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Making and Becoming in the Undocumented Student Policy Regime: A Post-Qualitative [Discourse] Analysis of U.S. Immigration and Higher Education Policy

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Abstract: This paper discursively analyzes the public conversation around immigration as it intra-sects with state and federal policy, particularly in relation to higher education. I take in-state resident tuition policy as a departure point for an effort to explain how "undocumented" and "illegal" subject positions are produced through *intra*-secting policy texts, popular journalism, and presidential campaigns. I illustrate how understandings of students become reified into "undocumented" and/or "illegal" identities. Meanwhile, I pay special attention to the discursive productions made available from policy texts, highlighting the use of discourse analysis in the interrogation of social policy.

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Haciendo y volviendo en el régimen de la política de estudiantes indocumentados: Un análisis [de discurso] post-cualitativo de la política de inmigración y educación superior de los Estados Unidos
Resumen: Este artículo analiza la conversación pública sobre la inmigración, ya que se inserta en las políticas estatales y federales, particularmente en relación con la educación superior. Tomo la política de matrícula de estudiante residente como un punto de partida para un esfuerzo por explicar cómo los sujetos "indocumentados" y "ilegales" son producidos a través de textos de políticas intra-sectarios, periodismo popular y campañas presidenciales. Ilustra cómo la comprensión de los estudiantes se vuelve reificada en identidades "indocumentadas" y / o "ilegales". También presto atención a las producciones discursivas que se ponen a disposición de los textos políticos, y resalto el uso del análisis del discurso en el interrogatorio de la política social.
Palabras-clave: Inmigrantes indocumentados; educación de los migrantes; política educativa; análisis del discurso; educación superior

Fazer e tornar-se no regime de política dos estudantes indocumentados: Uma análise [do discurso] pós-qualitativa da política de imigração e ensino superior nos Estados Unidos
Resumo: Este artigo analisa a discussão pública sobre a imigração, como ela intra-seções com a política estadual e federal, particularmente em relação ao ensino superior. Considero a política de aula de estudante residente como um ponto de partida para explicar como os sujeitos "indocumentados" e "ilegais" são produzidos através de textos de políticas intra-sectários, jornalismo popular e campanhas presidenciais. Eu ilustra como as compreensões dos estudantes se tornam reificadas em identidades "indocumentadas" e / ou "ilegais". Presto atenção também às produções discursivas disponibilizadas a partir de textos de políticas e destaco o uso da análise do discurso no interrogatório da política social.
Palavras-chave: Imigrantes indocumentados; educação de migrantes; política educacional; análise do discurso; ensino superior

Introduction

This paper discursively analyzes the public-political conversation around immigration as it intrasects (Barad, 2007; Jackson, 2013) with state and federal policy, particularly in relation to higher education. I take in-state resident tuition policy (ISRT) as a departure point for developing a post-qualitative (Jackson & Mazzei, 2012; St. Pierre, 2013) effort to explain how subjectivities can materialize through *intra*-secting discourses that constitute the undocumented student policy regime in U.S. higher education. Specifically, I draw from immigration and education policy texts, popular journalism, and presidential campaigns. I read instantiations of these various rhetorical fields through one another to explain how discourses of economy, security, and surveillance produce new subject positions of/for undocumented students in contemporary U.S. higher education. This paper aims to make substantive contributions to the policy research related to undocumented students in U.S. higher education, while also making methodological contributions by proposing a post-qualitative orientation to discursive studies of public policy in education.

Post-qualitative inquiry is grounded in poststructural (Foucault, 2008; Lemke, 2011) and new materialist (Coole & Frost, 2010) assumptions of social realities and research; the core concepts of which I review after briefly introducing the policy context of undocumented students in U.S. higher education. The goal of post-qualitative inquiry is not to interpret reality, but rather to explain how realities come into being/becoming, recognizing that any reality is temporal, historical, and contingent (Deleuze & Guattari, 1987). It is an ontological rather than epistemological project (St. Pierre, 2013). As discourse does not conform to bounded narrative forms, nor does immigration, nor social policy, I eschew the academic imperative to nicely fit my analyses and findings into a strictly straightforward and linear scaffolding of the traditional research report. Rather, I present findings as a series of fractured discursive productions that cumulatively can explain a plausible response to the orienting research question, "How does the entanglement of immigration and education discourses engender a production of the undocumented student?" This research question is a question of *the subject*, the human subject, and how it becomes a recognizable position in social life.

To be clear, I do not claim a scientific stance for the discursive renderings that I put forth. Rather, I present this article as a series of movements and flows that can and should be read *through* one another to produce a sense of what U.S. immigration and higher education courses can do when entwined between and betwixt each other. My goal is to explain how an undocumented student might come into being/becoming rather than interpret the meaning of such a subject position. I hope to elicit multiple and conflicting possibilities for immigration and education policy, provoking readers not only to make sense of my intended tracings of how policy and discourse interact, but also to assemble their own sense within and betwixt the discourses produced through the public and political conversations around immigration as they come to bear on higher education policy. These choices were informed by prior theorizations of representation in (post-)qualitative research (Koro-Ljungberg, 2016; Kuntz, 2015; Pasque, Carducci, Gildersleeve, & Kuntz, 2011), which called for increased playfulness, discontinuity, and openness in the reporting and representation of qualitative inquiry. Such an approach, I believe, is consistent with the poststructural foundations in which I engaged my analytical movements and flows through the productions of policy discourse related to immigration and higher education.

Undocumented Students in Higher Education as a Policy Context

Research on in-state resident tuition policies (ISRT) has relied heavily on establishing legal arguments for undocumented immigrants' rights to higher education (Olivas, 2011) as well as quantitative analyses of policy outcomes related to undocumented students, demonstrating the efficacy of ISRT policy (Flores, 2010). Some qualitative work has taken up ISRT policy and explores the affective consequences of ISRT policies in undocumented immigrants' everyday lives, suggesting that such policy can support broader democratic imperatives for educational opportunity in undocumented students' educational trajectories (Perez Huber & Malagon, 2007). Qualitative work has also demonstrated the need for increased training and new protocols for student and administrative services entrusted in supporting undocumented students (Nienhusser, 2014). Despite a growing literature related to undocumented immigrants in higher education, and ISRT policy in particular, these policies have remained largely unexamined in terms of their discursive effects and ethical outcomes, wherein *ethics* refers to a way of doing (as opposed to morals/standards). In asking how the entanglement of policy discourses produces undocumented students, this paper makes an original contribution in examining the exercises of power and the plausible material effects, including the terms of subject-production, that circulate through ISRT policy discourses.

Discourse and Power, Some Beginnings …

Poststructural theories assert that the life or effects of any text rely upon its interplay with other texts, broader contexts, and the readers of those texts. This interplay, and the action/meanings that carry forth from it can be understood as discourse. In short, discourse is the talk (or language) and action of a text. As Baxter (2003) writes, discourse is a "site for the construction and contestation of social meanings" (p. 6). As such, the meanings within texts are not lying in wait to be found, but rather, meanings are constructed by the contingencies and pressures betwixt and between talk and action (i.e., discourse). Hence, discourse produces reality.

Within poststructural theory, discourse and power are recursively interlocked (Allan, 2010). Indeed, power operates discursively and discourse relies on power to produce meanings in everyday lives. From a poststructural perspective, power is understood "as a *productive* force, rather than a primarily *repressive* one" (Allan, 2010, p. 16). Power builds, even if, or as, it destroys. Drawing largely from Foucault (1978/1980), power is not a possession, but rather an exercise; power circulates by way of discourse between and across social relations. Power operates at local levels and change happens from a multitude of diverse power negotiations across (inter)related discourses.

Importantly, power and knowledge cannot be separated and are interdependent with discourse. Foucault (1978/1980) instructs: "it is in discourse that power and knowledge are joined together" (p. 100). Power/knowledge then, are negotiations across complex discourses that lead to an understanding of reality. Hence, truth, in poststructural thinking is "an effect of power/knowledge operating through discourse" (Allan, 2010, p. 17) and therefore inherently fractured and incomplete. Truths are produced, never stable, and always historically bound. Power disperses as certain ways of knowing and being in the world are made possible.

Not Really Identity, But …

Subjectivity—the space(s) wherein the self is made known—is a constant site of struggle, crafted and shaped by the conflicting subject positions made available from various discursive fields (Foucault, 1978/1980). In opposition to humanist thought, there is no such thing as a unified self or stable identity. Rather, selves are made plausible as tentative, contested, and conflicted subject positions are produced through discourse. Moreover, a reified sense of self, often called *identity*, can be understood as a technology for population control, working toward particular biopolitical interests as an exercise of power (Esposito, 2008; Lemke, 2011). These are the kinds of concerns at stake. The concerns are illuminated by using discursive analyses to interrogate policy through the *intra*-section of immigration and higher education.

From Not-Identity to Biopower

I am seeking to understand (and disrupt) how power/knowledge circulates through undocumented student policy discourse, pedagogically forming possible subjects, thus exercising biopower to structure social opportunity into particularized configurations that ultimately disenfranchise those who some undocumented student policies (i.e., in-state resident tuition policies or "Dream Acts") purportedly might seek to support (e.g., immigrants). Any biopolitical renderings of the undocumented student policy regime rest on the utility of the text within its context. The subject positions that emerge from *intra*-secting discourses that become reified as identities must prove useful for controlling a form of life at the scale of the population. However, that form of life might not necessarily be found in the body of the migrant targeted by the policy itself. That is, the form of life to be secured by policy might indeed exclude the migrant.

Biopower is the exercise of power through social institutions to produce a population (Foucault, 2008). It is productive by way of securing the body politic as made into the form (singular) of lives (plural) most desired for economic production and/or consumption. Biopower does not negate life, nor does it impose restrictions on life. Rather, it is an exercise of power to generate lives in the biopolitical figures of desired livelihoods – it builds an ethics for a becoming-reality. In twenty-first century global racial capitalism, such ethics are tied to a figure as consumer, one that ever-more produces a growth economy (Lemke, 2011). How, then, are the undocumented students produced into economic bodies?

Post-Qualitative Research and Policy Discourse Analysis: An Operationalization

Understanding policy as discourse assumes that policy produces particular truths (albeit dynamic and unstable) and possible knowledges (albeit tentative and historically-bound). However, as policy discourse reflects and produces culture (Ball, 1994), cultural actors (i.e., people) tend to act upon the truths and knowledges produced through policy as stable, unified, and self-evident. People treat truth as wholesome. As Allan (2010) writes, "policy-as-discourse views policy as regulating social relations primarily through positive or productive means" (p. 25). One social consequence, then, is that policy (as discourse) creates identities. Understanding the effects of policy requires the deconstruction of the subject positions that policy produces. Yet, without recognition of the nonhuman actants produced by policy discourses, any affirmation of subject positions remain interpretive and therefore bound to the epistemological – the production of meaning. While valuable, it remains an incomplete analysis.

Post-qualitative research seeks to disrupt the qualitative obsession on *interpretation and meaning,* and contribute to a new empirical notion of being/becoming. Being/becoming signifies a process of materialization that comes about from interlocking and/or *intra*-secting discourses and material things (Barad, 2007; Connolly, 2011). While critical qualitative research historically has been viewed as an epistemological project, post-qualitative research can be understood as an ontological one (Kuntz, 2015; St. Pierre, 2013). Ontological inquiries seek to explain what data *do* rather than interpret what they *mean*.

"Data," or Some Things Like Them

There were four primary evidentiary sources at play in my analysis:

1. The policy texts from the 21 states with current extending ISRT policies and 5 states with current restricting ISRT policies[1]. These 26 states are the only states with ISRT in statute, and they represent states' interests in the undocumented student policy regime.
2. The policy texts from the U.S. federal executive action: Deferred Action for Childhood Arrivals (DACA), including an official memorandum from then-Secretary of Homeland Security, Janet Napolitano. These were chosen to represent the federal government's engagement with undocumented students in higher education.

[1] An extending ISRT policy effectively grants undocumented students in-state resident tuition status, while a restricting ISRT policy effectively denies undocumented students in-state resident tuition status. See Gildersleeve, Rumann, & Mondragon, 2008.

3. Editorial texts from *USA Today, The New York Times,* and the *Washington Post* related to undocumented immigrants and higher education from 2000-2014. These popular texts emplace the undocumented student policy regime in the contemporary zeitgeist of American cultural populism.
4. Official campaign texts, including public speeches to major political organizations, from the 2008 and 2012 presidential campaigns of Barack Obama, John McCain, and Mitt Romney, respectively, and including an editorial written by President Obama published in *Time* magazine during the 2012 campaign. These speeches represent the political dimension of the undocumented student policy regime.

These texts were chosen purposefully so as to provide a range of partisan political positions and mediating artifacts in the ethical dynamics of the undocumented student policy regime. Cumulatively, they provide a purposeful sampling of state and federal government, populist, and partisan-political entanglements with undocumented students and higher education.

"Analysis," or Some Ways of Cutting Through

In working with policy, political, and popular texts from the undocumented student policy regime, my goals for these analyses are to cut through the propagated understandings that come ready-made from the texts themselves and complicate them by emplacing them within broader contexts, while also recognizing and accounting for the actions made plausible by the artifacts, or things, produced through the discourses of these texts. For example, state-based in-state resident tuition policy that affects migrants should not be divorced from broader federal immigration policy, including enforcement. The goal is to make meaning of the discourses *and provide explanation* of the material consequences that plausibly emerge from bringing such texts into contact and then putting forth what such contact generates.

Such a positioning in relation to discourse analysis is built from poststructural foundations à la Fairclough (1992) and Ball (1994). The notions of discourse as Foucault's conduct of conducts referenced earlier, and the recognition that policy texts can generate new political relations as well as augment or re-arrange cultural understandings are clear derivations from Foucauldian theorizations of neoliberalism and the genealogies of contemporary history. I enjoin these poststructural building blocks of third generation policy analysis (Lester, Lochmiller, & Gabriel, 2016), to the ontological project of post-qualitative research, building upon the philosophies referenced earlier.

My cutting-through the undocumented student policy regime draws from four key concepts that stretch across the ontological project of post-qualitative research and new materialism. I sought to examine the *intra*-sections of discourse and its plausible material effects, by which, I draw from Karen Barad's (2007) notion of *intra*-sectionality as the doing through of one discourse (or material) with another. As opposed to the layering-on that *inter*sectionality seeks to establish, *intra*-sectionality obsesses over how each entity is changed through engagement with one another. I further drew from new materialist theorizing in asking how various *things*, such as an affidavit, enact social relations (Bennett, 2010; Esposito, 2008). I borrowed liberally, if not explicitly, from Patricia Clough's assertions that *affect* is an empirical question and therefore an empirical experience (2008). Cumulatively, I sought to mangle the materiality of the discursive effects that the undocumented student policy regime plausibly produces, and establish new readings, understandings, and opportunities for response, as instructed by Alecia Youngblood Jackson's (2013) ideas of how to apply Pickering's mangle of practice (1995) – the swarming together of practices to engender transformations of practice. As mentioned, operationalizing these post-structural and new materialist concepts turns inquiry away from the epistemological (i.e., interpretive) and toward the ontological

(i.e., being/becoming). The ontological requires recognition of the engagement of things across discourses and their affective consequences. Hence, practices become swarmed together in the materialization of new subject positions or postures that command transformed practice in the doing of discourse. What follows are intentionally incomplete renderings of the entangled discourses reified in policy and political texts.

Immigrants as Human Capital, Part One

The undocumented student policy regime circulates a *discourse of economy* as part of its subjectivation (Deleuze, 1986/2006; Foucault, 1978/1980) of the migrant's relationship to higher education. Migrants become produced as subjects, in part, by defining their bodies in economic interests. The economy serves to foster a mode of existence for the migrant-cum-undocumented student. This discourse relies upon common rhetoric that equates educational opportunity with economic benefits to the individual and society. Students are divorced from knowledge production, but rather are situated as consumers and becoming-workers. They are nascent labor in a process of becoming economically valuable contributors to society. As President Obama explained in his *Time* magazine editorial*,* "It makes no sense to expel talented young people … who want to staff our labs, or start new businesses…" (Obama, 2012, p. 1). According to the President, talented young people deserve to stay, in part, because of their promised labor. Residency, perhaps even citizenship down the line, indebts migrants to labor for the U.S. economy. Former Massachusetts Governor and Republican Presidential Nominee, Mitt Romney had shared similar sentiments in his 2008 campaign speech to the National Association of Latino Elected Officials (NALEO). Romney invoked the history of immigration and its role in the American neoliberal project's veridiction. He stated, "An effective immigration system can strengthen our economy. As it has since the nation's founding" (Romney, 2008, p. 2). For migrants to matter as humans in 21st century America, they must contribute to capital. They must become human capital – an enterprising subject responsible for making oneself as valuable to the economy as possible in order to exist (Foucault, 2008).

As migrants, undocumented students do not inherently occupy a subject position in the undocumented student policy regime, but rather are abandoned to the object of policy. The policy developments in both ISRT *and* federal immigration policies must make the migrant mutable into a student, into nascent labor for the American economy. For example, as colleague, Susana Hernández and I detailed in a previous analysis, ISRTs that extend in-state tuition benefits to undocumented students require that migrants demonstrate residency, good moral character, and academic achievement in order to qualify as an undocumented student – a status secured through college admission and tuition billing (see Gildersleeve & Hernández, 2012).

The Undocumented, the Illegal

In previous work, colleague Susana Hernández and I outline the linguistic constructions of humanizing and dehumanizing nouns used to signify the subject positions at stake and/or targeted by ISRT policies (Gildersleeve & Hernández, 2012). We found that across extending and restricting state ISRT policies, a flurry of subject nouns are drawn upon to name the migrants and migrant children whose educations are under scrutiny. From "illegal" on one extreme to "unauthorized" or "undocumented" on the other, these state policy texts defined the targeted bodies of its discourses based on immigration status. On the surface, this makes sense in that most policies need to clearly define their target populations. However, ISRT policy, in particular, is generally written to apply to *all students* and certainly to *all residents* of a given state. These policies define a circumference of residency for in-state tuition purposes; they seek to define a political geography rather than a cultural

personhood. The legal frameworks of the policies force an "all or nothing" application in order to avoid engaging in debates of "protected class" for various migrant circumstances.

The three-part qualification for in-state resident tuition, common across most policies, applies without respect for immigrant status: live in the state for at least three years; arrive in the United States by the age of 15, and exhibit good moral character. There is no need, in the legal framework of the policy, to involve immigrant status in the broader policy text. Yet, all 26 states' ISRT policy texts include a specific subject related to immigration. Such naming has the discursive effects of generating new subject positions – or at least contributing to such subject-creation. The naming of "illegal immigrants," "unauthorized minors," "the undocumented," and "undocumented students" in state ISRT policy texts weaves the subject-formation through other discursive moments, such as when President Obama explicitly addresses "Dreamers" in his 2012 editorial from *Time* magazine. "Dreamers" has emerged in popular media as a descriptor for undocumented student activists seeking immigration reform, particularly in relationship to education.

Immigrants as Human Capital, Part Two

Through the Obama Administration's Deferred Action for Childhood Arrivals (DACA) executive order, the migrant subject is permitted to stay in the country, only if they mutate into an undocumented student. Within the criteria to qualify for DACA, then-Secretary of Homeland Security Janet Napolitano's memorandum states an eligible immigrant, "is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States" (Napolitano, June 15, 2012). Such discourse seeks to remove the migrant from the equation by producing a new subject position – the undocumented student. The discourse of economy emergent from state and federal policy provides the bones to this new subject's structure.

Students, again, are nascent labor for the American economy, but not just any kind of labor. Students, or rather, college graduates, are the prized kind of labor for America. College graduates embody the self-enterprising subject position poised to effect change in society by generating income, expanding consumption, and producing ever more capital exchange and competition.

If the structural dimensions of ISRT and DACA policy texts are the bones of the undocumented student subject, then its flesh is affected through the discursive invention from popular and political texts. Presidential campaign speeches describe the economic value that well-intended (i.e., good moral character), hard-working (i.e., labor-suited), and educationally talented (i.e., college-ready) migrants represent for the American economy. As a subject, the undocumented student becomes worthy of investment.

As President Obama – the president who deported more migrants than any other in U.S. history – suggested in his rationale for redirecting the Department of Homeland Security away from focusing on youth and children: "[DACA and other directives] … lets us focus resources wisely while giving a degree of relief and hope to talented, driven, patriotic young people" (Obama, 2012, p. 3). Echoing the discourse of the economy while invoking the particularized roles that migrants – as undocumented students or otherwise – might play in it, 2008 Republican Presidential Nominee and U.S. Senator from Arizona John McCain told the audience at NALEO that Congress and the American people needed to "recognize the important economic necessity of immigrant laborers" (McCain, 2008, p. 2). McCain continued to make clear that needing migrants is different than treating them like subjects of policy, rather than objects. He asserted that he hoped to find a way to value migrant contributions, "… without excusing the fact they came here illegally or granting them privileges before those who did" (McCain, 2008, p. 3). No one gets a free ride in the undocumented student policy regime. And here is a conflation in the discourse of economy that harkens a discourse

of security – a fear for safety and a need to discipline the bodies of those who threaten it. Immigration law – from which the undocumented student policy regime emerges – the very set of laws that political leaders across all American political parties want to reform – are preserved here to rationalize punishment for those who could not follow them, positioning migrants as somehow dangerous to the preservation and perpetuation of the American economy.

Immigrants as Human Capital, Part Three

Recalling the prized human capital that a college educated undocumented student might become, while playing to the fears of the masses, popular media and political figures alike imbue the undocumented student with hyperbolic imagery of outstanding, talented migrant children. The figure of the undocumented valedictorian whose parents brought her into the US without authorization unbeknownst to her until she wanted to apply for federal financial aid is the story of the shiny students that popular media endlessly puts forward to pacify the fears of everyday Americans. According to this narrative, no one is getting a hand-out and no one deserves special treatment. Then Senator and Democratic Presidential Nominee Barack Obama shared as much with the leaders of NALEO in 2008:

> And let's make sure any child who comes here and studies here and does well in school gets the same chance to attend a public college as anyone else. I helped pass the DREAM Act in Illinois, and I will do the same as President (Obama, 2008, p. 3).

These students are special in and of themselves, therefore they should be treated as normal.

> Four years later, campaigning for re-election, President Obama instructed the nation: Put yourself in their shoes. Imagine you've done everything right in your life, studied hard, worked hard, maybe even graduated at the top of your class, only to suddenly face the threat of deportation to a country that you know nothing about, with a language that you may not even speak (Obama, 2012, p. 3).

Migrants, in order to become undocumented students, emerge as exceptional, an almost other-worldly kind of exceptionalism – like the American brand of exceptionalism.

Yet, here, in the flesh of the undocumented student provided by political and popular discursive texts, is where the human capital discourse augments into a *discourse of surveillance and security*. The migrant must be produced as the undocumented student – a particularized form of human capital – so that she can be watched, tracked, measured, and emplaced into the broader security technologies of the state. Policies that help make migrants into students by extending in-state resident tuition benefits to them also contribute to their surveillance. Each state that has passed an extending ISRT includes a provision that migrants must submit an affidavit affirming their desire and plans to pursue legal residency at their first opportunity (see Gildersleeve & Hernández, 2010 for an extended discussion of this surveillance technology). Federal legislation, such as DACA, similarly requires migrants to willingly disclose their immigration status and identity to educational and federal authorities. Such surveillance uniquely situates the undocumented student as vulnerable and mutable, as dependent upon the policy regime for its subjectivation, in that this surveillance is tied to students' rights to participate in American higher education. It is not tied to assistance in that education (i.e., it is not financial aid), but rather to the terms of becoming known as a student — as a subject.

The Wall(s) We Choose to Live Beside, Alone, Together

Not only does transfiguring the migrant into human capital contribute to securing of the economy, but it affords the state the ability to secure the fears of its population. The undocumented student is produced as a form of life worthy of joining the body politic, however, in so doing, migrants – as a now separate subject position – simultaneously are produced as concomitant with threats to national interests, both economic and security. The undocumented student policy regime produces what Foucault referred to as a "field of adversity" (Foucault, 2008, p. 107), a broad field of relations through which adverse conditions threaten society.

> Romney's 2012 remarks make this clear:
> … efforts to secure the borders. That means both preventing illegal border crossings and making it harder to illegally overstay a visa. We should field enough border patrol agents, complete a high-tech fence, and implement an improved exit verification system (Romney, 2012, p. 3).

Migrants threaten the United States. They must be surveilled upon attempted entry, via the high-tech fence, and their removal must be enforced via the exit verification system. Migrants' movements must be measurable. While undocumented students provide nascent labor and can become human capital, migrants, however, are threats.

Then-presidential candidate Obama pre-empted Romney's remarks when speaking to the Council of La Raza in 2008, making clear the economic imperative for migrant labor: "And we should also crack down on employers who hire undocumented workers so that we can protect jobs and wages" (Obama, 2008, p. 3). The "protection" is *for* the American worker and *from* the migrant. Undocumented students are exempt from this, as they become the nascent labor of becoming-human capital. Four years later in his plea to the American people for support of his deferred action strategies, President Obama recalled the discourse of security yet again, asserting his commitment to "comprehensive immigration reform that addresses our 21st century economic and security needs. … reform that continues to improve our border security … a nation of laws and a nation of immigrants" (Obama, 2012, *Time*). The field of adversity set up against migrants, as objects of policy, further enables the discourse of security and surveillance, which simultaneously is produced by and reinforces the production (and sustainability of) the undocumented student.

Whereas the migrant (and the *Illegal*) belongs to the field of adversity, the undocumented student is made and becomes human capital. Thus, the undocumented student policy regime operates from disciplinary power as well as biopower. Through discourses of economy and surveillance, and security, it disciplines migrants into following certain rules and regulations, academic and juridical. These same discourses (state and federal policies, political campaign speeches, popular media), present across the rhetorical technologies of the undocumented student policy regime, produce migrants as undocumented students – as nascent labor – or human capital for the securitization of the American economy. These discourses exercise biopower in how they transform the migrant into the undocumented student. Yet, the undocumented student is still a migrant. She is separated without being excluded. Thus, her own precarious positioning in U.S. society persists.

Such an inclusive separation is the outcome of the *intra*-sections of disciplinary power and biopower. Bodies are disciplined for measures and means of controlling the terms of their potential death while bodies (some similar, some different, all migrant) simultaneously are generated and produced as becoming-human capital. These discursive *intra*-sections build walls – with or without the high-tech fencing and employer verification systems – that Americans (migrant, permanent, or in-between) must live beside, in a confusing loneliness together.

On Discourse and Policy in American Education and Democracy

Undocumented student policy – as a regime – simultaneously regulates bodies while securing the body politic. That is to say, the undocumented student policy regime gives form and shape to individuation while retaining control over the population. Undocumented students can be systematically created and recreated as a set and a category, used to explain their socio-political subject position as human life to be fostered for U.S. economic domination. Put another way, the discourses of economy, security, and surveillance embedded within and across the undocumented student policy regime create a new category of student, who, when capitalised, engages a machine that produces a pedagogy of objectified-other and an ethics of "undocumented students" as surveilled, faux threats to national security, legitimated through an othering of the (im)migrant body.

Specific recommendations for policymakers, policy scholars, and philosophers of education concerned with policy include:

1. To the extent that policy reflects and produces the desired ethics (forms of life and ways of living) of U.S. democracy, it is imperative for policymakers to recognize the action of policy and how it produces new opportunities for such life.
2. Philosophy and critical analysis of policy discourse could be engaged as normative in the process of policy development and design. Since discourse operates within the power negotiations of the everyday, it can be difficult for those wrested with power (i.e., policymakers) to recognize the ostensible materiality of their discursive action (e.g., their policymaking).
3. Specific to migrant educational opportunity, current immigration and education policy could engage migrant subjectivities more broadly, casting a wider net to secure opportunity for migrant conditions, rather than perpetuating the possible exceptionalism provoked by producing a separate-yet-not-excluded posture of the undocumented student.

Throughout this article, I have interspersed discursive analyses of political, popular, and policy texts that cumulatively engender what I call the undocumented student policy regime in U.S. higher education. These analyses, by their nature as discursive, should be read as malleable and incomplete. Yet, they remain plausible explanations of social and political conditions that migrants and their families face when engaging with American higher education today. As plausible, they must be contested. The efforts of a new materialist discourse analysis, as contrary as it may sound, support novel and innovative meanings of policy effects and consequences that should empower educators and researchers to take action. Action, after all, is affective *and* affecting (Clough, 2009). I spliced my analyses across various discussions of the materialization of the new subjectivity produced by the undocumented student policy regime – the immigrant as human capital. I hope such splicing demonstrates one way that discourse can be opened up as a *new empiricism* for contestation and conversation. In these ways, my contribution to the third generation of policy analysis in education seeks to democratize policy analysis by inviting the reader into the sense-making process.

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