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Documenting Structures: the US Asylum Process as a Systematic Deterrence

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“I am where I think”-Walter Mignolo

The three main components that I will specifically focus on are the following: a) why the methodology of community based participatory research mattered to us; b) activities we participated in; and c) how the experience affected us as participants. Additionally, I will argue that these three thematic components intersect with functional notions of opacity and transparency.

In the summer of 2019, I was one of five students who collaborated with Hope Border Institute to document proceedings at immigration court hearings in El Paso, Texas, and visit migrant shelters in Ciudad Juárez. One purpose for this research was to better understand not only how the US asylum process works but also the consequences faced by the migrants who are seeking asylum. Along with four other students in our collaborative group project with Hope Border Institute, we focused particularly on the Migrant Protection Protocols (MPP)—also known as “Remain in Mexico”. This policy was instituted by the Trump administration in January 2019 and began in El Paso/Ciudad Juárez in May of that year. It required many asylum seekers to wait in Mexico until their case could be heard at an immigration court in the United States. The consequences of this requirement increased the vulnerability of the designated asylum seekers by forcing them to live in precarious conditions in some of the most dangerous cities along Mexico’s northern border, where many became prey for violent criminal

organizations. According to the U.S. Travel Advisory, Mexico's northern states are in high levels of security threats and, despite these labels, these are the very spaces where migrants are placed by MPP. This practice, therefore, facilitates the political and epistemic categorization of Mexico as a safe country. Furthermore, this policy enables the bureaucratic violation of the domestic and international legal principle of nonrefoulement and, ultimately, the denial of credible asylum cases, including those by Mexican citizens. It was then of particular interest and necessity to document lived experiences—local histories—and their corresponding structures concerning the asylum process, which is itself a system.

Through a Community-Based Participatory Research (CBPR) approach we, the students and researchers, considered (implicitly or explicitly) the concept of lived experience as central. Instead of intellectually approaching the asylum system from sophisticated abstractions, theories, or hypotheses that often support, or facilitate the production of, particular meta narratives and which precedes the gathering of empirical data for convenient justification or manipulation, we first dwell with the subject of study and embraced all of its ambiguous pre-conceptual life-world. The fundamental intention was that when dwelling in a life-world (an active, grounded, and dynamic field impossible to intellectually grasp in its totality but which is nonetheless experienced collectively) epistemic reference, at least for academic purposes, is more adequate. The CBPR approach situates us, the researchers (fellow humans), not only in a more grounded perspective but also in a fundamental epistemic beginning for any adequate understanding involving and referencing life itself. More specifically, this method centralizes, and dwells very specifically with, communities, as opposed to a fixed abstract object of intellectual or epistemic manipulation. Furthermore, it is a process of making explicit the time and space that is always

already presupposed with any research. The question is not if but when and where we are grounded.

In the case of our research, we intentionally grounded ourselves in the life-world of a borderland region and thus explicitly identified the time and space that is already not only situating the research but enriching or conditioning it. In this way, dwelling with the subject of study, being in that face to face, body to body, inter-subjective relationship or exposure as opposed to mere abstractions that are either independent from the factual world or does not adequately reference it is what makes the significant difference for an understanding that is in tuned with reality. The CBPR approach proved itself to be a practical and useful method that, because it adequately referenced the social phenomena as it is lived (which for our purposes presents itself as migratory), placed the researchers in a position that validates and grounds the production of knowledge. What, then, is this production of knowledge? What could we do in an REU program that centralized lived experience along with local community organizations as means to have a more grounded and, therefore, adequate understanding of the US asylum process?

We can perceive and document, *via* observations and descriptions, lived experiences and corresponding structures involving or constituting the asylum process, which is precisely what we did along with Hope Border Institute. As part of a daily procedure and along with my fellow research colleagues, we wrote field notes that preserved our already ambiguous experience. These field notes are full of descriptions of structures or lived experiences whose meanings, to this day, we still extract because they are as ambiguous as they are rich. That is, this life-world, like any, is multi-dimensional, impossible to completely understand, or reduce, using mere

conceptual frameworks. Nonetheless, the fact that we now have in our possession these field notes that emerged from critical observations and descriptions during our research, a field of knowledge was produced and remains ready to be made explicit a post-research intellectual procedure. This is the Gestalt understood through a practical dimension; the notion that the sense of a figure or, rather, the meaning of knowledge is instigated and supported by a background that is grounded in lived experience, perception, or, in this case, observations and descriptions. Therefore, whatever meaning we extract from our field notes will necessarily remain grounded in the world as opposed to a pure abstraction that, according to our own testimonies, could be motivated by political agendas that either bureaucratically disregard or tactically ignore truth anchored in local history. The media, when publishing on the asylum process, is an example of this latter type of truth concealing or distortion.

Those of us working with Hope Border Institute know, through personal lived experience, that the media can and will epistemically distort particular events in such a way that it does not adequately reference lived experience. We witnessed the Washington Examiner publish an article that conveniently discarded our own grounded experiences visiting migrant shelters in Ciudad Juárez. As Candi well documented the exact words used by the Washington Examiner, we were accused of "coaching migrants to exploit and circumvent the asylum process". Despite the injustice and lack of truthful transparency, these types of situations in which researchers can directly and explicitly experience the distortion of truth are helpful for perceiving contradictions at least within the asylum process and its peripheries. By peripheries I mean structures, practices, or procedures that are not themselves at the heart of the asylum process as a system but which

nonetheless influence its function and nature (e.g., the media as an entity with the power for shaping the collective perception of individuals consuming the information provided).

These types of epistemic distortions, often fueled by political agendas, not only generates but spreads opacity, hiding truths and intentionally affirming deceiving information. They appear transparent and, therefore, credible without being loyal to *the truth as it is lived and grounded*, all of which can be considered violent forms of opacity in disguise. After the REU program, post-field-notes, it became apparent that these types of distortions or concealments of truth are found in multiple spaces and structures constituting the asylum process, all of which produces further deterrence for asylum seekers. From the use of private detention contractors, the denial of access to telephone services, and not granting access to counsel during nonrefoulement interviews; to having the public not have explicit access to the actual number of migrant children who have been turned back or sent to unfamiliar spaces and not knowing the true conditions at *hieleras* (detention centers), the asylum process increasingly proves that one of its essential qualities is precisely its opacity, or cryptic ability to remain private and, therefore, immune to external (democratic) intervention. Most recently, under the issued order Title 42 of the U.S code, which is a public health law to immediately expel anyone who arrives at the border in-between or through ports of entry, the asylum process experienced an indefinite halt due to the COVID-19 pandemic. This meant that asylum seekers placed under MPP were required to remain in Mexico for an indeterminate time period, which is an overwhelming form of opacity pertaining to lived time. Ultimately, keeping all these examples in mind, and as a conceptualizing conclusion, the US asylum process, whose practices tactically filter migratory flows of human movement to the United States, can be understood as a *systematic deterrence*.

It is no coincidence that as of September 2019, “approximately 71% of the asylum cases in the US were denied. In El Paso, the denial rate is 100%.”¹ 70, 467 asylum seekers were subject to MPP, since it started until December of 2020. Therefore, virtually impasse for successful relief, the U.S. asylum process expeditiously deters asylum seekers, beginning with keeping them in Mexico for as much time as possible. Unfortunately, there has been hundreds of cases of extortion, kidnapping, rape, enforced disappearances, and torture towards these asylum seekers waiting in Mexico, some of which have been fatal. Even though both US and Mexican local organizations have unconditionally helped these asylum seekers by providing shelters and other basic needs, their vulnerability remains high, even when they do enter into US territory. On the one hand, we have identified the intimidation and harassment of migrants arriving at ports of entry, government agents’ failure to adequately screen for credible fear, the use of prolonged and irritating detention in cold *hieleras*, and the sometimes fatal abuse of migrants while in custody of Border Patrol. On the other hand, not adequately identifying and protecting members of vulnerable populations, complicating the access to US legal representation, or *in absentia* deportations, has all been documented. These practices tend to bureaucratically deter, displace, and dissuade asylum seekers at almost all steps of the process, which suggests an intentional and convenient materialization and legitimization of politically motivated forms of state violence.

Because the detailed and changing steps of the asylum process were not explicitly and easily shared with the public by the Department of Homeland Security (DHS), it was virtually impossible to make a judgement, discussion, or criticism that adequately referenced the asylum

¹ See Tapia, E. “Border Observatory: US Immigration Court Observation Manual”. *HOPE Border Institute*. 2019, p. 8. Retrieved from: <https://www.hopeborder.org/border-observatory> (accessed Fall, 2020).

process itself as a multi-dimensional system. Nonetheless, members of the public, including the migrants, have direct access to elements of various structures that comprise a concerted effort to deny asylum status. Dwelling with these dynamic structures (life-world) grants access to what is perceived most immediately in lived experience, namely, what is systematically available—and what is not—*qua* parts and absences of a perceivable structural whole. These can be documented when considering the asylum process as a systematic deterrence consisting of multiple levels of interrelated structures that instigate certain meanings (e.g., the meaning of who gets to receive asylum and under what conditions).

Considering spaces within the asylum process itself (e.g. courtrooms, migrant shelters, detention centers, and even official government internet websites), what is experientially available *via* perceptions, or observations, is then subject for formal documentation. For example, observing behavior and interactions from a judge presiding over the El Paso Processing Center (EPPC) immigration court, we documented the following:

“When we have the exotics is when we have fun” (Referring to defendants that need a translator for a language that is not Spanish or English).

“Only 5% get asylum, but it’s better than playing the lottery”.

These comments represent the biases of a judge who, while laughing and speaking English without having a translator communicate his jokes, was cryptically exchanging words with his colleagues while also assuming that he was not understood by the “exotics”. This suggests that key personnel of the asylum process can and will practice cryptic communication while occasionally mocking asylum seekers. Documenting these phenomena helps preserve the local histories of those who have been marginalized or conveniently ignored by the overall asylum

process. Not to mention that our presence as students in the courtroom made a significant impact in behavior, having the judge self-regulate and keep his biases as private as possible by virtue of knowing that we were there observing.

This documentation of available perceptions regarding the asylum process must be descriptive and aware that these have meanings that are already situated in a system of structures not meant to be fully understood by the public. This does not exclude, on the other hand, the absences of this structural whole that are just as meaningful for better understanding the asylum process as a systematic deterrence. For example, DHS's official internet website fails to adequately define words like "vulnerable populations". This absence of information, as perceivable, has brought negative consequences to particular asylum seekers placed under the MPP policy with critical health issues, cognitive delays, particular identities (e.g. LGBTQ), or even those who lack certain practical skills like speaking Spanish or English. A noticeable challenge for the latter, for example, is that all immigration forms and applications are and must be submitted in English regardless of the asylum seeker's native language.

Due to such predicaments, there was a high demand for attorneys who could guide these migrants through basic legal requirements. However, on the one hand, there were limited attorneys on both sides of the border; on the other, MPP-designated asylum seekers had consequential difficulty finding any type of secured U.S. legal representation while they were simultaneously required to remain in Mexico. Consequently, many asylum seekers did not experienced a fair chance to receive asylum because they unwillingly claimed *pro se*. Nevertheless, as an act of resistance against violent opacity, "Know Your Rights" workshops were temporarily provided outside the immigration courtrooms by attorneys to asylum seekers

who successfully arrived at their scheduled court hearing. Unfortunately, while they were in many cases the only source of legal information available to asylum seekers, these workshops were eliminated in El Paso by the immigration court as of July 2019. Therefore, confusion generated from structural opacity continued to prevail over the lives of most asylum seekers.

With the CBPR approach, practical action and resistance against violent opacity (including omnipresent, prevalent, and perpetual misinformation) was thus symbolized in our effort to directly engage with—and learn from—specific local spaces and actors constituting the asylum process. Hence, it can be briefly suggested that this practice has valuable pedagogical elements because it proves to be a reliable and engaging approach for teaching how we might better understand migratory phenomena. Edith Tapia, one of the policy analyst working with Hope Border Institute at the time, intelligently expressed the idea that each day is like a meaningful snapshot that, once documented, can be preserved and, over a period of days, months, or years, systematized to create general representations of structures, functions, or lived experiences pertaining or referencing, in this case, the asylum process. This way, local histories, particularly those of asylum seekers, can be better understood. In the words of Ava, this is an approach that is “working towards holistic knowledge development rather than finding definitive answers”. Productive in essence, the CBPR approach is an attempt to actively practice a pedagogical method for carefully and adequately assembling meaning-full perceptual facts corresponding to cryptic structures and functions of the U.S. asylum process. For instance, the perpetual, empathic, and critical documentation of consistent observations in and of immigration courtrooms contributed to the production of temporary frameworks for both MPP and the entire asylum process using pamphlets and flowcharts. These visible and easy to follow flowcharts,

provided to multiple asylum seekers, were helpful for dissipating epistemic ambiguity regarding the asylum process and, thus, better navigate it.

To conclude, as a researcher dwelling at the borderlands and working with a diverse team of researchers and local community organizations, I understand the necessity for always referencing local lived experience when researching on social phenomena. Otherwise, without a sense of grounding, there is disconnection from reality that can only be abstract and vague without the rich ambiguity of the world that always fuels perception and understanding. I personally feel like my experience during this REU program further intensified my solidarity with my borderland community and with fellow migrants. I think of both of my parents who were born and raised in Mexico to eventually migrate to the US, making me a first generation US citizen. Thinking of these factual occurrences has made me feel a significant degree of empathy towards migrants. Of course, there is a radical distance between me and asylum seekers; one involving citizenship status. Furthermore, this difference is never a criteria for judging human worth or value. That is, the realization that migrants seeking asylum in the US are themselves also worthy of having a prosperous life of well being is an idea that at first appearance sounds obvious. However, I have learned that meta narratives and too many aspects of the asylum process suggests otherwise, often antagonizing or harming the asylum seekers themselves.

Finally, from a philosophical point of view, participating in this REU program, being so close to the subject of study, dwelling, due to the CBPR method, shifted my philosophical interests towards a phenomenological exploration of the relationship between opacity and transparency, especially in the way they are found, expressed, or materialized—institutionally—in social spaces. If I intellectually dichotomize society between what is private and public, as two

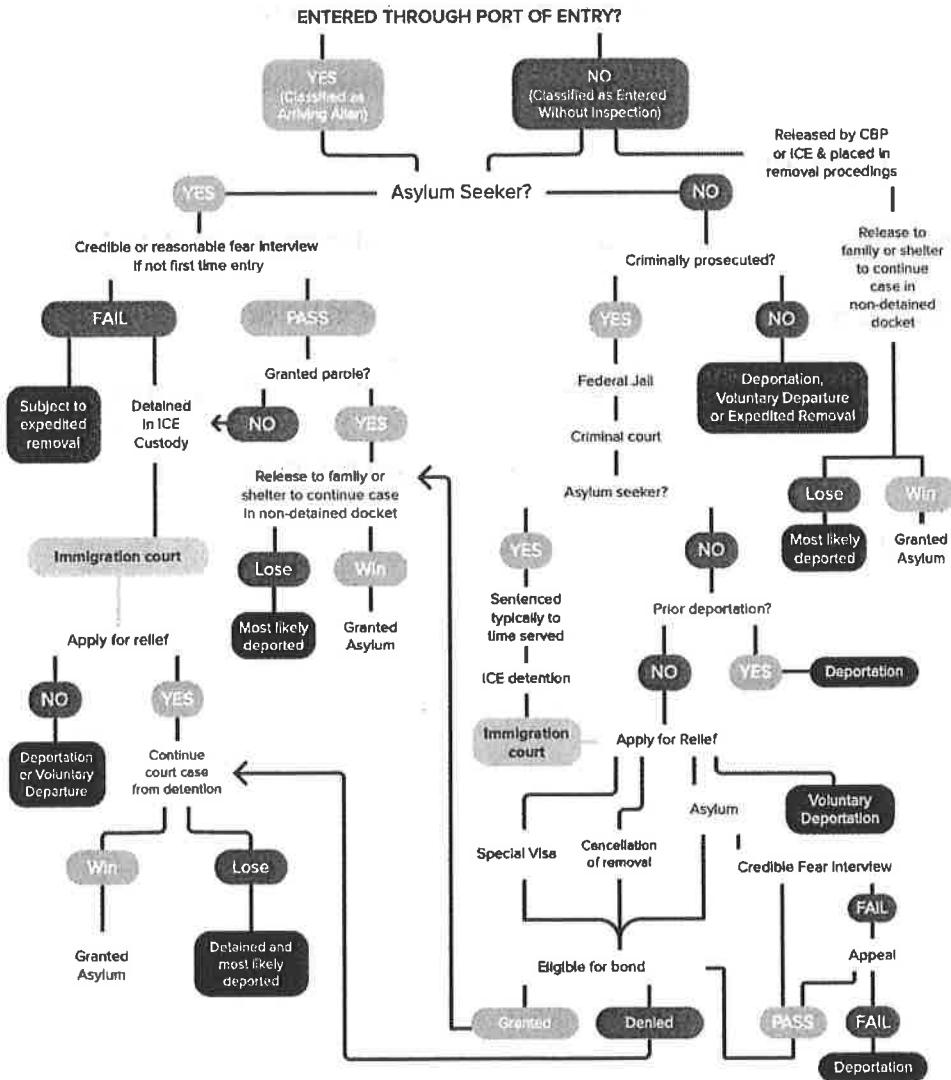
distinct concepts, then I would have to also parallel the distinction between that which is transparent as opposed to opaque. However, my main interest today is not defining an explicit border between these two technical concepts. Instead, I take a closer look at the oscillation between them both—a fold. I do not intend to provide normative prescriptions that may inform which is more effective. I simply think opacity and transparency, whatever they may strictly be, both have practical, political, pedagogical, and, perhaps more importantly, ethical implications, to state a few. Therefore, I think that transparency and opacity are concepts that should be better understood, mainly because I think their functioning is fundamental for the preservation of at least society, creativity, judgement, justice, truth, and, ultimately, life itself. In the case of the asylum process, these two concepts proved themselves to be of significant influence for not only the documented structures and functions of the asylum process itself but, most importantly, the consequences that the asylum seekers were condemned to experience.

Appendix

Figure 1. Rough flowchart of the U.S asylum process as of Fall 2019



GUIDE TO ASYLUM AT THE BORDER
by HOPE BORDER INSTITUTE



In 2018, approximately 65% of the asylum cases in the US were denied. In the El Paso sector, the denial rate is over 96%. This flowchart is a generalized path. Each case is different and this should not be seen as legal advice.

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