators at all levels, for voters, and for individuals running for public office who often take advantage of the media attention to disparage Latino immigrants for not using legal channels to enter the country.

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Bio

Martin Meráz García is currently an assistant professor of Chicano studies at Eastern Washington University (EWU) where he was also a visiting assistant professor of American government and international politics. He has also taught courses at

Washington State University in Criminal Justice. His areas of specialization include international relations, political psychology, and criminal justice. He has presented his research on Latinos at various regional, national, and international conferences. In addition, he has conducted field research in Nicaragua as well as in various states in the Pacific Northwest. Recent publications include *Ordinary Individuals Who Become Narcotraffickers: A Theoretical and Interdisciplinary Approach to Drug Trafficking* (Kendall Hunt), "The Psychology and Recruitment Process of the Narco" (*Global Crime Journal*) and "Cooperation among the Nicaraguan Sandinista Factions" (*Latin American Policy Journal*).

Dyrness, A. (2011). *Mothers United: An Immigrant Struggle for Socially Just Education*. Minneapolis: University of Minnesota Press. Cloth US\$69, Paper US\$22.95.

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As a minority student who studies education, one tends to grow accustomed to hearing about the negative outcomes associated with being a minority student raised by minority parents. The educational forecast for minorities, especially those with low socioeconomic status, is often bleak. Parents of these children are often portrayed as unwilling or unable to be involved in their child's education due to long working hours or a general apathy toward education. Recent research has acknowledged that, in many cases, there is simply a difference of opinion between parents and school staff on what it means to be involved in a child's schooling and that Latino parents do in fact truly value education (e.g., Zarate, 2007). Language barriers often make it extremely difficult for Spanish-speaking parents to become active members in the school community (Ramirez, 2003). Dyrness addresses these obstacles and opens the reader's eyes to even more barriers that come about by those with even the best of intentions.

Andrea Dyrness provides a stark contrast to the common conceptions of Latino parents and their involvement in schools in her book *Mothers United: An Immigrant Struggle for Socially Just Education*. Now a professor of education studies at Trinity College, she uses in this work material from the research she conducted for her dissertation project. She shares with us the experiences of five Latina, immigrant mothers as they struggle to find voice