Forum for Transnational Employment:

A Dialogue on Alternatives to the Status Quo in Immigrant-Labor Dominated Industries

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FORUM FOR TRANSNATIONAL EMPLOYMENT

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Foreword

Don Villarejo

In the midst of the booming U.S. economy of the late twentieth and early twenty-first centuries, there is evidence that immigrant workers are becoming highly valued. No less an authority than *Business Week* trumpeted this new attitude in a headline calling attention to the need for immigrant workers in the computer software industry: "Forget the Huddled Masses. Send Us Nerds."

According to the Department of Labor's Bureau of Labor Statistics, immigrants were responsible for 39 percent of all U.S. job growth since 1994, despite the fact that foreign-born workers comprise less than 12 percent of the labor force. Economists, long puzzled by the fact that unit labor costs have not increased significantly during the current boom while the unemployment rate shrank to just four percent in 2000, now realize that a huge unrecognized, and uncounted, reserve labor pool has been easily tapped by U.S. employers. That reserve labor force is comprised of workers who were born and presently live in Mexico, Central and South America, Asia, Africa and the nations of Eastern Europe. Eager to work in the U.S., millions have figured out how to get to this country, with or without official permission, knowing that jobs are waiting.

All the while, U.S. law has sought to discourage employment of the foreign-born, especially those without work authorization. During the past 14 years these initiatives have become more restrictive, not less so. Both the Immigration Reform and Control Act of 1986 (IRCA) and the welfare and immigration reforms of 1996 sought to tighten Immigration and Naturalization Service (INS) oversight of those who seek to work here, and has also, for the first time, brought immigration oversight into every U.S. workplace. The Border Initiative, begun in 1994, has deployed thousands of Border Patrol officers along the U.S.-Mexican boundary, making it the most notorious division since the construction of the infamous Berlin Wall that divided communist East Germany from the West. Mexican scholars and government officials estimate that some 750 persons have perished trying to cross this "line in the American sand," mostly from exposure in the deserts or mountains of the Southwest. The number of Mexican dead dwarfs the total of 160 Germans who were killed trying to cross the Berlin Wall in its 28 years of existence.

The Clinton administration has dramatically expanded the U.S. Border Patrol, bringing the number of agents up to some 9,000, greater

than the number of agents of the Federal Bureau of Investigation. Vast networks of electronic surveillance, helicopters, off-road vehicles, aircraft and even Native American trackers scouring the desert for signs of trespass have been deployed in a rather fruitless effort to seal U.S. boundaries from unauthorized entry.

As if Federal immigration restrictions were not enough, the late 1990's also brought a wave of both state and Federal domestic policy restrictions governing immigrant access to social benefits normally available to all U.S. residents. Laws were passed denying one or another category of immigrants the right to access food stamps, SSI benefits, welfare, and a whole host of other transfer payments. The most extreme of these laws, Proposition 187 in California, has recently been found to be unconstitutional.

Some five to six million unauthorized workers and family members are now living and working in the U.S. It is increasingly clear that U.S. policy, expressed in these laws, has failed to comprehend the nature of immigration in today's world. While the efforts to seal the border have succeeded in specific locations, those seeking to cross have found other places where the Border Patrol's skills at interception are less developed. Five years ago, San Diego and El Paso were favored crossing points. In the year 2000 it is the Southeastern Arizona town of Douglas where hundreds of thousands of people without papers will seek to cross.

America faces a recurring immigration dilemma. Its current economic success has relied heavily on hiring new immigrant workers. But its laws are mostly intended to discourage them from working here.

The Forum on Transnational Employment (FTE) is a new initiative intended to start a dialogue among representatives of labor unions, researchers, immigration activists and leaders of immigrant communities. FTE's agenda is to create a setting where difficult issues can be frankly discussed, and to seek long-range, realistic solutions.

There are a series of issues that need to be examined and understood if useful policy initiatives are to be proposed. In what follows, these issues will be framed, leading to a series of questions for research and discussion. The papers in this volume serve to bring differing perspectives to the same task.

IRCA: the effort to control the flow of unauthorized workers

In 1986, it was estimated that there were some three to four million undocumented immigrants living and working in the U.S. And their number was increasing with each passing year. Both policy-makers of the left and right, and labor unions, regarded this influx as a

threat to their respective interests.

The agricultural industry, where an estimated three out of every ten workers was thought to be undocumented at that time, saw itself as especially vulnerable to efforts to control immigration. Farm employers foresaw the possibility of losing entire crews of workers at critical times, such as harvest periods.

IRCA was intended to permanently solve the problem of unauthorized workers in the U.S. through a mix of policies of reform and control. On the reform side, IRCA offered immigration amnesty – legalization – of most undocumented workers already working in the country. Those who had continuously resided in the U.S. since January 1, 1982 were eligible to apply for general amnesty.

Agriculture got a special deal, and was the only industry to obtain exceptional consideration, primarily because it was widely recognized that it was the largest major U.S. industry where foreign-born workers were a plurality of the labor force. Under IRCA, anyone who had worked as an unauthorized immigrant in U.S. perishable crop agriculture for at least 90 days between May 1985 and May 1986 was eligible to apply for a Special Agricultural Worker (SAW) visa.

Immigration experts predicted that about 350,000 agricultural workers would be eligible for SAW visas. To the surprise of nearly everyone, especially to INS officials who had prepared 800,000 SAW applications, some 1.25 million individuals eventually applied. In retrospect, the SAW program created an opportunity for many persons living abroad in their home country, whether they had worked the required period in U.S. agriculture or not, to come to America and apply for a SAW visa. While the estimate that the pool of eligible agricultural workers was only 350,000 was undoubtedly too low, it is also clear that IRCA sent an unambiguous, and inviting, message throughout Mexico, Central and South America, and elsewhere. That message was simple: if all else fails, you had a chance to get a visa to work in the U.S. by coming to the U.S. as an unauthorized worker!

The 'good news' of IRCA was that millions of workers who had lived in the shadow of being an 'illegal alien' could now enjoy the same rights as all other legal immigrants. This is no small achievement. The 'bad news' of IRCA is that it *stimulated* substantial new immigration, both of persons residing abroad who returned to the U.S. because they qualified for SAW visas, and of additional undocumented workers, often family members of SAWs. Juan Vicente Palerm, Rafael Alarcon and other scholars have documented the manner in which agricultural communities and labor markets were fundamentally altered,

some would say disrupted, by the new immigrants.

The California Institute for Rural Studies, in its report "Too Many Farm Workers?", showed that average wage rates for agricultural workers in California plunged in the wake of IRCA. Employers were able to bid down wages owing to the large surplus of available workers. George Borjas has presented evidence that half of the real wage loss that U.S. high school dropouts experienced during the 1990's was due to the influx of low-skilled immigrants.

Some labor leaders spoke publicly about the potential impact of IRCA's legalization programs on organized labor. Dolores Huerta, First Vice-President of the United Farm Workers, speaking at the Symposium on California's Great Central Valley on October 18, 1986, warned that giving out one million visas to Mexican farm workers would have an adverse impact on her union's members. She argued that the program's encouragement of immigration would give employers additional leverage on issues such as wage rates.

There is evidence that the large pool of available immigrant workers did have the predicted impact on efforts of labor unions to win improvements in wages and working conditions in some industries. Strikes by workers in the food processing and agricultural industries in California's Central Valley during the 1990's, such as those at Diamond Walnut Growers and Gangi Bros. Packing, were easily broken, owing to the ready availability of recent immigrants who were hired as replacement workers.

On the control side, IRCA's key feature was employer sanctions, which represented a major U.S. policy shift. Before 1986, employers had no legal responsibility for limiting their hiring to authorized workers and generally did not face penalties for hiring unauthorized workers. The Border Patrol could enter an employer's premises at will, without a search warrant, to look for unauthorized workers. It was the workers themselves who were the object of INS raids, leading, in some instances, to the death of workers being pursued by agents of the Border Patrol. These "raids" would disrupt the employer's place of business, in some cases leaving perishable products at risk of loss.

IRCA changed U.S. policy dramatically by holding the employer, not the worker, responsible for who got hired. Severe penalties were to be imposed on employers who hired persons not authorized to work in the U.S. And the new law forbade the Border Patrol from "raiding" workplaces without a search warrant.

Both of these provisions were strongly supported by reform-minded legislators, and by key constituencies, such as labor unions.

Organized labor sought to protect the jobs of citizen and legal immigrants from the threat of displacement by unauthorized workers.

Now, every U.S. worker must provide employers with evidence of their immigration status, filling out a government form known as I-9, which must be retained by the employer and is subject to INS review at any time. This official record must include copies of identity documents presented by workers. Of course, unauthorized workers have quickly learned to turn to the false documents "mini-industry" and purchase "papers" to show to prospective employers.

The key fact about the I-9 process is that IRCA's employer sanctions provisions only apply to employers who "knowingly" hire unauthorized workers. This enormous loophole, intentionally included in IRCA through the collusion of employer groups and some immigration advocates, allows employers to accept false documents from those applying for jobs and later claim ignorance about the authenticity of the pieces of paper.

Today, 69% of U.S. hired farm workers are foreign-born, up sharply from the pre-IRCA period. As a result of IRCA's legalization initiatives, mainly the SAW visa program, those numbers had dropped to less than 10%. The proportion of undocumented workers has now returned to pre-IRCA levels.

Research questions about IRCA's impact

These outcomes were not anticipated by Congress when the law was passed in 1986. A series of policy questions that are not adequately understood need attention in the context of seeking resolution of immigration policy. In no particular order, they include the following.

1) **What was the impact of the employer sanctions provisions of IRCA on labor union organization?** Some labor union and immigration advocates see these provisions as discriminatory, not only at the point of hiring, but also on the job. Recently, the AFL-CIO Executive Committee voted to reverse its earlier position supporting employer sanctions. It now opposes these parts of IRCA because, in the words of Frank Hurt, President of the Bakery, Confectionary and Tobacco Workers, who chaired the AFL-CIO committee that recommended support for IRCA, now opposes the employer sanctions provisions "...they arm employers with additional weapons, often wielded with gov-

ernmental complicity…They pit worker against worker, ally against friend, driving wedges between us when we should stand united." But still unknown is the extent to which IRCA was exploited by employers as a weapon against labor organizing drives. New advocacy efforts, such as the Labor Immigration Organizing Network (LION), based in the San Francisco Bay area, have raised important questions about the adverse impact of employer sanctions.

2) **Where have the SAW visa holders gone?** By 1996, only 300,000 of the 1.1 million legalized under the SAW visa program remained as U.S. agricultural workers. The number is surely smaller today. Did most go onto other types of employment in the U.S., or were there other significant paths followed by the SAW's?

3) **What has been the impact of the harsh new U.S. immigration policies on the composition of the population of unauthorized workers now coming into the country?** Rick Mines has examined Border Patrol apprehension data and reports that currently only 5% of those apprehended are female, whereas before the stepped up border enforcement policy began in 1994 some 25% were female. Even if all undocumented workers presently in the U.S. were to benefit from another IRCA-like amnesty program, the elimination of the family unification program makes it unlikely that spouses and other family members will be able to join their husbands.

4) **What has been the effect of stepped-up the new INS 'interior enforcement' program?** There is evidence that INS has returned to the pre-IRCA policy of targeting workers, not employers. Raids by Border Patrol agents in the Southern California sweatshop garment industry appear to focus on apprehending and deporting undocumented workers, not targeting employers.

5) **What has been the experience of the new Social Security Administration (SSA) program of carefully reviewing employer records of employee social security numbers?** A relatively recent program of SSA, described as the 'unmatched records' initiative, involves reviewing selected employer records of employee names and social security numbers that accompany tax payments. Employers are notified when employee names and social security numbers don't match SSA records, and must pay fines of $50 per worker if they are unable to rectify any discrepancies. A memo of understanding between INS and SSA clearly underscores that this new approach is now an important part of employers sanctions enforcement.

6) **What is extent, both in terms of national scope and industries, of the participation of recent immigrants in the U.S. economy?** It is known that some Mid-Western communities in states such as Nebraska and Iowa have become magnets for immigrant workers who are hired to work in meat packing plants. Even as far as Alaska, Mexican workers are found in considerable number working in the fish processing industry. But little is known beyond anecdotal evidence of the recent patterns of migration.

7) **Are there jobs that are important components of the U.S. economy that citizens and legal residents are disinclined to do?** Ed Kissam found, in the early 1990's that U.S.-born children of foreign-born hired farm workers in Parlier, California, were not interested in pursuing their parents' line of work. In fact, fewer than 3% said they would be willing to do hired farm work. If still true today, then it appears unlikely that the U.S. hired farm labor force will be replicated in the future from within the country. In other words, under present conditions, the 700,000 hired farm workers on whom the hugely successful California agricultural industry now depends, will have to be replenished from persons born in other nations. At one time, students and homemakers would enter the farm labor market on a part-time basis, not only in California but in other states as well, to supplement the labor force. Some California counties, such as Santa Barbara, have imposed work requirements on recipients of welfare, but find that hardly any persons now required to obtain employment will do hired farm work. As employment in the

personal services sectors, such as food service, housecleaning, gardening, health aide and janitorial work, continue to expand rapidly, the question of who will do that work looms large.

Are there alternatives to the status quo?

The Forum on Transnational Employment seeks to explore alternatives to the current impasse. The essays in the present volume are intended to open the dialogue, and includes labor representatives at the outset of the process. This is important, for it guarantees that the point of view of the worker is fully represented in the on-going discussions.

An area to be more fully explored is that of options for future policy. The AFL-CIO has recently endorsed a new blanket amnesty for undocumented workers presently in the U.S., linked to elimination of employer sanctions and heightened border enforcement intended to finally seal the U.S. border. Left unanswered in their proposal is the issue of family unification.

Meanwhile, two proposals have been introduced in Congress. One, designed to address needs of the computer software industry, would expand the existing H-1A program to allow up to 200,000 technically skilled immigrants to enter the U.S. each year and remain for up to five years. Computer companies see this as a way to meet current manpower needs. But labor organizations argue that training programs in this country should be established to upgrade the skills of domestic workers to meet that need.

The other proposal, intended to serve the agricultural industry, would remodel the existing H-2B program along the lines of the long-abandoned Bracero program of the World War II era, and which was finally ended on December 31, 1964. Both SR 1814 and SR 1815 are pending in the Senate at this writing. Hundreds of thousands of new H-2 visas would be issued to enable farm employers to hire authorized workers instead of relying so heavily on undocumented workers. Labor and immigration advocates oppose this proposal, and any other 'guest worker' program because it would undermine existing labor markets. It was no accident that the United Farm Workers movement began to pick up and grow shortly after the Bracero program ended.

Lost in this debate, however, is the fact that several guest worker programs in agriculture have long been in place, often producing better results for workers than what faces undocumented workers. For example, Catherine Colby has described the successful Canadian-Mexican guest workers program in which tens of thousands of hired farm workers go to Canada each year with full legal status and excellent benefits, including participation in that nation's health system. She reports that participants send back an average of about $1,000 per month to their home villages, as compared with an average of $200 per month remitted by undocumented hired farm workers who are employed in the U.S.

For many decades, some Mexican hired farm workers have entered the U.S. with 'border crossing cards,' to work in the Imperial and Coachella Valleys and to return home to Mexico each day or at the end of the season. These documents can be thought of as 'guest worker' documents, offering some protection to the worker from the abuses to which undocumented workers are subjected.

Finally, the policy debate has been sharpened by the emergence of a highly visible protest movement against globalization, largely focussed on opposing the World Trade Organization agenda. The December 1999 protests in Seattle raised important questions about exploitation of labor in less developed nations, particularly in industries where American workers are threatened by global competitions. But this debate left one question off the table: what about U.S. industries, such as California agricultural and garment production, where nearly all of the labor force is foreign-born and perhaps half are undocumented. Is it better in these cases to import workers, or to export factories? For some industries, such as cut-and-sew garment production, centered in Los Angeles, many runaway shops have already relocated to Mexico. But it appears that the folks who would do the work would be the same in either case, undocumented Mexican immigrants who come to the U.S. to take those jobs, or residents of Mexico who work in the maquiladora factories along the border.

And what of workers themselves? Are all immigrants seeking permanent residency in the U.S.? Or are some seeking to return to their home villages regularly, and perhaps even retire there? Paul Johnston has raised the suggestion that a new North American visa be created which would confer the right of cross-border movement, but not guarantee permanent residence status. With FTE, the California Institute for Rural Studies hopes to encourage further debate.

Chapter 1

Options for U.S. Labor Intensive Agriculture: Perpetuation of the Status Quo or Transition to a New Labor Market?

Rafael Alarcón and Rick Mines

Introduction

The current agricultural labor system is based on a high-turnover, low-wage labor market dependent on the constant replenishment from abroad of newly arrived workers, most of which are Mexicans or Guatemalans. The decision-making process of growers, bankers, and government infrastructural support for labor-intensive agriculture is conditioned by this labor force regime. The availability of this high turnover, low-wage labor force affects how all these institutions function in the labor-intensive agricultural sector. The production systems implemented by growers, the loans provided by financial or banking institutions, the advice given by Cooperative Extension agents and the training included in Department of Labor programs, are all based on the assumption that the current labor system will persist into the next century.

This agricultural system has provoked an enormous turnover of populations over the last century in California. Ethnic replacement is a concept used by Zabin et al. (1993) to describe the process by which agricultural employers in California have relied on the sequential entry of groups of foreign workers for most of the last one hundred years. In general, a more settled group of farm workers is replaced by a new group which is willing to accept lower pay and worse working conditions. California farm employers have successively used Chinese, Japanese, Filipino, and Mexican workers. Only during the Great Depression did "Okies" and "Arkies" form an important part of the harvest labor force. After World War II, Blacks from the South worked for many years in California's fields. Currently the system allows the wasteful use of a docile supply of Mexican and Guatemalan labor instead of

providing incentives to the agricultural employer to systematically reorganize his production by investing in new technologies.

It is crucial to ask if this constant turnover in population is necessary or advisable. Perhaps in the past, the system had distinct benefits for certain groups such as employers, consumers, and workers with jobs complementary to the low-income farm workers. However, in the future, the new conditions of international competition may make obsolete whatever advantage the system may have had in the past.

In fact, it is likely that the current high-turnover, low-wage agricultural system may be a loser in the future. In terms of international competition, high-wage countries such as Holland, Israel, South Africa, Australia, and some Southern European nations are in the process of outcompeting the United States technologically. For example, Holland is already exporting tomatoes and peppers to the United States. At the same time, low-wage countries such as Brazil, Mexico and Argentina may be able to also outcompete U.S. labor-intensive agriculture based on wages. For example, the Brazilian juice orange industry may be able to increase its exports to the United States based on its lower production costs if no technological change occurs in the Florida industry.

Since the early 1990s, growers have pushed for the establishment of a guest worker program based on the assumption that employer sanctions brought about by the 1986 Immigration Reform and Control Act (IRCA) would lead to severe farm labor shortages. These programs invariably seek to weaken worker protections available under the current H-2A program. More recently, growers supported a pilot guest worker program with the argument that stepped-up efforts by the Immigration and Naturalization Service to control illegal immigration like Operation Gatekeeper will deprive them of workers. Their program would have permitted up to 20,000 temporary workers to be admitted at the request of farmers each year for two years to fill vacant jobs. The workers, without their families, could stay in the United States for up to ten months each year. To encourage the farm workers to return to Mexico or other countries of origin, 25 percent of their wages would be deducted and repaid only in the country of origin if the worker appears in person (Martin, 1999; Calavita, 1999).

The purpose of this paper is to examine the desirability of perpetuating a high-turnover, low-wage labor market in agriculture through the establishment of a guestworker program. To this end, in the first part of the paper, we present a general overview of the most important

characteristics of the labor market in agriculture. In the second section, we analyze the historical experience and the economic and social implications of the most important guestworker program—the Bracero Program of the 1942-1964 period. In the final section, we discuss the main conclusions of the paper and options for the transition to a new agricultural labor market.

The data used in this analysis mainly come from the National Agricultural Workers Survey (NAWS). Over 25,000 farm workers in a randomly selected national sample have been interviewed since 1988. Each year the NAWS interviews approximately 4,000 randomly selected crop workers in the United States. Crop agriculture is defined as nursery products and all other non-livestock commodities including cash grains, field crops, fruits, vegetables, silage and other animal fodder. The NAWS uses site area sampling to obtain a nationally representative group of crop workers and to ensure that data collection is sensitive to seasonal fluctuations; interviews are conducted three times a year (Rosenberg et al, 1998).

Main Characteristics of the Agricultural Labor Market

Although the employment level has remained constant in recent years, the ethnic composition of the population engaged in agricultural employment has undergone a profound transformation. In a word, it has shifted rapidly from a mixed ethnic composition toward an overwhelmingly Mexican and to some extent Guatemalan labor force.

Table 1 reveals that by the early 1980s, California had become dependent on a predominantly Mexican farm labor force. By 1983, 71 percent of the farm workers were foreign born Hispanics; but by 1995 this percentage increased to over 90 per cent. The overwhelming majority of these workers were from Mexico, and to a lesser extent, from Guatemala. As we will show below, the tendency toward dominance of a foreign-born Latino labor force in agriculture has taken an amazing course over the last ten years by spreading all over the country.

The incorporation of the foreign-born has been characterized by taking over one task at a time. First, Latino immigrants began dominating in the harvest that includes tasks such as picking, pulling and cutting. Then they took over tasks in the preharvest season including hoeing, thinning, tying, proping and transplanting. Later, Latino immigrants became dominant in semi-skilled activities such as pruning, spraying, irrigation and grove maintenance. At approximately the same time they

TABLE 1
Ethnic Shifts in California Agriculture (1966-1995)
(percentages)

	California Assembly[1]	UC EDD Survey	California NAWS
Year	**1965**	**1983**	**1994-1995**
Whites U.S. Born	43.9	4.5	1.1
Mexicans	45.9		
Hispanics U.S. Born		16.5	4.0
Hispanics Foreign Born		71.3	93.5
Asians & Native Americans	6.8	6.8	0
Blacks U.S. Born	3.3	0.9	0.1
Total	99.9	100.0	98.7

Source: California Assembly (1969); Mines and Martin (1986); NAWS data

also took over the majority of the packing, hauling and shipping tasks. Finally, Latino immigrants began working as supervisors doing recruiting, monitoring, checking and the transporting of crops.

According to NAWS data, the Latino immigrant farm labor force has increased from 60 to 80 per cent nationwide in the period between 1989 and 1997. Although, Latino immigrant farm workers have long had a historic strong presence in regions of the Western states and Florida, Eastern states are also becoming important points of destination for many of these workers.

To demonstrate these changes over the last ten years, we have divided the country into two regions: (1) The Eastern United States including all of the states east of the Mississippi River, except Florida, and (2) Western United States encompassing the rest of the country (i.e. all states west of the Mississippi plus Florida). These two regions very roughly encompass the areas of traditional foreign incorporation into the farm labor market (the West) and the area of more recent incorporation (the East). Table 2 shows the percentage of foreign born crop workers in the two regions in the period 1989 and 1997.

[1]In the California Assembly survey, place of birth was not asked. Therefore, the term "Mexicans" includes persons of Mexican ancestry who were born in Mexico or the United States.

TABLE 2
Percentage of Foreign Born Crop Workers in Two Regions of the United States (1989-1997)

Years	West and Florida	East
1989	83	40
1990	82	38
1991	78	26
1992	82	40
1993	81	57
1994	77	57
1995	79	59
1996	89	64
1997	83	77
Total	82	49
N	11,148	9,260

Source: NAWS 1989-1997, N = 20,408

Data in Table 2 suggest that there has been little change in the region encompassing the West and Florida where Latino immigrants already dominated at the beginning of the decade. But, in the East outside of Florida the proportion of foreign-born has doubled from 40 percent in 1989 to close to 80 percent in 1997. The heavy dependence on immigrant farm workers has made the different regions of the United States more similar in the composition of their labor force.

According to Table 3, there have not been major changes in the West over the period 1989-1997 in regards to the tasks performed by immigrant farm workers. In Western states and Florida all of the tasks were already dominated by the foreign born at the beginning of the period. However, in the East, outside of the harvest task, which also was already dominated by the foreign-born, there were rapid shifts in the other tasks.

In the East, the preharvest and the semi-skilled tasks became dominated by the new foreign-born groups and finally the shift occurred for the post harvest tasks as well. The proportion of the foreign-born in the preharvest tasks went from 23 percent to 60 percent, in the post-harvest tasks from seven percent to 56 percent, and in the semi-skilled jobs from 13 percent to 61 percent over the last 10 years. At the beginning of the period, white and African-American U.S.-born workers dominated the pruning, transplanting, packing and tobacco barn work

TABLE 3
Place of Birth of Farm Workers by Task
(1989- 1997) (percentages)

West U.S. and Florida

	Pre-Harvest		Harvest		Post-Harvest		Semi-Skilled	
Years	U.S. Born	Foreign Born	U.S. Born	Foreign Born	U.S. Born	Foreign Born	U.S. Born	Foreign Born
89-91	28	72	15	85	22	78	15	85
92-94	32	68	10	90	30	70	22	78
95-97	15	85	11	89	35	65	13	87

East U.S. except Florida

	Pre-Harvest		Harvest		Post-Harvest		Semi-Skilled	
Years	U.S. Born	Foreign Born	U.S. Born	Foreign Born	U.S. Born	Foreign Born	U.S. Born	Foreign Born
89-91	77	23	28	72	93	7	87	13
92-94	44	56	33	67	73	27	52	48
95-97	40	60	18	82	44	56	39	61

Source: NAWS 1989-1997, N = 20,408

east of the Mississippi, but by the end of this period the participation of native-born workers was on a distinct decline.

What accounts for this rapid shift to an overwhelmingly Mexican (and Guatemalan) labor force? It is due in part to poor working conditions on farms that fail to keep veteran U.S. and foreign-born workers in agriculture. Some part of this shift too can be explained by the availability of alternative low-wage jobs in the booming non-agricultural U.S. economy. As the experienced domestic and foreign farm workers have left agriculture, most of the replacement workers have been recently-arrived male Mexicans. In fact, NAWS data indicate that among the new (first-year) workers, 70 percent are recently arrived Mexican immigrants and another eight percent are Guatemalans.

Low wages and a decline in earnings contribute to ethnic replacement in labor intensive agriculture. Many farm workers are not able to work constantly through the year and there is evidence from the NAWS that there may be an actual earnings decline in real terms. The NAWS reports that the earnings of individual farm workers have

stagnated at between $5,000 and $7,500 dollars per year. Moreover, there are indications that farm workers are finding less farm work each year in recent years than previously. Table 4 shows that for foreign-born workers the percent of time engaged in farm work dropped from 58 to 48 percent between the periods 1989-1991 and 1995-1997. This trend affected the U.S.-born farm workers even more severely since the percentage of their time engaged in farm work dropped from 50 to 35 percent. Two factors explain this shift, for the foreign-born, the shift occurred because the turnover rate has increased and a higher proportion of the workers are first year entrants from abroad. This explains why the percentage of time spent abroad is higher in the most recent period indicated on Table 4. For the U.S.-born farm workers, the drop in time spent in farmwork occurred because the labor force is made up increasingly of young summer workers and less by long term U.S.-born farm workers. This trend for both foreign and U.S.-born farm workers indicates that yearly earnings in real terms may be falling.

Finally, another important characteristic of the current agricultural labor system is the high unemployment that calls into question the need for a guestworker program. The existence of high unemployment rates in agricultural counties, despite a vigorous economy, indicates that the supply of available agricultural labor remains high.

According to a recent GAO study, the twenty largest labor intensive agricultural counties, representing about 50 per cent of all production of fruits, nuts, and vegetables, had unemployment rates far in excess of state averages in all but two counties. The June 1997 unemployment rate exceeded 10 per cent in 11 of those counties and ranged as high as 24.6 per cent in Imperial County, California and 32.7 per cent in Yuma County, Arizona (GAO, 1997).

In sum, it is apparent that the past 10 years of U.S. farm worker history are characterized by a labor force becoming increasingly Mexican and Guatemalan, increasingly male, with a high turnover rate and lower earning capacity. The next section examines the experience and the effects on the current labor market of the Bracero Program, the most important guestworker program established between the United States and Mexico.

The Historical Lesson: the Effects of the Bracero Program (1942-1964)

Guestworker programs are based on the underlying assumption that after working a year or two in a foreign country, guestworkers will return to their countries of origin to be productive citizens. However,

TABLE 4
Distribution of Time Spent Engagedin Various Activities AmongCrop Workers: Three Periods Compared (percentages)
Foreign-Born Crop Workers

Years	Farm Work	Non-Farm Work	Not Working in U.S.	Abroad
89-91	58.4	9.6	15.6	16.3
92-94	52.8	9.4	17.3	20.5
95-97	48.2	7.4	15.6	28.8

U.S.-Born Crop Workers

Years	Farm Work	Non-Farm Work	Not Working in U.S.	Abroad
89-91	50.2	20.3	26.3	3.1
92-94	42.5	21.5	32.7	3.2
95-97	35.3	19.1	37.3	3.3

Source: NAWS 1989-1997

despite the deceptive name, many guestworkers remain in the receiving countries for their entire economic life. Also, the constant influx of newcomers by maintaining a low-cost labor force removes the incentives to make necessary technological and labor management changes.

Based on the Bracero Program established between Mexico and the United States in 1942 and continuing through 1964, historical evidence shows that many of the all-male Braceros deserted their contracts or returned to the United States as undocumented workers. It is likely that most Braceros stayed and worked in the United States for most of their economic life.[2] Evidence from congressional testimony and from ethnographic field work among ex-Braceros demonstrates a strong tendency for Braceros to have stayed in the United States (Mines, 1981; Calavita, 1992).

There is also historical evidence that indicates that the presence of male-only guest workers discouraged growers from rising wages. If we take, for example, four California crops that were largely worked

[2]For a detailed historical overview of the Bracero Program see Garcia y Griego (1996) and Calavita (1992).

by Braceros and review the wage changes from 1950 to 1974, we see an obvious correlation between the presence of Braceros and stagnant wages.

In the period 1961-1964, Braceros harvested 79 percent of the tomatoes, 74 percent of the strawberries, 71 percent of the lettuce and 49 per cent of the asparagus harvested in California (Holt).

Table 5 shows that during the 1950-1964 period, wages were absolutely flat or went down in real terms. In all four crops, wages stagnated at about $1.10 per hour in 1967 dollars. This occurred during a period of relative increase in real wages for production workers nationwide. However, starting in 1965 with the end of the Bracero Program wages began to increase.

Wages for field workers reached a peak in 1978. Later, they dropped about 15 percent between 1974 and 1996. In the last two years the USDA has reported another rise in hourly wages but wages for field workers still remain below the 1978 peak period. Under current circumstances, the institution of a large guestworker program would likely have a similar effect to the 1942-1964 Bracero Program. It would tend to perpetuate a low-wage, high-turnover system and increase the stock of unauthorized workers in the United States.

Another flaw of the Bracero Program was that it failed to encourage the return of guestworkers to Mexico. Although, after the termination of the program, employment on farms was replaced by a new system reliant on the influx of the unauthorized, initially many ex-Braceros settled with their families in many rural communities of the United States. In the period from approximately 1965 to the late 1970s, many Braceros instead of returning to Mexico, brought their families with them. There are several reasons that explain this process. In 1965 there was a major overhaul of U.S. immigration policy. Not only was the Bracero Program quashed by an alliance of unions, church and civil rights groups, but in 1965, the Immigration and Nationality Act of 1952 was substantially amended in key provisions under the pressure of these same groups. The new act abolished the national origins quota system established in the 1920s eliminating national origin, race or ancestry as a basis for immigration to the United States. This led to a more diversified pool of legal immigrants on the basis of family reunification and occupational qualifications (Portes and Rumbaut, 1996).

The Department of Labor's Labor Certification Program may have been particularly important in this process as former employers of Braceros and the unauthorized sought to legalize their workers at a time when employers felt their access to labor south of the border was

TABLE 5
Real Hourly Wage of Bracero-Affected Crops in California: 1950-1974
(1967=100)

Crop	1950	1960	1965	1974
Aspergus	$1.12	$1.10	$1.80	$1.53
Luttuce	$1.04	$1.03	$1.40	$1.64
Tomatoes	$1.11	$1.00	$1.37	$1.58
Strawberries	$1.18	$1.13	$1.38	$1.51

Source: California State Employment Service, Farm Labor Report #881A, 1950-1974

uncertain. These ex-Bracero employers even advertised in Mexico inviting their former workers to come north; these employers frequently helped their ex-Braceros obtain legal status (Mines and Anzaldua, 1982). Permanent settler core communities took root in rural California including a substantial proportion of women from the various sending areas of Mexico (Palerm, 1991: 14; Alarcon, 1995: 9). In some cases, employers adapted their management practices stimulating family settlement by instituting benefit programs including family housing for their workers (Mines and Anzaldua, 1982: 41). In addition to all these factors and relatively higher wages, the settlement of many families of ex-Braceros was encouraged by the expansion of service programs for farm workers, and the upsurge of unionization among them (Zabin et al. 1993).

The incorporation of Mexican-born women into these communities in the post Bracero Program period is corroborated by Immigration and Naturalization Service statistics showing the relatively high proportion of females among Mexicans obtaining permanent resident status. In the period from 1964 to 1970 over half of all Mexican immigrants who obtained a "green card" were women. This contrasts with the year 1962 when only 40 percent of them were women.

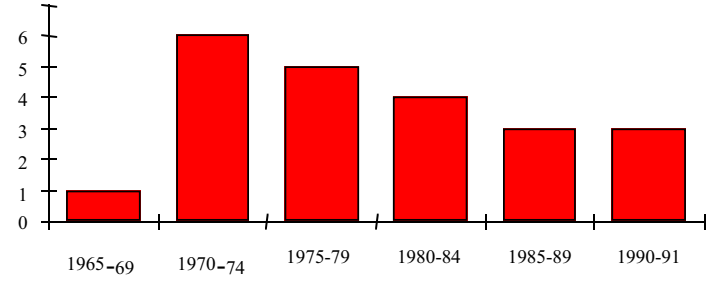
Survey research provides additional corroboration of family reunification during the period between 1965 and the late 1970s. In the survey of California farm workers carried out in the summer of 1983 by the University of California in conjunction with the California Employment Development Department (the UC-EDD Survey), the cohort of workers who entered the country before 1965 were predominantly male. Those who entered during the late 1960s and early 1970s were about

evenly divided among men and women. The age cohorts likely to have entered in the late 1970s and thereafter again were predominantly male (Mines and Martin, 1986: 2). The NAWS reinforces the view of this period as one of women joining men north of the border. From the NAWS data, it is possible to calculate the proportion of female foreign-born farm workers entering each year since the 1950s. The overall average number of females among foreign-born crop workers is 15 percent. However, in the period from 1966 to 1969, 25 percent of the entrants were women, and the proportion continued to be high into the late 1970s.

The experience of one group of immigrant farm workers illustrates this settlement process (see Alarcon, 1995). A large proportion of migrants from Chavinda, Michoacan concentrate in Madera County located in the San Joaquin Valley in California. Although there have been Chavindeños in that area since at least the 1940s, the arrival and settlement of families did not become important until the early 1970s. A study conducted in 1992 reveals that most of the families formed in Chavinda, arrived in Madera in the 1970s. In most cases the husband arrived first, and then wife and children followed after the husband and father finds full-time, year-round employment (See Figure 1).[3]

Coincident with this period of strong settlement was an upsurge in technological research to reduce the dependence on stoop labor. The introduction of mechanization for the harvest of processing tomatoes and cling peaches demonstrates the successes of mechanization at the end of the Bracero period. A good measure of this upsurge of interest

Fig. 1. Year of Arrival of Families From Chavinda to Madera County.



[3]This analysis is based on a random sample of 24 families.

in mechanization is that in 1971 twenty-five agricultural engineers were working for the Agricultural Research Service (ARS) on mechanical fruit aids, while today one half time position remains. There exists a coincidence in the upsurge of solo male immigrant farm workers and the decline in experimentation and adaptation of new technologies.

A review of the agricultural engineering literature of the late 1960s also reveals that many knowledgeable observers were predicting a rapid technological change which has yet to occur. To cite one example, G. E. Rossmiller, the noted engineer, stated in introducing a 1969 volume on fruit and vegetable mechanization, "The authors leave little doubt that the FV (fruit and vegetable) industry will be well on its way toward mechanical harvest of all but a very few specific commodities by 1975." (Cargill and Rossmiller, 1969).

Perpetuation of the Status Quo or Transition to a New System?

In this paper we have shown that since the Bracero Program, conditions faced by farm workers have been set largely by solo male newcomers who are willing to work for earnings below a sustainable wage. The social costs of this solo male dominated system are borne by the Mexican communities that provide the workers (Bustamante, 1979: Meillassoux, 1977). In particular, family separation means that a generation of Mexican children is being raised while their fathers are absent in the United States. Due to the absence of young males, rural Mexican production and development requires a population shift by which migrants to the United States are replaced by workers from smaller localities who do not have access to labor markets in the United States and are willing at least for a while to accept the prevalent wages in the area. However, frequently a local labor shortage occurs in Mexico and production is negatively affected. Lower production and income in Mexico renders it a weaker trading partner for the United States.[4]

There are also social costs associated with having large numbers of solo males in rural communities in the United States. Their living and working conditions exacerbate problems of prostitution, alcoholism and other drug addictions. In addition, social costs rise as farm workers unable to make a living at farm work leave the labor market

[4]A series of case studies of immigrant sending communities from around the world demonstrate that emigration often freezes rather than encourages local development in the sending areas.

and flow through to the urban sectors of the economy. This means that ex-welfare recipients and other low-wage workers are put in competition with and displaced by ex-farm workers in nonfarm jobs.

This situation does not have to be perpetuated through another guestworker program, since there is an option for a gradual transition that will maintain the competitive edge of the U.S. agricultural industry. This transition would require the introduction of new technologies to agricultural production that would lead to the consolidation of a stable labor force.

A program supported by private and public resources should subsidize back-saving and productivity enhancing technologies to adapt orchards and vineyards to a more year-round demand for labor. This system would be based on cost-saving labor productivity-enhancing technology to lower demand for labor and the introduction of back-saving labor aids to increase the supply of labor. This has to be accompanied by the implementation of labor-sharing management schemes among growers. Much of this technology already exists in in either fully or partially tested stages of development. Much work still remains to iron out the wrinkles in these yet to be fully tested technologies. Table 6 presents some of these technologies.

The productivity-enhancing technologies affect the workers and growers in important ways. First, they are demand-reducing, production cost-saving innovations. They can reduce the demand for labor enormously during the spike or peak of the season, evening out the demand for labor through the year. For instance, in the case of the orange juice industry, due to improved technologies in the packing houses, shake and catch methods can deliver fruit to the sheds which can be sorted by machines. The reduced labor force to run this new technology will be more skilled and more highly paid. As many as 45,000 pickers would be replaced by a smaller labor force which would be assigned to manage the new technology. Another example is the Dried on the Vine (DOV) potential in raisin grapes. If this technology could be adopted, it would reduce the number of workers but increase the hours and earnings of those who remain in the industry. Dwarf varieties incorporating trellising techniques in the apple industry would have similar impacts. Namely, fewer workers doing more skilled work would have higher yearly earnings.

The labor aides will lighten the tasks without directly saving production costs for the producers. These back-saving approaches allow women and older men to work more years during their career and more weeks per year at agriculture, expanding the labor supply. They do not

save money, since they do not necessarily expand output per hour. In fact, some of the techniques, like platform work, may slow down the output of some of the fastest members of a crew to the pace of the slower workers on the platform. But, they do save backs. Indirectly, money may be saved by the grower due to reduced workers compensation claims. For the U.S. and Mexican societies, back-saving technologies save the costs of musculo-skeletal problems, probably the biggest chronic health problem for farm workers.

It must be remembered that mechanization does not necessarily lead to more hours per person or more days per year. The altered labor process that results from changing technologies depends on many social and political inputs. With respect to productivity-enhancing technologies, under conditions of virtually unlimited supply of solo male labor from Mexico and Guatemala, the employers may opt for continuing the same conditions and the same wages as before rather than changing the technology. Just because the new technology is compatible with a more year-round labor force does not automatically translate into adopting recruitment policies which lead to a settled labor force. Given a labor surplus situation, the employers may choose to alternate among competing labor contractors who provide recently-arrived all-male crews at low costs. This could prove to hold down labor costs even with a

TABLE 6
Examples of Labor Aids and Productivity Enhancing Technologies

Productivity Enhancing	Labor Aids or Task Facilitators
Mature green (bush) tomato harvester	Conveyor belt for row crops to palletized areas
Mechanical twine tier for cauliflower leaves before harvest	Platforms, brooms, derricks for harvesting or pruning trees
Mechanical harvester for fresh market onions	Sleds for hauling strawberries, broccoli and celery
Harvester for pickling cucumbers	Battery-run clippers for citrus harvest
Cling peach harvester	Deceleration tube for citrus harvest
Tobacco harvester	Three-legged ladder for citrus

technology suited to a stable labor force. However, if the supply of solo male labor is relatively reduced, then employers may opt for a more stable labor force. This latter adaptation may lead them to incorporate labor aides or task facilitators into their labor processes that in turn may expand the labor supply by allowing older men and women to continue their farm work careers.

There are two historical examples of how the reduction in access to inexpensive all-male labor led to a shift to a more stable year-round labor force. The first is the sugar cane industry in West Palm Beach, Florida after mechanization in the 1990s. The labor force was reduced numerically but a more steady and stable labor situation was created for those who remained. Also, in the tomato industry in California in the late 1960s, we find that employers shifted to a more female labor force. The work remained seasonal due to the crop, but more steady jobs were created relative to the previous status quo in the crop. It is interesting that in both cases, at least the employers felt that the endless supply of solo male labor was relatively scarce.

It also should be recalled that much mechanization occurred during the Bracero years despite the presence of a docile all-male labor force accessed from Mexico. The forklift, shake-and-catch harvesters for processed fruits and nuts, cotton and sugar beet harvesters were all introduced during the Bracero years. These changes represented huge productivity-enhancing improvements. However, these changes occurred because they were cheaper than using solo male labor. There were many changes that could have happened or happened and were retracted due to the cheap solo male labor. Of course, these remaining changes would require much scientific and grower input before they would be fully profitable. And, in some cases, for example the machine harvesting of tomatoes may prove to be infeasible given the competition of Mexican and vine-ripened U.S. varieties. Still, there is a strong possibility that other crops might be suitable for both productivity-enhancing and task facilitating change. Included here are the pickling cucumber, cling peaches, and tying machines for broccoli. Juice oranges and possibly olives are also possibilities. Again, expensive cultural practice changes requiring government assistance and grower adaptability are needed to make these changes practical. Cheap, docile labor forestalls these options; it allows the grower community and the government agencies to put off the needed experimentation. The point is not whether mechanization occurred where it was cheaper than solo male labor but whether it is stopped where cheap labor is seen as the option for innovation. Under current conditions in which solo male

labor is relatively scarce, mechanization could lead to an expansion in the supply of labor. Of course, government would have to put the right incentives in place to encourage this outcome

As demonstrated above, the average farmworker does not find enough work to produce annual earnings sufficient to remain in agriculture for many years. However, if weeks per year and years per career for the average farmworker could be substantially increased, it would make these jobs comparable to alternative urban jobs in construction, manufacturing or services. A longer-term labor force without need for extremely high-turnover rates would be made possible.

A great need at this transitional time is for social impact research to be done to identify exactly what might be the impact of various technological changes. We need to know for each commodity what will be the redistribution of jobs and skill levels if technological change occurs. These calculations can be made at the county and crop level if necessary. Agricultural engineers, extension agents, agronomists, and social scientists could work together to flesh out what the new system would entail.

There will be advantages and disadvantages to the new system. The down side is that mechanization may adversely affect shelf life when our markets are asking for longer shelf life. Also, some difficult-to-mechanize crops like strawberries and staked tomatoes are expanding in demand. Moreover, many perennial crops will require major investments, for replanting or retrofitting existing acreages. On the upside, there are now strawberry varieties bearing fruit for 11 months, allowing for a longer season for the workers. Also, pathogens are transferred by human hand so that mechanization reduces disease risk. Moreover, many of the fresh-cut value-added presentations are getting more popular which makes it easier to mechanize.

On balance, the social costs or diseconomies that result from the current system outweigh its advantages. It would be socially productive to transform the high-turnover, flow-through, low-cost labor market to one based on a numerically smaller but better paid labor force. This would require resources provided by the federal, state and local governments plus industry and labor would have to agree to the new adaptations. It would require, in particular, the subsidization of technological change, led and coordinated by the Cooperative Extension Service, and paid for in part by large-scale industry participants and by government. Some sectors, for example raisin grapes, would require substantial subsidies to get an aging owner class to adapt the new technologies (Martin, 1999). However, subsidization will lead to experimentation on a wide scale which would pay off in the potential path-

breaking technologies that result. If we perpetuate the low-wage system through use of guestworkers or the continuation of the unauthorized system, we will not stimulate the kind of experimentation necessary for the transition to a new system.

In addition to the adoption of new technologies, the current labor force should be legalized to allow agriculture time to transition. The labor force has become increasingly undocumented over the last decade. Probably as many as half of all crop workers do not have work authorization. Policies that would permit the stabilization of the labor force and the folding in of the current population into a long-term commitment to U.S. agriculture must confront the legal status problems of many of the currently employed. This legalization must include families as well as workers, and envision an enhancement of workers rights and conditions. A transition to a new system is only practical if the currently employed undocumented have the option to stay. The introduction of new technologies and the consolidation of a stable labor force will eliminate the need for future legalization programs of farm workers.

The current H-2A program, that allows the temporary stay of foreign-born farm workers, must maintain or enhance its worker protection provisions. Otherwise, employers will be tempted to perpetuate the current system by expanding that program. Interestingly, current developments in Mexico call into question the proposal to defer payment of guest workers salaries by as much as 25 percent. According to the guestworker program supported by growers described above, a quarter of the salaries earned by guest workers would be kept by their respective governments and would be paid to them when they return to their countries of origin. Former Braceros and relatives of dead Braceros are demanding the Mexican government to repay the “savings fund” created during the Bracero Program. Ten percent of the salaries earned by Braceros in the United States was deposited into this fund that was controlled by the Mexican government (Sanchez, Julian and Jose Luis Ruiz, 1999).

U.S. labor-intensive agriculture does not need new guestworkers. What it needs is to keep its present work force, improve the conditions of work so that they will stay, bring their families and spend their entire careers at this noble activity. We would do well to recall the historical example of the period after the Bracero Program when relatively higher wages, the spreading of service programs for farm workers, and the upsurge of unionization led to improved conditions and greater family reunification among agricultural laborers. Even today, a substantial

portion of the farm workers who were legalized under IRCA are still working in crop production. In fact, many of them are now in the process of becoming U.S. citizens.

Settlement of farm workers in California has been encouraged by three trends. First, many Mexican farm workers are taking full-time, year-round jobs in agriculture as tractor drivers, irrigators and farm employees because they are replacing White and Black workers who held these jobs in the past (Alarcón, 1995). Second, the proliferation and expansion of high-value fruit and vegetable specialty crops has led to an intensification and sophistication of farm work (Palerm, 1991). Finally, the eligibility of farm workers for the state unemployment insurance program since 1977 and the Special Agricultural Workers program included in IRCA have contributed to the sedentarization of farm workers.

In general, the farm workers who stay performing farm tasks have incorporated skilled tasks in their portfolio of income-generating activities. The model of these successful farm workers can help us design a work environment which will maintain the long term commitment of a much larger share of those who do farm work to the industry. What is needed is higher wages and longer term employment, better working and living conditions, access to home ownership, access to education for children and employment opportunities for spouses. New technologies and a stable farm labor force are not only desirable but also perhaps the most practical way for U.S. labor-intensive agriculture to compete in a global economy. At the same time, by reducing the magnet of thousands of new agricultural jobs, the social problems which accompany excessive influx of low-wage workers will be lessened. The introduction of new technologies and the creation of a stable farm labor force will require subsidies for certain groups. However, these may prove less expensive and more desirable than accommodating to the perpetuation of the cheap labor market.

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Chapter 2

Mexico and U.S. Guest Worker Proposals in 2000

Manuel García y Griego

Introduction

For too long in the United States we have debated guest worker proposals in black-and-white terms with the expectation that all such proposals would have virtually the same effects on the domestic workforce. Similarly, for much of the past 35 years—since the Mexican Bracero Program came to an end in December 1964—it has been commonly assumed that the Mexican government could adopt only one position: to establish a neo-bracero program. (The Bracero Program was a labor recruitment mechanism that allowed for 4.6 million Mexican workers to be employed temporarily, usually about six weeks at a time, in agriculture or railroad work in the United States between 1942 and 1964.) These two expectations illustrate that the Bracero Program has cast a long shadow over our thinking about guest worker proposals and that the interests of the Mexican government in emigration are not well understood.

It is of course true that there is some basis for these expectations, even if they oversimplify. Before and after 1965, guest worker proposals were advanced by agricultural employers to thwart agricultural labor organizing efforts and restrain wage increases. Many guest worker proposals of the 1980s and 1990s *would* in fact have resulted in a substantial deterioration in wages and/or working conditions. Similarly, the Mexican government *did* oppose the termination of the program in 1964. Mexican presidents from Echeverría in the 1970s to Salinas de Gortari in the 1990s expressed support for a new bracero-type program. As a consequence both of employer advocacy and Mexican government preferences, guest worker proposals have come to be viewed as attempts to re-create the dismal working conditions generally associated with

the Bracero Program during its heyday in the late 1950s and the Mexican government as a silent partner of US agribusiness interests.

Even though these interpretations are not entirely without foundation, our analysis and critiques of current proposals will fall significantly short of their mark if they do not take this into account. The purpose of this paper is to take a step in that direction by analyzing some of the implications of the policy legacy of the Bracero Program and focusing on the Mexican government's role during that program and its potential role when we debate guest worker proposals in 2000.

The Policy Legacy of the Bracero Program

When the Bracero Program began in 1942, many observers concerned about the welfare of Mexican immigrants and of US farm workers expected it to be an improvement over the status quo. From the perspective of the national wartime emergency, the program was intended to avert agricultural production failures due to insufficient labor at harvest time. And although the program would increase the labor supply, and thus labor competition, it would do so under conditions where the foreign workers would have labor protections that domestic workers did not have. Labor-oriented bracero advocates saw the program as providing an incentive for growers to hire domestic workers at higher wages and better working conditions, and take away any excuses for crop failures due to labor shortages. In this manner some of these advocates hoped to avoid a guest worker program without any safeguards at all, which they were certain would undermine the condition of domestic farm workers.

The extent and type of protections and labor conditions afforded by the Bracero Program were unusual for that time (Craig, 1971; Galarza, 1964; Rasmussen, 1951). First, it established the US government as the formal employer of these workers and the US growers as subcontractors, so that the Mexican government could hold the US responsible for the conditions under which Mexican workers were recruited and employed. (This condition was dropped in 1947, and then a version of it reinstituted with P.L. 78 in 1951.) Second, it required the employer to pay the transportation costs of the Mexican braceros. In practice this meant that transportation costs were split between the US government and the employers during the war and for a period in the early 1950s, but paid for by growers between 1947 and 1951 and after 1955. In principle this made braceros more costly to growers relative to domestic migrant labor, since domestic workers arranged their own

transportation. It also made braceros more costly to growers than unauthorized migrants, for similar reasons, with the added condition that many of the unauthorized migrants came from the same villages as the braceros or themselves might have worked legally as braceros in the past, and therefore arranged their own transportation home as well.

Third, the recruitment of guest workers was supposed to not adversely affect the conditions of domestic workers. Workers could not be recruited unless the Department of Labor determined that such workers were needed. (This was the forerunner of our current labor certification process both for H-2 workers and legal immigrants.) Braceros were to be paid the «prevailing wage,» i.e., not less than what domestic workers were paid for comparable work. (This was less than the "adverse-effect wage rate"currently required for H-2A labor certifications, which grower organizations are trying to eliminate under current law.) Braceros were not to be recruited to a worksite where there was a labor dispute.

Fourth, the employment and housing conditions of braceros were regulated in considerable detail. Although the details varied, practically all of them required growers to meet conditions not required under domestic labor law, which virtually excluded farm workers from labor protections. The contracts specified a minimum contract period—initially 6 weeks, later 4 weeks. The Bracero Program also is the origin of our current three-quarter employment rule for H-2A workers—that agricultural workers not be idle and unpaid for more than 25% of the period of the contract. The contracts also provided for various forms of work-related insurance. The Mexican government pressured, without success, to get growers to pay for nonoccupational insurance as well.

In addition to standard labor protections, the bracero agreements included some provisions that were very much a reflection of their time. Before 1964, the United States was a society segregated by race and color, and from the very outset in 1942 the Mexican government demanded and obtained certain anti-discriminatory provisions in the bracero agreements. Because overt anti-Mexican segregation was especially prevalent in Texas, Mexico was able prevent any braceros from being employed by Texas growers until 1947. This prohibition backfired, though. Texas growers recruited Mexican workers illegally and during World War II the INS cooperated by stopping enforcement at harvest times.

Until 1954 the Mexican government interpreted the agreements as giving it the right to withdraw workers unilaterally from communities which engaged in discriminatory practices. In effect, the Mexican

government embargoed legal labor to counties where public businesses, such as restaurants and movie houses, barred Mexican patrons. In communities where Mexican braceros were a critically important labor source this action by the Mexican government gave farm employers an incentive to ask their neighbors to drop segregationist practices (García y Griego, 1988).

The previous list of requirements associated with the bracero agreements suggest that the architects of the bracero program were quite conscious of some of the potential problems that might result from this guest worker program. They were keenly aware of the history of farm labor struggles and the types of protections that might be needed. The three-quarters employment rule and housing requirements—conditions adopted by the H-2A program and largely intact to this day—are reflections of this awareness. They also were aware that, given the politics of agriculture of that day, a minimum wage for domestic agricultural workers was not an attainable goal.[1] The Bracero Program, arising as it did in the context of a wartime emergency, was thus designed first to solve a national production problem without doing harm to domestic workers. A secondary goal was to help establish a new and improved labor market standard for domestic workers by requiring a high standard for foreign guest workers.

Analyzing the failure of the Bracero Program

We now know that the Bracero Program failed to live up to this promise. Two obvious policy shortcomings are closely related to this failure: inadequate enforcement of the contracts and the inability of the two governments to cooperate to reduce unauthorized migration.

The failure to enforce bracero labor contracts adequately is worth a closer examination than it has received in previous analyses of guest worker proposals. The enforcement of labor law in many industries, not just agricultural employers of foreign labor, is generally inadequate but only in extreme cases do we find such large individual Mexican consular officials went above and beyond the call of duty to assist workers in their jurisdiction; others did as little as possible. U.S. officials represented growers in a collective bargaining situation and also were subject to pressures from Congress and the public. They sought to obtain favorable terms for growers and to cope with the growing negative

[1] Ellis Hawley's analysis (reprinted in 1979) of the congressional politics of bracero recruitment shows how improbable such reforms would have been.

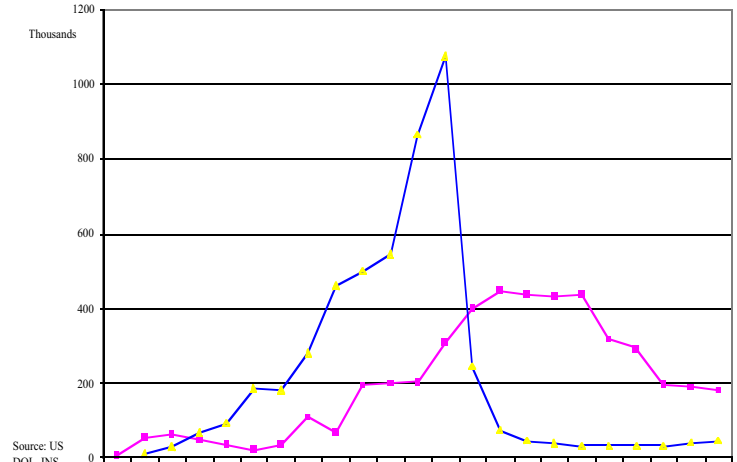
publicity associated with unauthorized migration. During the late 1940s U.S. officials stopped border enforcement selectively or threatened to stop enforcement in order to pressure the Mexican government to reduce its labor demands (U.S. President's Commission on Migratory Labor, 1951; García y Griego, 1983). For its part, the Mexican government began to advocate that the United States penalize employers who hired unauthorized immigrant workers.

The Bracero Program is often blamed for the vast increase in illegal migration from Mexico after 1945. The most comprehensive evidence we have of this is the sharp growth in the number of unauthorized migrants apprehended by the INS, from 64,000 in FY 1945 to 1,075,000 in FY 1954. The actual growth was probably smaller, but no less dramatic. Anecdotal information suggests that in fact the news of the bracero jobs in the U.S. circulating in Mexican villages brought many more would-be migrants to migration stations in Mexico than could be accommodated. Many left to work for the United States even though they did not get a labor contract. In other instances, growers who got to know their workers well encouraged them to return even if they did not get a contract a second time. Through a variety of circumstances guest worker programs stimulate new unauthorized migratory flows.

The Bracero Program rarely gets the credit, such as it is, for reducing unauthorized migration after 1954. "Operation Wetback," launched in the summer of 1954 as a joint operation between the INS and the Mexican government, entailed a two-step process to reduce unauthorized migration. The first step was the mass expulsion of about 200,000 long-term residents from mostly California and Texas, and their transportation by Mexican railroad to communities of origin in central Mexico. The second step was to make legal recruitment easier for growers, mostly by shortening the contract period to 4 weeks, reducing transportation costs, and easing up on the contract compliance efforts of both governments. By 1955 a major shift had occurred: bracero apprehensions were down to 243,000 and bracero contracts were up to 398,000. Figure 1 shows the "x" pattern of rising bracero contracts and declining apprehensions after 1954—a pattern which reflects the mass substitution of unauthorized workers by legal braceros (though with practically worthless contracts).

There is a complex story behind this graph of exponential rising, then falling apprehensions and a zig-zag growth of bracero migration before 1954 and the plateau and gradual tapering off afterwards. That story can be summarized briefly. In the early period, farm employers

Fig. 1. Braceros Contracted and Unauthorized Mexican Migrants Apprehended, 1942-64



	1942	1943	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964
Braceros	4	52	62	49	32	20	35	107	68	192	197	201	309	398	445	436	433	438	316	291	195	187	178
Apprehensions		8	27	64	91	183	179	279	458	500	544	865	1,075	243	72	44	37	30	30	30	30	39	44

complained bitterly about what they saw as excessive requirements and red tape in the bracero agreements and tried unsuccessfully to get them changed. Some hired workers briefly and then arranged for them to return illegally without contracts afterwards. Texas growers, who were barred from legal Mexican labor before 1947, had considerable experience by the late 1940s in using contractor and labor networks to obtain unauthorized workers. The relatively small number of braceros contracted during the war and in the late 1940s was the result of considerable reluctance by growers to meet the formal requirements in the bracero agreements, notwithstanding their inadequate enforcement. The explosive growth in the number of apprehensions is suggestive of a sharp growth in the flow of unauthorized migrants who were apprehended at entry as they sought employment in agriculture, especially in Texas and California. Then as now, apprehension often delayed but did not dissuade migrants from reaching their destinations.

The position on U.S. and Mexican authorities zig-zagged between extremes on this issue during the 1940s and early 1950s with adverse unintended consequences. Initially, the two governments penalized growers who hired unauthorized workers by blacklisting them from future bracero contracts. However this also had the consequence of assuring that these growers would continue the practice of hiring unauthorized

workers. Later in the 1940s, some growers were given an amnesty and their workers legalized by giving them bracero contracts with their employer. But this also gave growers an incentive to hire unauthorized workers and then try to legalize them later in order to avoid both bracero transportation costs and an INS raid.

After the Korean War began in 1950 with its attendant perceptions of a looming agricultural labor shortage, the Mexican government made two demands as its price for continuing the Bracero Program: the adoption of an institutionalized role for the U.S. government (which had been scaled back in 1947) and the enactment of employer sanctions. Although the Truman Administration made a good faith effort to obtain both conditions, it was successful only in obtaining the first one, which became known as Public Law 78, enacted in July 1951. The effort to enact employer sanctions was spectacularly unsuccessful. The Truman Administration did succeed in getting Congress to pass a law making it a felony to "harbor an alien," which basically meant assisting in the illegal entry of a foreigner. But this proved to be hollow victory for those seeking to reduce illegal entry via legislative means. The Texas congressional delegation tacked on an amendment explicitly exempting employment from the penalty provisions of the new act—an amendment which thereafter came to be known as the "Texas Proviso" (Craig, 1971).

The growing negative publicity associated with the "wetback invasion"—the term then used to refer to the growing migration of unauthorized Mexican migrants—worried the U.S. and Mexican governments and U.S. farm organizations. It also gave labor organizations a new weapon to use in their advocacy against the Bracero Program, which had been thoroughly discredited in their eyes by the late 1940s. The U.S. government adopted a number of tactics to respond both to the migration and to the negative publicity. In 1952 it began to expel unauthorized migrants by air to the interior of Mexico with the hope of discouraging them from crossing the border again after deportation. In early 1953 it sought cooperation to get Mexican authorities to use police power to dissuade migrants from traveling within Mexico to migrate illegally to the United States. Mexico's Foreign Relations Secretariat rejected the U.S. argument that this would be permissable under Mexico's Constitution. In late 1953 the U.S. began to plan for unilateral recruitment of Mexican workers as a way to pressure Mexican authorities to make certain concessions at the bargaining table. When the Mexican government did not yield, the U.S. initiated a unilateral contracting program in early 1954 and Mexican

authorities at the border used force in a vain attempt to stop their countrymen from crossing into the United States. Later in 1954 Mexico made important concessions at the bargaining table which made legal braceros more attractive to growers (García y Griego, 1983).

Implications for the Domestic Debate

Given this historical summary, what can we say about the relevance of the Bracero Program to the current and future debate about guest worker proposals? The most obvious point is that labor organizations and advocates whose primary interest is the working condition of domestic and migrant labor have a well-founded skepticism of guest worker programs. The Bracero Program demonstrated to this political constituency that a program with even these remarkable labor protections can be thoroughly corrupted. Not surprisingly, this constituency is equally skeptical of the ongoing H-2A agricultural worker program, many of whose provisions grew directly out of the Bracero Program except that it is run unilaterally by the United States. Growers have been discouraged from recruiting H-2A workers in part for the same reason they did not like the Bracero Program—it puts considerable bureaucratic requirements and labor obligations on them that they do not have with domestic workers or with unauthorized workers. They also have been discouraged from using this program because of labor advocacy litigation. In a partial replay of the Bracero Program growers have rejected the H-2A program as too stringent and have gone to Congress to obtain legislative authorization for an alternative streamlined program that imposes fewer burdens on them (and incidentally fewer protections on workers). To complete this historical analogy, pro-labor organizations also reject H-2A, because it does not offer enough labor protections, and sometimes they minimize the difference between H-2A and the grower-inspired alternatives.

The experience with the Bracero Program is relevant to today's debate in other important ways. The inferences I draw from that experience can be summarized in a few basic points. The first is that conditions likely to produce a balanced guest worker program, beneficial both to grower and labor interests, were only met when unauthorized migration was low and labor had strong allies in Washington. Second, protections available to domestic workers via domestic legislation, labor law enforcement, and the advocacy of labor and other organizations, made a critical difference. Guest workers cannot be employed to set a higher labor standard than that already available for domestic and

unauthorized workers. The minimum standards already in place are critically important, which suggests that if labor advocates are unable to stop a guest worker proposal they should extract the price of higher standards for domestic labor. Third, guest workers are unlikely to be employed to replace unauthorized workers unless there is a parallel concerted immigration enforcement effort. Without such a concerted effort, whether solely by the INS or with Mexican border enforcement cooperation, a guest worker program is likely to stimulate rather than substitute for unauthorized migration.

In sum, it is not correct to assume that all guest worker programs are alike or any program adopted will function exactly as did the Bracero Program in its final years. Safeguards in the terms of recruitment and employment obviously can make a difference, and an adequate enforcement effort is critically important. Guest worker programs should not be conceived in isolation from the standards already applied to protect domestic workers or without considering how such programs relate to ongoing and possibly new flows of unauthorized migrants. Under the conditions that have prevailed during much of the past three decades—slack labor markets, large-scale unauthorized migration, and intermittent influence by labor and pro-immigrant advocates in Washington—it would have been unlikely to obtain a balanced guest worker program that would not have harmed labor interests.

The Role of the Mexican Government during the Bracero Program

During the Bracero Program, Mexico's role evolved, in part due to changing government personnel and political priorities, and also because of the lessons that Mexican officials drew from their experience with the negotiations and administration of the program. Mexico's political leaders were sensitive to domestic political criticism of the program, especially to allegations that Mexican worker interests were not properly represented or that they had made too many concessions to the United States at the bargaining table. This motivated Mexican negotiators to seek favorable labor terms for braceros and even to push for concessions that U.S. negotiators were unlikely to be able to deliver. Because the terms of the agreement were widely publicized but the actual conditions of workers were far more difficult to document, Mexican officials were less motivated to seek a strong enforcement of the agreement. Even so, the Mexican Foreign Secretariat was perfectly

capable of holding up contracting unilaterally or to order the withdrawal of workers from a community when certain conditions were violated. Mexican officials were more aggressive in defending these interests prior to 1954 than is usually recognized, though it is noteworthy that such efforts virtually ceased after the successful U.S. unilateral contracting of 1954.

The unilateral contracting of Mexican workers over the very public objections of the Mexican government in January 1954 represented a major watershed in Mexican official thinking regarding emigration. Prior to that time Mexican officials promoted certain modifications to the work contract and occasionally held up contracting to obtain better wage offers from growers with the expectation of political rewards at home. When Mexico refused to renew the agreement under terms proposed by the U.S. in 1953 and the U.S. called Mexico's bluff by contracting workers unilaterally, conditions changed dramatically. Mexican border guards were ordered to use force to keep Mexican workers from crossing the border. The spectacle of Mexican workers rushing to leave for the United States and the use of illegal force to prevent the departure of nationals from Mexican territory brought a storm of criticism upon the government. When Mexican officials returned to the bargaining table and met U.S. conditions, the initiative in the administration of the program shifted to the United States. Mexico's president decided to continue with the program even under less favorable circumstances, probably on the basis of the argument that Mexico needed an emigration "safety valve" for rural unemployment and discontent.

There is a certain irony in the reversal of roles of the 1960s between the United States and Mexican governments when the U.S. decided to terminate the program. By the early 1960s the Department of Labor had reached the conclusion that the terms of the bracero contracts were not adequately observed by growers and that braceros were being used to lower wages or restrain the wage growth of domestic farm workers. This was, in essence, the position of the Mexican government before 1954, when it pressured the U.S. to adopt employer sanctions and to negotiate more agressively with growers regarding the conditions of employment. The U.S. solution in the early 1960s, however, was not to fix the Bracero Program but to abandon it. The official Mexican response to congressional efforts to end the program was opposition, on the grounds that terminating the program would not stop Mexican migration. Then as now, Mexican officials preferred legal Mexican migration to illegal migration, and they saw the U.S. decision to end the Bracero Program as a de facto decision to allow the hiring of unauthorized

workers. A review of the evidence of the growth of the unauthorized migrant population after 1965 shows that although the replacement of braceros with unauthorized migrants was not immediate, unauthorized migration grew explosively after 1965.

Mexico's Post Bracero Program Goals

The goals of the Mexican government with respect to emigration are rarely articulated explicitly. Migration to the United States is a subject discussed frequently in Mexico's mass media and within the government, but the discussion is usually framed around implicit though widely accepted premises which guide Mexican policy. When we seek to identify broad themes that have been consistent across several administrations we find that Mexican policy goals are essentially four: access, protection, predictability, and participation (García y Griego, 1998).

Assuring access means that the United States remains relatively open to Mexican migration. This goal has been held in part because no government wants its nationals to be barred from another country. In Mexico's case, this goal also reflects the assessment that the country needed a "safety valve" for its national economy. Any act of the U.S. Congress which might restrict immigration from Mexico or any large scale enforcement effort by the INS which might return hundreds of thousands of workers to Mexico was seen as a potential closing of that safety valve. (It may be worth noting that the evidence is weak that the Mexican economy or political system was actually vulnerable to changes in U.S. immigration policy [García y Griego and Giner de los Ríos, 1984]. The safety valve has not been as large as usually assumed and closing it has proved far more difficult than most analysts imagined. Nevertheless, Mexican and U.S. officials assumed that emigration functioned as a safety valve for Mexico.)

Assuring access should not be equated with unlimited Mexican migration. The Mexican government has supported a relatively open U.S. policy, but not one that would draw away all of the Mexican migrants that might conceivably leave. This position was explicit during the Bracero Program, when the Mexican government sought to lower and the U.S. to raise the limits on the number of workers to be recruited in any given year. During the 1984 U.S.-Mexican Inter-Parliamentary Meeting the leader of the Mexican Senate observed that "in the long run out-migration from Mexico to the United States is contrary to the national interest" (Bustamante, 1988). This position reflects several

Mexican assumptions held before and after 1984: that the Mexican government is not in a position to prevent emigration; that must find ways to manage it and ameliorate its potential problems; that emigrants would make important contributions to Mexico if they remained at home; and that an improvement of Mexican economic conditions that led to a gradual reduction of emigration would probably be the best possible outcome from a Mexican point of view.

A second important Mexican goal is protection. "Protection," as a Mexican emigration goal, is broader than labor protections as have been discussed in the above section regarding the bracero program. The protection of emigrants is generally thought of in Mexico as the sovereign obligation of consular protection. It consists of assuring that the rights of Mexican nationals are respected in the United States. In political terms it includes being perceived in Mexico as responding appropriately to anti-Mexican actions that take place in the United States. Thus, news events which generate little or moderate attention in the U.S., such as the high-speed chase of Mexican migrants by Riverside Sheriff's Deputies in 1996, and the subsequent televised beating, get a great deal of coverage in Mexico. Even minor changes in status of immigration bills in Congress in INS administrative procedures are scrutinized as potential threats to the welfare of ordinary migrants. The demands of the public on the Mexican government are: what are you doing about this?

A third Mexican goal is predictability. The importance of this goal is difficult to overstate. There are about seven million Mexican immigrants, authorized and unauthorized, residing in the United States. This number is equivalent to a medium-sized Mexican state. Even a minor change in the status of Mexican migrants can affect a large number of people. Much of what can affect the legal status of this population is in the hands of the U.S. Congress, state legislatures, or the courts—entities whose behavior is difficult to predict. Having a large emigrant population in the United States is similar to having a large part of the country ruled by an opposing political party—another unsettling condition which the Mexican government has been getting used to in the 1990s.

A final Mexican goal is participation. The terms under which Mexican migrants are admitted, employed, and accepted as long-term residents are largely determined by U.S. governmental entities and private employers. The Mexican government exercises little direct influence. Given a choice, the Mexican government would prefer to participate in this decision-making process, especially if the possibilities

of influence are real and the costs are relatively low. During most of the post-bracero period the Mexican government has refrained from such participation. For example, during the attempts by U.S. officials to consult with the Mexican government regarding the Simpson-Mazzoli bills during the 1980s the Mexican government largely refrained from expressing a point of view. The costs of participating were perceived as high and the likelihood that the Mexican government could influence the outcome positively was seen as low.

This calculation has changed during the past decade. The Ascensio Commission of the late 1980s did much to change Mexican thinking on the possible benefits of engaging the U.S. in a migration policy dialogue. The efforts of the Salinas and Clinton administrations to secure passage of the NAFTA legislation in 1993, though not directly related to migration, also broadened channels for migration dialogue and cooperation. This effort has spilled over into the migration issue area, and has encouraged Mexican officials to look for concrete ways in which the two governments can cooperate on migration issues. One such effort led to a 1995 agreement to create a study group formed by academic researchers and experts from both countries who met over a two-year period to arrive at a common set of facts on migration issues as a potential prelude for bilateral negotiations.

Reviewing these four Mexican goals on emigration one can see how they might be consistent with the bilateral negotiation of a guest worker program. Almost by definition such a program would meet three Mexican goals: participation, access, and predictability. A bilateral program also would insure that the Mexican government would influence the terms of labor recruitment and therefore facilitate the protection of Mexican workers. Since both Mexican officials and the Mexican public accept the premise that unauthorized migration will not be stopped in the short run, legal migration seems to be a better alternative to the status quo.

Clearly, the Mexican government is likely to support U.S. policies which facilitate legal entry to some extent, and this might include a guest worker program. It is not clear, however, that the Mexican government would support any guest worker program on grower terms, or a neo-bracero program that did not seem to be an improvement on the experience of 1942-1964. Mexican officials are less likely to point to the Bracero Program as a model than to its bilateral guest worker program with Canada, which sends less than 10,000 agricultural workers from Mexico each year. Precisely because the Canada-Mexico program is so small it has worked well, but also for that reason it is probably not a good model for any proposals to be advanced between Mexico

and the United States.

In this binational debate regarding guest workers, Mexican officials and the public have access to essentially the same information that we are familiar with in the United States. In the event of a serious guest worker proposal, the dismal record of the enforcement of labor rights under the Bracero Program would received widespread analysis and discussion in Mexico, perhaps even more so than in the United States. In Mexico, however, the attitude that a guest worker program can be fixed to work properly is more likely to command acceptance. Much depends, however, on the highest officials of the Mexican government. President Luis Echeverria, for example, promoted a new bracero agreement with the United States with much fanfare between 1971 and 1973. In 1974, after meeting with Ernesto Galarza, who persuaded him that any neo-bracero program would not protect the workers as promised, he reversed course. Though not all his cabinet appeared to have been convinced, as president Echeverria was in a position to depart sharply from the standard assumptions about how a bracero program is better for Mexico than the status quo.

The position of the Mexican government in any guest worker proposal debated in 2000 could shape the outcome of the U.S. debate for any of three reasons. First, Mexico's society and government are interested parties, and they have an even more direct interest in U.S. policies that bear on guest workers than they do on policies regarding the admission of permanent immigrant residents. Guest workers are likely to be recruited in Mexican territory itself (not just in the U.S.) and there is constitutional and statutory law that applies to the recruitment of emigrant workers which is the responsibility of the Mexican Secretariat of Government (Gobernacion). Moreover, as previously noted, the treatment of Mexican nationals in the United States is a traditional concern of the Mexican Secretariat of Foreign Relations. The Mexican government will be held accountable in the Mexican mass media and in an increasingly independent Congress for its efforts or lack of protection of Mexican nationals in the United States. Given these considerations, Mexico has a large stake in the outcome of any U.S. debate regarding guest workers and can be expected to play a role in shaping that debate and perhaps the content of the U.S. policy itself.

A second reason why Mexico's position on guest workers will be important to the U.S. policy process is that Mexican positions on many other matters, such as trade, investment, the environment, and drug-control policies have become more important to the United States in

the 1990s. The North American Free Trade Agreement is a symbol of this new importance and closer consultation between the two governments, and other indicators include U.S.-Mexican cooperation on monetary issues (the so-called Mexican bailout of 1995), and the efforts by both governments to defuse potential conflicts over drug policy (1997) and immigration policy (the 1996 amendments) in recent years. U.S. and Mexican cabinet officers and their staffs regularly meet and hammer out executive agreements and memoranda of understanding on subjects ranging from radio frequencies to hazardous waste disposal. What position the Mexican government takes on a matter as important as guest workers will be taken quite seriously within the U.S. executive branch if for no other reason than the huge range of bilateral problems on which cooperation is essential. Even if the U.S. adopts a guest worker policy that in the end does not include explicit Mexican government participation, U.S. officials will consult their counterparts in Mexico and take those consultations into account in deciding what range of guest worker proposals is acceptable.

A final reason why Mexico's position will matter is that the U.S. will be sharply divided on guest workers, thus increasing the marginal impact of external influences. Mexico's position would have far less influence if the U.S. were nearly unanimous on this question. Both sides (or more if there are more than two sides) in the U.S. debate will court Mexican support for its particular position on a given guest worker proposal. Whichever side prevails will most likely have obtained Mexican government and perhaps widespread Mexican public support for its proposal.

Conclusion

This summary review of the history of the Bracero Program and Mexican government emigration goals suggests a more complex situation that is usually described when we debate guest worker programs. Though it is generally recognized that the Mexican government desires access for its workers to the U.S. labor market, the importance of other goals is not generally appreciated. If a bilateral guest worker program is proposed there is much room for dialogue between U.S. labor organizations and the Mexican government, if for no other reason than its sensitivity to domestic criticisms regarding the lack of protections available to Mexican workers. The Mexican goal of protection is the principal area where U.S. labor and immigrant advocate groups and Mexican government interests converge. That dialogue

may take the form of efforts by U.S. organizations to persuade Mexican officials that a particular guest worker proposal is harmful to the interests of Mexican workers. To be successful, however, such efforts will need to acknowledge that not all guest worker programs are the same—that some provide less protections than others. In the current climate, moreover, it is not likely that the Mexican government position on this matter is likely to be decided single-handedly by a president after a meeting or series of meetings with one group or individual such as occurred with Galarza and Echeverría in 1974. U.S. organizations interested in engaging the Mexican government in a dialogue over guest worker programs will need to meet with a broad range of government officials and to not limit their contacts to officials—to engage Mexican private organizations and the mass media as well.

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Chapter 3

Government Intervention and the Farm Labor Market: How Past Policies Shape Future Options

Monica Heppel and
Demetrios Papademetriou

By 1942, experience had already shown what Mexican migrants who entered the United States illegally for seasonal work might expect at the hands of unscrupulous employers. Left to their own devices, the forces that had created the great demand for Mexican manpower, particularly along the border states, had proved how great the evils of unregulated mass migration could be. The protection of the contractual and civil rights of the bracero while residing in the United States was therefore a fundamental aim of the original executive agreement between the two countries.

Ernesto Galarza 1956

Introduction

The current economic, social, and political situation in the farm labor market has been shaped by our history of immigration policy, labor policy, and agricultural policy. The development of policy includes not only the laws and regulations, but also administrative actions and inaction. Each of these three areas of policy development, as well as their intersection, has led to contradictions, unintended consequences, and perverse effects as much, if not more, than the stated policy goals. Yet each has had a continuing impact on developing realistic policy options for the future.

In addition to a history of political intervention that has led to the current agricultural labor market, another factor to be taken into account is the relationship between trade and the international mobility of capital and labor. The current binational labor force, and the entire concept of transnational employment, is a reflection of the present context of globalization.

This paper will briefly describe the history of policies and political intervention in the farm labor market and discuss some of the current policy options within this current and historical context.

Government's Efforts to Provide Workers to Agriculture

The U.S. government has played a key role in shaping the agricultural system. Government intervention has included such things as limiting production to artificially support prices, setting commodity price floors, purchasing surpluses, and establishing tariffs on imported foodstuffs. The government has also intervened to protect the economic viability of agriculture by assisting growers of fruits and vegetables to obtain a stable and plentiful labor supply. This has taken the form of establishing a system to match domestic workers with agricultural jobs, importing additional temporary foreign workers, and legalizing unauthorized farmworkers. The latter two strategies, which have been much more successful than the matching function, show the clear linkage between immigration policy, agricultural policy, and labor policy. They have also established a pattern of intervention among policy makers, a reliance on government assistance among agricultural producers, the expectation of cheap and readily available fresh produce among consumers, and an agricultural labor market that relies on regular influxes of foreign-born workers.

Temporary Worker Programs

The Ninth Proviso of the Immigration Act of 1917. The official admission of temporary non-immigrant agricultural workers to the United States began approximately 80 years ago in response to fears of agricultural labor shortages brought about by a combination of World War I and changes in immigration policy. Domestic workers began leaving agriculture in larger numbers to join the military or for higher paying jobs in wartime industries. At the same time, the Immigration Act of 1917 restricted immigration by imposing a literacy test for new immigrants while continuing to bar the entry of aliens

for prearranged contract labor.

The Bureau of Immigration, at that time housed within the U.S. Department of Labor, responded to Southwest growers' requests for help by issuing an order to allow the temporary admission of otherwise inadmissible aliens as allowed by the ninth proviso to section 3 of the Immigration Act of 1917.[1] This order suspended the contract labor prohibition, the head tax, and the literacy test requirement of the 1917 act for temporary agricultural employees from Mexico.

Employers had to submit an application with either a U.S. immigration or a U.S. employment official, setting out the number of laborers desired, class of work, wages offered, housing conditions, and duration and place of proposed employment (U.S. Congress 1921). In their application, employers also had to provide written evidence that domestic workers, either local or from "a reasonable distance," were not available. Emphasizing the extraordinary nature of this program, the Department of Labor explained that "any doubt which may arise as to the ability of the United States Employment Service to meet the needs in a particular case shall be taken as a reason to withhold granting permission to import agricultural laborers until such doubt can be cleared up" (U.S. Congress 1921:700).

Employers or employer associations requesting contracted workers were required to pay the current wages offered for similar employment, pay transportation costs, and abide by all state laws regarding housing and sanitation. If there were no such laws, employers were required to maintain conditions as specified by the Secretary of Labor. Employers were also required to withhold a specified amount from the workers' wages and deposit it in the U.S. Postal Savings Bank as a way to ensure that workers would comply with the terms of their temporary admission. Workers who abandoned their contacts and accepted employment in other industries were to be arrested and deported. However, workers were allowed to change employers in the authorized fields of employment (primarily agriculture, but for a brief period, maintenance of way on railroads and lignite coal mining) as long as the employers were authorized for contract workers and the Immigration Service was notified of the change.

[1] This proviso read, "...the Commissioner General of Immigration with the approval of the Secretary of Labor shall issue rules and prescribed conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission."

Employees admitted under this program were issued photo identification cards that they were required to supply to their petitioning employers. In contrast to current non-immigrant worker programs, family members were allowed to accompany the workers, who were admitted for six months, with a possible six month's extension.

While these procedures were carefully specified, they were not systematically enforced. According to the Bureau of Immigration, between 1917 and 1921 72,862 temporary non-immigrant workers were admitted, most for work in agriculture. Almost 30 percent deserted their employment and disappeared, and "as far as can be ascertained, 15,632 are still in the employ of the original importers" (INS 1921:7). Many of the problems, the Immigration Service felt, stemmed from an employer being "unmindful of the obligations he assumed toward the government as trustee for his laborers" (INS 1921:427). The Immigration Service's Supervising Inspector at El Paso wrote:

> While some of the importers have in the utmost good faith endeavored to live up to their undertaking with the Government and return such laborers to Mexico without expense to it, many, if not most of them, have neglected or flatly repudiated their obligations in that respect, and it seems highly probable that with the lapse of time they will grow even more unmindful of the benefits which accrued to them from the Government's indulgence and exhibit a greater degree of indifference and remissness in the matter of disposing of these laborers in accordance with the terms of their contract with the Government (INS 1923:28).

Just as the government's best interests were not being protected by employers who did not fulfill their contractual obligations, many employers using the program were felt to be similarly unprotected from workers who did not abide by the contracts. An employer using the program

> …has no means of compelling imported laborers to remain in his employ; he can not resort to force or duress, intimidation, withholding of pay, or any one of the many other devices which obviously come to mind. If after importing laborers and conveying them to their place of employment, all at heavy expense, they choose to desert their employer for work in an industry or with another employer offering a higher scale of wage than they agreed to work for at the

> time of entry, the original employer has no redress, but becomes immediately liable for a heavy bill, which the government may at any time thereafter present for expenses incurred in returning these former employees to Mexico (INS 1923:28.)

Concerns expressed during this early program pre-shadow many of the debates that accompanied later non-immigrant, contract worker programs. These included the hiring of foreign in lieu of domestic workers, the need to ensure that prevailing wages and working conditions in that industry were not depressed, and concern over workers jumping contract. And, as was also the case in later programs, the perception was that most of the problems arose from inadequate enforcement mechanisms and personnel (INS Annual Reports and Scruggs 1960).

The 1917 war time emergency order by the Secretary of Labor set a precedent for subsequent use of the ninth proviso of section 3 to admit temporary non-immigrant agricultural workers again in 1942 until special legislation for the *Bracero* Program was passed and remained in effect until 1964. The order also served as the basis for the H-2 provision of the Immigration and Nationality Act of 1952.

The Bracero Program. The program that has come to represent all temporary agricultural worker programs is the 22-year "wartime emergency" Bracero Program through which 4 to 5 million Mexican workers were contracted. In 1942 the Mexican and U.S. governments entered into negotiations and exchanged a series of diplomatic notes that set the legal foundation for an intergovernmental accord between the two countries. Prior to the first round of recruitment, the Mexican government insisted upon certain protections for its workers. They were to be exempt from military service in the United States, they were not to be subject to discriminatory practices, and in general Mexican labor standards would be adhered to in their employment (Galarza 1956). A number of mechanisms were included in the agreement to try to protect braceros from exploitation. These included, for example, the role of the Farm Security Administration as the primary employer, with the farmer contracted as a "sub-employer," and as recruiter, with employers prohibited from recruiting directly in Mexico. Growers using the program were required to pay the local prevailing wage, provide free housing and a reasonable subsistence allowance, and pay for transportation from Mexican reception sites near the border to and from the work site (CAW 1992).

In less than one year, growers were able to get Congress to remove the program from the auspices of the Farm Security Administration and place it within the War Food Administration, a much more "grower-friendly" agency (Calavita 1992). This was followed by four years of similar agreements, but with further significant revisions. A primary one was that employers, not the U.S. government, became the contractors. This allowed growers to bypass the Mexican government in the recruitment process. Employers were allowed to recruit at the border, with *braceros* admitted directly by the INS. In addition, direct grower-to-*bracero* contracts replaced the government-to-government contracts of the initial accord. The government of Mexico strongly objected to a lack of enforcement, the methods of determining the prevailing wage rate, and the absence of the U.S. government as a guarantor for ensuring that employers fulfilled their part of the contracts.

The period of 1947 through 1951 is marked more by administrative action and grower involvement than had been the previous five years. In fact, despite the fact that Congress officially declared the program over, the State Department arranged another accord with Mexico and the importation of *braceros* continued. More importantly, in 1949, the government of Mexico agreed to a provision in which workers already in the United States illegally would be given preference for *bracero* status.

With renewed concerns over labor shortages brought on by the Korean War, Public Law 78, which established the program's framework for its duration, was enacted in 1951. The U.S. government again took responsibility for recruiting and transporting Mexican workers, while also "guaranteeing" that employers honored the terms of the contracts. At the insistence of the Mexican government, contracting workers already in the United States was prohibited and *braceros* were not to be used to replace striking workers (Calavita 1992:46).

The British West Indies (BWI) Temporary Alien Labor Program. The BWI program originated at approximately the same time as did the *Bracero* Program and ostensibly for the same reasons—fears of agricultural labor shortages during World War II. While the *Bracero* Program was intended for western growers, BWI workers were primarily used on the east coast. Over the years, however, BWI workers were employed in shade tobacco in Connecticut, truck farming in New Jersey, cherry picking in Wisconsin, sweet corn in Idaho, tomatos in Indiana, asparagus in Illinois, and peas in California (U.S. Congress 1975). In later years they were employed primarily in sugar cane in Florida and apple picking in many eastern states.

The governments of the offshore islands from which Caribbean workers came were heavily involved in the early stages of the program. The first workers were Bahamians who were admitted pursuant to an intergovernmental agreement signed in March of 1943. The next month Jamaica signed such an agreement with the United States. Adding legislative authority to these intergovernmental agreements, Congress enacted Public Law 45 on April 29, 1943. This Act, the first of a series referred to as the farm labor supply appropriations acts, authorized the U.S. government to temporarily admit "native-born residents of North America, South America, and Central America, and the islands adjacent thereto, desiring to perform agricultural labor in the United States" and provided funds for the recruitment, transportation, and placement of the workers. These acts, combined with the international agreements, formed the basis for the emergency labor supply programs operated under direct governmental supervision until the end of 1947. In 1945, approximately 19,400 BWI and Bahamian workers were employed in U.S. agriculture. BWI workers were also involved in non-agricultural work. In that same year, approximately three-fourths as many worked outside of agriculture as within.

The memoranda of understanding that were drawn up by representatives of the governments involved contained the following basic provisions:

a) Transportation costs from the point of recruitment to the United States and the return trip home were to be borne by the U.S. government.

b) Workers were to be paid the prevailing wage paid to U.S. workers, but not less than 30 cents per hour.

c) Employment was guaranteed for three-fourths of the contract period; a subsistence allowance was to be paid if the work guarantee was not fulfilled.

d) Employment of foreign workers was not to displace domestic workers, or reduce the rates of pay of domestic workers.

e) The imported laborer was to be exempted from the draft, and to be protected from discriminatory acts.

f) Housing and medical care were to be equal to that received by local workers, or of quality approved by the government, and to be free to workers.

g) Amounts which were to be deducted from the workers' wages were established to be sent back home and claimed by the workers upon return. Other unauthorized deductions were prohibited. The amounts deducted varied as the programs developed during the war period.

In addition to the intergovernmental agreements, detailed work contracts were executed between the BWI workers and U.S. employers, although the government was ultimately responsible for employer compliance with the terms of the BWI agreements. As in the 1917 program, the international agreements provided for the transfer of workers from one employer to another. In 1944, the British government objected to the transfer of Jamaican workers among different employers without the workers' consent. The U.S. government replied that workers had only one contract, which was with the U.S. government and thus could be transferred at will.

When the emergency wartime legislation expired at the end of 1947, the U.S. government no longer directly participated in and paid for the recruitment and transportation of BWI and Bahamian workers. Instead, agreements were made between the Caribbean workers, their U.S. employers, and representatives of the BWI and Bahamian governments. Again, the ninth proviso of section 3 of the Immigration Act of 1917 was used to allow for the temporary admission of contract laborers. Until 1951, the governments of Jamaica, Barbados, and the Leeward Islands contracted directly with U.S. employers, with the Caribbean governments essentially taking over the functions of recruitiment, transportation, and contract-enforcement activities formerly assumed by the U.S. government. The British West Indies Central Labour Organisation (BWICLO) served as a general liaison.

When Public Law 78, which authorized the post-war Mexican worker program, was enacted in 1951, the BWI program was specifically excluded. This was at the request of Senator Holland (D-FL) who relayed the desires of the agricultural interests of Florida "not to have any subsidy from the government in this connection, not to have the Department of Labor serve as an official agency for recruiting offshore laborers" (U.S. Senate 1951:16). Instead, agricultural employers preferred to continue their ongoing practices, which included

paying the transportation costs for foreign workers themselves and posting bonds to ensure their return to the Bahamas or Jamaica. With enactment of the 1952 Immigration and Nationality Act, growers continued to contract with Caribbean workers through the H-2 program.

Section H-2 of the 1952 Immigration and Nationality Act. The 1952 Immigration and Nationality Act (INA) contained provisions which provided the first permanent statutory authority for the admission of temporary contract workers. According to the Act, workers entering the United States to perform temporary labor were defined as non-immigrants and contrasted with immigrants who were admitted permanently and allowed to change occupations upon entry, even if they were admitted under one of the occupational preferences. Most non-immigrant workers entered through Section 101(a)(15)(h)(ii), which closely followed the procedures established under section 3 of the Immigration Act of 1917. Section (h)(ii) defined a non-immigrant as "an alien having a residence in a foreign country which he has no intention of abandoning…who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found in this country."

Section 214(c) then authorized the Attorney General, in consultation with appropriate agencies of the government, and after petition from an employer, to determine whether such non-immigrants could be imported. Later regulations set out the procedures for consultation between the Justice Department and the Department of Labor.

While the DOL's role in implementing the H-2 provision was determined by law, the philosophical approach to that role has varied. When the *bracero* program was terminated in 1964, there was much debate over the scope of the only remaining avenue for the importation of non-immigrant agricultural workers. During this time the Secretary of Labor, Willard Wirtz, clearly indicated that the Labor Department did not want the *bracero* program to continue under the guise of the H-2 program. Upon issuance of new DOL regulations at the time of the termination of the *bracero* program, he stated:

> (the issuance of new regulations)…does not imply that there will be any large scale use of foreign workers in the future. To the contrary. It is expected that such use will be very greatly reduced, and hopefully eliminated (USDOL 1966).

The DOL regulations in question required that employers requesting foreign workers offer domestic workers wages substantially higher than the wages such employers previously had been required to offer. The regulations further required that those domestic workers be offered other benefits, such as housing, transportation, and insurance—benefits previously offered only to *braceros*. Finally, worker certification was limited to 120 days, emphasizing that the program was intended only to meet the peak seasonal needs of the industry. In responding to questions before the Senate Committee on Agriculture and Forestry in 1965, Secretary Wirtz specifically linked Congress' desire to reduce U.S. dependence on imported labor (as seen in the termination of the *bracero* program) with the nation's problems of rising unemployment and the generally depressed wages and working conditions that characterized agriculture in contrast to other industries (U.S. Congress 1965). Concern over the Secretary of Labor's outlook expressed by employer interests is reflected in an unsuccessful 1965 Congressional attempt to legislatively transfer the advisory certification responsibility regarding the availability of domestic workers from the Department of Labor to the Department of Agriculture.

As early as 1962, the department began to publish "adverse effects rates" (AEWRs) for agricultural employment which were to be paid to all workers hired by an employer using H-2 workers. These rates, which varied by crop and area, were determined by the department with the goal of ensuring that the wages of similarly employed U.S. workers would not be adversely affected. These might be the prevailing wage rate if the use of aliens had not depressed local wages, or a higher rate if the administrator determined that the use of aliens had already depressed the wages of similarly employed U.S. workers. In terms of cost savings for the employers, however, they were exempt from paying social security and unemployment taxes for the H-2 workers.

In 1978, the Department of Labor issued revised regulations governing the labor certification process. The primary difference between these and prior regulations was the degree of detail specified. An employer's application for certification was to include a job offer for U.S. workers and specify standards regarding wages, working conditions, subsistence costs, housing transportation and worker rights and benefits—essentially requiring that employers offer and provide U.S. workers with at least the same level of wages, benefits and working conditions provided to foreign workers. The Immigration Reform and

Control Act of 1986 (IRCA) divided the H-2 program into H-2A visas for agricultural employees and H-2B visas for nonagricultural temporary or seasonal employees. It also provided for the following changes:

1) including input from the Secretary of Agriculture;
2) shortening the filing time required from 90 to 60 days; and
3) expediting the time periods for appeals and reconsideration of labor certifications.

Legalization Programs

The Bracero Program. Legalization as a mechanism to reduce the vulnerability of undocumented farmworkers was used for a brief period during the *Bracero* Program. Mexican negotiators agreed to this approach in the 1949 bilateral accord. Farmers strongly supported this provision because it made recruitment cheaper and easier for them. Mexico also hoped that it would reduce the number of illegal immigrants in the United States. For the three years between 1947 and 1949, approximately twice as many Mexican nationals in the United States illegally were put under *bracero* contracts as were brought from Mexico (142,000 legalized; 74,600 brought from Mexico) (President's Commission 1951:6117). In 1950, there were almost five times as many workers legalized as were brought from Mexico (96,000 legalized; 20,000 brought from Mexico (Galarza 1964). Contrary to Mexico's hopes that placing undocumented workers under *bracero* contracts would reduce the number of illegal immigrants in the United States, this strategy actually increased illegal immigration as Mexicans learned that the best way to obtain a *bracero* contract was to come to the United States illegally (Calavita 1992:28).

The Immigration Reform and Control Act (IRCA). The decade of the 1980s saw repeated Congressional attempts at drafting immigration legislation. Most included three critical elements: employer sanctions; an amnesty or legalization program; and a temporary work program for agriculture. The first two elements were included in IRCA, while the third element underwent a dramatic change weeks before the final bill was passed. Instead of a temporary worker program, the agricultural portion of IRCA included a Special Agricultural Worker (SAW) provision allowing for the legalization of an unlimited number of applicants who had worked for 90 days in qualifying agricultural employment.

Approximately one million persons were legalized under the SAW provisions of IRCA, most of them young men from Mexico. As was the case under the legalization portion of the *bracero* program, the SAW program was found to increase illegal immigration, rather than reduce it.

The Effects of Government Intervention

Stabilizing a labor force for highly seasonal jobs presents challenges under the best of circumstances. Instead of concentrating political and economic resources on this task, however, the U.S. government has taken the route of ensuring that agricultural employers are provided with new cohorts of foreign-born workers on a regular basis. This has gone on for almost 100 years.

Added to the challenge of stabilizing a legal work force is the government's policy of funding programs that provide the poor with opportunities to improve their employment status. With regard to agriculture, this involves programs for domestic farm workers to upgrade their employment opportunities, often by exiting farm work. This year over $67 million was allocated to states to provide employment and training opportunities to domestic farm workers through the JTPA 402 program.

Another policy issue is that most farm workers are ineligible for unemployment insurance, making reliance on seasonal jobs even more problematic. This is a result of a combination of factors. Aside from the issue of needing to be legally authorized, many states discourage the use of unemployment insurance for those holding highly seasonal jobs by having certain earnings requirements for each quarter during a base-line year. Other employees are excluded because agricultural employers have a substantially higher wage threshold than do non-agricultural employers.[2]

Finally, upward mobility for most workers in the United States is defined by achieving stable, consistent employment in comfortable surroundings, earning increasing amounts of money. While we can

[2] For example, non-agricultural employers must pay FUTA taxes if they pay wages of $1,500 or more during any calendar quarter or if they employ at least one individual on one day in each of 20 weeks during the year. In contrast, agricultural employers must pay wages of at least $20,000 during any calendar quarter or employ 10 or more workers on at least one day in each 20 weeks during the current or preceding year.

extol the virtues and nobility of working in the fields for someone else, studies have shown that this is not an occupation that many parents want for their children.

Government's Support for Agriculture

In addition to shaping the agricultural labor system through the provision of workers to the industry through both temporary worker programs and legalization programs, growers of fresh fruits, vegetables and horticultural products receive assistance through subsidized agricultural research conducted through the U.S. Department of Agriculture and the land-grant college system. Much of this research emphasizes increasing overall productivity and yield per acre.

Other research has focused on using technology to promote mechanization and other labor-saving devices. A lawsuit brought in 1979 challenged the use of public funds to promote mechanization, with critics claiming that mechanization has accelerated the development of monopolies in food production, the dispossession of family farms, and the displacement of large numbers of hired workers (CAW 1992:36).

Other subsidies to agricultural producers include large-scale irrigation projects and cheap water in dry western states and the support of marketing orders that allow growers to increase consumer demand and control quality and volume of perishable commodities.

Finally, low-cost loans for farm worker housing, and government-funded medical and educational programs for farm workers shift the costs that many employers in other industries pay as employee benefits onto the shoulders of the government.

Agricultural Exceptionalism

The differential treatment of agriculture and agricultural workers by the government has a long tradition, deriving primarily from government's attempts to deal with the agricultural crisis of the 1920s. Arguments stressing the need to protect our nation's food supply, the seasonality of the work and perishability of the product, and the pervasive romanticization of the family farm convinced policy makers that agriculture was, indeed, a special case. The resulting premise of "agricultural exceptionalism" continues to guide national policy not only through legislation specifically designed to subsidize agricultural producers and immigration policies that ensure farmers a work force, but lesser protections provided to agricultural workers under many labor laws.

Fair Labor Standards Act (FLSA). The 1938 act was designed to eliminate poverty among workers by establishing a minimum wage; discouraging excessively long hours of work; and eliminating child labor. At its inception, farm workers were completly excluded from its protections. The act was amended in 1966 and 1974 to provide farm workers on larger farms federal minimum wage protections. In addition to those on small farms, many hand-harvest workers who are paid on a piece-rate basis continue to be excluded. Agricultural workers are also not entitled to overtime pay for work performed beyond the federally established 40-hour work week. Finally, there are less restrictive prohibitions regarding child labor in agriculture. For example, children aged 12 or 13 can be employed in agriculture as long as it is outside of school hours and in a non-hazardous occupation. The minimum age in non-agricultural jobs is sixteen.

State Workers' Compensation and Unemployment Insurance. The majority of states do not offer the same level of compulsory coverage for agricultural workers injured on the job. Likewise, as stated earlier, agricultural employers are less likely to be required to pay unemployment insurance taxes.

National Labor Relations Act (NLRA). The 1935 act provides the basic statutory framework that governs labor-management relations by providing employees the right to organize and bargain collectively. Farm workers continue to be completely excluded from the act.

High levels of direct and indirect government assistance to growers, assistance which is avidly sought and widely expected, is an interesting contrast to the general feeling, as expressed in many surveys, that what agricultural employers really want is to have the government leave them alone. Of course, this feeling is directed toward enforcement and regulation, not assistance.

The Current Situation in the Agricultural Labor Market

The best data about current conditions in the agricultural labor market is derived from the National Agricultural Worker Survey (NAWS) conducted by the U.S. Department of Labor. Unfortunately, the most recent usable data comes from the period 1994-95. The bleak picture of the continuing deterioration of farmworker wages and working conditions that the NAWS paints, however, is reinforced by other studies.

In terms of basic demographics, farm workers are young (two-thirds are younger than 35 years old), male (80 percent of the workers), and foreign-born (70 percent of the workers—mostly born in Mexico). Thirty-seven percent of workers reported that they were unauthorized. Over the seven-year period of NAWS data that has been analyzed, the population of foreign-born farm workers increased by 10 percent; the participation of women in farm work dropped from 25 percent to 19 percent; the proportion of unauthorized workers increased from 7 percent to 37 percent; and the proportion of farm workers younger than 17 years old doubled from four percent to eight percent. (Mines 1997).

According to the 1995 NAWS, farm work provided an annual income of between $2,500 and $5,000. Only about one-fourth of the farm workers had non-farm work earnings. In 1997 the Current Population Survey reported median weekly farm worker earnings of $277—55 percent of the median for all workers. Over three-fifths (61 percent) of the farm worker population lived below the poverty line. Five years previously, one-half were reported living in poverty (USDOL 1997).

Policy Options to Reform the Farm Labor Market

Several policy options have been proposed or are currently being discussed with regard to the agricultural labor supply. We will consider three basic ideas: changes to the H-2A program, a substantially different type of temporary worker program, and the approach of allowing market mechanisms to improve conditions for agricultural workers. Subsequently we will discuss our current thinking about what elements any new temporary worker program for agriculture should contain.

Revisions to H-2A. Grower interests have identified a number of problems that they see with the current H-2A program. As indicated in testimony on behalf of the National Council of Agricultural Employers (NCAE) before the Senate Judiciary Committee (May 12, 1999) these include:

1) The program is administratively cumbersome and costly. Included in this category is the requirement that employers must apply for workers 60 days in advance of their need. (This was shortened from 90 days in 1986). Also included as needlessly cumbersome is the prescribed recruitment and advertising procedure for domestic workers (which most observers agree are ineffective as currently specified). Growers also assert that many "domestic" workers referred by the state employment services for the advertised jobs are unauthorized or else they quickly quit the jobs.

   The solution proposed by the NCAE is a computerized farm worker registry, run by the Department of Labor. Apparently the only responsibility that a grower would have is to list the job and tell workers about the existence of the registry.

2) The required wages and benefits are unreasonably rigid or not economically feasible and thus exclude many from participating in the H-2A program. Growers object to the Adverse Effect Wage Rate (AEWR) set by the DOL, which is calculated to attempt to mitigate against the downward effect on wages that the introduction of foreign workers will have. Another objection is the requirement that growers provide housing.

   The solution proposed by the NCAE is to replace the AEWR with the prevailing wage (which is the 51st percentile of wages of workers in the occupation and area of employment). With regard to housing, the proposal is to allow growers to provide a housing allowance in areas where there is adequate housing and a "transition period" for employers without housing during which time there apparently would be no housing required.

   The NCAE also stated that "aliens who participate in the U.S. seasonal agricultural work force, contribute to the U.S. economy, and abide by U.S. law, including the requirements of the H-2A program while they are H-2A workers, should have a realistic opportunity to move up into permanent agricultural work and greater responsibilities and earnings, or to move up and out of the agricultural work force if they so desire" (Holt 1999).

The current H-2A program has some important protections for farm workers besides the previously mentioned AEWR and housing provision. These include a three-quarter guarantee (workers are to be paid for three-quarters of the contracted period of employment) and the requirement that employers must pay for a worker's transportation expenses in getting to the place of employment.

Many of the negative aspects of the H-2A program stem from its requirement that workers must work only for the employer with whom they are contracted and can continue to participate in the program only if that employer is satisfied. This provides employers with a high level of control and places workers in a structural position that minimizes the likelihood of their speaking out against unfair treatment. As is the case with non-contract agricultural workers, the recruiting system also provides a myriad of opportunities of exploitation and control, primarily through a system of "black-listing."

Many researchers have pointed out the long-lasting effects of the *Bracero* Program in establishing patterns of migration, both legal and illegal, from specific sending areas in Mexico. Others emphasize that temporary workers themselves, over time, are likely to become permanent, albeit unauthorized, immigrants. Thus, temporary worker programs are seen as a leading cause of illegal immigration, rather than a potential solution. A significant element of the H-2 program that should be of concern to policy makers is that workers can be recruited from any part of the world. In fact, there have been a number of instances over the past few years when employers and contractors have talked about and even explored the possibility of bringing workers from even more desperately poor and heavily populated countries than Mexico, such as Bangladesh and mainland China. The possibility of establishing new migrant streams, with the kinds of long-lasting effects that have been the case with Mexico and various Caribbean nations, has implications far beyond the agricultural labor market.

A RAW-type Program. One proposal that is being discussed at this time is legislation that would combine a temporary worker program with amnesty. This is often referred to as a RAW-type program. Part of the legalization provision for agricultural workers under IRCA was the Replenishment Agricultural Worker (RAW) program. This provision was developed to protect the industry from the possibility of a large exodus of newly legalized workers from farm work—something that many assumed would occur given the poor wages and working conditions, as well as the seasonality of the work. Through this program the Departments of Labor and Agriculture would jointly decide on a "shortage number" of agricultural workers for three years (FY1990-1993).[3] The RAW workers would be admitted with the provision that they work in agriculture 90 days for each of three years following their admission. After fulfilling this obligation, they would be adjusted to permanent resident status. Failure to perform 90 days of agricultural work in any of the three years was to result in loss of temporary resident status and deportation. If the workers continued to work in agriculture for 90 days in each of two additional years, they would have been eligible for naturalization.

[3] The shortage number was always estimated to be zero, thus the RAW program was never implemented.

Procedures by which potential RAW workers were to register and the preference given to certain categories of people for this program were left to the INS to develop and implement. The INS established a single three-month registration period during which time 624,000 potential workers registered. To be eligible these applicants were to have worked at least 20 days in U.S. agriculture during a qualifying period of three and one-half years. Those in the United States at the time of registration were given priority for selection. Eighty-seven percent of the registrants fell into that category. First priority went to aliens in the United States claiming family preference to someone legalized through IRCA, while second priority went to aliens in the United States not claiming family preference to someone legalized through IRCA. Third and fourth priority went to aliens who registered outside the United States (Heppel and Amendola 1991).

The mechanism by which workers were to be matched with jobs remained unspecified as the program was never implemented. Some preliminary discussions were held to discuss the idea of limiting RAWs to a particular region of the country; however, RAWs would have been free to change employers at will, as long as they met the criterion of work in agriculture for the specified time.

Enforce Labor Standards, Reduce the Labor Supply, and Allow Market Mechanisms to Take Over. The goal of enforcing labor standards within the context of the debate over immigration policy would be to ensure that there is no economic advantage to hiring unauthorized workers. Currently there are only about 950 DOL Wage and Hour compliance officers whose job it is to monitor workplaces throughout the country. It is thus no surprise that enforcement is lax across the

board. This obviously has an impact on all farmworkers and it is clear that the DOL has to both expand its resources significantly and better target its enforcement efforts—something that should be part of any legislation having to do with the agricultural labor market. In a context in which such a large proportion of the work force is unauthorized, however, it is less clear that such enforcement would significantly change the dynamics of the labor market.

The goal of tightening the labor supply by reducing illegal immigration, of course, raises the issue of how. We have already spent millions of dollars to increase the presence of the border patrol, build fences and institute a range of detection devises along the southern border. Many observers believe that the result has been to increase the costs and dangers of crossing illegally rather than to actually reduce the flow of potential workers into the United States, as well as posing a constant irritant between the United States and Mexico. Another impact has been to discourage cyclical migration. We do not believe that it is either feasible or desirable to continue the trend of militarizing the southern border to the point of actually significantly reducing illegal immigration. Migration should be managed as much as possible, not "controlled" at all costs.

Enforcing employer sanctions to the point at which it becomes a work place standard to hire only authorized workers is again laudable if it can be accomplished without an increase in discrimination against foreign-looking or foreign-sounding workers. The effectiveness of achieving this goal, of course, brings up the issue of a national ID card—an always hotly contested idea. Again, viewing this as a reasonable and timely solution to the deteriorating conditions in the agricultural labor market is unrealistic.

Reducing the need for agricultural workers through labor-saving technologies has also been suggested as a means to improve conditions for farmworkers. This strategy raises the question of continuing un- and under-employment for farm workers as well as the question of who will pay for such research. Government-sponsored research on mechanization in the past ran into the problems mentioned previously when a lawsuit was filed objecting to it on the basis of the impact it had on farm workers.

More important, however, is the fact that political involvement in the farm labor market is so entrenched that it is unlikely that the operation of free market mechanisms will be able to "work". We cannot start from scratch and ignore the almost 100 year history of such political involvement. As a result, failure to address the issue of immigration policy and agricultural labor will continue to condemn hundreds of thousands of farmworkers to the poor wages and working conditions under which they currently suffer.

Elements that Should be Included in a New Temporary Worker Program. The following is our assessment of several important issues that are critical for developing a new temporary worker program for agriculture. There are undoubtedly more, but we feel that the following represent key elements that must be seriously considered in the ongoing debate about non-immigrant workers and agriculture—a debate that is unlikely to simply disappear:

1) It must be experimental. It must be time-limited. It must include a mechanism by which it is monitored and evaluated. And, its ultimate fate should be determined by the results of an independent evaluation. The history of policy development with regard to agricultural workers shows that intended consequences are not always achieved. One of the most recent examples is the 1986 IRCA, which was supposed to drastically curtail the employment of unauthorized workers in agriculture, yet had the opposite effect. Another is the perverse effect of tighter border controls leading to a reduction in seasonal, cyclical migration and an increase in the settlement of unauthorized immigrants in the United States.

2) It must be limited to specific countries and give preference to workers already employed in U.S. agriculture. These workers represent a long history of migration to U.S. agricultural labor markets from Mexico and various Caribbean countries, the strength of which should be recognized in crafting effective policies. For example, under the current H-2A program, recruitment is not limited to traditional migrant-sending countries. Thus, various recruiters have explored the possibility of recruiting workers in Bangladesh or China. The potential for establishing *new* migration streams through a temporary worker program could be politically explosive and have serious and negative long-term implications. A new program should focus on countries

with a history of cyclical migration to U.S. agriculture. This would also represent a logical extension of current economic arrangements, such as the North American Free Trade Agreement and the Caribbean Basin Initiative.

3) A new program must recognize and seek to minimize the level of control over workers exerted by employers and recruiters in the current H-2A program. This control is structurally created when workers are tied to a particular employer and/or employer association. Addressing this imbalance of power should take the form of providing temporarily authorized workers with the right to change employers and of allowing workers to join unions and have access to worker representatives and legal representation.

4) Housing is an issue that needs serious consideration. On the one hand, employer-provided housing, while clearly a significant work-place benefit, also increases the control that an employer is able to exert over his/her employees. Vouchers are only successful if local housing is available. If vouchers are considered, it is important to note that workers often need to spend approximately 25% of their income on housing. The best solution to this dilemma would entail incentives to private entrepreneurs to build housing, coupled with support for not-for-profit housing developments and increased federal/state/local government support for farm worker housing.

5) A temporary foreign worker program should not continue to include a *de-facto* exclusion of women. Such an exclusion runs counter to U.S. norms of equality as well as the historical participation of women in the agricultural work force. It also imposes significant social costs on sending communities in terms of family separation.

6) A new program must not undercut the participation of U.S. workers in agriculture. The "positive recruitment" requirement of the H-2A program is ineffective. The best way to protect U.S. workers is not making it cheaper, in any sense, to hire foreign workers. Employers must pay a premium for being provided, by the government, access to authorized foreign workers.

7) Finally, the issue of workers being able to gain permanent residence status must be addressed. Ultimately this country may arrive at the conclusion that a binational labor force in which workers, whether foreign or domestic, are *guaranteed* decent wages and working conditions in an industry is all that we can offer. Until that is guaranteed, however, foreign workers who are needed because the work does not attract enough domestic workers should be allowed to ultimately gain permanent residence status and the right to participate fully in our democracy.

Conclusion

The best approach to attempting to improve conditions for farm workers in the United States—notice we say the best, not the ideal—is one that is politically feasible, that does not allow the status quo to continue, and that provides increased protections for workers in this labor market. A first step is to recognize its long-standing and ever-increasing binational character. The task at hand is to work together with labor-sending countries to regularize and manage this labor flow, and to develop standards that regulate its movement and improve the conditions under which this needed labor is performed. The North American Free Trade Agreement (NAFTA) has been described as "both a culminating act, giving legal and hence more entrenched form to changes already in process, and an initiating act to foster and cement the restructuring of the bilateral relationship" (Weintraub 1997). Goods were already flowing between the two countries, as was capital. NAFTA was to provide a better, more even-handed mechanism

to manage that flow. In the same way, we must consider ways to give "legal and hence more entrenched form to changes already in process" with regard to the flow of foreign workers into the U.S. agricultural labor market and to "cement the restructuring of the bilateral relationship" to provide enduring standards and worker protections for a binational work force.

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Chapter 4

Rethinking Cross-Border Employment in Overlapping Societies: A Citizenship Movement Agenda

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Paul Johnston

Introduction

The passage of Proposition 187 in California in 1994 launched a barrage of policy change creating a new and more hostile environment for immigrants and for immigration and naturalization; a new anti-immigrant civic regime. These policies have had a strong and sometimes brutal impact on families, especially on low income families; on the elderly and disabled; on employment conditions and labor rights; health care for immigrant families and educational opportunities for immigrant youth; and on the health and safety and often the lives of persons crossing the border for work. They have failed, however, to slow the growth of unauthorized immigration or the emergence of what appears more and more to be a new apartheid of citizenship status. Instead, by making border crossing more dangerous and expensive, they have accelerated the process of settlement and family formation inside the United States by migrants who might otherwise have maintained their primary residence in Mexico.

On the other hand, these developments have promoted the emergence of a citizenship movement among immigrants in the U.S.: a social movement for expanded participation in public life. The sharp rise in naturalizations, traced in figure one, represent a dramatic reversal of Mexican immigrants' long-time tendency *not* to naturalize. Importantly, at the same time that these legal permanent residents move in unprecedented numbers into U.S. citizenship, they sustain stronger connections with their homelands, especially in North America. These contrary trends have radical consequences for the future relationship between nationality and citizenship, to which I shall return in the final section below.

This is only one measure of a broad trend toward increased public life, concentrated among Mexican immigrants. It was accompanied, for example, by an explosion of participation in adult education classes beyond ESL and Citizenship. And it is now being followed by new citizen voter participation rates, which exceed those of native-born Latinos and match that of the general voting public. At the same time, moreover, the U.S. labor movement is reassessing and beginning to move away from its historically exclusionary attitude toward immigrant labor. This unfinished process has opened up new possibilities for more inclusive political coalitions, which can change the political balance of power and policies at every level of government in the U.S. As a result, new opportunities to re-define citizenship are likely to be open in the future.

If these possibilities are to be realized, it is imperative that those concerned about the status and treatment of immigrant workers move beyond opposition and toward the development of positive agendas. These are, to be sure, complex issues, and controversial enough to make dialogue difficult amongst those with different views. Given the balance of power in Congress and the prevailing anti-immigrant spirit in the country at large, moreover, the danger exists that reforms considered with the best of intentions may mutate into forms that only reinforce employer control and exploitation in low wage labor markets that are currently filled with unauthorized immigrants. The Forum for Transnational Employment is designed to operate in these circumstances: as a space committed not to policy advocacy but to the exploration of alternatives and dialogue among scholars and civic leaders.

This article aims to help inform and stimulate that dialogue. It will be useful, we believe, for participants:

- to grasp "citizenship" not as a fixed and inflexible thing, but as an unfinished and evolving set of relationships to public institutions that are a focus of social conflict and political struggle;

- to see themselves as participants in a social movement with realistic prospects of changing the direction of history;

Fig 1. Naturalized Immigrants 1907-1998 and Backlog, 11/30/97

- to grasp the pivotal role of the labor movement, both in generating a culture of citizenship and as potential allies—and potential adversaries—with much at stake in an agenda for expanded citizenship;

- to review and briefly assess today's contending agendas for cross-border employment rights (and to suggest, in passing reconsideration of a decades-old proposal to legalize the flow of temporary Mexican labor in the U.S. through individual visas not tied to companies, nor even to industries); and finally,

- to reflect on the direction of change in the relationship between citizenship and national identity in the emerging new conditions of transnational or overlapping societies.

The Citizenship Movement and the Labor Movement

Unlike lawyers and many others, sociologists who study citizenship see it as more than a legal status. Though their views differ widely, most see citizenship as including the exercise of civil rights or basic freedoms of speech and movement and equal treatment under the law; social rights or protection from extreme poverty and participation in self-government (Marshall, 1950). For some, citizenship also means educational rights, including access to information (Parsons 1966); economic rights of some kind (Marshall 1950) and recently, the right to express and receive recognition of our own culture in a diverse society (Flores & Benmayor, 1997). Also, a great body of historical research on the emergence of citizenship has shown that labor movements among workers who are excluded from basic citizenship rights have been and remain today among the most important forces in history for the expansion of citizenship in all these domains (Hobsbawm 1968, Thompson 1974, Montgomery 1993, Foweraker & Landman 1997).

From this point of view, "citizenship" first appears not when governments recognize rights but when people begin demanding and exercising them. Also from this point of view the long history of struggle for this whole array of citizenship rights among Mexican immigrants and their descendents in the U.S. can be understood as a broad current of citizenship— at times forceful, at times nearly dormant— moving through this population, or a citizenship movement. And from this point of view it makes sense that the citizenship movement among Mexican immigrants and their descendents has mainly grown out of farm workers' and urban immigrants' struggle for fair treatment in employment.

Despite the massive scale of recent changes in Mexican immigrants' participation in U.S. public institutions, the citizenship movement is as yet more potential than reality today. Tangible to organizers working in this community, it is a disorganized and low-key social movement, more a current of change than a wave of collective action. It suffers from:

- a lack of visible public leadership;

- the absence of clear and strong language through which participants express their cause and locate their movement in history;

- an ambivalent relationship to the U.S. labor movement; and

- as *Latinos* and their allies begin to win electoral power, an absence of viable local policy agendas to champion, especially at the local level.

Whether this new citizenship movement achieves its potential depends in part on whether leaders emerge who articulate it as a movement for social justice; whether those involved tap this expanded interest in civic participation or instead rely on bureaucratic client processing; whether labor leaders adopt agendas that respond to the interests of immigrant workers; and whether emerging Latino political leaders and their allies are equipped with viable policy proposals that allow them to assemble coalitions with the capacity to govern. Here, we focus in particular on its relationship to the labor movement.

Citizenship movements are also more than struggles for labor rights. The citizenship movement among Mexican immigrants is also, for example, largely a movement of women, powerfully affected by concerns about the future of children, and structured in basic ways by family relationships that both cross borders and that serve as criteria of eligibility for immigration to the United States. It is also partly rooted in the recent and growing vitality of civic participation in indigenous peoples' groups and hometown associations. And it is also probably strongest today in the realm of education, though it could be much stronger there as well.

But the connections between the labor movement and the long struggle for expanded citizenship are easy to see. Starting in the 1970s, for example, the United Farm Workers union led many thousands of Mexican immigrants into a series of dramatic electoral campaigns. Since the UFW began to embrace the rights of undocumented workers in the 1970s, that organization has emerged as among the most powerful voices for immigrant rights in the U.S. Also, during the amnesty program in the late 1980s, and again during the huge surge of new applications for U.S. citizenship in the 1990s, a variety of Latino-led labor unions mobilized support for immigrants making their way through the immigration and naturalization process.

Over these decades, the Mexican immigrant workers' movement grew in strength not only among the newly "legal" immigrant workers but also among undocumented immigrants, empowered by a relatively porous border and relatively lax enforcement of laws prohibiting their

employment (Milkman & Wong 1999). Elsewhere in the United States other farm worker labor movements also gained ground. After years of decline, the UFW itself began to experience organizing success again in the early 1990's, and a series of immigrant worker movements surfaced in a wide variety of other industries as well. Among the best-known of the new movements was the Service Employees International Union's Justice for Janitors campaign, which, starting in the late 1980's, succeeded in many cities in reorganizing an industry where union membership had virtually collapsed since the mid-1970's (Johnston 1994).

The Justice for Janitors campaign had consequences far beyond the building maintenance industry; it helped to propel an insurgency within the top ranks of the AFL-CIO which led to the emergence of new labor leadership more committed to organizing. The AFL-CIO had pressed, in previous rounds of immigration policy-making, for stronger border enforcement and employer sanctions targeting undocumented workers, in direct opposition to the agendas of immigrant advocates and Latino community leaders. The new AFL-CIO leadership, however, was committed to organizing undocumented first-generation immigrants.

But many labor leaders continue to believe that by preventing a labor surplus, border enforcement could enhance the conditions for organizing. Also, the strength of these movements among undocumented workers had by the early 1990's persuaded many scholars and union organizers that citizenship status and immigrant rights issues were not significant factors in organizing (Delgado 1993). So leadership changes in the AFL-CIO would not produce significant new advocacy for immigrant rights, support for the naturalization movement which would explode in the mid-1990's, or a changed stance on border enforcement and employer sanctions. Ironically, in fact, the AFL-CIO withdrew its support for the California Immigrant Workers Association and for LAMAP, two labor initiatives which had indeed tied the defense of immigrant rights to labor organizing.

Consequently, despite these deep connections between the emergence of citizenship and labor movements among immigrant workers and despite a broad turn toward a more political unionism, efforts to revive the U.S. labor movement have to date largely missed the opportunity to identify unionization with immigrant communities' citizenship aspirations. Instead, labor unions struggle to organize low-wage workers in difficult conditions created, to a degree, by their own policies.

Labor unions, then, are by no means always the immigrants' best friend. They can choose to defend established economic advantages

against newcomers, and frequently do so. Frequently in history labor unions have been both decisive adversaries as well as key allies of immigrants and others excluded from full citizenship. Labor is mainly an ally of immigrant rights when it is a social movement, committed to the expansion of citizens' rights in the field of industry or in the particular public institution where workers are employed, and elsewhere. *The critical point about the present period, however, is that while U.S. labor hasn't really changed its mind about immigrants, it has begun to do so.* This may prove to be an historic opening, with great significance for the future shape of our society.

The historic exclusion of first-generation immigrants from labor unions and from full participation in citizenship more generally has had decisive consequences for U.S. politics and the economy, including a weaker labor movement, a deeply dualistic economy and labor market (divided, that is, between very low-wage and relatively high-wage work), deeper income inequalities, and more regressive public policies. Because labor and immigrant rights advocates have been at odds with each other in the past, the embrace of first-generation immigrant workers by the U.S. labor movement might well produce rapid changes in policy and explosive developments on the organizing front. If an extended dialogue between labor and immigrant rights leaders produced a new consensus, the result would be a sharp change in the pattern of political conflict around this issue in Washington D.C., opening up dramatic new possibilities for positive legislation protecting the rights of the currently undocumented workforce.

Today the struggle for expanded citizenship continues on many fronts, from education to the electoral arena. Since the barrage of new anti-immigrant policies began with the passage of Proposition 187 in California in 1994, most Latino civil rights energies have been taken up with defensive efforts, seeking to stop or blunt attacks on social welfare rights, bilingual education, and affirmative action. But as the new political strength of Latino communities begins to become evident, it is possible that new political coalitions will form with the capacity to roll back the array of anti-immigrant policies put in place during the 1990s. In these circumstances, critical questions arise: Will labor union leaders learn the lessons of recent organizing failures, to become advocates for the rights of the undocumented workers whom they would like to organize? More generally, will we be prepared to advance our own policy agenda for fair cross-border employment? Or will we remain so focused on opposing anti-immigrant initiatives that we never take the time to develop and build support for our own positive agendas?

The Struggle over Cross-border Employment

The past five years have seen a dizzy pace of change in immigrant rights, caused by the struggle over citizenship. This pace is likely to continue, with new conflicts and new changes already on the horizon. Two new initiatives focused on Mexican employment in the U.S. now threaten to further develop the new anti-immigrant regime, while also stimulating greater opposition to it. One is an element of the INS' new "internal enforcement" agenda, and involves what might be called "*industrial audits*": computerized identification of persons without valid social security numbers. This technique, which allows the INS to selectively target and "purge" particular industries and regions of "suspect" workers has already been field-tested and found effective in the meatpacking industry in the midwest and in the apple industry of the Northwest.

A second agenda has been persistently pushed by agricultural employers who find themselves increasingly dependent on unauthorized immigrant workers. Since 1995, they have sought to sharply expand and streamline the *guestworker program*, giving employers more ready access to temporary Mexican workers. Labor and immigrant advocates oppose the expanded guestworker program arguing that, though it does allow workers to work legally in the United States, it places them under conditions of control by a single corporation that are not consistent with work in a free society. These advocates also oppose the new industrial audit agenda, both to defend the rights of targeted workers and to deal with the consequences of these mass firings for families, local economies, and social service systems.

The agenda for an expanded guestworker program is mainly driven by employer interests. It reflects their recognition of the reality of cross-border employment, and their preferred way of organizing it. Even with the passage of new legislation, however, determined labor resistance backed by broad public opposition make it highly unlikely that a significant portion of the temporary Mexican immigrant workforce will ever be brought into this framework. If as appears likely, however, these two programs do take root and expand, they may trigger increased organizing and advocacy for alternative policies in affected communities on both sides of the border. In particular, the spectacle of thousands of unauthorized Mexican workers being discharged and replaced by thousands of Mexican guestworkers is likely to inspire demands from employers as well as others affected that legal status of some kind be instead given to those workers already in place.

Two other influential agendas for change might be called the *enforcement agenda* and the *anti-enforcement agenda*. Economists influential in the Clinton-Gore administration argue that stronger and better enforced regulation of wages and working conditions will reduce both the abuse of low-wage workers and the employment of unauthorized immigrants. On the other hand, immigrant rights advocates argue for the non-enforcement of employer sanctions and, more specifically, for prohibiting collaboration between the INS and the Social Security Administration to identify workers suspected of unauthorized immigration status. Many are fearful, however, that any program expanding legal temporary employment in the U.S. will be so biased toward employer power that it weakens immigrant rights still further, and so do not support efforts to legalize temporary immigrant employment in the U.S.

As it appears that Clinton and Zedillo administrations are sidling toward some new guestworker program, several other new proposals aiming for more far-reaching change in cross-border employment policy have recently been offered as alternatives. The United Farm Workers Union has set their sights on a new amnesty program, which would provide legal permanent residency status to those currently working in agriculture. Others argue for more far-reaching reforms, which would simultaneously seek to stabilize employment in agriculture. Specifically, Mines & Alarcón (1999) and Papametriou & Heppel (1999) offer plans which vary in some details but basically involve:

- a limited amnesty for those now employed in agriculture,
- an expanded guestworker program with stronger protection for workers' rights,
- efforts to stabilize and upgrade the agricultural labor market to reduce turnover and so slow its appetite for more low-wage immigrant workers, and finally
- a still more intense crackdown on unauthorized immigrants.

It is not clear why, aside perhaps from considerations of political viability, these proposals include the last of these elements (intensified crackdown on unauthorized immigrants). Importantly, however, these ideas have attracted the interest of Senator Dianne Feinstein, among others.

Although it is not being actively circulated today, Wayne

Cornelius' 1981 proposal to simply legalize the flow of temporary migrant workers from Mexico through the issuance of massive numbers of temporary worker visas on a first-come, first-served basis represents a yet another approach. Because the proposal allows the worker to move freely in the U.S. labor market, avoids the intensified crackdown on unauthorized immigrants, allows the migrant to have dependents with him or her, and also responds to the particular interests of unions and workers involved in strikes and organizing campaigns, it may be a better starting point for discussion than some of the other approaches outlined above. Interestingly, this is a "free market" agenda: relieving employers of burdensome paperwork, while offering workers the option of "exit" which is so essential if they are to enjoy the option of "voice".

We would strengthen this proposal by calling for mechanisms that ensure a voice by those affected in its administration and implementation. Low-wage and low-skill migrant workers temporarily employed in the U.S. are so vulnerable that, left to the labor market, their conditions of employment will be inconsistent with work in a free society. It is unlikely, moreover, that labor organizations will back a plan which could potentially flood the U.S. labor market with an unlimited number of low-wage competitors.[1] Specifically, then, we would place it under the administration of a board that includes both U.S. and Mexican labor representatives, and also include provisions supporting representation of and by migrant workers on the job as well was in the administration of this program.

Conclusion: Facing the New Transnational Realities

There are few more powerful forces in the social world than the labor market. The failure of the past decade of immigration policy to reduce cross-border employment shows the folly of policies that assume they can effectively abolish the cross-border labor market. As an unintended consequence of increased enforcement, for example, most

[1] It is interesting to consider, however, that the only break-through in private sector U.S. labor organizing on a scale comparable to that which unions hunger after today came not in a tight labor market, but rather in the Great Depression. Similarly, during a short-lived period of success in immigrant worker organizing of the late 1980s and early 1990s, low-wage labor markets were awash in unemployment. In such circumstances, social movement unionism has generated political resources able to overcome the challenge of high unemployment.

informed observers agree that temporary workers have increased their rate of settlement and family formation in the U.S. due to the increased cost and difficulty of border crossing. As long as wage levels differ on a scale similar to today's 8:1 ratio between the U.S. and Mexico, such policies are never likely to do more than deepen undocumented workers' isolation and vulnerability to unemployment.

Both current policies and most responses and proposed alternatives suffer from a failure to face reality when they assume that government enforcement efforts can override the power of a labor market that crosses borders. Similarly, immigrant advocates who assume that no legal status short of permanent residence can protect migrant workers in the U.S. remain trapped within a notion of citizenship rights increasingly unsuited to the global age. Both fail to grasp the reality of our increasingly overlapping societies, tied together by a transnational labor market, by a huge and growing number of transnational families, and increasingly by transnational citizenries.

It is useful to reflect briefly on the historic significance of this change. In the past, when waves of mass migration have changed the composition of society in the United States, first generation immigrants have remained attached to their homelands. Only in the second generation have migrant communities sought—and sometime won—inclusion as full members of society. Not until the labor movement of the 1930s and the upheavals in local government politics in the same period, for example, did the children of immigrants from southern and eastern Europe win a degree of membership comparable to that of northern European immigrants in U.S. society.[2] This historical exclusion of first generation migrants is closely related to the dualism or sharp inequalities in U.S. labor markets and in the economy more generally. For the past century, this pattern of exclusion has defined the character of the labor movement and shaped the economy and politics of the United States (Piore 1979, Mink 1986).

Now, however, something new is happening. On the one hand, even more than in previous periods many immigrants are remaining

[2]Michael Piore (1979:158-64) suggests that the urban upheavals of the 1960s represent a similar struggle for inclusion by the children of African-American migrants from the rural south, and that the Chicano movement reflected a similar process at work among the children of migrants from Mexico and the rural southwest.

rooted in their countries of origin, thanks to cheaper and faster travel and communication and to continuing migration flows (Massey 1995, Portes 1996, Smith & Guarnizo 1998). Increasingly, political elites in sending countries have recognized and sought to tap into these "transnational communities" as an economic and political resource (Basch et al 1994). Since March 1998, Mexico has joined other countries (including the U.S.) in allowing its citizens to remain nationals after naturalization in another country (Spiro 1998), and the Mexican government is now considering plans that will permit dual citizens to vote in Mexican elections (Dillon 1999).

On the other hand, driven by the desire to secure rights for themselves and their families, unprecedented numbers of these same first generation immigrants are seeking full membership in U.S. society. As they do so they feel deeply ambivalent, torn between their attachment to Mexico and their new connection to the land where their children were born and their descendants will live. So, as Los Tigres del Norte say in their wildly popular song, they make a place for two countries in the same heart.

Together, these trends suggest a disconnection between nationality and citizenship; possibly the decline of (and certainly a challenge to) the nation-state model of citizenship. Unchecked, they imply the emergence of what might be called post-national or trans-national citizenries: nationalities that participate in more than one polity, and polities that embrace more than one nationality. The first shares in more than one public life, while the second shares in a bounded citizenship that nonetheless embraces diversity. These two crosscutting kinds of "transnational citizenship" have consequences not only for immigrant groups and the cross-border relationships that bind them to their homeland but also, we argue here, for public life, public policy and public organization within receiving countries.

There is no inevitable triumph on the horizon for the transnational citizenship envisioned here, neither for its embrace of diversity within the U.S. public nor for its recognition of the rights of citizens of our sister countries like Mexico, who labor here in low-waged jobs. But the new and still-growing level of immigrant participation in U.S. public institutions will certainly produce opportunities for rolling back the exclusionary policies of the 1990s and for re-defining the terms of membership in our over-lapping societies. Success in this project will depend to a great degree on

the course of what we have called here the citizenship movement.

This movement has a message, we believe, not only for Mexican and other immigrants coming to terms with their own transnational lives and identities, but also for others in the U.S. who are prepared to embrace the growing diversity of our society. Its strength will depend in part on our self-consciousness, or our shared vision of who we are and what we stand for. It will depend in part, that is, on our ability to grasp and to express our role in history, on California's cutting edge in the struggle to realize the promise of democracy in the global age.

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Chapter 5

Farm Workers, Guest Workers, and California Agriculture

Phil Martin

Introduction

California agriculture provides a case study of how an industry can remain dependent on an outside-the-community labor force for decades, usually by persuading the federal government to leave immigration doors ajar so that foreign workers willing to accommodate themselves to seasonal farm work are available (Congressional Research Service, 1980; Fuller, 1942). There are many reasons why agriculture requests and receives special treatment in immigration matters, but three stand out:

1) Agriculture is considered a U.S. economic success story: it provides U.S. residents with low cost food and generates a consistent trade surplus.

2) Agriculture is one of the few U.S. industries in which the number of employers, about 750,000, is high relative to the number of employees, about 2.5 million, so that farm employers are far more important in employer organizations than farm workers are in employee organizations.

3) Agriculture is a widely-dispersed industry with experience organizing into commodity and regional groups to obtain government assistance.

Seasonal farm labor is almost always discussed as a problem. For farmers, the problem is the cost and availability of labor—how can farmers be assured that there will be enough workers available to fill seasonal jobs at "reasonable" wages? Farmers argue that the uncertainties inherent in the biological production process, the competitive nature of the markets in which many labor-intensive commodities are sold, and the nature of farm work make it impossible for farmers to compete with nonfarm employers for workers.

Worker advocates, on the other hand, define the farm labor problem as too little work at too low wages, so that most farm workers wind up with below poverty-level incomes. Not surprisingly, both farmers and worker advocates look to government to resolve the farm labor problem as each has defined it. Farmers, especially those in California, long ago learned that the cost and availability problem could be dealt with most easily through immigration; if there were enough immigrants without other U.S. job options, then there would be a sufficient seasonal labor force for each farm. Just as farmers cooperated to get federal and state governments to develop water facilities so that all had access to cheap water, so farmers learned to cooperate to persuade government to keep border gates open so that all had access to immigrant labor.

Farmers traditionally won the immigration-for-agriculture argument. Farm worker advocates were divided on a strategy: for most of the 20th century, more worker advocates wanted to break up large farms that depended on armies of seasonal workers into family-sized units than wanted to treat large farms the same as nonfarm employers for immigration and labor law purposes. There were also two economic factors that worked against worker advocates. First, in a booming nonfarm economy, farm workers found it easier to achieve upward mobility by shifting to nonfarm jobs than by fighting for change within the farm labor market, helping to explain why, even today, the average seasonal farm work career is less than 10 years. Second, farm wages lowered by the availability of immigrant workers raised land prices, giving farm employers an economic incentive to make political investments to protect land values by making political contributions to maintain access to immigrant workers.

Immigrant farm workers provide a classic example of the tradeoffs inherent in immigration policy making. Permitting Mexican farm workers to enter the U.S. helps to hold down farm wages and thus food prices. The immigrants are eager to come, the farmers are eager to

employ them, and because of their presence, Americans have more money to spend on non-food items. The competing good is high wages and benefits for all farm workers, immigrants and U.S. workers. As the immigrants settle, they and their children are encouraged by low farm wages to move to urban areas to improve their lot. If they and their children succeed in urban labor markets, then the U.S. immigration miracle of giving opportunity to the poor of other countries is repeated. If they do not, then rural poverty in Mexico becomes rural and eventually rural and urban poverty in the U.S.

U.S. Agriculture

Agriculture is a frequently misunderstood industry. Farming is often considered a crown jewel of the economy, a testament to the fact that only about 8 percent of the average "consumer unit's" annual expenditures of $35,000 in 1997 were for food eaten at home.[1] The US also runs a $20 to $30 billion annual surplus in agricultural trade.

This picture of efficiency, however, is clouded by the fact that most U.S. farms lose money farming, and that government payments typically account for one-fourth of net farm income. A handful of large farms produce most of the nation's food and fiber. The largest five percent of all farms, each a significant business, account for over half of the nation's farm output, while the smallest two-thirds of all farms account for only five percent of all farm output. These small farms, on average, lose money farming.[2]

Most American farms are family farms—defined by USDA as those that can operate with less than the equivalent of one and one-half year-round hired hands. Most of these farms are operated by non-Hispanic whites: the Census of Agriculture in 1992 reprted that there were 1.9 million U.S. farms, and that over 80 percent were operated by

[1] The US Bureau of Labor Statistics reported 106 million "consumer units" in the U.S. in 1997, with an average of 2.5 persons each, and they spent an average of $35,000 during the year, including $4,800 for food (14 percent). These food expenditures included $2,900 for food eaten at home (eight percent), or about $55 a week, including $6 weekly for fresh fruits and vegetables. For more information: ftp://ftp.bls.gov/pub/special.requests/ce/standard/y8497.txt

[2] Statistical Abstract of the United States, 1992, p. 649. There were 2.1 million farms with a gross cash income of $186 billion in 1990. The largest 107,000 farms each sold farm products worth $250,000 or more, and they accounted for 56 percent of gross cash income. The smallest 1.3 million farms each sold farm products worth $20,000 or less, and they accounted for 5 percent of gross cash income. These small farms lost $500 million farming.

non-Hispanic whites. Many of these farmers are sideline farmers, but many report that they put in more than 40 hours each week on their farms, so that about two-thirds of U.S. farm work is done by farmers and their unpaid family members.

The subsector of U.S. agriculture that is most closely associated with Mexican migrants is so-called FVH agriculture, the 75,000 U.S. farms that hire workers to produce fruits and nuts, vegetables and melons, and horticultural specialties (FVH) such as flowers and nursery products. Even the 75,000 number exaggerates—the largest 10 percent of these FVH farms account for 80 percent of U.S. fruit and vegetable production and employment. It is true that most U.S. farms, as well as most of fruit and vegetable operations, are small, family-run operations, but seasonal factories in the fields account for most of U.S. farm worker employment, and it is their efforts to obtain seasonal workers that have led to immigration exceptions for agriculture.

Immigration policy and immigrants are linked to fruit and vegetable agriculture because immigrants constitute almost two-thirds of the industry's current work force and nearly all the entrants to the seasonal fruit and vegetable work force. The U.S. Department of Labor's National Agricultural Worker Survey (NAWS), for example, finds that over 70 percent of the hired workers on crop farms were recent immigrants from Mexico, and that 75 percent of them worked in fruit and vegetable agriculture.

Few young Amercians dream of growing up to be farm workers. In the past, it was feared that farm worker children would be trapped in the migrant stream by the inadequate education they would get because of their migrancy, i.e., the migrant farm work force reproduced itself within the U.S. because the children of migrants count not obtain nonfarm jobs. Today, farm workers' children educated in the U.S. tend to take nonfarm jobs by age 18 or 20 to avoid being trapped as their parents were. The farm work force is reproduced abroad; most new entrants to the farm work force in the 21st century are growing up today in southern Mexico and Central America.

Immigration Reform

When the Congressional hearings on illegal immigration that eventually culminated in the Immigration Reform and Control Act of 1986 began in 1981, the positions of farm worker and farmer advocates were not well developed. United Farm Workers (UFW) repre-

sentative Stephanie Bower, for example, testified on September 30, 1981, that the UFW supported "imposing sanctions on employers who hire illegal aliens...[but since] laws covering farm workers have been rarely enforced…we strongly urge that a large budget for staff and operations be allocated to enforce sanctions.[3] TheUFW also supported issuing counterfeit-proof social security cards to all workers, including farm workers, so that employers could easily verify the right of newly hired workers to hold U.S. jobs.

Farm employers, through the National Council of Agricultural Employers (NCAE), opposed both employer sanctions and an amnesty for some unauthorized workers, arguing that this Grand Bargain to deal with illegal immigration could lead to labor shortages: "they [illegal alien farm workers] will move to other jobs where they may get 12 months out of the year employment"…and many of "those people" (illegal aliens) "do not want amnesty," so if they must "choose amnesty" in order to work in the United States, "they may just opt [to go] back to Mexico."[4]

When the Simpson-Mazzoli immigration reform bill was introduced in 1982, it included sanctions on U.S. employers who knowingly hired illegal aliens, an amnesty for some aliens in the United States illegally, and a streamlined H-2 non-immigrant worker program that allowed temporary farm workers to fill temporary U.S. jobs if American workers were unavailable at government-set wage and working conditions. Western farm employers were not satisfied with the prospect of a government certification process standing between them and the Mexican workers to whom they had become accustomed. They argued that they could not plan their need for seasonal labor as the H-2 program required because they produced perishable commodities, that they lacked the free housing needed to be certified for H-2 workers, and that farm worker unions might urge the government not to approve their requests for alien workers on the grounds that U.S. workers were available—farmers did not want to be in the position of being forced to hire union activists in order to receive permission to hire H-2 workers.

In January, 1983, representatives of the leading organizations representing growers met in Dallas to decide whether to press for further changes in the H-2 program to accommodate Western growers, or to seek a new foreign worker program. The decision was made to leave the H-2 program largely intact and to seek a new foreign worker pro-

[3] Senate Serial J-97-61, 1981, p 78.
[4] Senate Serial J-97-61, 1981, p 125.

gram. The Farm Labor Alliance (FLA), a coalition of 22 farm organizations, was created to press for such a program in Congress. The FLA wanted:

- a flexible program under which there would be no DOL certification of an individual farmer's need for foreign workers; and

- legal non-immigrant workers who would be confined to farm jobs, but not to a particular employer.

Both Senator Alan Simpson (R-WY) and Representative Romano Mazzoli (D-KY) opposed such a free agent guest worker program, arguing that it was hard to justify a guest worker program in legislation designed to re-assert control over unauthorized immigration. Free agent guest workers, they argued, would be difficult to regulate in a manner that would not undermine the wages and working conditions of U.S. farm workers. Most government agencies opposed the FLA's free agent guest worker proposal as well, arguing that they would not be able to carry out their assigned enforcement tasks if the labor market was awash in free agent guest workers.

Representatives Leon Panetta (D-CA) and Sid Morrison (R-WA) introduced the FLA's guest worker program as an amendment to the Simpson-Mazzoli bill in the House in 1984. To the surprise of many observers, the House approved the Panetta-Morrison guest worker program in June 1984 in a form similar to what the growers proposed, producing what the New York Times described as one of the year's top 10 political stories.[5] In 1985, the FLA got Senator Pete Wilson (R-CA) to offer another version of the Panetta-Morrison program in the U.S. Senate and, after Wilson agreed to cap the number of guest workers at 350,000, Wilson's guest worker program was approved by the Senate.

When the House considered immigration reform in 1986, Representative Peter Rodino (D-NJ) asserted that he would try to block legislation that included a Panetta-Morrison or Wilson-type free-agent guest worker program for agriculture. During the summer of 1986, Representative Charles Schumer (D-NY) negotiated a compromise legaliza-

[5] John Norton, Undersecretary of Agriculture in the mid-1980s and a major lettuce grower, said that "Leon Panetta carried the ball for California on the Panetta-Morrison amendment...He did a superb job of trying to represent California's labor needs...he's been a real champion of the industry." California Farmer, June 21, 1986, 7.

tion program with Representative Panetta (D-CA), representing employer interests, and Representative Howard Berman (D-CA) representing worker interests, and this "Schumer compromise" was a key element that permitted the Immigration Reform and Control Act of 1986 to be enacted.

IRCA's Agricultural Provisions

IRCA included three major agricultural provisions: deferred sanctions enforcement and search warrants, the Special Agricultural Worker or SAW legalization program, and the (revised) H-2A plus the new RAW foreign worker programs. Each provision had anticipated and unanticipated consequences (Martin, et.al., 1995).

Sanctions. Before IRCA, the Immigration and Naturalization Service (INS) enforced immigration laws in agriculture by having the Border Patrol drive into fields and apprehend aliens who tried to run away. Farmers pointed out that the INS was required to obtain search warrants before inspecting factories for illegal aliens, and they argued that farms were like factories, and that the INS should be obliged to show evidence that illegal aliens were employed on a farm before raiding it. Farmers won this argument: IRCA extended the requirement that the INS have a search warrant before raiding a workplace for illegal aliens from nonfarm to agricultural work places.

Farmers also argued that farms, unlike factories, were extraordinarily dependent on unauthorized aliens, and that sanctions should not be enforced while the legalization program for farm workers was underway. Sanctions enforcement was thus deferred in most crop agriculture until December 1, 1988.

Legalization. IRCA created two legalization programs: a general (I-687) program that granted legal status to illegal aliens if they had continuously resided in the U.S. since January 1, 1982, and the SAW (I-700) program, which granted legal status to illegal aliens who did at least 90 days of farm work in 1985-86. Because farmers and farm worker advocates testified that many illegal alien workers were paid in cash, legalization procedures were far easier for illegal alien farm workers than for nonfarm aliens.[6]

No one knew how many illegal aliens were employed in U.S. agriculture in the mid-1980s. Most farmers and farm worker advocates accepted a USDA estimate that there were 350,000 illegal aliens were employed in agriculture, and this number became the maximum number of Group 1 SAWs.[7] However, 1.3 million aliens applied for

SAW status, or almost three-fourths as many as applied for the general legalization program, even though it was widely asserted that only 15 to 20 percent of the undocumented workers in the United States in the mid-1980s were employed in agriculture, and that the INS was unfairly concentrating its enforcement efforts in agriculture.

SAW applicants turned out to be mostly young Mexican men (Table 1). Their median age was 24, and half were between 20 and 29. Since SAWs had to be employed in 1985-86 to qualify, there were few SAWs under 15, compared to 7 percent of the general legalization applicants. Over 80 percent of all SAW applicants were male, and 42 percent were married. In a few limited surveys, SAWs who had an average 5 years of education earned between $30 and $35 daily for 100 days of farm work in 1985-86.

The SAW program was rife with fraud. Some unauthorized workers were paid in cash, so unauthorized aliens were permitted to apply for legalization with only a letter from a U.S. farm employer asserting that the named person had done at least 90 days of farm work. Most SAW applicants, in fact, submitted a letter, often signed by a farm labor contractor rather than a farmer, that asserted "Juan Gonzalez picked tomatoes for 92 days in Salinas for me in 1986."

A careful analysis of the employment data provided by several hundred applicants suggested that most could not have done the farm work they were claiming and their employers were verifying (Martin, Luce, Newsom, 1988; Martin, Taylor, Hardiman, 1988). The 90 day requirement is relatively stiff: in most surveys, less than half of all hired farm workers find 90 days of farm work in a typical year. But, in an unusual twist in U.S. immigration law, after a SAW application was filed, the burden of proof then shifted to the INS to "disprove" the alien's claim, something the INS rarely did. For example, very few seasonal farm workers outside the coastal valleys of California do 90 days of farm work in one location, so the assertion of tens of thousands

[6] A SAW applicant, for example, could have entered the United States illegally in early 1986, left after doing 90 days of farm work, and then applied for SAW status from abroad. An applicant was permitted to apply for the SAW program with only an affidavit from an employer asserting that the worker named in the letter had done e.g. 90 days of work in virtually any crop. The burden of proof then shifted to the INS to disprove the alien's claimed employment.

[7] Group I SAWs did at least 90 days of SAS work in each of the years ending in May 1, 1984, 1985, and 1986. Group II SAWs, by contrast, did 90 days of SAS work only in the year ending May 1, 1986. Over 90 percent of all SAW applicants were in the Group II category.

TABLE 1
Legislation Applicants

Characteristic	LAW (a)	SAW (b)
Median Age at Entry	23	24
1. Age 15 to 44 (%)	80	93
2. Male (%)	57	82
3. Married (%)	41	42
4. From Mexico (%)	70	82
5. Applied in California (%)	54	52
Total Applicants	1,759,705	1,272,143

Source: INS Statistical Yearbook, 1991, pp. 70-74
(a) Persons filing I-687 legalization applications
(b) Persons filing I-700 legalization applications.
About 80,000 farm workers received legal immigrant status under the pre-1982 legalization program.

of persons that they picked raisins for 90 days around Fresno must be false, since the raisin harvest season is, at most, eight weeks or 56 days long.

In the spring of 1987, an early Oregon strawberry crop, as well as fears that IRCA could lead to prison terms for unauthorized Mexicans, led to cries of a farm labor shortage. Representative Vic Fazio (D-CA) succeeded in requiring the INS to establish a border entry program for illegal alien farm workers. Under this program, a foreigner could arrive at the U.S.-Mexican border, assert that s/he did farm work as an illegal alien in the U.S. for 90 days in 1985-86, but had no records of such employment, and could enter the U.S. with a 90-day work permit to contact the old employer, obtain the letter certifying employment, and apply for SAW status—the 90-day work permit was intended to permit the alien to be self-supporting while gathering materials to apply for SAW status and to augment the U.S. farm work force.

Workers lined up at the ports of entry, and entrepreneurs offered to rent them work clothes, provide instruction in farming practices, and give geography lessons to the thousands of Mexicans seeking to enter the U.S. Almost 100,000 Mexicans entered the U.S. in 1987-88 under this border entry program, even though, near the end of the program, over 95 percent of those who applied were rejected when they e.g., said that they wanted to go to Salinas to find their old raisin employer (raisins are not grown in Salinas). Many made ludicrous assertions. When asked how they picked strawberries 1985-86, for example, at least several applicants asserted "we got out our ladders and climbed the strawberry tree."

H-2A and RAW. Many unauthorized aliens in the early and mid-1980s were believed to be "trapped" in farm work by lack of English, skills, and documents. By granting farm workers legal status, the expectation was that nonfarm employers of unskilled workers, such as hotels and factories, would recruit SAWs, so that farm employers would have to gradually improve wages and working conditions to retain them. With sanctions and stepped up border enforcement preventing additional illegal aliens from entering the U.S., the expectation was that the low-wage labor market would gradually tighten and that wages and working conditions that had been slipping since the late 1970s and early 1980s would reverse course.

The government is a very imperfect referee for guiding labor market adjustments. Farmers argued that, once currently illegal workers became SAWs, they could rush out of the farm labor market en masse, leaving farmers with labor shortages so severe that even sharply higher wages and improved working conditions could not bring supply into balance with demand. To head off such an outcome, farmers won *two* programs through which they could obtain foreign workers if there were labor shortages, the revised H-2A non-immigrant worker program and the Replenishment Agricultural Worker (RAW) program.

The H-2A and RAW programs neatly illustrate the basic differences between guest worker programs. The H-2/H-2A programs are certification-contractual programs— they require employers to receive Labor Department certification that they cannot find local workers, and the foreign workers receive contracts upon their arrival that spell out wages and other work-related conditions. Certification is a government procedure to assure that the employer tried to recruit U.S. workers, and that the presence of foreign workers will not depress the wages and working conditions of similar U.S. workers. Since 1990, attestation has substituted for certification in the H-1B program for foreign professionals, which means that U.S. employers file letters with their local ES "attesting" that they tried and failed to find U.S. workers. An employer's attestation opens the border gate to foreign workers, and the H-1B foreign workers who enter are confined to that employer with contracts.

Guest Worker Programs	Employer/Worker
Contractual Worker	Free Agent Worker
Certification	H-2A/B
Attestation	H-1B
F-1, AgJobs, RAW	
No Employer Requirements	
NAFTA Pros, J-1, Unauthorized	

The major difference between certification and attestation is the nature of governmental control over entries. In certification programs, the government controls the border gate—foreign workers cannot enter until recruitment, wages, and housing are checked and certified. In attestation programs, employers open the border gate for foreign workers, who are tied to them with contracts, but there is no enforcement to check on recruitment or wages or other conditions unless there are complaints.

Farm worker advocates dislike programs that tie workers to employers with contracts, arguing that workers with contracts are "captives" of their U.S. farm employers. On the other hand, California farmers feared that, if they requested H-2/H-2A workers, the United Farm Workers union might send them U.S. workers who favored UFW representation when they did required recruitment. The SAW and Replenishment Agricultural Worker (RAW) programs represented the Grand Bargain between worker and employer advocates: legal immigrant SAWs and probationary immigrant RAWs were free to leave abusive employers, as worker advocates wanted, and there was no need for the government to certify any farmer's recruitment or housing under the SAW-RAW programs, as farmers wanted.

The RAW program would have been a first in U.S. immigration history. If the U.S. government projected an overall farm labor shortage, then RAWS could be "admitted" to fill U.S. vacant farm jobs.[8] However, to protect farmers from government interference, there would be no certification that U.S. workers were not available. To protect the

[8] Farmers and the INS were chagrined to learn that over 90 percent of the 700,000 persons who registered for the RAW program provided U.S. addresses; farmers complained that simply legalizing illegal aliens would not add to the farm labor supply.

RAW workers, they would be free agents in the U.S., free to move from farm to farm. The immigration anomaly was that, after doing at least 90 days of farm work for three years, the RAW could become a legal immigrant, and five years of U.S. farm work would enable a RAW to become a naturalized U.S. citizen.

Neither the RAW nor the H-2A program admitted any additional legal foreign workers in the late 1980s and early 1990s, largely because illegal immigration continued, and document fraud enabled farm employers and unauthorized workers to satisfy the letter but not the spirit of IRCA. RAW admissions depended on national calculations of farm labor "need" and supply, and these calculations did not produce the necessary prediction of a labor shortage to justify the issuance of any RAW visas, and so the RAW program expired on September 30, 1993. H-2A admissions depend on employer requests. The U.S. Department of Labor added staff to handle the expected 200,000 H-2A applications per year in the late 1980s, but instead H-2A admissions shrank from about 30,000 in 1989 to 15,000 in 1995, due in large part to the mechanization of the Florida sugarcane harvest, which in the mid-1980s employed 9000 H-2A mostly Jamaican cane cutters.

IRCA's Agricultural Effects

Immigration reforms launched in the mid-1980s should have had at least two effects in agriculture:

- most farm workers should be legal U.S. workers; and
- farmers should have adjusted to expect fewer newly-arrived unauthorized workers from Mexico, i.e., wages should have risen and working conditions improved.

IRCA has not had these effects in agriculture. There are several reasons, including a continued influx of unauthorized workers, and less rather than more effective enforcement of immigration and labor laws in agriculture. The demand for labor-intensive fruit and vegetable commodities, both in the U.S. and abroad, has increased, encouraging increased plantings of the crops that tend to rely on foreign workers.

One of the most dramatic changes in the farm labor market after IRCA was the switch from "undocumented workers" to "falsely documented" workers. Illegal immigrants who do farm work are usually among

the poorest and least sophisticated workers in the United States. IRCA may well be remembered as a stimulus to illegal immigration for spreading work authorization documents and knowledge about how to obtain and use them to very poor and unsophisticated rural Mexicans and Central Americans, encouraging first-time entrants from these areas.

Once in the U.S., seasonal farm workers were affected by the post-IRCA tendency of farm operators to hire more seasonal workers through intermediary FLCs. In California, the "market share" of FLCs appears to have risen from about one-third of all job matches in the early 1980s to over half in the late 1990s. Employees of FLCs are worse off in several ways, including the tendency of FLCs to pay lower wages to recently arrived immigrants, and to house the workers away from the worksite, so that workers must pay for both housing and rides to work. Housing away from the farm usually costs each worker $25 to $35 weekly, and then the private rural taxis (raiteros) which provide rides to worksites typically charge each worker $3 to $5 daily. A worker earning $240 weekly (40 hours @ $6), can have $50 or 20 percent less take-home pay if he or she is employed by a FLC because of these housing and taxi charges.

Many farmers are planting perennial crops under the assumption that an ample supply of seasonal workers will continue to be available. In Washington, apple acreage expanded in remote areas with few people and little farm worker housing. In California, strawberry and broccoli acreage increased, and in southwestern Florida thousand acre blocks of oranges were planted in areas with no infrastructure for seasonal workers. When asked about the labor supply assumptions behind these plantings, many farmers admit that they did not think about labor because they assumed seasonal labor would be "as it always has been."

IRCA-created a Commission on Agricultural Workers (CAW) to review the effects of IRCA and especially its SAW provisions on the farm labor market (CAW, 1993). On the basis of case study research and hearings, the Commission made three major findings. First, the Commission concluded that the majority of SAW-eligible undocumented workers gained legal status, but through such a flawed worker- and industry-specific legalization program that it was " one of the most extensive immigration frauds ever perpetrated against the U.S. government."[9] Second, the Commission found that, although the SAW program legalized many undocumented farm workers, the continued influx of illegal workers prevented newly legalized SAWs from obtaining improvements in wages and benefits from farmers. Third, the

[9] Reprinted in the *Sacramento Bee*, November 12, 1989, p. A1.

Commission reported that the farm labor market continues to leave the average farm worker with below poverty-level earnings.

These findings led the Commission to recommend that federal and state governments take steps to develop a legal farm work force, to improve social services for farm workers and their families, and to improve the enforcement of labor laws. In response to IRCA's failure to reduce illegal immigration, the Commission recommended more enforcement and a fraud-proof work authorization card. To combat declining real farm wages, the absence of benefits like health insurance, and the exclusion of some farm workers from federal and state programs that would make them eligible for unemployment insurance benefits and workers' compensation, the Commission recommended that the federal government provide more services to farm workers and their children and that farm workers be covered under protective labor laws. Finally, the Commission recognized that federal and state agencies today have only a limited ability to enforce farm labor laws, and recommended that enforcement efforts should be better coordinated and targeted.

From CAW to AgJobs

The CAW report, which did not recommend a new guest worker program, was issued in early 1993. However, as the percentage of unauthorized farm workers increased—the U.S. Department of Labor's National Agricultural Worker Survey found that the percentage of unauthorized workers on U.S. crop farms doubled from about 12 percent in 1989-90 to 25 percent in 1993-94—and as Republican power in Congress increased, some grower lobbyists made a renewed push for guest workers, based largely on the assertion that, if the INS were to seriously enforce employer sanctions laws, there would be farm labor shortages.

The growers' proposal would have introduced an attestation procedure on a pilot basis for farmers to obtain free agent guest workers. For example, under one proposal, U.S. farmers, labor contractors, or employer associations would "attest" that they face shortages of U.S. workers despite recruitment at prevailing wages and working conditions. Growers would then be able to submit the names of workers who should be granted nonimmigrant visas in Mexico and elsewhere to come to the U.S. to do farm work for up to 10 months each year. Growers would pay user fees to cover the cost of administering the program, and the workers would be encouraged to return to their countries of origin because 25 percent of their U.S. wages would be withheld and repaid to them only after they returned.

There were many voices raised in opposition to calls for a new

guest worker program based on grower attestations of labor shortages. The U.S. Commission on Immigration Reform in June 1995 said: "a large scale agricultural guest worker program ... is not in the national interest...such a program would be a grievous mistake." The chairs of the Senate and House immigration subcommittees, Simpson and Smith, announced their opposition to the growers proposal, and on June 23, 1995, President Clinton issued a statement opposing an agricultural guest worker program, asserting that a guest worker program would increase illegal immigration, displace U.S. workers, and depress wages and working conditions. Clinton said that "if our crackdown on illegal immigration contributes to labor shortages ... I will direct the departments of Labor and Agriculture to work cooperatively to improve and enhance existing programs to meet the labor requirements of our vital agricultural industry consistent with our obligations to American workers."

Nonetheless, grower bills were introduced (HR 2202 and S 269) in both the House and Senate for pilot agricultural guest worker programs. Hearings were held in September and December 1995 on these proposals, and growers made three arguments in support of them. First, growers asserted that illegal aliens comprised a significant share—50 to 70 percent— of the farm labor force. Second, growers asserted that new INS control measures under consideration in Congress would prevent them from continuing to hire unauthorized workers who present fraudulent documents. Third, growers testified that the H-2A program was too inflexible to provide them with foreign workers if labor shortages appear; the only realistic solution was a new program. Growers offered a pre-emptive strike against critics who said that there were no farm labor shortages currently by asserting that farmers cannot wait for a shortage to plan for the admission of foreign labor to harvest their crops.

Growers were bolstered in their argument by persons who agreed on little else, e.g., in November 1994 outgoing Mexican President Salinas and then-California Governor Wilson called for a guest worker program that would allow Mexican workers to be employed temporarily in the U.S. Los Angeles Times editorial page manager Frank del Olmo argued in a January 31, 1995 Op-Ed that a guest worker program was the "least bad" means to control illegal immigration, and he endorsed withholding part of each guest worker's U.S. earnings to induce returns. On February 6, 1995, then-California Attorney General Dan Lungren called for a guest worker (compañero) program that would permit Mexican workers to be "free agent" workers in the U.S. The workers would be protected in the U.S., according to Lungren, by the right to change employers, and induced to return by having 10 to 25 percent of their U.S. earnings deducted in a manner that they could reclaim only upon their return to Mexico.

When Congressional support for a pilot guest worker program was tested early in 1996, it failed. On March 5, 1996 the House Agriculture Committee approved 25 to 14 an amendment by Rep. Richard Pombo (R-CA) to the House immigration bill that would have granted temporary work visas to up to 250,000 foreign farm workers, with the ceiling to be reduced by 25,000 each year. The full House on March 21, 1996 rejected this proposal on a 242-180 vote, which persuaded Senator John Kyl (R-AZ) not to introduce it in the Senate. Before the House vote, Secretary of Labor Robert Reich and US Attorney General Janet Reno had written to Senate Judiciary chairman Orin Hatch (R-Utah) that they would "strongly recommend" a veto of the entire immigration legislation if it included temporary foreign farm worker provisions for agriculture.

Instead of a guest worker program, Congress asked the General Accounting Office to examine the farm labor market and determine if a new guest worker program was needed. The GAO issued its report on December 31, 1997; it concluded that there is "no national agricultural labor shortage at this time" and that "a sudden, widespread farm labor shortage requiring the importation of large numbers of foreign workers is unlikely to occur in the near future." The GAO emphasized that some U.S. farmers were using the H-2A program, and that virtually all employer requests for H-2A workers were approved: 99 percent of the 3,700 U.S. employer requests for H-2A workers in 1996-97 were approved, and 89 percent of the 41,549 jobs that U.S. employers believed could not be filled with U.S. workers were certified by DOL to be filled with H-2A workers. The GAO recommended several administrative changes in the H-2A program which were implemented in 1999, but not a new guest worker program.[10] Rep. Howard Berman (D-CA) said that the GAO report "totally deflates the political effort ... to enact another Bracero program."

[10] One of the most interesting commentaries on the GAO report can be found in the appendix. The DOL had seven pages of comments that generally supported the GAO's conclusions, while the USDA had 21 pages of comments that attempted to undermine the basis for the GAO's conclusions. For example, the USDA asserted that unemployment rates cannot be used to indicate the availability of farm workers: "Unemployment rates do not indicate whether workers are willing to accept particular jobs at the time and place needed." (page 124) In one remarkable sentence, USDA said that "widespread unemployment" among farm workers is necessary to satisfy peak farm labor needs: "The unpleasant fact is that, if there are sufficient workers available to meet peak agricultural labor needs, there will necessarily be widespread unemployment among agricultural workers during most of the year." (page 128).

Nonetheless, the effort to enact a new guest worker program resumed in March 1998, when the House immigration subcommittee voted 7-2 in support of a pilot guest worker program that would permit U.S. farmers to hire foreign workers with H-2C visas if a farmer "attested" that he tried and failed to find U.S. workers. HR 3410, the Temporary Agricultural Worker Act, would have permitted up to 20,000 nonimmigrant workers to be admitted at the request of U.S. farmers each year for two years to fill vacant jobs. The workers could stay in the U.S. for up to ten months each year; the families of H-2C workers could not join them in the U.S. To encourage the H-2C workers to return to Mexico or other countries of origin, 25 percent of their wages would be deducted and repaid only in the country of origin if the worker appears in person.

To obtain permission to employ H-2C workers, farmers would file a one-page attestation form with their local Employment Service office that promised to pay all workers the prevailing or minimum wage, whichever is higher, and simultaneously farmers would file a request for H-2C workers with the INS. Employers would not have to provide housing, but they would be obliged to pay housing allowances to workers if that was prevailing practice in the area. In a March 12, 1998 letter to Lamar Smith, DOL Secretary Alexis Herman said "the Administration strongly opposes enactment of HR 3410" and that, if enacted, Herman "would recommend that [Clinton] veto the bill."

On July 23, 1998, the Senate approved on a 68-31 vote the Agricultural Job Opportunity Benefits and Security Act of 1998 or AgJOBS as Amendment 3258 to the Commerce-Justice-State Department appropriations bill, but the amendment was dropped in negotiations with the House. AgJOBS would have substituted a registry for certification. If an employer requested 100 workers at least 21 days before they were needed, and ES had only 40 registered workers willing to go to the requesting employer seven days before the need date, the grower would have permission to bring 60 foreign farm workers into the U.S. U.S. workers would be dropped from the registry and deemed unavailable for U.S. farm jobs if they rejected three registry requests for workers from farmers.

In addition to the registry, the other major features of the 1998 AgJOBS H-2A program included:

1) Foreign workers admitted under the new program would receive up to 10-month renewable H-2A visas; they could remain in the US continuously for up to three years;

2) Employers would pay federal FUTA and FICA taxes on the wages of the foreign workers to a trust fund rather than to UI and SSA authorities, i.e., about 8.3 percent of their earnings would be used to reimburse the DOL and INS for their costs of administering the program. Most migrant and seasonal farm workers do farm work for about 1,000 hours a year; at $6 to $7 an hour, employers would pay $500 to $580 a year per worker into the trust fund, so that every 10,000 AgJOBS foreign workers would generate $5 million;

3) If the Attorney General found that a significant number of AgJOBS foreign workers were remaining in the U.S., 20 percent of their earnings could be withheld and paid into the trust fund, and returned to the worker after he surrendered the visa-ID, which would include a photo and biometric information;

4) AgJOBS H-2A foreign workers who completed at least six months of farm work in each of four consecutive calendar years could become third-preference immigrants;[11] and

5) There was no limit on the number of AgJOBS foreign workers who could be admitted.

What Next

The most interesting change between the early-1990s and late-1990s lies in the spirit and language of the debate: growers appear to be winning. Despite a failure to raise wages and working conditions to retain SAW workers, despite admissions that many farm employers hire unauthorized workers, and without a plan to change the basic structure of the farm labor market, grower advocates were able to shift the focus of the debate from whether guest workers were truly needed, and what wage, benefit, and housing rules should regulate the admission

[11] This provision is similar to the probationary immigrant plan of the never-used RAW provisions of IRCA, but there is a lengthy wait for immigrant visas for unskilled workers.

and employment of guest workers, toward how to assure the return of guest workers by withholding wages.

I have no magic bullet solution for the farm worker dilemma that serves the national interest and will prove acceptable to often polarized worker and grower advocates. The data base on farm workers has been improved significantly by the NAWS. Perhaps what is needed is a series of case studies of how particular commodities would adjust to fewer unauthorized workers and presumably higher wages. For example, harvesting the 125,000 to 150,000 acres of raisin grapes within one hour of Fresno is probably the single most labor-intensive farming activity in North America, with 40,000 to 60,000 workers involved in the four to five week August-September harvest. About 35 percent of raisin harvesters admitted to being unauthorized in 1991; an estimated 50 to 70 percent may be unauthorized in 1999.

The raisin industry is characterized by 40-acre vineyards operated by persons in their mid-60s who fear trade changes and who are reluctant to make the investment needed to retrain their vineyards so that raisin grapes can be harvested mechanically.[12] However, there are three major labor futures for the raisin industry, each with different immigration policy consequences.

1) The option preferred by most raisin growers is to develop an alternative to the H-2A program, so that currently unauthorized workers could be hired legally without changing wages or working conditions. Between 1986 and 1996, harvest workers were paid $0.16 to $0.18 per 18 to 22 pounds of grapes that were cut and laid on a 30 inch square paper tray to dry, rolled, and then picked up and cleaned before being taken to a packing house. About 4.5 pounds of grapes dry into one pound of raisins.

   Piece rate wages rose to $0.19-$0.20 a tray in 1998. On March 1, 1998, California's minimum wage rose to $5.75 an hour; California's minimum wage was $4.25 an hour in September 1996, so that the minimum wage has increased by $1.50 an hour, or 35 percent in 15 months. If a typical piece rate increased

[12] There are about 3700 raisin growers; in one early 1990s survey, fewer than one-third were interested in mechanization.

from $0.17 in 1996 to $0.20 in 1998, the piece rate rose 18 percent, half as fast as the hourly minimum. The FLCs who organize most harvest workers into crews are paid an additional 30 to 33 percent, or $0.06 per tray, as a commission to cover payroll taxes, provision of toilets, and supervision. Most workers harvest 300 to 400 25-pound trays of green grapes per nine-hour day, for daily earnings of $63 or $7 per hour. If workers get 300 hours of work during the harvest season, they would earn $2100 for harvesting raisins.

2) The cooperative that handles 35 percent of the US raisin crop, Sun Maid, has developed a dried on the vine (DOV) system that permits existing east-west rows of grapes to be retrofitted into separate fruiting (higher vines) and harvesting/drying (lower vines) zones. About 2000 acres of raisin grapes have been trained to grow over the guide wires on the southern side of rows planted in an east-west direction. The canes are cut by machine so that the grapes can dry while still in bunches on the vine, and then the raisins are harvested by a machine outfitted with rotating fingers and a catcher, with a blower eliminating most of the leaves. One machine can harvest about 15 acres a day, equivalent to what a crew of 35 to 40 workers can harvest by hand.

   The machines are relatively simple, and have been developed by farmers working with local machine shops. The cost of retrofitting vineyards for mechanical cane cutting and harvesting is about $1,500 per acre; labor savings are $150 per acre, there is less risk of rain damage to drying raisins, and yields are often 20 percent higher. Farmers with as few as 100 acres can justify the investment in a mechanical harvester, harvesting their own grapes and doing custom harvesting for $150 per acre. This southside DOV system is used by a handful of Sun Maid's 1500 growers on 400 to 500 acres; if it were adopted throughout the industry, the peak number of workers

might fall to by 80 percent from 50,000 to 10,000.

3) One raisin grower, Simpson Vineyards, has designed a high-density DOV vineyard for the mechanical harvesting of about 150 acres. Grape vines grow on a so-called pergola trellising that shades the whole vineyard floor much of the summer, and drip irrigation is used to minimize humidity—in this manner, sunlight on the leaves is maximized.[13] The advantage of this system, used by Simpson on about 160 acres of newly planted raisin grapes, is that yields are 5 to 6 tons per acre, three times the industry average of 2 tons per acre.

High-density DOV smoothes out the demand for labor—about 31 hours per ton of raisins are needed versus the usual 40 hours—and workers are employed year round rather than in a four to six week period. Simpson estimates that a conventional vineyard yields two tons per acre; with U.S. raisins worth $1,000 per ton, he estimates that costs of conventional production are $600, including $220 or 37 percent for harvesting. Simpson, by contrast, gets 5-6 tons per acre, with total costs of about $550 per ton. According to Simpson, five year-round workers can handle 160 acres, supplemented by five more at harvest time to hand cut the canes. If high-density DOV were widely adopted, the same quantity of raisins could be produced with one-third of today's raisin grape acreage, and the current peaks and troughs in the demand for labor would be practically eliminated.

What would happen if raisin harvesters were not readily available? If there were a sustained labor shortage that pushed piece rates for harvesting raisins to $0.30 a tray or more, growers would likely divide into two groups—those willing to make the investment needed for DOV, and those who go out of business. A second factor that might change labor needs in the U.S. raisin industry is freer trade. The U.S. is a high cost producer of about 350,000 tons of raisins a year, and imports must meet the standards set by a U.S. marketing order that separates raisins into "free and reserve" pools. Free raisins sold to U.S. consumers are worth about $1000 per ton, and reserve raisins that are used in school lunches or exported with federal subsidies abroad

[13] Most raisin growers receive water from the Fresno Irrigation District, which charges a flat price for per acre regardless of how much water is applied. For this reason, most growers use flood irrigation.

are worth about $500 per ton, or less than typical U.S. costs of production. In recent years, about 60 percent of the raisin crop was free tonnage, giving growers a blend price of about $800 per ton. If non-U.S. producers raise the quality of their raisins to meet the standards of the U.S. marketing order, or if the U.S. marketing order were abandoned, lower-cost reserve raisins or imports could force production changes that have labor implications.

A sober debate that relies on case studies of how commodities are likely to adjust to higher labor costs could help to develop solutions to perennial farm labor problems that are in the long-run national interest rather than in the short-run interest of opposing advocates.

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