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Interest Group Politics and U.S. Immigration Policy towards Mexico

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INTRODUCTION

The economic slump of the last century has contributed to the pressure on each incoming Administration to address the illegal immigrant "problem" in the United States. Mexicans comprise the largest component of this undocumented immigrant population now living at the fringes of American society. It is the complexities surrounding this issue, the little that is known about it, and the challenge it poses for government that has inspired this study.

This paper examines the role of domestic interest groups in the formulation of United States immigration policy toward Mexico. While the issue of immigration escapes easy categorization, one of its most important characteristics is the fact that it is not a "crisis" demanding special or immediate attention. A crisis issue is one which, not having been planned, usually demands the attention of the parties most able to arrive at an immediate solution or response. As a non-crisis issue, immigration is usually considered one of the lowest priority issues in Congress.

The history of United States immigration policy toward Mexico is one which has consistently made exceptions for Mexican workers to enter the United States for employment purposes. Thus, while "official" immigration policy continues to be obscured in the language of hemispheric and country quotas, the United States' unofficial position toward Mexico has been vague and flexible enough to make emergency accommodations for wartime requirements and peacetime booms.

This Comment will demonstrate that the fragmented ad-hoc manner of United States immigration policy decision-making has facilitated the expression of established interests, but has hindered the identification of national priorities.

While the debate over the Mexican legal and illegal immigration flow has been economic, moral, and legal in emphasis, in essence this issue is political in nature. In the case of United States immigration policy toward Mexico, much more than domestic politics is at stake. Mexican immigration as an issue links the smallest of domestic concerns to the broadest questions of foreign policy. It has forced Americans to confront the question of whether we educate the children of undocumented immigrants long established here; and it has contributed to the broader discussion regarding the immobility of labor versus the internationalization of capital. These questions are beyond the scope of this paper, but answers to them will be implied in the resolution of the Mexican immigration question.

THEORIES AND APPROACHES TO MIGRATION

Two major theories have developed in relation to the Mexican immigration phenomenon: the push-pull theory and the dependency theory. The push-pull theory of migration states that the combined “push” and “pull” forces in the sending and receiving countries, respectively, are the main impetus for migrations across international boundaries. Economic migrations motivated by “push-pull” factors occur because there are vast economic advantages in the country of destination which, when compared to the country of origin, act as a magnet for both legal and illegal immigrants.

Push-pull theorists believe that for all of its growth, Mexico continues to be an underdeveloped country. Unemployment rates in Mexican cities bordering the United States remain at approximately 40 percent. The minimum wage in Mexico’s border cities is approximately one-eighth of the minimum wage across the border in the United States. Proponents of the push-pull theory argue that as long as this economic imbalance persists between the two bordering nations, the flow of immigrants will continue.

The second (and related) reason for out-migration, according to push-pull theorists, is the willingness of employers in the receiving country to hire foreign laborers because they are unable to attract domestic workers at the low prevailing wages. This side of the equation is known as the “pull” factor.

Push-pull theorists claim it is not surprising that the major “pull” factor in Mexican immigration appears to be the active efforts of U.S.

employers to secure access to Mexican labor, particularly since a surplus foreign labor has often been the major force in the industrial development of many developed nations. The receiving country initiates the flow by creating the jobs which will be attractive only to migrants, while it often maintains the flow through deliberate recruitment by industrial and agricultural employers or agents.

Push-pull theorists regard Mexican immigration as a perfect case of natural push-pull forces at work. The Mexican national enters the U.S. primarily to obtain employment and escape poverty and the U.S. employers send agents to Central Mexico to secure for him "a good group of illegals." However, the push-pull theory is not by any means a complete explanation: it does not account for international controls.

An example of the inadequacy of the theory to explain the Mexico to United States migration is made by comparing rural to urban internal migrations with migrations across international borders. As in international migrations, internal migrations are motivated by the forces of supply and demand. But unlike international migrations, rural to urban migrations cannot be effectively deterred without either massive coercion (e.g., Asia, South Africa) or, in its absence, insurrection. International migrations, on the other hand, can and have been effectively deterred because there are laws governing, controlling, and enforcing compliance at national borders. Laws define legal immigration and in this manner influence the conditions under which migration may occur and create a politically controlled and limited market. When problems in controlling or enforcing compliance occur as they have in the Mexican migration to the United States, it is usually due to anomalies in the law. In the case of Mexican migration, the anomaly lies in the fact that the United States has encouraged a temporary application of the law formulated by the dominant interest groups which bring pressure to bear on the formation of laws at any given time.

The dependency theory claims that the "underdeveloped" areas of the world have been historically "linked" to the developed world in an unbalanced relationship, usually to the detriment of less-developed countries. The "dependists" believe that the main function of the world "periphery" has been to enhance the economic development and well-being of the "core" areas. The "system" imposed by the core on the periphery is often characterized in conspiratorial terms. The dependists believe that the scarcity of unskilled labor in developed countries is characteristic of an advanced state of capitalism. Consequently, when tra-

7. See e.g., Immigration Act of 1979, supra note 4, at 20 (statement of Gilbert Cardenas, Southwest Border Regional Commission).
8. See generally, 32 Int'l Org.
ditional colonial rule was being abandoned, labor, the object of exploitation, had to be transferred to the core itself through the import of foreign workers. This applies particularly to those industries, like agriculture, which by their very nature cannot easily export their industry abroad.

It is difficult to argue against some of the precepts set forth by "dependist" theorists because there is insufficient evidence to disprove the argument that a capitalist system requires the importation of cheap labor. However, numerous political theorists note that the United States political system is characterized by its aggregation and dispersion among the many interest groups and actors across the face of the nation. In light of this, a conspiratorial theory such as the dependist, is highly questionable. Though the system of checks and balances at the national level has not always worked to prevent any single actor or group from exerting excessive influence over policy, it has not quite collapsed to allow conspiratorial politics to take its place.

THE INTERACTION BETWEEN POLICY AND INTEREST GROUPS

The absence of a meaningful immigration policy toward Mexico at the beginning of the century is inextricably tied to what is now an established pattern of migration from Mexico to the United States. The pattern of sparse Mexican immigration began to change significantly in the early twentieth century. Between 1910 and 1930, an estimated 750,000 Mexicans immigrated to the United States. It is generally agreed that the short term "push" factor in this initial immigration was the extreme violence that accompanied the Revolution in Mexico between 1910 and 1919. Other factors include the expansion of the railroad network in Mexico leading to the north, the immense agricultural expansion occurring throughout the American Southwest, the domestic labor shortages that occurred during the First World War, both as a result of the war and as a result of earlier restrictive legislation such as the Chinese Exclusion Act of 1882 and the Japanese Exclusion Act of 1906, improved methods of irrigation, and an increased need for agricultural products by a rapidly growing population. Demand for Mexican labor further increased as a result of the internal migration of poor white and black la-

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borders to the northern United States, and passage of the Immigration Act of 1917 which further curtailed the entry of European immigrants.

In 1924, the United States adopted the "National Origins Quota System" which set for each nationality a quota consistent with the percentage of foreign-born persons of that nationality resident in the United States in 1920. This measure was not extended to immigrants from the Western Hemisphere.

Although Mexican immigrants were still subject to other generally applicable eligibility requirements, countless exceptions were made to facilitate their entry. The development of a grower lobby was largely responsible for these exceptions. For example, at the insistence of growers associations and industrial companies, Mexican immigrants wishing to work in the sugar beet fields, on railroad gangs, and other contract labor jobs, were granted exemptions from the literacy and head tax imposed by the Immigration Act of 1917. Thus, while the "grower lobby" was more powerful during the Bracero years, it was in a position to influence legislation even at the turn of the century.

Encouraged by the exceptions granted them and by the continuing prosperity of the twenties, Mexican immigrants continued to migrate to the United States until the process was abruptly reversed in the 1930's. The economic recession that followed the First World War set in motion a movement in the Southwest to "repatriate" Mexicans living in the United States.

Although the deportation campaign affected aliens of a number of ethnic groups, the group most affected was composed of Mexican aliens and

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15. In 1952, Congress passed the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq. (1952). Although it completely revised and codified existing law, it did not affect immigration from the South due to the influence of agriculture, which sought to keep its cheap foreign sources of labor. Not until the INA was again amended in 1975 was the 20,000 per country limit placed on the Western Hemisphere, even though the same quota was made applicable to non-Western countries as early as 1965.
16. Illegal Aliens: Analysis and Background; House Comm. on the Judiciary, 95th Cong., 1st Sess. 50 (Comm. Print No. 5, 1977) [hereinafter cited as Illegal Aliens]. (Mexicans were first made an exception to the general rule of U.S. immigration policy under an administration Departmental Order of 1918 issued by the Commissioner General of Immigration with the approval of the Secretary of Labor).
17. See infra notes 28-33 and accompanying text.
18. Stoddard, supra note 2, at 158.
the United States citizens of Mexican descent.20

The deportation campaign of the 1930's coincided with the worst depression in U.S. history. As such, deportation became a nationally approved necessity. The reversal in policy was foreseeable, for between the United States and Mexico, the "special relationship" had been built upon temporary and reciprocal economic necessity. Generally, the U.S. need for labor and stability in Mexico and Mexico's need for American capital have constituted the stabilizing mechanism between the two countries.21

A. Development of the Grower Lobby

The emergence of the California grower cooperation in the early century was the outcome of a choice between a force pulling "between what each wanted to take from the others and what all had to do together to gain certain benefits for themselves as a class."22 Among some of those common benefits was the benefit to be derived by preventing the passage of legislation that would extend to farm workers the minimum wage and unemployment insurance laws. They also tried to discourage government sponsored housing for migrants. Their most urgent goal, however, was replenishing the labor pool.23

Among the private organizations formed early in the evolution of the growers' network of associations in California were the Central California Asparagus Growers Association, the Diamond Walnut Growers and the Sunkist Growers.

Forming another system of interconnections were the publicly supported service agencies. But it was through the associations of growers and shippers that the grower strength evolved into a political power structure. Labor procurement became the primary function of the grower associations, and as early as 1926 they began functioning as labor bureaus by going beyond their express purpose of contracting and negotiating with U.S. government agencies.24 In fact, their function was extended to include "refin[ing] their practices of leveling wage rates, such as policing farmers to enforce them, and using their connections with freight handlers, field inspectors, processors, banks and suppliers to enforce compliance on any [farmer] who might be inclined to break ranks."25

The multiplicity of links that these grower organizations established

20. Id.
21. Stoddard, supra note 2, at 171.
22. Galarza, supra note 12, at 47.
23. Id. at 49.
24. Id.
25. Id.
through backward and forward linkages to other industries (e.g., processors, shippers) grew into such a "mesh of interests" that it became everyone's concern to fight against possible migrant involvement in unions. Wages were set by local growers' associations, and this information was passed on to all growers in the area through the press, association bulletins, or farm journals.

**B. The Bracero Program: The Grower Lobby at Work**

With the advent of the Second World War in the 1940's the situation for immigrant labor changed. The military requirements of the nation and its related manufacturing needs led to a labor shortage in agriculture. This in turn led to renewed efforts by business in general, and agri-business in particular, to try to gain access to cheap labor from Mexico.

Negotiations soon began between the governments of the United States and Mexico for implementation of the contract labor law known as the "Bracero Program." In a 1942 formal agreement for the program permitting the entry of Mexican farm workers on a temporary basis under contract to U.S. employers went into effect. This time, however, Mexico insisted in securing protection of the "braceros."  

Several examples from the Bracero Program help illustrate the power and influence of the Southwest growers on U.S. Policy toward Mexican workers. The first is what has been referred to as the "obsolescing bargain" of the Bracero program. The Bracero Program guaranteed Mexican workers wages at the prevailing rate paid domestics; employment for at least 75 percent of the contract period; housing and medical care;
and a savings fund. Soon, however, the growers became dissatisfied with the Program, preferring the World War I arrangement which allowed them to do their own recruiting, and set the terms and conditions of employment with little government interference on either side of the border.

The growers reacted to the contract requirements by coopting the agencies charged with the Program's administration. In time these provisions were rendered meaningless:

The prevailing wage concept for determining bracero wages had several advantages. It was an officially declared rate, which permitted employers to shrug off criticism by pointing out that not they but the government determined it. The FPS field men merely circulated among the harvesters recording the wages they were receiving . . . . [T]he FPS and the employers had agreed privately on the level of the prevailing wage before it was announced publicly. These understandings were arrived at without regard for the provisions of the Labor Code which did not apply to agriculture . . .

Even more flexible were the various scales that agricultural experts devised from time to time to cover the inconsistencies of rates—"going," "base," "common," or "prevailing." In 1958 tomato growers set up a sliding scale for piece wages according to yield per acre, taking into consideration such variables as the method of harvesting and the variety of the fruit picked . . . . The object was to provide a technical screen to reduce rates . . . . 31

In the period between 1948 and 1951, the Department of Agriculture was replaced by the U.S. Employment Service and the U.S. Government ceased to be the employer of the Mexican Braceros. 32 At this time, individual growers took over the task of contracting for Mexican laborers.

The duration of the Bracero Program is a second indication of the grower-bloc influence. The 1942 accord was scheduled to expire at the end of the war, since it had been a war emergency measure in response to the shortage of labor. However, due to the demands of the grower lobby it was extended under different accords until 1964. Grower success was the result of

. . . coordinated effort, political access at all levels and branches of government, detailed and logical presentation before friendly congressional committees, logical and well publicized rebuttals to charges made against the bracero, the need by Mexico and the Mexicans for United States dollars, political logrolling, and the uncoordinated, ineffective efforts of the opposition. 33

C. The Post World War Period

The postwar period again increased an interest in making changes

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32. Farmworker Powerlessness, supra note 13, at 76.
33. Craig, supra note 29, at 148.
in the law in order to accommodate changes which postwar conditions seemed to require. But growers viewed the threat of repeal of the Bracero Program as a government action to take something which was rightfully theirs. One irate grower said, "... if they take them (braceros) away let them, I hope the farmers would refuse to feed the people—let them eat horse—You can't do it without them." 34 As a result, growers kept their cheap source of labor despite growing opposition by labor and migrant sympathizers who were appalled at the conditions under which they had to live. 35 

Organization and tactics constituted the key factor in explaining the growers' strength. The growers were organized at local, state and national levels. At the local level in California alone there were the local farm advisory committees which provided the FPS with statistics on shortages and the marketing associations. These in turn provided additional access into the higher spheres of politics and banking, and to the state and federal bureaucracies. At the state level, for example, the growers controlled the Board of Agriculture and had the respect and support of the State Chamber of Commerce's Agricultural Committee. 36 Then there were the protective organizations among them, such as the Southeastern California Fruit Exchange and the California Fruit Growers Exchange.

At the national level, there was the special Farm Labor Committee, composed of representatives from forty-eight states who carried the message of the growers to the Secretary of Labor, and to the Agricultural Producers Labor Committee of the House. There were the national and state lobbies, American Farm Bureau Federation and California Farm Bureau, respectively. There were also organizations formed for emergency situations, such as the California Farmers Emergency Food Committee and Diversified Farmers. In addition, there was the publicly financed institution such as the California Farm Production Council whose function was to coordinate the interests of agribusiness; and the Farm Placement Service and Farm Security Administration whose responsibilities included the welfare of Mexican migrant workers. 37

From the contractors who agreed to recruit their manpower, to the railroad companies supplying the transport of workers, the grower associations maintained and regulated an ever-increasing support system which in California constituted a large percentage of all business transacted in the state. Contractors, for example, developed into small busi-

35. See Farmworker Powerlessness, supra note 13, at 58-77 (excerpts from newspaper articles and the Cong. Record).
36. Galarza, supra note 12, at 53.
37. Tomasek, supra note 26, at 297.
nesses on which growers greatly relied for their source of Mexican immigrant laborers. Contractors also provided the immigrants with housing, transportation, and food. Soon, the contracting of farm labor developed into a thriving and competitive business:

Contractors also hired at their own expense the necessary personnel for the details of crew management, such as checking and bookkeeping. Gradually contractors specialized as to the type of employer served and crops harvested, based on the extent and reliability of their connections on the one hand with employers and on the other with workers. If he could regularly fulfill expectations of this kind year in and year out, a contractor could become a personage of sorts in his chosen area of operations. He would buy a house in town and manage a payroll of as much as two hundred thousand dollars a year. Since contracting was highly competitive, his preserves were constantly raided by outside cut-rate bidders.\textsuperscript{38}

\textbf{D. Government Disaggregation}

A decision pertaining to immigration involves a wide decisional system. The President must listen to advisors in the State, Labor, Agriculture and Treasury Departments. In formulating immigration policy, Congress has mandated overall jurisdiction for all domestic matters. Thus, the possible access which interest groups or interested parties have in the case of immigration can be hundreds of times greater than is the case for diplomatic or security decisions in foreign policy, for instance. Since the legitimacy of their concern is also more obvious, interest groups are more likely to become part of the decisional system.

In the case of Mexican migration, the issue has been dealt with both as a foreign policy concern and as a domestic issue. This tendency obscures the overall effect of legislation, as no one is sure where jurisdiction lies. Thus, the foreign policy decision-makers do not make substantial efforts to correct discrepancies in the law and practice of immigration, fearing that the matter is not within their jurisdiction. Likewise, Congress shirks its responsibility on the domestic side. In essence, the degree of disaggregation characteristic of immigration policy has the effect of obscuring responsibility.

One of the most favored tactics of gaining influence in policymaking by the growers was by weakening the very governmental institutions with a special mandate in migrant working and living conditions, such as the Farm Placement Service and the Farm Security Administration.\textsuperscript{39} In the case of the Farm Placement Service, a Congressional Committee report listed among the aims and purposes of the FPS in 1942 the following: "to direct agricultural workers to seasonal opportunities [and to

\textsuperscript{38} Galarza, \textit{supra} note 12, at 56.

\textsuperscript{39} Tomasek, \textit{supra} note 26, at 297.
reduce migration] . . . to provide adequate income for the workers; and to eliminate irresponsible farm labor contractors. 40 However, the legislative intent became distorted over time. In fact, "[t]o make certain that in its view all its interests were compatible with those of growers, the FPS set up the machinery by which [the growers] could register their advice and consent with the management of the agency." 41 The most important task the FPS undertook was that of determining the needs of the industry to keep migrant labor supply fluid and abundant. The certification procedure for the FPS guaranteed the agency's continuing susceptibility to growers because of: (1) the continual questioning of its personnel in committee hearings where the pro-grower bias was very apparent, (2) its fear that it might be transferred from the Department of Labor to the Department of Agriculture, and (3) an internal drive for expansion. 42

The Farm Bureau Federation was founded in 1933 as a government attempt to organize a group which could formulate the consensus of agriculture. During the First World War, this type of organization proved to be helpful to the government, as it was relieved of much of its own information-gathering responsibility.

The Farm Bureau effectively acquired the power to exert great influence over policy and administration through attaining membership on advisory boards of administrative agencies and by commanding the close attention of Congressional Committees. 43 An unfortunate consequence was that soon Congress took into account only those interests which found expression in organized groups with power.

Growers took advantage of the government disaggregation in influencing immigration policy by defending their private interests in terms of the public good. For example, when they sought to extend the duration of the Bracero Program, they agreed that: (1) the defense effort required the use of braceros; (2) that it would boost U.S.-Mexico relations; and (3) that it would substantially reduce the tide of "wetbacks." This argument was an explicit assertion of their private interests, justified in terms of an explicit and easily understandable public good.

They fared their greatest success in Congress, where the importation of Mexican farmworkers was considered an agricultural question. The Agricultural committees in both Houses occasionally conducted hearings pertaining to farmworker welfare. The Committees also happened to be chaired by known supporters of the Program. "In short, the importation question was from the beginning the personal property of pro-Bracero

40. Galarza, supra note 12, at 42.
41. Id. at 43.
42. Tomasek, supra note 26, at 308-309.
Program interests in Congress." Another important factor figuring in the growers’ lobby influence was a sort of sanctity surrounding agriculture early in this century. Agriculture was placed above industry and was seen as the foundation of the economy. For example, agricultural agents argued that crop strikes should be treated differently from industrial disputes. One attorney general concluded that for employment purposes, "agriculture is not a trade or an industry." For national policy purposes, the multimillion dollar agricultural operation in the Southwest was not an industry.

E. Development of Opposition to Growers and Employers

Growers were successful in excluding farm labor, both domestic and foreign, from provisions of important federal labor programs such as the National Labor Relations Act and the Fair Labor Standards Act. Migrant living conditions, however, soon aroused the sympathy of a number of individuals, in no way organized, but whose voices were beginning to enter the American conscience as early as the 1920’s. Organizing farmworkers had always been a difficult if not impossible task given the migratory nature of the employment. In the 1930’s labor organizers began stressing the importance of stable locals, and the trend in this direction had progressed sufficiently by the 1940’s to encourage the formation of the National Agricultural Worker’s Union.

But again, during World War II, the chance of building a union had to be postponed. Grower claims that the defense effort required foreign importation of labor would not be easy to challenge during a major war. Interestingly enough, during the war, a newly emerging group of domestic migrant sympathizers composed of unionized domestic migrants and religious, racial and civic groups were not opposed to the contract labor program. In fact, "they unsuccessfully tried to use the Mexican labor guarantees [given braceros under the Bracero Program] as a leverage to improve domestic migrant conditions." Their attitude changed considerably after 1947.

44. Craig, supra note 29, at 90.
45. Galarza, supra note 12, at 80.
46. See generally, Farmworker Powerlessness, supra note 13, at 58-77 (excerpts from newspaper articles and the Cong. Record).
48. Tomasek, supra note 26, at 298.
49. Id. at 304. The National Farm Labor Union was chartered in 1946. By 1950, it has recruited only 50,000 out of 500,000 domestic migrants, with only 12,000 who were dues-paying members. Its position toward contract labor in the postwar period was that before Mexican contract labor was certified, its members be given the same guarantees of paid transportation, minimum wages, medical services and 75% employment time to be included in a contract and given to domestic migrants. Additionally, it wanted a guarantee that Mexicans be removed if a domestic migrant strike took place. It fiercely advocated the elimination of the undocumented worker.
Due to the broad socio-economic ramifications of importing alien workers by the hundreds of thousands, the Bracero Program was destined to be subject to pressures beyond agriculture's sphere of influence. Government actors responsible for its administration had a responsibility to all segments of society, which slowly they began to address by way of "get tough policies." Later, as public awareness grew, it was widely believed that an increase in contract laborers would have a detrimental effect on domestic wages. But again, grower interests prevailed notwithstanding a general uneasiness on the part of the public. Domestic migrant sympathizers and labor interests again witnessed the extensions of the wartime farmworker contract in mid-1947, 1948, and 1949. "Never again would the forces of organized labor appear as impotent alongside their agricultural counterparts [as at this particular time]."

After the war, the National Agricultural Workers Union again began organizing in California. The legalized importation of Mexican labor would be the common enemy against which groups concerned with the plight of domestic migrant labor would organize to revitalize the union movement in Southwest agriculture. The Bracero Program from their standpoint, produced a number of anomalies. None, however, compared with the fact that the U.S. government was willing to grant Mexican farmworkers what it refused its own domestic workers.

**F. The Anti-Bracero Movement**

The enemies of the Bracero Program were more diversified in composition than the pro-Bracero forces (mainly agricultural in nature). The "anti-braceroists" mainly consisted of representatives of organized labor (the AFL-CIO and its affiliates) and numerous social reform and human rights organizations.

The anti-braceroists argued that no scarcity of domestic workers existed to justify importation of Mexican labor. They claimed that growers made no effort to secure domestics and that agricultural labor involved wages so low as to discourage all but the most desperate.

The major gains for the anti-bracero forces came between 1948-51, when groups other than labor became concerned and openly critical of the program. Specifically, the President's Commission on Migratory Labor, established in June 1950, held hearings and published findings and

50. Stoddard, *supra* note 2, at 163-64.
52. See generally, *Farmworker Powerlessness, supra* note 13.
53. These organizations include: the National Council of Churches, National Catholic Welfare Conference, National Advisory Committee on Farm Labor, National Sharecroppers Fund, National Consumer's League, American G.I. Forum, National Association for the Advancement of Colored People, American Friends Committee, National Council on La Raza.
54. Padfield & Martin, *supra* note 34, at 257.
recommendations which were extremely critical of the program. The Commission reported that the program had proven detrimental to the wages and working conditions of domestic workers, and that wages paid were so low that a labor shortage was created.

The "wetback legislation" policies of the United States were essential to the preservation of the appearance of democracy. In the 1950's, after wartime requirements could no longer justify the program, opposition to growers finally achieved threatening dimensions. Successful unionization was more conceivable than at any other point in history and the excesses of the growers were slowly being exposed. Increasingly, the government had to satisfy the opponents of the Bracero Program, and the one way to achieve this was through a series of contradictory policies.\(^5\)

Thus, a policy which was in itself contradictory, was implemented in the shape of what the commission called "wetback legislation." "Operation Wetback"\(^6\) is an example of such a policy. It was successful because it persuaded the public that the government was taking steps to curb the flow of "illegals," when in fact it was accomplished with full grower cooperation. The INS Commissioner had guaranteed legal temporary Mexican labor to growers in exchange for their cooperation with the deportations. And indeed, between 1953 and 1956, the bracero contract labor program was more than doubled in size, and many of those returned to Mexico by "Operation Wetback" were soon able to return to the United States as braceros.\(^7\)

At that time, there was growing disunity among the foreign labor users. Among the employers of Mexican workers, a minority began hiring illegals because it made the cumbersome process of recruitment in Mexico unnecessary and because they were more easily acquired. How-

\(^{55.}\) *Illegal Aliens*, supra note 16, at 45. The conflicting themes throughout the history of immigration policy have been the need to protect American labor against adverse competition from alien workers while at the same time addressing the needs of agriculture for cheap labor. The Chinese Exclusion Act, the contract labor laws of 1885 and 1887 prohibiting the importation under contracts of foreign labor, an 1888 amendment permitting the deportation within one year of contract workers who entered in violation of the law, and the "H-Z provision" (presently in effect) allowing temporary alien workers to perform a service or labor in the United States "if employed persons capable of performing such services cannot be found in the country," are examples of government's efforts to assuage opponents of immigration.

At the same time, however, Congress made concessions to Texas agricultural interests via the "Texas proviso" which says that hiring an undocumented worker shall constitute "harboring" such that employers of undocumented workers are exempt from the felony penalties attached to the harboring of aliens. To accommodate employers, the U.S. government customarily issues H-2 emergency visas to Mexicans desiring to work in the fields and underfunds the Immigration and Naturalization Service (INS), its principle source of enforcement for present immigration laws.

\(^{56.}\) Operation Wetback was the single most successful drive ever attempted for "rounding up illegals."

ever, other employers who claimed that they adhered to the wage, housing, and other regulations governing the use of legal Mexican workers felt at a disadvantage vis-a-vis the employers of illegal aliens. This group claimed it was not willing to hire illegals because of the penalties attached to hiring them: losing the privilege of future access to braceros. Thus, when Commissioner Swing of the INS asked for the growers’ cooperation and reassured them that they would be given legal braceros after the deportations, they welcomed the proposal. The mass deportation-legalization arrangement satisfied the public for a period of about eight years.

Another factor contributing to the slow dismantling of the growers’ power was the position taken by the Kennedy administration against extension of the program. President Kennedy had promised a more vigorous role in the area of farm labor. Subsequent Labor Department actions proved that the President intended to carry out the promise.

The 1962 extension of Public Law 78 contained a number of additions which reflected recent pressures by labor groups and the Secretary of Labor aimed at counteracting the adverse effect of bracero contracting on wages and working conditions of domestic farmworkers. First, braceros were prohibited from remaining in the United States any longer than six months. Second, occupational insurance benefits for braceros were increased. Third, wages were to be no less than an amount set by the Secretary of Labor in an effort to avoid adverse effect. And finally, criteria governing the removal of braceros involved in strikes or lockouts were included.58

Secretary of Labor Goldberg immediately instituted statewide “adverse effect” rates for the twenty-four states which utilized braceros. The “adverse effect” rates constituted the minimum wage that could be offered to any worker and ranged from 60 cents to one dollar per hour. Prior to this, employers had been required to offer only the prevailing area wage, an amount which for the most part the growers set among themselves. In effect, the wage was designed to force employers to “bid higher for the services of domestic farmworkers.”59 The courts upheld the secretary’s authority to determine what wages bracero employers would have to offer, and employment of braceros thereafter became much less attractive. Mexican contracts for work in U.S. farms dropped a full 67 percent in 1962 from the previous year. According to one high official in the Department of Labor, the then President of the AFL-CIO, George Meany, and other labor leaders, were deeply involved in negotiations with the Secretary to bring this measure about.60

58. Craig, supra note 29, at 177.
59. Id. at 179.
60. Cornelius, Mexican Migration, supra note 14, at 8.
Another factor contributing to the gradual decline of the grower lobby was the changing character and composition of the growers themselves. The decade before the final termination of the program saw the beginnings of mechanization on a grand scale. The postwar period had been an era of accelerated mechanization in agriculture. From 1949 to 1965 the average number of persons employed in agriculture fell from 9,964,000 to 5,610,000, while wage workers in the same period dropped from 4,140,000 to 3,128,000.61

Mechanization, particularly in cotton harvesting, where a majority of braceros had been employed, caused the sharp decline in the number of braceros imported from the late 1950's to early 1960's. Technological changes such as these, plus the continuing proliferation of anti-bracero interest groups exerting combined pressure, brought about disagreement among the farmers. The farmers who underwent mechanization were no longer interested in protecting their previous sources of labor.62

During the time that mechanization was occurring, the composition of the groups favoring Mexican workers was already beginning to change again. As mechanization occurred and the Mexicans were forced into the cities, other employer groups welcomed their arrival and informally began to form what would later become an urban employer lobby for Mexican workers.

Following the termination of the Bracero Program, the labor market tightened, bringing unemployment rates to below 4 percent from 1966-69. Labor shortages began to appear in many low-wage industries, from manufacturing (apparel, furniture, shoes, plastics) to service industries (hotels, restaurants, cleaning).Illegal entry of large numbers of Mexicans and migrants coming from many other countries once again increased. Again, the economy demanded marginal workers for low-wage and otherwise undesirable jobs.

A DEMOCRATIC THEORY OF ORGANIZATION

Since the framing of the Constitution, the founders of this nation acknowledged that the most serious problem of popular government was its disposition for creating factions. Although admitting to the mischiefs of faction, James Madison wrote that its detrimental effects would be less probable in an extended sphere (such as the United States) where a great variety of parties and interests would act to "break and control the violence of faction."63 The system of checks and balances was extended to the public through a Constitutional guarantee of freedom of

61. Id. at 10.
63. The Federalist Papers, No. 110 at 53 (J. Madison) (Modern Library College ed.).
association. Private associations were proof that the Federalists' preference for decentralization was working well. Associations stood for stability in politics, were a medium for expressing the public interest, and embodied the guarantee of liberty.\textsuperscript{64}

There are two differing interpretations of the political power of associations in the United States. The first regards their power as excessive and dangerous. Proponents of this view hold that the interests of these associations or groups are incompatible with the national interest due to their disproportionate power and access to power.\textsuperscript{65} The second view, of which the Federalists are early examples, focuses on the variety and multiplicity of interest groups, each with its own grievance or project. The net effect is that these associations balance and counterbalance each other, with automatic benefit to society.

There are other more deep-seated reasons supporting the belief that power vested in associations could not be detrimental to society. Of these, the most important is American "faith in the virtue of small units of social and political organization."\textsuperscript{66} Other reasons include the belief that present arrangements are the result of much evolution and should not be disturbed; and that without the existing array of private organizations the nation might fall into the hands of extremists. In short, organizations insure the preservation of democracy.

Mexican immigration provides an interesting and rather complex study of interest group politics, policy, and their implications for democratic values. Anyone seeking to challenge grower power would encounter some deeply entrenched barriers. The constitutionally guaranteed right to associate gave organizations a measure of independence and claim against the State in the name of liberty.\textsuperscript{67} Alexis de Tocqueville wrote:

The most natural right of man ... is that of combining his efforts with those of his fellows and acting together. Therefore, the right of association seems to me by nature almost as inalienable as individual liberty.\textsuperscript{68}

De Tocqueville compared associations in Europe with those in the United States and warned that only effective party competition could justify the unlimited freedom of association:

In our own day freedom of association has become a necessary guarantee against the tyranny of the majority. In the United States once a party has become predominant, all public power passes into its hands; its close supporters occupy all offices and have control of all organized forces. The most distinguished men of the opposite party, unable to cross the barrier

\textsuperscript{64} McConnell, \textit{supra} note 43, at 119-120.
\textsuperscript{65} Id. at 113.
\textsuperscript{66} Id. at 150.
\textsuperscript{67} Id. at 119.
\textsuperscript{68} A. de Tocqueville, Democracy in America 193 (1969 ed.).
keeping them from power, must be able to establish themselves outside it; the minority must use the whole of its moral authority to oppose the physical power oppressing it.

* * * So the exercise of the right of association becomes dangerous when great parties see no possibility of becoming the majority. In a country like the United States, where the differences of view are only matters of nuance, the right of association can remain, so to say, without limits.69

De Tocqueville’s warning gains in relevance when we examine more closely efforts at resolving the migrant labor question. Pressure by interest groups and the resulting influence on policy is by no means surprising in this country. However, on most questions, political parties have taken some stand. On the subject, however, the insignificance of the migrant vote has meant an almost complete lack of major party interest. Thus, the exclusive role of interest groups in this context creates an alarming situation, particularly before 1950, when the opposing forces were nowhere near in strength.

In a Tocquevillian democracy, private associations, though powerful, would be unable to make policy or to constrain opinion. Their function would be limited to advice and their opinion would be balanced by equally powerful and important opposing forces. The evidence presented here regarding the unopposed growers’ lobby, however, does not accord with this vision. The validity of the concept of free association rests on the assumption that it will be private and autonomous. In the case of the Mexican immigrant farm labor issue this quality of free association was quickly lost and the distinction between public and private power was eroded by the farmer organizations of the Southwest and their political allies in government.

THE STALEMATE

The stereotype notion of omnipotent pressure groups becomes completely untenable once there are groups aligned on both sides. The result of equipotent forces is stalemate.70

What makes the case of Mexican immigration different from European or Eastern Hemisphere immigration? Why does it necessarily entail domestic interest group involvement? The obvious answer lies in the size of the available pool of migrants who want to come and can arrive easily. Easy accessibility to this pool of migrants has in turn encouraged a policy of immigration toward Mexico’s migrants significantly different from that toward the rest of the world. In the previous section we saw how

69. Id. at 192, 194.
slowly the powerful grower lobby strength gave way to a situation where it had to share power with other interest groups. The current interest group debate will be described in this section—a debate which is essentially a stalemate.

The higher rate of unemployment in the 1970’s generated a great deal of controversy over the undocumented worker situation. Specifically, there were charges that migrants displace domestic workers who then have to rely on unemployment compensation. In short, the politicization of the issue increased tremendously and brought about a re-emergence of the age-old debate between the pro and anti-foreign labor factions.

According to the Interagency Task Force on Migration, “the high unemployment of 1975-1976 did not produce a re-employment of resident workers in the markets which had come to be dominated by the illegals.” The task force cites three reasons for this: (1) employers had come to prefer migrants, (2) their presence kept wage rates depressed and no longer attracted domestic workers, and (3) unemployment compensation was extended to 65 weeks and eligibility was liberalized.

Other developments were taking place which could be related to the growing opposition to immigration, particularly Mexican immigration. First, the United States began to discover an Hispanic population whose numbers and potential power was growing. This situation caused alarm among a number of nativist groups.

During the 1970’s, illegal Mexican immigration took new dimensions: first, the flow shifted to urban settings and became concentrated in some large metropolitan areas both inside and outside the Southwest. The shift from rural to urban settings gave the migrant greater visibility and encouraged greater opposition to immigration.

Second, several events in Mexico focused attention on the relationship between the United States and Mexico: the strong Third World posture Mexico began taking in international fora; the vote on Zionism; the land invasions in

71. Staff of Department of Justice, Labor and State, Interagency Task Force on Immigration Policy 397 (1979) (available at La Raza Law Journal Office, Boalt Hall, Univ. of California, Berkeley).
72. Id.
74. One of the most intriguing questions surrounding the Bracero Program is whether it was a cause or cure of the illegal immigrant problem. It is Professor Cornelius’ thesis that the Bracero Program stimulated further illegal migration because the supply of laborers wishing to come as braceros far exceeded the number of available contracts. See Cornelius, supra note 14.

The 1976 amendment to the INA, reducing the possible permanent legal immigrants from Mexico from 41,000 to 20,000 annually, has also been an important factor encouraging illegal migration in the 1970’s and 1980’s. (See Immigration Act of 1979, supra note 4, at 50, 71, 80).
Mexico; and finally, the peso devaluations. These were considered unfavorable signals warranting a reevaluation of U.S. policy toward its southern neighbor.

At the height of grower strength, interest group activity brought about what amounted to a special immigration policy of exceptions toward Mexico. While interest group pressure has continued to dictate American immigration policy in our time, interest group participation has had the effect of dictating a situation whereby the absence of official policy appears to be the only satisfactory way of addressing the demands of the many forces with a stake in the issue.

Prior to 1964, immigration as an issue was characterized by immense public and special interest group participation, and by relative inactivity in higher levels of government. Currently, the reverse is true. In the 95th Congress alone, more than 65 bills relating in whole or in part to undocumented immigrants were introduced in response to public concern. The fact that few of these bills have passed as law is reflective of the general state of confusion which extreme politicization of the issue has brought about. Consequently, no one group, institution, or Congressional committee seems to be in command of immigration at present.

A. Employers

The current most successful lobbying in favor of Mexican labor has been by an assortment of low-wage industries and small farmers. The one common characteristic of these groups is that they are all employers of illegal immigrants. Rather than characterizing them as a lobby for an open border, it would be more accurate to say that they combine to form a lobby against the restrictive legislation considered frequently in Congress during the 1970's. On the surface, these groups do not appear as concerned about what happens to undocumented immigrants (i.e., whether they are legalized or not) as they are about particular detrimental effects which the legislation, if passed, would have on their source of cheap labor. Few of them will publicly oppose the goal of the legislation under consideration, but most vehemently resist the manner by which it is sought, i.e., by forcing employers through employer sanctions to determine if a prospective employee has a legal right to a job.75

Legislation which would penalize employers who hire undocumented workers has been introduced almost every Congressional year since 1971. Employers are always represented before Congressional committees, registering their resentment of legislation which makes the

employer "assume the function of an immigration officer." They criticize this legislation as being vague on what an employer must do to insure that none of his employees is working illegally and that he has not discriminated against U.S. citizens or aliens entitled to work.\textsuperscript{76}

The Senate Small Business Committee points out that small business, which employs half of the work force in the United States, would be faced with a compliance burden of approximately $225 million if forced with the responsibility of screening illegal aliens.\textsuperscript{77}

The manufacturing and service employers' argument is not very different from those of the agricultural growers before them. They claim that they cannot compete without foreign labor because domestic labor is not attracted to the type of low-wage, hard work employment they have to offer. They prefer "illegals" because they work better and are more reliable, primarily because they are afraid they could not get another job elsewhere and because they fear apprehension and deportation. Undocumented workers can be denied protections such as minimum wage, overtime requirements, workers' compensation, employment payments for unemployment compensation, and social security because they do not seek these protections due to the risk involved if detected or referred to the INS.

Because of the many differences within the employer group, their cohesiveness and level of organization cannot compare with that of the growers during the Bracero years. While larger agricultural employers with extensive mechanization, stable work forces, and high wages would like to end the use of undocumented workers, smaller employers would not. Even among the users of undocumented workers no single policy option appears to satisfy all—some find advantage in the present situation while others support the temporary importation of foreign labor under government supervision.

The major interest group supporting restrictive immigration measures has consistently been labor. The belief that Mexican illegal aliens are entering industry and commerce in greater numbers has further fueled their opposition to the illegals.

In the farm sector, domestic farm worker groups such as Cesar Chavez' United Farm Workers (UFW)—affiliate of the AFL-CIO—felt that illegal aliens and other legal Mexican commuters are a deterrent to the organization of farm workers and to the right of organized workers to strike. They charged that growers and farmers employed undocumented immigrant as strikebreakers and undermined American wage and labor standards. However, some unions, including the UFW, have conveniently changed their positions and now include the illegals and Mexican na-

\textsuperscript{76} Illegal Aliens, supra note 16, at 57.
\textsuperscript{77} Small Business: Hearings, supra note 75, at 93.
tionals in their organizing efforts. This reversal was apparently forced on them after finding no easy way of replacing aliens with domestic workers.

Organized labor charges immigrants with depressing the wages and working conditions of the industries where they are concentrated because they are willing to work for substandard wages and working conditions. They also claim they have a "displacement effect" which results in the loss of jobs and employment opportunities for American workers. Nevertheless, according to the National Council on Employment Policy, the labor movement is ambivalent in its policies toward immigration. Although it is not in its economic interest to increase the labor force through immigration, an open door is viewed as being consistent with the humanitarian principles that have guided the labor movement.

As a whole, the labor lobby has been strong but much less effective than its opponent, the employers of migrants (legal and illegal). Because of the many differences among labor, they have had difficulty in coordinating their efforts. Big organized labor such as the Teamsters Union usually does not have to compete with illegal immigrants, generally because immigrants are not concentrated in heavy industry. As a result, organized labor is not an enthusiastic supporter of the smaller local unions’ efforts to lobby for restrictive immigration during periods of economic stress in the country. The current labor lobby, then, has been only lukewarm about lobbying for legislation favorable to the Mexican worker. Like many members of Congress, labor seems to be reluctant to take a position on the flagrant violations of civil rights of migrants (although apparently not due to lack of concern) for fear that this might lock it into a pro-migrant stand. Furthermore, passage of the legislation introduced so far would greatly endanger the membership of unions recruiting illegal aliens.

B. Civil Rights, Religious, Social Reform and Ethnic Associations

In general, religious, social reform, and ethnic associations have not espoused or promoted a specific private interest in the sense of being for or against foreign labor. These organizations can be distinguished from employers or labor groups by the fact that they promote their vision of the public interest. They do not tend to be issue-specific organizations, but become involved in the national deliberations of issues with a bear-

78. Stoddard, supra note 2, at 173-174.
80. Stoddard, supra note 2, at 176; see also Immigration Act of 1979, supra note 4, 162, 79-88. (Statement of Al Perez, Mexican American Legal Defense and Educational Fund, and of Dale Schwarts and Nancy Wold, Lawyer's Committee for Civil Rights under the Law).
ing on the more general goals they promote.

These organizations include the U.S. Catholic Conference, the Mexican-American Legal Defense and Educational Fund (MALDEF), the Lawyers' Committee on Civil Rights under the Law, the National Board of the Young Women's Christian Association, and others, such as the various committees on Migrant Workers, Farm Labor Consumer organizations, the National Association of Social Workers, the Workers' Defense League and several Commissions on Christian Social Action.

These organizations have lobbied for or against legislation considered in Congress in the 1970's and 1980's. The U.S. Catholic Conference, for example, has opposed legislation penalizing employers for hiring illegal aliens. They are credited as the key organization opposing bills which would impose employer penalties from reaching the House floor between 1974 and 1976.82

The Catholic Conference, for example, is concerned that legislation "providing sanctions . . . would create a situation that assuredly will lead to discrimination against any person belonging to a minority group whose legal status might be called into question. Legal aliens and minority group citizens will be denied employment simply because employers will not want to run the risk of inadvertently violating the law."83 The U.S. Commission on Civil Rights, speaking before a Congressional committee added to this view: "Attempts to solve this country's serious economic problems cannot be made at the expense of the civil and constitutional rights of minority persons."84

These same organizations provide food, clothing, and lodging for the immigrant families.85 Their involvement in the welfare of undocumented immigrants is not necessarily an indication of their support of foreign migration, but is motivated by humanitarian concerns. For example, the One-Stop Immigration Center and the International Institute of Los Angeles and the Legal Aid Society of Denver provide counseling, legal advice, and help reunite hundreds of undocumented Mexican immigrant families by assisting them to move more rapidly through the visa procedures.86

CONCLUSION

We began this study with an examination of two economic theories which presumably explain international migrations and discovered that

81. Immigration Act of 1979, supra note 4, at 62.
82. Id. at 80-88.
83. Small Business: Hearings, supra note 75, at 63 (statement by James Sanchez, Orange County Human Relations Commission).
84. Id.
85. Stoddard, supra note 2, at 173.
86. Id.
because of the economic status of the groups affected, another theory had to be explored. Neither the push-pull theory nor the dependency theory alone can account for the continuing flow of immigrants from Mexico both documented and undocumented. As we have seen, the immigration policy of the United States has been and is greatly influenced by the role special interest groups have played in formulating that policy.

An examination of the actors behind the "special" policy toward Mexico showed that agricultural interests dominated policy implementation from the 1920's until the late 1950's. Then, a major technological change by means of agricultural mechanization forced a restructuring of interest groups working in opposition to and in favor of continued cheap labor from Mexico. The strength of both forces required State action which would accommodate both parties. In essence, because the goals of these two opposing forces were contradictory in nature and the power of both to influence government was effective, the government response was destined also to be contradictory.

This study has demonstrated that immigration is no one's political bait. As a result, an absence of meaningful policy has characterized the 1970's and 1980's. Several observers have noted that the attempt to cope with the "problem" of illegal immigration short-circuits pre-established ideological lines. Conservatives who believe in restricted immigration find themselves in company with liberals who believe that the unemployability of the undocumented to take jobs which would otherwise be discharged by U.S. citizens. Employers oppose the restrictionist legislation which calls for sanctions, but the American public is easily aroused by exaggerated claims that the growing "illegal alien" population is displacing American workers from badly needed jobs in these high unemployment times. This contradiction has produced the stalemate in the seventies and continuing today.

Although there has been an absence of policy for enforcing immigration laws, legislative and administrative activity, as evidenced by the number of Congressional hearings held and bills introduced in the 1970's and 1980's has been continuous due to the political nature of the issue and to attempts to present to the American public the appearance of performance toward the solution of the "problem."

What will determine which of these policies will be selected? Economic explanations such as the "push-pull" and the "dependist" theories are not helpful in predicting government response to the continuing flow of illegal or legal Mexican workers coming to the United States. The worsening recession which we are now experiencing will not necessarily translate into decreased demand for the undocumented worker. In fact, there is no reason to believe that the employer does not want to hire more undocumented workers at cheaper wages, with the worsening
of the economy. Nor will the present recession mean necessarily that the government will adopt more restrictive measures. What more than likely will explain how the government addresses the issue is the pressure felt from special interest groups or organizations. This has been the driving force behind government response. No doubt, these organizations largely react to perceived threats in times of economic recession, but without a balance of interest groups to express all points of view, a strong, well-organized, and well-connected lobby could dominate public debate in spite of the rhetoric from Congress. This was how grower demands prevailed in the early 1960's despite generally adverse economic conditions and how the Bracero Program was allowed to continue after the Second World War.

Based on the analysis presented, it is likely that special interest groups will continue to influence and shape the immigration policies of the United States towards Mexican immigrants. The current example is in the forces behind the proposed Simpson-Mazzoli Bill and those forces in opposition to the bill. This time, however, a "stalemate" situation is unlikely.

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