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## CHAPTER 6

# Recasting the Agency of Unaccompanied Youth

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Early law in the United States did not recognize children as individual rights holders independent of their parents. The law considered children as wage-earning assets of their fathers, in which “their services, earnings and the like became the property of their paternal masters in exchange for life and maintenance” (Woodhouse, 1992: 1037). The nineteenth century was marked by, what Stanley Cohen has termed a profound “moral panic” concerning gangs of children overstepping the confines of childhood and threatening “societal values and interests” particularly among new immigrant communities (Cohen, 1972: 9; Pearson, 1985: 63; Davin, 1990). In the late nineteenth century, Progressive Era reformers fundamentally altered the relationship between the state, the family,

and the child—no longer did a father wield absolute possession and control over his child, and the state began to monitor the community’s social investment in the child. Reformers sought to “save” children from the violence of factories and the street through compulsory education, welfare reforms, and specialized juvenile courts. Seeking to protect and provide for this inherently vulnerable population, the court began to emphasize children’s rights, which “operated both as standards for parental behavior and as limitations on parental power. Parental failure to live up to these standards violated children’s rights and justified community intervention” (Woodhouse, 1992: 1052, cited in Thronson, 2002: 979). Under the rubric of the “best interests of the child,” the legal principle that still prevails in contemporary juvenile courts, the state can intervene directly in family life in order to assure appropriate therapeutic interventions for children. Moreover, these historical reforms marked a shift in allegiance that remains with us today—a child’s “highest duty was no longer obedience to parents, but preparation for citizenship” (Woodhouse, 1992: 1051).

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Despite discarded notions of children as property, contemporary U.S. immigration law still frames immigrant children as objects, recognizing the identity of a child only inasmuch as that child is a derivative of the actions, legal status, and presence of his or her parent(s). The presumption is that adults are the decision-makers and providers for children. The social position of the child as inferior or somehow exclusively dependent stands in marked contrast to the integral roles children often assume in familial decision-making processes, as well as the decisions they make as individual social actors. Nonetheless, to succeed best at obtaining legality under the practices of immigration law, children must be presented as variables or liminal figures within adult-defined worlds. Because children are not seen as autonomous individuals from birth, but as beings that families must socialize into mature adults, children do not maintain an independent relationship to the state (Schneider, 1968). And yet, as Glenn convincingly argues, independence is a “key ideological concept anchoring citizenship” manifested in rights such as property ownership and voting (Glenn, 2002: 27). At the same time, the family becomes the mediator of the state’s investment in the child as a future citizen. Because of this presumed dependence, children must rely on their parents as proxies before the law, which restricts their access to the state (Jans, 2004; Leiter, et al., 2006; O’Neil, 1997; Thronson, 2002). Consequently, the legal identity of the “unaccompanied alien child”<sup>1</sup> is both contingent and dependent: an impossible subject who cannot exist in juridical

<sup>1</sup> The U.S. legal code defines “unaccompanied alien children” as “illegal aliens” under the age of eighteen who come to the United States without authorization or overstay their visas and are without a parent or legal guardian. Although many children outside of their country of origin are without their parents or legal guardians, they may be accompanied by customary care providers, extended family, family friends, community members, or entrusted to smugglers throughout the duration of their journey. Internationally, the more prevalent term is “separated children” which, in many ways, more accurately reflects the temporary or contingent nature of travel or living arrangements of many children. In my research, I choose to enlist the juridical term “unaccompanied child” because it is a critical intersection between migrant youth, their families, and U.S. law. The legal category, constructed though it may be, becomes a useful site of inquiry into the ways the law attempts to identify and to shape the capabilities and rights of children and their relationships to extended kinship networks both in the United States and abroad.

accounts of personhood due to his illegal presence in the United States and his paradoxical position as an alone but dependent minor. Just as Mae Ngai (2004: 4) argues, a migrant’s illegality is “simultaneously a social reality and a legal impossibility—a subject barred from citizenship and without rights.”

Countering the perception of children as dependent citizens, this article argues that recent changes in immigration law once again shift the relationship between the state, the family, and the child, positioning the state at odds with lived kinship structures and forcing youth to choose between the state and existing kinship ties. In viewing children as undeveloped in their autonomy and thereby dependent upon an adult (be it parents or the state *in loco parentis*), immigration law does not allow space for thoughtful consideration of a child’s agency. In contrast, I argue that a discussion of agency becomes central in the narratives of migrant youth in the ways they cross physical, social and metaphoric borders and reside in overlapping spaces of impossibility—be it social invisibility, illegality, or independence. A unidirectional approach to the study of the law’s impact on the lives of youth negates the significant contributions youth make as social actors. Youth negotiate complex networks of actors and institutions that may aid them in evading deportation, earning income, and contributing to household economies in the United States and in their home countries (Ayotte, 2000; Coutin, 2005; Menjivar, 2001). By examining their everyday interactions and confrontations with these networks, I consider how youth shape the very laws that govern their everyday lives.

The nature of agency I discuss above will be examined through the case study presented here. Over an eighteen-month period, I traced the circulation of Julio through three geographic locales—in his hometown in El Salvador, in a federal shelter for unaccompanied children in Texas, and at an uncle’s home in Maryland—in an effort to understand how unaccompanied migrant children negotiate their often conflicting identities as child, family member, boyfriend/girlfriend, student, migrant, economic agent, victim of violence, at-risk youth, perceived perpetrator of violence, and/or juvenile delinquent. This article is a small segment of my doctoral research with migrant

children in which I explore the network of actors and institutions that emerge when unaccompanied children migrate clandestinely from Central America and Mexico to the United States. This multisited ethnography, spanning from Maryland to the sister cities of El Paso and Ciudad Juarez to El Salvador to Illinois, asks how the juridical category of “unaccompanied alien child” recasts relationships between the state, youth, and their families. I trace the coherence of this category through the complex and not always legible decisions of immigration officials, consular officials, practices of shelter social workers, attorneys, and activists and the narratives of migrant children and their families.

## JULIO’S (IN)VISIBILITY

When I first met Julio, a lanky youth of fifteen, he was dressed in a neon blue sweat shirt with matching pants and black, plastic flipflops provided to him by the federal shelter where he resided. In the El Paso heat of early summer, Julio incessantly wiped the sweat from his brow onto his right sleeve. The shelter’s director explained that the florescent-colored clothing—red, blue, yellow, and green—allowed staff to easily identify children who attempted to escape the federal shelter where they were detained. The sandals were also standard-issue flip-flops thought to deter fast-footed children from getting very far along the gravel road connecting the shelter to the highway. The shelter is one of thirty-six federal shelters (at the time) in which the U.S. Department of Health and Human Services’ Office of Refugee Resettlement (ORR) subcontracts nongovernmental organizations to provide housing and social services to unaccompanied or trafficked children apprehended by Immigration and Customs Enforcement (ICE), formerly known as Immigration and Naturalization Services.

At the time, the convoluted network of four government departments, fifteen federal government agencies, and myriad nongovernmental organizations involved in the care and custody of apprehended unaccompanied children (Bhabha & Schmidt, 2006) was indecipherable to Julio. In his mounting

frustration with his “captivity” at the shelter, Julio remarked, “I am ashamed that I got caught. I made my decision, had everything organized, had my plan, and now what? I am trapped here in this place. My debt is increasing as I sit here wasting my time learning geography. They must think I’m stupid. I walked their geography.”<sup>2</sup>

While in his hometown of Santa Ines, El Salvador, Julio’s reputation as a talented student and responsible worker had brought him school awards for excellence and stable employment as a dishwasher and as an occasional carpenter; but it also brought him to the attention of the Joker. The Joker was the local *Mara Salvatrucha* (also known as MS-13) gang leader, whose first contact with Julio was to demand the new tennis shoes that Julio purchased with his earnings. Later, demands came for his girlfriend and his participation in gang activities. Each threat was met with Julio’s firm and sometimes-belligerent refusals, refusals that belied how scared he really was. “I am not interested in your *babosada*,”<sup>3</sup> he told them. On three occasions, several gang members beat Julio, with the Joker directing each blow. They would wait for Julio outside of school, his place of work, and even church on Sundays. At times, Julio left through an alternate door, climbed a fence behind the school, or ran to escape these confrontations, but often this occurred without success. “It was hard to hide from them,” Julio remarked on his efforts to avoid gang members in his community. “I am taller than most people in my town. It is kind of hard for me to blend in.”

Julio typically contributed to his family’s food and schooling expenses for six younger siblings. His two elder sisters had limited capacity to contribute to the household’s needs, while Julio’s stepfather’s intermittent employment as a truck driver varied with

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2 I conducted all interviews in either Spanish or English. Translations are my own, highlighting in some instances Spanish words of particular force or interest. While detained, children receive daily instruction in the English language. At the time of my initial interview with Julio, one of the shelter teachers was introducing the geography of Central America and Mexico to detainees. In later conversations with Julio, he would detail with great specificity the route he traveled from El Salvador to the United States. Hence, he literally “walked their geography.”

3 Stupidity or crap.

the demand for timber from neighboring Honduras, Guatemala, and Nicaragua. When not working, his stepfather also had corresponding bouts of heavy drinking and verbal and physical abuse. After a particularly brutal beating in which the Joker and three of his fellow gang members broke Julio's arm, Julio stopped attending school and work, only leaving the house once in six weeks to remove his cast. "I tried to become invisible," he explained. He slept most of the day or watched Hollywood films on a small television set in the living room, able for the most part to avoid the gaze of his stepfather who, fortunately, was working during this period and away from the home for several weeks at a time. Gang members would regularly pass his home and yell threats through the windows. On one occasion, the Joker knocked on the door. When Julio's mother answered, she said Julio had left for the United States—a decision Julio had been contemplating for several months. Julio recalled this period of hiding: "There was nothing for me there. I could not work; I could not study; I could not protect my mom from my stepfather or even myself. I had to hide to survive; that is no way to live."

After six weeks of retreat, Julio and his mother began discussing his journey to the United States. She had located a distant uncle of Julio's who had moved eight years previously to Silver Spring, Maryland, and she called on Julio's behalf requesting help. Julio's uncle agreed to secure him employment and provide him a place to live if he could get to Maryland on his own. Julio borrowed US\$6000 from a local police officer for whom he had done some carpentry work but who could not provide him protection from the MS-13's recruitment apparatus. The police officer introduced Julio to his brother, a broker for *coyotes* who smuggled migrants through Guatemala and Mexico into the United States. Julio's \$3000 down payment assured him passage to the U.S.-Mexico border, or so he thought.

## SPACES OF LIMINALITY, INVISIBILITY AND MOVEMENT INTO THE JURIDICAL SPACE

His departure from Santa Ines marked Julio's entrance into a liminal period of transit, whereby he was devoid of the protection of the police, the gang, his family, and the Salvadoran and U.S. governments. He journeyed for three weeks—by bus through Guatemala, by car and by train through Mexico, and eventually by foot into the United States. The success of Julio's journey was predicated upon his hiding his physical presence—in ditches along the road, on top of trains, in the back of vans—as well as his language. He rarely spoke for fear of passersby detecting his Salvadoran accent and vocabulary. "I imagined I was a superhero in a comic book, you know, who had the power to make himself invisible. No one could see me. I never spoke. It is like I wasn't even there. Besides, it all seems like a bad nightmare now. I try not to think about it. It never really happened." Julio entered another dimension, be it liminal or science fictional, to absent himself while in transit (Coutin, 2005). Susan Coutin (2005: 195) analyzes how "clandestinity" is a public secret, a known social reality in which unauthorized migrants must be "absent from the spaces they occupy." For unauthorized migrants arriving in the United States, the law becomes a mechanism by which the state may *absent* those that are present through the prohibition of unauthorized entrance or through the denial of certain rights and services. The state may also physically absent, via detention or deportation, those that are unlawfully living within national borders (Coutin, 2005: 196).

Upon crossing the territorial boundary between the United States and Mexico, Julio also entered into a new juridical space (Ngai, 2004: 6). Julio shifts his principal legal identity from a citizen of El Salvador to an *illegal alien* with limited access to rights and services in the United States. As Ngai argues, however, the boundary between citizen and *illegal* is soft, where forms of illegality are ironically recognized by the state in some circumstances. "[I]llegal alienage is not a natural or fixed condition but the product of positive law; it is contingent and at times unstable.

The line between legal and illegal status can be crossed in both directions” (Ngai, 2004: 6). Under some conditions, such as Temporary Protected Status or certain types of visas, an individual can transform his illegal status to legal, just as an individual with legal status in the United States can lose his status through committing certain crimes (Ngai, 2004: 6). Kitty Calavita (1998) adds that not only does the law create illegality, but in the case of Spanish immigration law, it actively “regularizes and ‘irregularizes’ people, by making it all but impossible to retain legal status over time . . . the boundaries between legal and illegal populations are porous and in constant flux, as people routinely move in and out of legal status” (Calavita, 1998: 531).

Within three days of crossing the border by foot near McAllen, Texas, Border Patrol agents apprehended Julio en route to Houston. They interrogated him for two hours and held him for eight days in a small cell with six other migrants. Eventually, because of his age and his presence without a legal guardian, Julio was transferred to an ORR shelter for unaccompanied children. Analogous to the legal space of airports, ORR shelters are simultaneously located within and outside of national territories. Unaccompanied children are held betwixt and between in federal shelters that are geographically within United States territory but without access to the rights and services afforded to citizens (Turner, 1967). Unaccompanied children are confined to federal shelters much longer than their counterparts in the domestic child welfare system because they lack the proper documentation to enter into national spaces.

## IN LOCO PARENTIS

The state defines and positions unaccompanied youth largely through the law, whether by legislating citizenship, labor, or eligibility for government programs (Garcia, 2006; Hagan, 1994; Orellana, et al., 2001). It is important to note that immigration law does not provide any child-specific accommodations customary in family and juvenile courts for citizens. Unaccompanied children do not have a right to state-funded attorneys but must secure and pay for their own representation during immigration proceedings;

unlike children in state courts, there is no “best-interest” legal standard taking into account the safety and well-being of the child in immigration law; yet the rules of evidence remain the same for children and adults, forcing children to meet the same burdens of evidence and testimony as adults.

Recent shifts in immigration law for unaccompanied children have begun to guarantee some measure of legal relief for minors through the introduction of Special Immigrant Juvenile (SIJ) status. SIJ is a step in immigration law towards the identification of unaccompanied minors by permitting undocumented children to stand before the law as primary petitioners in cases of abuse, neglect, or abandonment. While SIJ has existed since the early 1990s, advocates have increasingly utilized this tool in the last five years. While in many ways it is consistent with immigration law’s view that children are necessarily dependent, SIJ does open a critical window through which advocates have begun to push for expanded rights of children and a more nuanced perspective on migrant children. It is the only provision within immigration law that considers the best interests of the child, creating a unique hybrid of state courts and federal immigration law, which provides certain undocumented children with an avenue to citizenship. The mechanism of the best-interest standard with the SIJ petition is one of the only ways by which the voice of the child figures into immigration proceedings. Children claiming SIJ, however, must legally sever kinship ties and become dependents of the state.

In order to remain in the United States, the most viable legal option for Julio was to petition for a Special Immigrant Juvenile Visa in which Julio had to detail how his father abandoned him at a young age, the abuse he and his siblings received at the hands of his stepfather and that his mother could not or chose not to protect him. In effect, Julio had to publicly claim that he was “abused, neglected, or abandoned” by his family—a claim that, according to Julio, was not only emotionally inaccurate but also undermined his personal and financial commitment to his mother and siblings. “I just can’t say those bad things about my family to a room of people, to a judge. You just do not do that. They are my family.” According to Julio’s

former employer in Santa Ines, the physical abuse was public knowledge but something not discussed or addressed publicly. He said, “It [domestic violence] happens. We know it happens but it is a family affair. Julio never said anything to me, but I knew what was going on. We all knew.”

The Special Immigrant Juvenile status is a form of legal relief that embraces the traditional binaries in which a child can either exist as part of a family or as wholly independent. If a child is seen as independent or abandoned by his family, the state affixes itself as the parent of the child victim. With SIJ, Julio forfeits any right to petition for his mother or siblings to immigrate. Further, since an SIJ recipient is “no longer the ‘child’ of an abusive parent, the CIS [U.S. Citizenship and Immigration Services] may assert that he or she no longer has any sibling relationship with brothers and sisters” (Kinoshita & Brady, 2005: 9). As such, SIJ suffers from a legal *aconsanguinity* in which “immigration policies nullify legal legitimacy of some kinship ties” (Coutin, 2000: 32–3; De Genova, 2002: 427).<sup>4</sup> In Julio’s situation, the state exists at odds with his actual family structure, legislating the space of the family by forcing him to choose between the state (and partial citizenship) and existing kinship ties.

## A QUESTION OF AGENCY

Anthropologists have traced the emergence of multiple youth identities shaped by social and political forces, yet there is a distinct neglect of how youth shape these same processes. What do youth do with this “agency”? How do youth interpret, navigate, shape, and re-invent relationships and customs,

and how are youth shaped by them? How do youth conceive of their social worlds, and what can adults learn from these perspectives? Prout (2005) claims that, although the empirical research on child agency is robust, there is minimal literature that moves beyond description. This speaks to how discussions of youth agency are consistently unidirectional—youth respond to or work against social structures, instead of actively shaping these same processes through their everyday interactions. For example, while focusing on the “agency” of youth as they assimilate global capitalism, transnational processes, and local culture, the anthropology of youth disproportionately centers on consumer practices and popular culture, such as the consumption of romance novels (Christian-Smith, 1987), fashion (Talbot, 1995), and clothing styles (Dimitriadis, 2001; Gondola, 1999). While these studies attempt to contextualize the lives of youth by focusing on how globalization and modernity shape cultural practices of youth in local contexts (Dirlik, 2001; Soja, 1989), few ethnographies allow for a mutually constitutive framework in which youth both incorporate global forces into local practices and influence the ways in which these forces are constituted and circulated beyond consumer preferences and practices. This essay seeks to challenge this analytic approach through the incorporation of the law as exemplary of the interdependence of the lives of youth such as Julio, especially at the center of global phenomena such as migration.

The quickly growing network of Office of Refugee Resettlement shelters for unaccompanied children might suggest that the law has begun to recognize the social agency of an entrepreneurial youth who orchestrates his or her own transnational journey, although the bureaucratic processes and institutional practices are predicated exclusively on children as undeveloped and dependent upon adults. More frequently, the law and lawlike processes frame agency in terms of delinquency, perhaps a contributing factor in why gang-based asylum claims, that Julio might also have pursued, have limited success. As Julio’s *pro bono* attorney remarked: “In immigration court, child abuse is more palatable than gangs.” Another advocate specializing in gang-based asylum claims concurs: “If you have a client who comes into the courtroom with muscles, visible tattoos or even just a bad attitude, you will have an extremely difficult time convincing the judge

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4 Although a child granted SIJ could apply for a sibling, she must first become a naturalized U.S. citizen, which requires a five-year waiting period following his or her adjustment of status to a Legal Permanent Resident, and must be over the age of 21 before she can apply for her sibling(s) to immigrate to the United States. Currently, there is a ten-year backlog for sibling petitions of U.S. citizens. Immigration law is very clear that a child granted SIJ cannot petition for her parent, stating “no natural parent of prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage be accorded any right, privilege, or status under this chapter” [INA 101 § 27 (J) (iii)(II)].

that your client is sufficiently sympathetic and deserving of asylum. However irrelevant to your legal claim, your client must play into a more sympathetic image of the victim—docile, quiet, and sufficiently fearful.” In contrast to his state-issued sweat suits and sandals, which marked Julio as a prisoner, Julio’s attorney also sought to physically and symbolically dress him as a sympathetic child victim, worthy of the court’s sympathies.

In tandem with an analysis of the ways legal and lawlike processes position migrant youth at the intersection of the family and the state comes an imperative to also focus on how youth like Julio negotiate, evade, and at times resist this normative positioning in their everyday interactions. While the law attempts to restrict or to deny the agency of children, the presence of unaccompanied children has spawned specialized governmental and nongovernmental programs, the emergence of “children’s judges” and “children’s attorneys,” “children’s dockets” for detained children, legal theories on child-specific persecution claims and has even generated new laws. By reading agency back into the law, we may see how the law functions in the daily lives of youth. Analyzing youth discourses on, confrontations with, or perceptions of the law will not only validate youth as important social actors warranting serious academic study but also will demonstrate how the law is interdependent with social subjects.

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