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Thomas U. White
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Mexican Immigrant Labor:  
An Alternative Analysis and Policy Proposal

by

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CHAPTER 1: INTRODUCTION

Immigration reform has been one of the most intensely debated issues of this decade. Years of bipartisan efforts to reform the Immigration and Nationality Act of 1952 (INA) culminated in the passage of the Immigration Reform and Control Act of 1986 (IRCA). Better known as the Simpson-Rodino Act, this law was hastily passed in the waning moments of the Ninety-Ninth U.S. Congress only after adjournment had been postponed and legislators finally reached a compromise on controversial "amnesty" provisions for seasonal agricultural workers.

The question of immigration reform holds particular interest for the Southwestern region of the United States because of its proximity to the porous, two-thousand-mile boundary dividing Mexico and the United States. A majority of new immigrants, legal and undocumented, come from Mexico. Of the 2.1 million undocumented persons counted in the 1980 U.S. Census, about 1.1 were Mexican and nearly half were women. Most come seeking better economic opportunities in a country where jobs are more plentiful and wages higher than in their own country. In actuality, Mexican immigrant labor has been an integral part of the regional economy of the Southwest for the last one hundred years. Recognizing the importance of immigrant workers, President Ronald Reagan proclaimed in 1981 that "[i]llegal immigrants in considerable numbers have become productive members of our society and are a basic part of our work force." Yet policymakers and interest groups often blame Mexican workers for causing such domestic problems as economic recession and high levels of unemployment. Mexican workers have thus been used as scapegoats in times of economic crisis and have borne the brunt of restrictive immigration policy.

The Immigration Reform and Control Act of 1986 constitutes the U.S. Congress's answer to public outcry against the "tidal wave" of new immigrants that "endangers our national sovereignty" and has caused the United States to "lose control of our borders." Nativist attitudes combined with extraordinarily high estimates of the number of "illegal aliens" in this country to prejudice public sentiment toward Mexican immigrants. Moreover, orthodox economic and sociological theories of migration have reinforced popular attitudes and assumptions about immigration. These negative influences are all reflected in the legislation known as IRCA.

This act represents a compromise between conflicting interests. Those favoring restrictive immigration policy sought to impose sanctions on employers who hire
undocumented workers. This approach is based on the assumption that employer sanctions will stop the demand for undocumented labor and thus stop the flow of undocumented immigrants. On the other side, agribusiness and other groups favoring immigrant labor lobbied for provisions that would keep it available. IRCA reflects these contradictory interests.

The contradictions inherent in IRCA make it a symbolic, unenforceable law that promotes the status quo in migrant labor relations, allows migration to continue, and places undocumented workers in an even more precarious position. As experts begin to study the results of IRCA, it is becoming evident that the United States must formulate a workable, long-term policy on Mexican immigrant labor.

Between 1985 and 2000, the Mexican economically active population will increase by an estimated fifteen million persons. To keep these workers employed in an already saturated job market, Mexico must create one million new jobs per year until the year 2000. At the same time, the United States will be experiencing a labor shortage in low-entry-level, low-skilled jobs. These trends make it imperative that the U.S. government implement an effective bilateral approach to the question of Mexican immigrant labor.

This paper will propose an alternative policy based on a comprehensive bilateral agreement on the issue. Such an agreement would emphasize the legalization of Mexican workers, unionization of immigrant workers, and grass-roots development in sending communities. Such a policy would also facilitate the entry of workers into economic sectors where demand exists in the United States.

RESEARCH METHODOLOGY

Because of the multidisciplinary nature of this study, it employs an uncommon research methodology. The underlying research is made up of three parts. The first is a survey of the empirical literature on Mexican immigrant labor and the theoretical literature on migration. The second part combines the findings of the first with a legal analysis of IRCA and the forces behind its promulgation. The third part consists of interviews with immigration experts on both sides of the border, including government officials, academicians, organizers of immigrant workers, and immigration law practitioners. These interviews focused on the results of IRCA and evaluations of an alternative policy prescription designed to address the issue of Mexican immigrant workers in the United States. The study combines legal analysis with an application of alternative migration theory in reaching its conclusions. It does not rely on empirical data to prove that IRCA is
not working but argues instead that IRCA will not stop undocumented immigration precisely because of the important role played by immigrant labor in maintaining the U.S. economic system. These assertions will be supported by empirical findings.

PURPOSE OF THE STUDY

This study seeks to analyze the Immigration Reform and Control Act of 1986 from an alternative theoretical perspective and to propose an alternative policy on the issue of undocumented Mexican immigrant labor. It will focus closely on IRCA and its effects on Mexican immigrant workers. Other immigration policy issues such as political asylum for Central American refugees and revisions of the current quota system fall outside the scope of this paper. Although these topics are related to the subject of undocumented immigration, they warrant separate consideration elsewhere. Similarly, this study does not purport to address foreign-policy issues such as trade and debt. Finally, this paper will not attempt to provide a strategy for meeting the needs of all Mexican immigrants, who come to the United States for a variety of reasons. As noted, the central focus is on IRCA and its effects on Mexican immigrant labor.
CHAPTER 2: THE U.S. PERSPECTIVE

The Immigration Control and Reform Act of 1986 resulted from interactions among a complex panoply of actors representing diverse interests. This chapter will present the social and political context underlying the debates over immigration reform and the forces that influenced the passage of IRCA. The first section will describe the influence of orthodox social and economic theories on the prevailing U.S. perspective on immigration reform. The second section will emphasize the historic role of Mexican labor in the United States. It will also discuss the U.S. government's unilateral policy toward the issue of immigration and how political elites have promoted "myths" about Mexican immigrants in attempting to influence the political climate during the recent immigration reform debate. The chapter will conclude by discussing the various interest groups that lined up on opposing sides during the debate.

THEORIES OF MIGRATION

The most popular theory of migration is equilibrium theory, which combines conventional economic theory with the "push and pull" hypothesis on the causes of human migration. This orthodox theory views migration as an adjustment between spatial differences in supply and demand for labor (Portes and Walton 1981, 26). Higher wages in urban areas stimulate out-migration by individuals from the subsistence rural sector. Migration decreases the pressure of population in areas of low economic growth and provides labor for regions of high economic growth. Labor migration thus helps restore the balance between human capital and resources.

Modernization theorists have provided a sociological version of equilibrium theory. According to this version, Western-style values and forms of consumption penetrate backward regions, producing a split between those who wish to preserve their traditional ways and those who wish to modernize. Migration is viewed as a natural process that restores equilibrium by moving the modernizing segment of the rural population to urban centers and leaving the traditional segment behind (Portes and Walton 1981, 26-27).

Both economic and sociological versions of equilibrium theory present what might be called an "us versus them" perspective on the immigration issue. In the context of Mexican immigration to the United States, this perspective holds that Mexicans migrate in response to their social ills and that migration toward more job opportunities and higher wages
provides a "safety valve" for Mexico's socioeconomic ills, for which the Mexican people are to blame. This perspective consequently encourages a unilateral approach to policymaking in regard to a bilateral problem.

Human migration is a complex phenomenon involving numerous decisions made by migrants at various stages of the migration process. Different theories of migration tend to focus on one "stage" or another of the migration process, such as the causes of migration or the adaptation of immigrants to their new environment. To understand international migration, it is useful to examine theories of migration in terms of four stages of the migration process: the origins of migration (or factors that cause individuals to migrate); the stability of migrant flows; the uses of immigrant labor; and the adaptation of immigrants to the host society. The following discussion will focus on these four stages from an orthodox perspective.³

Origins of Migration

The orthodox view compiles economic, social, and political "push and pull" factors to determine the causes of migration among individuals. It emphasizes the wage differential in favor of receiving areas as the principal cause of labor migration. In addition to stressing this "pull" factor, orthodox theorists view migrant flows as dependent on labor demand in receiving areas: when demand exists, migration takes place. Thus emphasis is also placed on the pull factors of the receiving economy (Portes and Bach 1985, 4).

This view reinforces support for legislation requiring employer sanctions. It also legitimizes the assumption that if the receiving country penalizes employers for hiring undocumented workers, the flow of illegal aliens will stop. Orthodox theory is flawed, however, in its perception of the origins and causes of labor migration. First, the emphasis on wage differentials is erroneous. If the wage gap is the main cause of immigrant labor, one could assume that Mexican immigration would originate in the most impoverished areas of Mexico, where the wage differential relative to the United States is most pronounced. One could further assume that Mexican immigrant labor would originate in poor communities closest to the U.S.-Mexican border. Studies of Mexican immigration show, however, that immigrants historically come not from the most impoverished areas of Mexico but from families with moderate incomes who live in Mexico's central plateau. Immigration from urban areas and northern communities has increased only since 1970.⁴

Second, labor demand cannot be deemed the primary impetus of Mexican immigrant labor if one compares the unemployment rates in the United States with levels of
immigration since 1945. If labor demand were the determining factor, then high levels of unemployment in the United States would stem immigrant flows. But that has not proved to be the case. As Alejandro Portes and Robert Bach have observed, "Instead of varying inversely with U.S. unemployment, labor immigration actually accompanied increases in the unemployment rate in these latter years" (Portes and Bach 1985, 337).

**Stability of Migration Flows in Direction and over Time**

Orthodox theory views migratory flows as unidirectional: individuals migrate in response to real or perceived differences in the standard of living between different geographical areas. Economic or social conditions in the home country may push individuals to move to another country in hope of obtaining a better life, causing them and their descendants to struggle for years to attain equality in the new society. According to this perspective, immigrants return home only because of deliberate repatriation or severe economic depression in the receiving country (Portes and Bach 1985, 7). This unidirectional movement supposedly continues as long as push and pull factors continue and the receiving country permits entry.

But this view contradicts the empirical literature on common migratory patterns among Mexican immigrants. For the most part, Mexican immigrant labor is cyclical and demonstrates a strong orientation toward return migration. Contrary to popular perceptions, most Mexican immigrants are sojourners who stay in the United States for an average of six to eight months. Despite efforts at the federal and state levels, the United States has not stopped the flow of Mexican immigrants, as orthodox theory predicts it should have.

Orthodox theory nevertheless reinforces the popular belief that most Mexican immigrants intend to settle permanently in the United States. It also reinforces maintenance of a unilateral policy toward immigrant labor based on the assumption that the receiving area can stop a migrational flow once it has been institutionalized (see Portes 1983).

**Uses of Immigrant Labor**

In the orthodox view, immigrant labor supplements a scarce domestic labor force. Initially, immigrants take the worst jobs as part of the "natural consequence of an expanding economy" (Portes and Bach 1985, 12). Native workers meanwhile move upward toward better-paying jobs, leaving room at the bottom for new workers. Then wages for
skilled and semiskilled workers tend to rise as a result of employer competition for workers and labor scarcity at the bottom of the ladder. But these higher wages also attract immigrants. Employers can thus seek new sources of labor as a means of controlling or reducing wages. Over time, immigrants acquire experience and qualifications to move up the ladder.

Critics of this perspective point out that it fails to consider economic, political, and class relations within society. It also fails to account for the exploitation of immigrant workers and offers no explanation for the numerous immigrant workers who do not move up the occupational ladder.

Adaptation to the Host Society

The assimilation school of thought provides the conventional or orthodox view of adaptation by immigrants to the host society. The assimilationist view defines the situation of immigrants as "a clash between conflicting cultural values and norms" (Portes and Bach 1985, 21). Assimilation occurs through the diffusion of values and norms of the native culture or "core" group into the immigrant "peripheral" group. Thus immigrants gradually absorb new cultural forms that bring them closer to the majority. Assimilationists generally consider this process of acculturation as inevitable and positive, although Portes and Bach note that "it may take different lengths of time for different groups" (1985, 21).

Three alternatives may result from the process of assimilation in the United States: Anglo conformity, a melting-pot situation, or cultural pluralism. Anglo conformity represents the complete surrender of the immigrants' symbols and values and their absorption by the core U.S. culture. The melting pot symbolizes a blend of the values, norms, life styles, and institutions from both core and peripheral groups. Cultural pluralism, according to Portes and Bach, "refers to a situation in which immigrants are able to retain their own culture, modified by contrast with the core but still preserved in its distinct character; each group is allowed to function on a plane of equality with limited structural assimilation and amalgamation among them" (Portes and Bach 1985, 22).

Assimilationists disagree nevertheless about the outcomes of the assimilation process. Portes and Bach explain that their "basic insight is that contact between new immigrants and an established majority will lead to an eventual merging of values, symbols and identities" (1985, 23). As noted, assimilationists view this merging as a positive process. For the majority, it represents a guarantee of social stability as well as enrichment provided by the elements of new cultures. For the minority, merging offers the possibility of access to higher prestige and power and the promise of a better future for their children.
Conversely, nativist groups like U.S. English consider cultural pluralism to be a bad outcome. In their view, immigrants should not be allowed to exist in "cultural enclaves" where they speak no English. Groups like U.S. English prefer Anglo conformity, or in the alternative, the melting-pot scenario (see U.S. English 1986, 214).

Regardless of individual preferences, this outline illustrates the major flaw in orthodox theory: assimilation theory cannot explain the existence of immigrant groups that, despite contact with the dominant society, do not eventually assimilate according to theorists' predictions. These immigrant enclaves have minimal contact with the dominant majority and resist assimilation. To summarize, orthodox theory views migration as a unilateral flow of individuals responding to circumstances in the sending and receiving countries. As Portes and Walton explain, this perspective "views migration as an external process occurring between two distinct spatially defined units: that which is exploited and exports labor, and that which exploits and receives labor" (Portes and Walton 1981, 29). This interpretation leads to the assumption that if the push or pull factors could be eliminated, migration would cease. It also reinforces the "us versus them" perspective of unilateral immigration policy. Policymakers often use orthodox theory to influence public opinion and to provide a theoretical basis for the argument that undocumented immigrant labor causes unemployment and poor working conditions and also burdens and threatens American society (for a detailed discussion of this point, see White 1989, chap. 2).

Despite evidence to the contrary, government officials and private groups insist that the presence of Mexican immigrant labor is damaging to the United States. President Reagan summarized the government's stance toward undocumented aliens when he signed IRCA into law. He stated that illegal immigration "is a challenge to our sovereignty" and that "the problem of illegal immigration should not be seen as a problem between the United States and its neighbors." He praised IRCA as "an effort to humanely regain control of our borders and thereby preserve the value of one of the most sacred possessions of our people: American citizenship."

These statements clearly reflect the influence of orthodox theory in generating a unilateral immigration policy toward undocumented Mexican immigration. In his critique of U.S. policy on Mexican immigration, UCLA law professor Gerald López has described the U.S. government's view and popular opinion on immigration as the "informed consensus," which is rooted in orthodox "push and pull" theory (López 1981, 620). He observes that although conventional push and pull theory contains no concept of culpability, the informed consensus on immigration assumes that Mexico "bears the
ultimate responsibility to keep its population at home" (López 1981, 621). In the final analysis, undocumented out-migration from Mexico is "presumed to be the by-product of Mexican policies and programs and the destination country has limited moral responsibility for the problem" (López 1981, 639). Yet as will be shown, the United States has historically encouraged Mexican immigrant labor as a steady source of cheap labor and an easy scapegoat for domestic social and economic problems. A review of the historic role of Mexican labor in the United States will illustrate this ambivalent policy.

MEXICAN IMMIGRANT LABOR IN HISTORICAL PERSPECTIVE

Mexican labor migration is not a recent development. U.S. labor recruiters entered Mexico during the 1880s and 1890s, when Chinese workers were being excluded, in an effort to replenish the dwindling work force in the Western Territories. Recruiters continued to import Mexican laborers to work on railroads, in mines, and in agriculture between 1900 and 1910 (see Cardenas 1975, 73).

Indeed, the United States gave preferential treatment to Mexican workers under the Immigration Exclusion Act of 1917 (see 39 U.S. Statutes at Large; and Calavita 1984, 135). Under a provision allowing for the admission of temporary immigrant labor, the U.S. Secretary of Labor exempted Mexicans from the literacy requirement, the head tax, and the anti-contract-labor clause of the 1917 Immigration Act. This law was actually designed to reduce the flow of Southern and Eastern European immigrants and Asians as well. But due to a shortage of domestic labor resulting from the manpower needs of World War I, Mexicans were allowed to work in the United States for up to six months per visit.

In later developments, immigrants from the Western Hemisphere were exempted from the Emergency Quota Law of 1921 (42 Statutes at Large; see also Calavita 1984, 149). These mostly Mexican immigrants continued to enjoy "non-quota" status under the 1924 quota law, despite opposition from organized labor (43 Statutes at Large; Calavita 1984, 157-58).

The 1924 law created the U.S. Border Patrol, whose primary mission was to restrict the surreptitious flow of undesirable European and Asian immigrants to coastal cities in the East and West. But the Border Patrol profoundly affected the southern border by creating a category of illegal immigrants out of a "pre-existing, established flow" (Portes and Bach 1985, 77). Although Mexican workers enjoyed exemptions from immigrant quotas, they were still subject to exclusionary provisions and visa requirements. Consequently, many Mexican workers chose to simply bypass increasingly cumbersome regulations and cross the border without a visa.
In the 1930s, immigration from all countries declined sharply due to the depression and the quota system. Between 1930 and 1940, Mexicans were laid off from their jobs and deported en masse. This period marked the beginning of a cycle of encouraging Mexican immigration in times of labor shortage then deporting Mexican workers in times of economic or social upheaval. Many Americans blamed Mexican immigrants for the economic problems of the 1930s and even deported Mexican American citizens during the mass deportation campaigns. By 1940, however, an estimated one million Mexican citizens were living in the United States (Cockcroft 1986, 62).

Mexicans saw the doors to the United States open once again during World War II, when the United States began the bracero program in 1942 in cooperation with the Mexican government. This program allowed temporary Mexican contract workers to cross legally into the United States. During the bracero period (1942-1964), an estimated five million workers entered the United States. During the same period, thousands of undocumented workers crossed the border as well. Numerous scholars have consequently criticized the bracero program for encouraging undocumented entry and subsequent abuses of Mexican workers (see Bustamante 1978, 194).

The bracero program represented the institutionalization of the "revolving-door" policy on Mexican immigration: while Mexican labor is being imported, "illegals" are simultaneously being deported. This policy has been legitimized by notions of sovereignty, national security, and the right to control national borders.

The revolving-door policy has had far-reaching implications. First, it has exacerbated tensions between employers and employees. The primary objective of employers is to keep production costs down and thus allow the highest profits possible. In contrast, employees seek higher wages, better working conditions, and job security. Undocumented workers get caught in the middle and are used as strikebreakers to diffuse labor demands. These competing interests played an important role in shaping the outcome of the immigration reform debate.

Second, the revolving-door policy exposes the vulnerable position of undocumented workers. Their "illegal" status leaves them open to exploitation and abuse by employers, and these workers live in constant fear of deportation. As will be shown, employer abuses could continue under IRCA, thus driving undocumented workers further "underground" and placing them in an even more precarious position.

Finally, the revolving-door policy exemplifies the U.S. government's unilateral policy toward Mexican immigration. The United States officially encouraged temporary Mexican
immigrant labor until the mid-1960s. But when Mexican workers arrived in the United States, legally or illegally, the U.S. government ignored them (see Pedraza-Bailey 1985, 10-17). The result has been an ambivalent policy toward Mexican immigrant workers and a unilateral perspective that refuses to consider the Mexican side of the migratory phenomenon.

The 1965 and 1976 amendments to the Immigration and Nationality Act placed numerical restrictions on Mexican immigration, thus reinforcing the revolving-door approach and its inherent problems. Partly as a result of these laws, undocumented immigration has increased dramatically since the early 1960s. In the midst of a new "immigration crisis," the United States found that it could not stop the flow of temporary labor that it had been actively encouraging for nearly a century.19

The "us versus them" perspective is still evident in current U.S. immigration policy. While IRCA officially represents an effort to "humanely regain control of our borders," it actually keeps migrant workers (especially the undocumented) intimidated, divided, and confused. As previously noted, these policy objectives developed over more than a century and reflect the influence of racism and xenophobia on immigration policy.20

Popular opinion on immigration issues is formed when the general public draws on statements made by policymakers and the mass media on the subject. Studies have shown that U.S. citizens overwhelmingly oppose the presence of undocumented immigrants in the United States and generally favor restrictive legislation (see Simon 1985, 44-45). Coauthors Cafferty, Chiswick, Greeley, and Sullivan explain that the fear of immigrants is rooted in the belief that the American political system is fragile and vulnerable to foreign spies, criminals, and immigrants who lack democratic ideals and foster divisiveness. Xenophobia reinforces the belief that failure to enforce immigration laws breeds cynicism, hypocrisy, and a general disregard for the law among aliens--hence the need to "regain control of our borders" (Cafferty et al. 1984, 31).

Additional rationale for immigration reform (that is, a more restrictive immigration law) is based on four popular assumptions: that immigrants take jobs from domestic workers, that immigrant labor depresses wages, that immigrants place a burden on social services, and that employer sanctions will stop the demand for undocumented labor and thus end the flow.21 Yet the findings of recent studies indicate the contrary. Several studies have shown that undocumented workers do not cause massive job displacement (see Flores 1983, 287; Passel 1986, 195; Cockcroft 1986, 131;22 and De Freitas 1986, 7-15). Although most undocumented workers pay federal, state, and social security taxes, they are largely
ineligible for these benefits. Other recent studies indicate that Mexican immigrants do not depress wages for a significant portion of the American labor force. In fact, some studies indicate that undocumented workers make a net contribution to society (see Zoldberg 1983, 3; Passel 1986, 197; Cárdenas et al. 1986).

In any case, one point is clear: immigrants to the United States (legal and undocumented) are increasing from countries all over the world. The growing numbers of immigrants, combined with public pressure, led to the immigration reform debates of the 1970s and 1980s. Powerful groups lined up on opposite sides on the issue. The next section will show how both sides played important roles in shaping the outcome of the debate and the IRCA legislation of 1986.

THE INFLUENCE OF LABOR UNIONS, EMPLOYERS, AND INTEREST GROUPS ON THE IMMIGRATION REFORM DEBATE

The forces behind the immigration reform debate began developing as far back as the 1850s. Since that time, diverse groups representing a wide range of interests have taken opposing sides on the immigration issue.

Labor Unions and Employers

In 1964 the bracero program was ended because of heavy opposition by organized labor. Most labor unions have traditionally opposed immigrant labor, arguing that immigrants push wages downward, contribute to poor working conditions, and act as strikebreakers. The primary factor in the anti-immigrant stance of early labor unions, however, was racism. For example, the Knights of Labor, a workers' union created in 1869, openly discriminated against Chinese and Hungarian laborers (see Santamaría Gómez 1988, 55). Organized labor continued to lobby against immigrant labor into the 1920s by taking advantage of and even encouraging anti-immigrant sentiment and racism.

Despite organized labor's efforts to cut off the flow of immigrant labor during the 1920s, employers maintained strong allies in the U.S. Departments of Agriculture and State. Consequently, employers succeeded in procuring Mexican contract labor under Article 4, Proviso 9 of the 1917 immigration law. This legislation was based on a "tacit compromise" between employers and organized labor under which Mexicans were restricted to employment in Southwestern agriculture and "other stigmatized jobs, where virtually no effort was being expended to organize workers or to improve working and living conditions" (López 1981, 661).
Gilberto Cárdenas has pointed out that Proviso 9 established two important precedents: first, the proviso initiated the practice of relaxing immigrant laws when it became desirable to import Mexican workers; second, the proviso invoked restrictive provisions when it was deemed necessary to exclude Mexicans from immigrating on a permanent basis (Cárdenas 1975, 68). Much the same strategy is still being used by employers today.29

Employers thus achieved significant gains during the 1920s. They won other major victories in the 1950s: in 1951, by lobbying successfully for reinstatement of the bracero program under Public Law 78,30 then in 1952, by blocking proposed legislation establishing employer sanctions with the passage of the McCarran-Walter Act.31

But organized labor and anti-immigrant restrictionists also achieved successes during the 1950s. In late 1953, with the post-Korean war recession hitting hard and anti-immigrant sentiment peaking, "Operation Wetback" picked up steam. This mass deportation campaign was aimed at undocumented immigrants, whose numbers had increased under the bracero program.32 In 1954 alone, the INS apprehended more than one million undocumented Mexicans (Cockcroft 1986, 39).

The "success" of Operation Wetback did not prove totally beneficial to organized labor, however. In actuality, one factor contributing to implementation of a mass deportation program for undocumented Mexican labor was the success of the bracero program.33 It allowed "de jure" importation of Mexican laborers, while Operation Wetback was mounted to stop the flow of undocumented workers, who had been motivated to enter the United States in part because of the bracero program.

Ending the bracero program also proved to be a bittersweet victory for organized labor. It occasioned increasing numbers of undocumented Mexicans, many of them former braceros who later crossed the border illegally. Others took advantage of the 1965 amendments by marrying U.S. citizens whom they had met during previous visits as braceros.34

Throughout these years of struggle between employers and labor, U.S. unions generally viewed Mexican workers as incapable and unworthy of organization.35 In its early years, the American Federation of Labor (AFL) barred Mexicans from membership. Samuel Gompers, a former AFL president, told union members and the press that "Mexicans had an inferior capacity to produce" (Cockcroft 1986, 39). The AFL-CIO has consistently been quick to blame Mexican workers during economic crises for causing unemployment. The union has called for mass deportation of Mexicans and even for
sealing the border with Mexico (see Cockcroft 1986, 41). The AFL-CIO led the opposition against undocumented workers by lobbying for the Carter Plan for immigration reform, which included employer sanctions (see Chapter 3).

Another important labor union, the United Farm Workers Union (UFW), which affiliated with the AFL-CIO in 1965, has flip-flopped in its policy toward Mexican immigrant labor. In 1974 the UFW opposed the use of immigrant labor because employers were hiring them as strikebreakers (Gómez 1988, 135). But in 1975, the UFW embraced a "policy of organizing all workers," documented or undocumented (Gómez 1988, 135).

Subsequently, the UFW called for apprehending and deporting undocumented Mexicans in 1979, the same year that George Meany of the AFL-CIO demanded that the INS intervene to stop the flow of undocumented workers (Gómez 1988, 136). Since then, however, the UFW has changed its position again, insisting that it opposes strikebreakers, not immigrant workers (see Cárdenas 1975, 88; also Sierra 1987, 51). Cárdenas reports elsewhere that a significant proportion of the current UFW membership may be undocumented workers (Cárdenas 1988, 96). The UFW has also opposed the restrictive immigration policy contained in the Simpson-Rodino Act and has joined immigrant rights groups in filing lawsuits against INS operations under IRCA.

Other unions have openly advocated immigrant workers' rights and have successfully organized undocumented workers. In 1978 members of the UFW broke away from the union to form an independent union at El Mirage, Arizona, the Arizona Farm Workers Union (AFW). Since the late 1970s, the AFW and the Maricopa County Organizing Project (MCOP) have successfully met the challenge of "organizing the unorganizable."

Private Interest Groups

Minority rights groups have also joined in advocating immigrant workers' rights. One such group, the League of United Latin American Citizens (LULAC, the first national organization of Mexican Americans), started out in the 1930s as an assimilationist group in which Mexican Americans distinguished themselves from Mexicans. Although LULAC adopted an anti-immigrant stance during the bracero period, it subsequently advocated immigrant rights during the immigration reform debates of the 1980s (Sierra 1987, 51). LULAC lobbied against restrictive immigration legislation and has filed a lawsuit against the INS since the passage of IRCA.

Other minority rights groups opposing restrictive legislation include the Mexican American Legal Defense and Educational Fund (MALDEF), the Southwest Voter
Registration Education Project (SVREP), and the National Council of La Raza (NCLR). Rather than opposing undocumented immigrants, these groups advocate the rights of Hispanics in general (whether undocumented, citizens, or legal residents). According to political scientist Christine Sierra, "Chicano rights groups have adopted a dual strategy of support for the rights of undocumented workers in conjunction with protection for the rights of Mexican American and Latino citizens and legal residents" (Sierra 1987, 49).

These groups formed a coalition with the American Civil Liberties Union (ACLU), the National Council of Churches, and the National Immigration, Refugee, and Citizenship Forum to oppose restrictive legislation. This coalition has played an important role in counterbalancing the "informed consensus" on immigration. As Sierra observes, "Latino activists, public officials, scholars and civil rights organizations play an increasingly important role as 'interpreters' of the immigration issue in recent times and offer rival interpretations of the impact of undocumented Mexican immigration" (Sierra 1987, 41).

Other groups that provide "institutionalized support" for undocumented Mexicans include churches and private welfare agencies. Also, Ellwyn Stoddard reports that middle- and upper-class families along the border often hire undocumented workers as maids and gardeners. According to Stoddard, these families "are perhaps the strongest source of institutionalized support for IMAs [illegal Mexican immigrants]" (Stoddard 1976, 173).

This seemingly endless list of actors in the immigration reform debate also includes private-interest groups and scholars who have joined in advocating restrictive immigration legislation. Some environmental groups such as the Environmental Fund and Zero Population Growth oppose increased immigration as a threat to the quality of life in the United States (see U.S. House Hearings 1986, 157). Such groups view immigration as disrupting the population balance of American society. Other groups argue that Mexican immigrants fail to assimilate into mainstream society (see U.S. English 1986). The Federation for American Immigration Reform (FAIR) adds the argument that undocumented immigration poses a severe drain on the economy.

FAIR cites popular opinion polls in claiming that U.S. blacks and Hispanics favor restrictive immigration (Sierra 1987, 46). Although opinion polls show that Mexican Americans are generally divided on the issue of undocumented workers, the majority of those who actually voiced their opinion during the immigration reform debates did not agree with FAIR's conclusion. According to Cárdenas, among Mexican Americans who spoke out in community meetings and forums on immigration, "the overwhelming voice was supportive and protective of undocumented immigrants" (Cárdenas 1988, 97). Another
study of Chicano political elites from 1978 to 1980 indicates that only 22 percent of elected and appointed officials and community leaders voiced hostile views toward undocumented workers (de la Garza 1981, 10).

In reality, the debate over the negative impact of undocumented Mexican immigrants on Mexican Americans seriously diverts attention from the central issue, which is the official policy of encouraging Mexican labor migration as a temporary work force. Cárdenas summarizes this issue:

The determination of U.S. policy toward Mexicans began some 66 years ago as a mechanism of maximizing the massive circulation of temporary Mexican workers to the U.S. and minimizing the size and strength of the Mexican population residing in the U.S. Again in 1983 we find the U.S. Congress and policy-makers espousing the same anti-immigrant/anti-Mexican sentiment as they did 66 years ago, yet the rhetoric is no longer blatantly expressed as opposition to racial type and skin color, but, rather is now couched in opposition to culture, language, behavioral and other aspects of behavioral assimilation with national origins (Cárdenas 1988, 97).

Cárdenas wrote this assessment during debate over the Simpson-Mazzoli legislation (much the same as the Simpson-Rodino Act), which finally passed in 1986. All the actors discussed in this chapter played significant roles in determining the final outcome of the immigration reform debate.
CHAPTER 3: A DESCRIPTION OF IRCA

The Immigration Reform and Control Act of 1986 is based on three key assumptions: that sanctioning employers for hiring undocumented workers will cause demand for immigrant labor to fall (and this drop in demand for immigrant labor will stem the flow of undocumented immigration); that sanctioning employers for hiring undocumented workers will cause undocumented aliens in this country to return to their home country; and that if the above assumptions hold, domestic workers will fill jobs that undocumented workers leave behind. The first two assumptions are linked to flawed orthodox migrational theory (as discussed in Chapter 2). The third assumption has neither a theoretical nor an empirical basis.¹

Yet the success of IRCA depends on these orthodox assertions. This chapter will analyze the legislation known as IRCA, its history, and its implementation with the above assumptions in mind. This chapter will describe previous attempts made in the U.S. Congress to legislate change in immigration policy, particularly on undocumented labor, and will also detail the bills that led to the Simpson-Rodino Act and the major provisions in the new law pertaining to Mexican immigrant labor. It will conclude with a discussion of the practical problems and controversies surrounding the implementation of IRCA thus far.

THE HISTORY OF LEGISLATION REQUIRING EMPLOYER SANCTIONS AND IRCA

Congress has attempted to pass legislation providing for employer sanctions and other immigration reforms since the early 1950s. Senator Paul Douglas of Illinois proposed to include employer sanctions in the 1952 Immigration and Nationality Act, but a group of Texas congressmen blocked the proposal (see Chapter 2). After several attempts to pass employer sanctions failed in the 1970s, the issue reappeared in the early 1980s with the first Simpson-Mazzoli Bill.² The avowed purpose of the companion bills was to "reform outmoded and unworkable provisions of the present immigration law and to gain control of our national borders."³

The Senate bill passed on 17 August 1982, by a vote of eighty to nineteen.⁴ But the House did not reach a final vote on the bill because of objections to the conservative cut-off date for legalization (1 January 1980) and concern over possible discrimination against
minorities. Agricultural groups also objected to the bill because they feared that employer sanctions would "create havoc" in the agricultural industry (see Lungren 1987, 281). It was thus evident that agricultural interests wanted adequate provisions for importing large numbers of foreign farmworkers.

Both bills contained revisions of the INA H-2 program created in 1952, which provided for the entry of temporary workers in areas where a domestic shortage exists. Workers admitted under this program are known as "H-2s" (see Chapter 2, note 28). These new provisions were also designed to "wean" Southwestern growers from relying on illegal workers (see Briggs 1986).


The original Senate bill included provisions to ease H-2 regulations and a three-year transition period for growers. During the floor debate, Senator Pete Wilson proposed an amendment establishing a new temporary worker program that was incorporated into the legislation. The bill passed on 19 September 1985. The House bill included provisions for employer sanctions, legalization, easing H-2 regulations, and a three-year transitional program for agriculture. The last provision was subsequently deleted. The original bill did not include a new temporary worker program. In an effort to agree on such a program, the House negotiated behind the scenes for ten months after the Senate passed its version of the law. Although this kind of program was opposed by farmworkers and minority groups, it won the support of agricultural interests (mostly from the Southwest).

The House eventually reached a compromise consisting of a "second amnesty" program. Under the compromise, the U.S. Attorney General would grant permanent residency status to any undocumented worker who could prove that he or she had completed twenty days of labor in perishable crops in the United States between 1 May 1985 and 1 May 1986. In case some workers left the fields for other jobs, the agreement provided means of "replenishing" the labor supply with additional foreign workers (see Briggs 1986, 1004).

These provisions, known as the "Schumer Amendment," met with stiff opposition from some House members, including Representatives Mazzoli and Lungren.
Nevertheless, the House Judiciary Committee considered the amendment and changed the amnesty requirement from twenty to sixty days. The bill finally passed the House after the amnesty was extended to ninety days of work in perishable crops between 1 May 1985 and 1 May 1986. Those who qualified would be eligible for initial temporary resident status. On completing the requirements for permanent residency, these workers would not have to remain in agriculture and would be eligible for most social benefits.

A Senate-House conference committee hammered out the differences between both houses and filed its report on 10 October 1986. The Senate proposals for the Wilson temporary worker program and the agricultural transition program were dropped, but the Schumer provisions in the House bill were retained. The House voted 238 to 173 to accept the report on 15 October. The Senate then voted 63 to 24 on 17 October to approve the report, and President Reagan signed the bill into law on 6 November 1986.

As noted, the Congress hastily passed the Simpson-Rodino Bill in the waning moments of the Ninety-Ninth Congress, after adjournment had been postponed. Following years of controversy, the United States finally had a new immigration law to deal with undocumented aliens. Not everyone was completely satisfied with the final legislation, however. Even Senator Simpson described the new law as "a monstrous s.o.b., ... but it will be as sure as hell a lot better than anything we've got now" (see Langley 1988, 144). This paper will argue instead that IRCA does not represent an improvement because it continues to take an orthodox, unilateral approach toward Mexican immigrant labor. But first, the new U.S. immigration law needs to be explained briefly.

THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

IRCA consists of seven titles that amend the Immigration and Nationality Act of 1952. Titles I through III will be summarized here, with emphasis on the sections that relate primarily to immigrant labor.

Title I: Control of Illegal Immigration

Section 101 amends the INA by adding Section 274A, which makes it illegal to knowingly hire, recruit, or assign honorarium to aliens who are unauthorized to work in the United States. Under this section, it is illegal to continue employing an unauthorized alien if the employer becomes aware of the employee's illegal status after hire. It is also illegal to hire unauthorized aliens as contract laborers.

IRCA does contain a grandfather clause exempting undocumented workers who were hired prior to passage of this act. These workers may continue to work for the same
employer. But if a worker desires to work elsewhere, he or she is required to prove work authorization to obtain a new job.

All employers must seek proof of work authorization when hiring any new employee after 6 November 1986. Each employee must attest, under penalty of perjury, to his or her valid work authorization. Proof of the employer's examination of these documents and proof of the employee's attestation are to be recorded on an employer's verification form (INS Form I-9).

Employers must keep this form for three years after hire or one year after termination of the employee, whichever is later. The INS shall have "reasonable access" to examine evidence of any person or entity under investigation. Sanctions include civil fines and criminal penalties for employers who engage in a pattern or practice of employing unauthorized aliens. A civil fine for the first violation can range from two hundred and fifty dollars to two thousand dollars per individual. Fines for the second violation range from two to five thousand dollars and for the third violation, from five to ten thousand.

Criminal penalties include a fine of up to three thousand dollars per individual or a jail term of up to six months or both. The Attorney General may also bring a civil action to request relief, including a permanent injunction, for the pattern or practice of hiring unauthorized workers. An I-9 paperwork violation carries a civil penalty of one hundred to one thousand dollars.

Section 274A(i)(3)(A) provides an important exception for employing seasonal agricultural workers. This section allows for deferring enforcement until 1 December 1988 for employing individuals in seasonal agricultural services. Additionally, Section 274A(i)(b) prohibits recruiting aliens to perform seasonal agricultural services except when the recruiter "reasonably believes" that the employee meets the Labor and Agriculture departments' determination that a labor shortage exists.

For all other employers, the sanctions took effect on 23 May 1988. IRCA provided for an initial six-month educational period (from November 1986 through May 1987), followed by a twelve-month "first citation period" (May 1987 through May 1988).

**Title II: Legalization**

Section 201 of IRCA amends the INA by adding Section 245A. Better known as the "amnesty program," this section provides temporary resident status for two categories of immigrants: those who can prove that they entered the United States illegally prior to 1 January 1982 and have remained continuously since then, and those who can prove that
they entered the United States legally but violated their legal status prior to 1 January 1982 (see subsection b of 245A). All applicants must be otherwise admissible under the pertinent provisions of the INA.9

According to this title, the U.S. Attorney General will grant work authorization to those eligible for temporary status. These persons must file for permanent residency within one year after completing eighteen months of continuous temporary residency. Failure to do so will cause them to lose their temporary resident status and work authorization.

Applicants who received certain forms of public assistance after January 1982 are ineligible for legalization.10 Those who qualify for legalization are barred from receiving public assistance for five years.

**Title III: Temporary Agricultural Workers**

Section 301 amends INA Section 101(a)(15)(H)(ii) by adding new provisions for agricultural workers. It divides H-2 workers into two categories: temporary agricultural workers (H-2A) and all other temporary workers (H-2B). There are no changes in the law for temporary, non-agricultural workers.

Section 301(c) amends the INA by adding Section 216, which contains provisions for admitting H-2A workers. The grower must file a petition for H-2A workers with the Department of Labor. The Secretary of Labor will grant the petition if two conditions are met: there is a shortage of able, willing, and qualified workers to perform the services described in the petition; and no adverse effect on wages and working conditions will result in similar areas.

Section 301 creates a new INA Section 210, which provides for legalizing special agricultural workers (known as "SAWs"). Those undocumented workers who worked in seasonal agriculture for at least ninety days between 1 May 1985 and 1 May 1986 may file for temporary resident status. This special "amnesty" program divides applicants into two groups. Those who worked for ninety days harvesting perishable crops in the United States during 1984, 1985, and 1986--designated as Group I--will be given first preference on adjusting their status to permanent residency. No more than three hundred and fifty thousand applicants will receive Group I status. These workers can change their status to permanent residency one year after the INS approves their application or one year after the end of the application period, whichever is later. All other SAWs fall into Group II. These workers may adjust their status one year after the SAWs in Group I do so. The INS will automatically grant SAWs permanent residence after they complete the one-year temporary residency requirement (see Interpreter Releases 66:815).
The application period runs from 1 June 1987 to 30 November 1988. All applicants must be admissible as immigrants. The INS, however, may waive certain grounds for exclusion to fulfill humanitarian concerns, to assure family reunification, or to promote the public interest.

Finally, IRCA Section 301 amends the INA by creating Section 210A. This section allows for the admission of replenishment agricultural workers (known as "RAWs") if the Secretaries of Labor and Agriculture determine that a shortage of domestic agricultural workers exists. The secretaries of both departments must make this determination for each year between 1990 and 1993. The number of workers admitted should equal the shortage, if any.

RAWs must perform ninety days of seasonal agricultural services for three consecutive years under temporary resident status. At the end of three years, they may apply for permanent residency and leave the agricultural field if they desire.

THE IRCA AMENDMENTS AND THEIR PROBLEMATIC IMPLEMENTATION

After IRCA passed the U.S. Congress and President Reagan signed the bill into law, it was left up to the INS to promulgate rules and regulations for carrying out the law. The resulting INS rules and regulations have proved to be controversial. Some courts have found that IRCA regulations contradicted congressional intent. Moreover, the implementation of IRCA has met with stiff opposition and criticism, primarily from immigration attorneys and minority rights groups. The following section will summarize current developments and the practical problems of implementing IRCA.

Title I: INA Section 274A

The INS issued proposed rules for employer sanctions on 16 March 1987. These rules contained five important provisions: the I-9 would be simplified to make record keeping easier for employers; employers would have three days to fill out the I-9 after a new hire; employers would be given until 1 September 1987 to complete I-9s for all workers hired after 1 November 1986; the INS would create an exception for brief and casual employment, defined as "work by individuals who provide domestic service in a private home that is sporadic, irregular and incidental"; and the INS would create a "special rule" for SAWs specifying that any person who intends to apply for legalization under the SAW program does not have to present documentary evidence of work authorization until 1 September 1987. All these proposed rules benefited employers, especially those in agriculture and other industries that hire day laborers.
The INS issued its final rules on 4 May 1987. Employer sanctions rules remained essentially the same as proposed, with some additional provisions: employers would have three days to complete the I-9, except in cases where the employee lost the documentary evidence, in which case the employer has up to three weeks to complete the I-9; the INS has the authority to inspect I-9 paperwork compliance after giving three days’ advance notice to employers; and amnesty applicants are given automatic work authorization for the duration of the application process.12

Perhaps the most significant omission from the final rules was the failure to include a definition of the phrase "knowingly hire." The INS declined to define it despite earlier criticism from the House Subcommittee on Immigration, Refugees, and International Law. When Representative Patrick Swindall asked why the proposed rules did not include a definition of the term, INS Commissioner Alan Nelson replied that the INS felt it was unnecessary to define "such a well-known concept" (see Interpreter Releases 64:439). This omission may prove significant because employers could rely on the "knowingly hire" phraseology as an affirmative defense against prosecution for hiring undocumented workers.13

An additional problem in effectively enforcing employer sanctions is employee fraud. Undocumented workers reportedly can purchase fake documents to gain employment without much difficulty (Interpreter Releases 65:883). In some cases, employers readily accept fake documents to "verify" work eligibility (Cornelius 1988a, 1988b). The INS will have to take the employer’s word at face value regarding the authenticity of employees’ documents; if employers complete the I-9 correctly, the INS would have to prove the undocumented worker is in fact unauthorized to work in the United States. This requirement could cause the INS to ask every employee to carry proof of work authorization.14

Sanctions were begun amidst considerable confusion among employers. Some employers fired "grandfathered" employees after IRCA went into effect.15 The INS also implemented an inconsistent policy concerning employers of domestic workers. For example, after INS officials said that the agency would not harass persons employing undocumented housekeepers, it fined a couple in San Benito, Texas, two hundred and fifty dollars for having knowingly hired an illegal maid (Interpreter Releases 65:1230). Such cases will force employers to hire workers for less than three days or for sporadic employment, which compounds the uncertainty and job instability of employees.
public charge" provision under Section 245A(d)(2)(B)(iii). This section states that an inadmissible alien can overcome the public charge barrier by demonstrating a history of employment in the United States or self-support without receipt of public cash assistance.

The INS attempted to replace this "special rule" by defining public cash assistance to include money received by the alien or by family members. The court in Zambrano found the INS interpretation to be inconsistent with the intent of the statute and ordered a preliminary injunction enjoining the INS from applying its regulation. The court consequently allowed an extension for affected members of the class action to apply for amnesty. Subsequently, the INS revised its rule on public cash assistance.

Another class action against the INS challenged the agency's construction of the phrase "unlawful status known to the government" as meaning "known to the INS." In Ayuda v. Meese, District Court Judge Stanley Sporkin held that the INS interpretation was inconsistent with the statute and enjoined the INS from applying it. The court ordered the INS to notify all affected members of this class of their possible eligibility and ordered the agency to adopt measures to ease the requirements.

In a Ninth Circuit Court of Appeals case, LULAC v. INS, the plaintiffs challenged the INS policy of denying amnesty to otherwise qualified aliens who had reentered the United States after 1 January 1982 with nonimmigrant visas or other forms of documentation that, according to the INS, "break the chain of continuous unlawful residence." On 8 October 1987, the INS reversed its policy and announced that those who reentered on nonimmigrant visas but intended to remain permanently in the United States had reentered by means of a fraudulent act and thus must apply for a waiver of inadmissibility for fraud.

Another case from the Ninth Circuit has resulted in an extension of amnesty for affected applicants. In Catholic Social Services v. Meese, the plaintiffs challenged the INS's definition of "brief, casual and innocent" absences from the United States. The INS interpreted such absences as requiring advanced parole, that is, a departure from the United States authorized in advance by the INS. The court held that the INS interpretation was inconsistent with congressional intent to implement amnesty provisions in a "liberal and generous fashion" and gave potential applicants until 30 November 1988 to apply for amnesty.

All these cases illustrate the problems inherent in the legalization provisions promulgated by the INS. Some professional groups, like the Association of Immigration Law Attorneys (AILA), blamed the confusion and "snags" in the legalization program on
the INS for delaying rules and regulations (the INS published its final rules on 4 May 1987, just one day prior to the start of the amnesty application period). The INS, in turn, adopted procedures designed to implement the program in a smoother fashion.

Nevertheless, fewer people filed applications for legalization than expected. Because of the cases filed by Ayuda, LULAC, and Catholic Social Services, it is too early to determine the final results of first-phase temporary amnesty. By 20 January 1989, almost 1.2 million persons had filed amnesty applications. At the end of the application period, 1.7 million persons had applied. As of February 1989, the INS had approved 1,236,609 applications and denied 33,585, an approval rate of 97 percent (see Interpreter Releases 64:1255-56).

Applicants who are approved by the INS must complete the second phase of the amnesty process by applying for and gaining permanent residency within thirty months after being approved for temporary amnesty. The INS released its rules for completing the second phase on 31 October 1988 (see Interpreter Releases 65:75). The INS will accept applications for permanent residency by mail at INS regional processing facilities beginning 7 November 1988. Each application must be accompanied by a fee of eighty dollars per person or two hundred and forty dollars per family. Applicants who filed for temporary amnesty before 1 December 1987 must submit current results of a medical examination for AIDS. All applicants must be interviewed by INS officials and must demonstrate knowledge and proficiency in English and U.S. civics.25

It is too soon to tell how many applicants will pass the second-phase regulations. Nevertheless, immigrant rights groups have already attacked INS rules on the second phase on the grounds that INS notice to temporary amnesty recipients was misleading (see Interpreter Releases 66:64).

Title III: Section 210 (SAWs) and 210A (RAWs)

Although the INS has applied strict interpretations to Title II provisions, it has granted considerably more flexibility and latitude to SAW applicants. For example, the omnibus spending bill of 1987 contained a compromise allowing for notice to all deportees of the opportunity to apply for SAW legalization (see Interpreter Releases 65:2). Those deportees who may be eligible are allowed to reenter the United States at designated ports of entry located along the Mexican border at Calexico, Otay Mesa, and Laredo. Workers entering at these locations may file a SAW application without the normally required documentary evidence of performance of ninety days’ labor in agricultural services (see Interpreter Releases 65:2).
The bill also eliminates the proposed cut-off dates for reentry into the United States. Thus SAW applicants may reenter the United States during the application period and apply for SAW legalization, contrary to Title II, which requires illegal residence in the United States prior to 1982. These provisions facilitate SAW applications, bona fide as well as fraudulent, and encourage widespread participation in the SAW program. Nevertheless, the SAW program has generated a considerable amount of confusion and contradictions in policy.

Most of the confusion over the SAW program stems from the Secretary of Agriculture’s interpretation of perishable commodities. The USDA list of such commodities includes Christmas trees, sugar beets, and hay but excludes sugarcane and sod (see Interpreter Releases 65:841). Meanwhile, the USDA has categorized cotton as a fruit, thus allowing cotton pickers to apply for the SAW program (see Interpreter Releases 65:841). In the cases of cotton and hay, these contradictory interpretations have resulted from lawsuits challenging the omission of these crops from the list of perishable commodities.

Other lawsuits are challenging the INS policies of implementing Title III. The Arizona Farmworkers Union challenged the INS policy of denying employment authorization to H-2A immigrants who file nonfrivolous SAW applications. These applicants are now being granted work authorizations.

A similar suit was filed by the United Farmworkers Union challenging the INS practice of denying SAW applications in cases where the employer refuses to provide crucial documentary evidence in support of the applicant. The INS has since amended its rules to require the agency to attempt to secure the employment records of SAW applicants who allege that employers or farm labor contractors are refusing to provide employment records.

The UFW case also challenges the INS practice of denying SAW applications where applicants rely on corroborative evidence like affidavits to prove eligibility. The court denied a preliminary injunction against the INS in the United Farmworkers case (see Interpreter Releases 65:506-7). The parties have since reached an agreement whereby the INS will abandon the practice of denying applications based only on corroborative evidence. Conversely, an Eleventh Circuit court granted a preliminary injunction on the same question in the case of the Haitian Refugee Center v. Nelson. Although this ruling applies only in the jurisdiction of the Eleventh Circuit, it provides advocates for farmworkers with an important victory against INS policy. Some advocates are currently organizing a nationwide class action against the INS on the same issue.
Despite these problems, liberal SAW regulations encouraged more SAW applications than expected. By the application deadline of 30 November 1988, some 1.1 million persons had applied for SAW status. Eighty-four percent of the applicants are from Mexico, with more than one-half of the applications filed in California, 10 percent in Florida, and 8 percent in Texas (see Interpreter Releases 65:1255-56). Applications are still awaiting approval, and lawsuits are still pending against the INS on SAW provisions. For example, one lawsuit filed in California charges the U.S. Border Patrol from Texas to California with wrongfully seizing documents from SAW applicants and coercing them into withdrawing the application or signing a "confession" admitting that they fraudulently applied for amnesty.32

CONCLUSION

The obvious flaw in the IRCA legislation is its assumption that employer sanctions will stop the demand for undocumented workers and thus stop undocumented immigrant flows. The evidence thus far has proved otherwise (see Chapter 4). But the law contains other shortcomings stemming from inherent contradictions. For example, the legalization program directly contradicts orthodox theory. While orthodox theory assumes that the receiving country can stop the flow of immigrant labor, the "amnesty" program continues to provide employers with a pool of relatively powerless temporary resident workers. The SAW program exacerbates this contradiction by increasing the pool of temporary workers in the agricultural sector. Moreover, the RAW program guarantees the continued flow of temporary immigrant workers in agriculture if SAWs move to other occupations.

In sum, numerous practical problems have arisen in implementing IRCA. Loopholes in the employer sanctions legislation make Section 274A an ineffective and unenforceable law that encourages employment of undocumented workers on a temporary basis. Many potential applicants did not apply for legalization or were discouraged from completing the application process. Those who gained temporary residency must complete the second phase of the legalization program or lose their legal status. In contrast, SAW applicants are given preferential treatment. The easier burden on SAWs illustrates how the legal system adjusts its procedures to accommodate employers' need for a reserve pool of labor in the United States.
CHAPTER 4: A CRITIQUE OF IRCA

This chapter will assess IRCA from an alternative theoretical perspective that emphasizes the role of Mexican immigrant labor in the U.S. economy and the role of the state in regulating immigrant labor. Although orthodox theorists do not incorporate the state into their theories, in actuality it plays a contradictory role: the U.S. government must control the flow of immigrant labor while simultaneously providing U.S. businesses with a steady supply of immigrant labor. This contradictory role is built into IRCA, which seemingly attempts to stop undocumented migration while permitting the continued flow of immigrant labor. IRCA enables the state to perform the latter function by means of loopholes in employer sanctions provisions, a misleading "amnesty" program, and legal provisions designed to facilitate the use of immigrant labor in agriculture.

ALTERNATIVE MIGRATION THEORY

Another approach to migration emphasizes world-system and articulation theories, which were developed in the past decade or so out of neo-Marxist thinking on the development of modern societies.

According to the world-system view, migration occurs not as an external process between two separate entities (as orthodox theory suggests) but as part of the internal dynamics of the global capitalist system. Centers of the system control peripheral areas through financial and trade mechanisms. The goal of the system is maximization of surplus in the core, and the net result has been characterized as "an ever growing articulation and interdependence between the different economic units of the global system" (Portes and Walton 1981, 29).

Articulationists take this approach one step further by positing that noncapitalist modes of production exist in articulation with dominant capitalist modes of production to supply the dominant sector with a reserve pool of labor. Noncapitalist modes also provide a mechanism of subsistence production through which workers can generate part of their subsistence costs outside the wage sector, thereby allowing them to survive on a lower wage than would otherwise be necessary for their economic survival.¹

Just as orthodox theories do not encompass the process of migration in all its stages (for example, equilibrium theory confines itself to the origins and uses of migrant labor while assimilation theory focuses on immigrants' adaptation to the host society), various
alternative theories also limit themselves to certain aspects or stages of the migration process. World-system theory describes the origins and stability of migrant flows. Split-labor-market and dual-economy theories explain the uses of immigrant labor. Internal-colonialist theory provides an alternative view of immigrants' adaptation to the host society. Finally, articulationists explain the role of workers in noncapitalist sectors of the economy, such as subsistence farmers and street vendors. The next section will discuss the four "stages" of migration in terms of each theory and specify its contributions to an alternative perspective on labor migration.

Origins of Migration

World-system theory explains labor migration as originating in the gradual penetration by the world capitalist economy into lesser developed countries. Penetration produces imbalances in the internal social and economic structure of the peripheral country. According to this theory, migration represents a solution to internal problems that are actually induced by the expansion of the global capitalist system (see Portes and Bach 1985, 7).

Rapid-demand industrialization and technical improvements in the United States during the late nineteenth and early twentieth centuries created a pronounced need for foreign labor. Additionally, declining profits generated a need for cheap labor to offset the victories of organized labor. As the drive for accumulation and expanded markets and resources pushed capitalist penetration westward in the United States, Mexican labor became the most attractive source of immigrant labor in what is now the southwestern United States (see Sassen-Koob 1981, 56, n. 2).

In contrast to world-system theory, the articulation approach to development argues that the capitalist system has not entirely penetrated peripheral regions of the world. This approach analyzes the transition or lack of transition of traditional economies into the capitalist system. David Goodman and Michael Redclift describe the premises of the articulation approach: "peripheral social formations are constituted by the articulated combination of the dominant mode of production and the subordinate, non-capitalist modes of production. The persistence of these modes in articulation with capitalism 'blocks' the expansion of capitalist production relations, and full development of the productive forces ... is impaired" (Goodman and Redclift 1982, 56). Thus noncapitalist economies, such as peasant subsistence agricultural economies, exist jointly and interrelatedly with the capitalist system. The conditions of human reproduction, however,
are viewed as existing independently of the capitalist system. In other words, noncapitalist economies assume the costs of raising, clothing, feeding, and educating children.

Meillassoux adds that articulation is necessary to counteract the declining rate of profit and to provide access to cheap labor power. He observes that under certain conditions, articulation is structured to maintain precapitalist modes of production that act as "reservoirs" of cheap labor for capitalist sectors of the economy: "With seasonal or migrant labor, part of the long-term costs of production are borne by the pre-capitalist sector or domestic community and the wage paid by capital is correspondingly lower" (Meillassoux 1972).

**Stability and Direction of Migration Flows**

According to world-system theory, migration serves a dual function: "From the standpoint of capital, it is the means to fulfill labor demands at different [spatial] points of the system; from the standpoint of labor, it is the means to take advantage of opportunities distributed unequally in space" (Portes and Bach 1985, 9). Migrational networks thus link peripheral areas to center areas. Networks also help ensure the early survival of new migrants and assist in finding new jobs. According to Portes and Bach, "labor migration can thus be conceptualized as a process of network building, which depends on and, in turn, reinforces social relationships across space" (1985, 10). Migrant flows do not respond automatically to changes in push and pull forces. On the contrary, the resilience of migrant networks defies changes in push and pull factors.

**Uses of Immigrant Labor**

Orthodox theory views the use of immigrant labor as purely supplemental to a scarce domestic labor force, but alternative theories focus on differences in class and race. The split-labor-market theory perceives the use of immigrant labor as a strategy used by the employer class against the organizational efforts of citizen workers. Immigrant workers are used as strikebreakers and as a means of keeping labor costs down, and they consequently benefit only employers, not society as a whole. The position of these workers is weaker than citizen workers vis-à-vis employers for a variety of reasons. Immigrants must deal with linguistic and cultural barriers, including racial prejudice. Conditions in the home country may leave immigrants no choice but to accept the demands of employers. Moreover, legal constraints make undocumented workers vulnerable to employers and governmental authorities (Portes and Bach 1985, 16).
The dual-economy thesis provides an additional perspective on the use of immigrant labor. According to this theory, powerful oligopolies form the primary segment of the economy in the industrialized capitalist countries and rely on capital-intensive technology to reduce labor costs and demand. Because of their size, these large firms succeed in creating internal job markets. They can compensate for increases in labor costs with increases in productivity or higher prices or both. Labor entry usually occurs at the bottom of the job ladder, with higher wages and increases in pay and status providing incentives for workers to remain in a particular firm (Portes and Bach 1985, 17).

Smaller competitive firms form the secondary segment of the economy. Functioning in an environment of uncertainty, competitive firms operate in local or regional markets and cannot pass higher labor costs on to consumers. They often rely on labor-intensive processes of production and suffer a high rate of turnover. Portes and Bach conclude that "for competitive capital, the viability of these relationships [of production] depends on the presence of a labor force that is both abundant and powerless" (Portes and Bach 1985, 18). Thus competitive firms rely primarily on immigrant and minority labor.

The relatively advantaged position of workers in the primary sector reflects earlier class struggles and eventual accommodation through which organized labor gained its present advantages and security while firms gained control over the work process in a manner that promoted stability and minimal disturbances (Portes and Bach 1985, 19). But as the availability of jobs in the primary sector began to decrease after the New Deal and World War II, smaller competitive firms began to hire less-organized minority workers. Portes and Bach have noted an increasing reliance among secondary firms on undocumented immigrant labor. This increase "coincides with the exhaustion of certain labor sources—teenagers and rural migrants—and the increasing resistance of workers to accept employment in these firms" (Portes and Bach 1985, 19).

The split-labor-market and dual-economy theories both have their drawbacks. First, split-labor-market theory views immigrant labor as benefiting only employers. Yet studies indicate that even undocumented workers benefit society as a whole through their taxes and contributions to social security (see Chapter 2, notes 37-38). Second, not all immigrant workers are stuck in secondary, competitive firms. Some immigrant workers pierce the "barriers of entry" in the primary segment of the dual-economy model.

Despite these drawbacks, split-labor-market and dual-economy theories are more convincing than orthodox theory because they do not make the empirically inaccurate claim (commonly made by restrictionists) that native workers will fill jobs left by undocumented
workers because of employer sanctions. There is no evidence that native workers take jobs left vacant by undocumented workers (see Cornelius 1988a). Thus the expectation of lowering domestic unemployment through employer sanctions is empirically flawed.

These other theories also explain the use of undocumented labor for the purpose of controlling the labor force. According to split-labor-market analysis, employers hire undocumented workers as strikebreakers to diminish organized labor's power. According to the dual-economy model, if immigrant labor displaces national labor at all, it is in secondary firms where workers are largely minority and unorganized. The use of immigrant labor consequently renders the work force powerless and increases employers' control (see Chapter 5, note 11).

Articulationists provide an additional interpretation of the uses of immigrant labor. In the articulation view, noncapitalist modes of production are maintained to provide a reservoir of cheap labor for capitalist sectors of the economy and a subsidy for the working proletariat and capitalists in the form of subsistence production. The noncapitalist mode bears the long-term costs of reproduction (that is, of raising children to be workers), and therefore wages paid by the capitalist sector can be correspondingly lower. Partly because of these reasons, employers prefer immigrant labor.

**Adaptation to Host Society**

While assimilation theory holds that immigrant groups will eventually blend into the mainstream society, an alternative view holds that contact with the dominant majority can have the opposite effect. According to John Stone, minority immigrant groups "learn their true economic position" through contact with the majority and "are exposed to racist ideologies directed against them as instruments of domination" (Stone 1985, 113). Drawing on an internal colonialist model, this view offers an explanation for the existence of immigrant groups that, despite having learned the dominant language and become thoroughly familiar with the majority's values and lifestyles, still cling to their cultural identity and resist further assimilation. According to this perspective, structural factors like racism prohibit the complete assimilation of immigrant ethnic groups. The purpose of this continued segregation is to maintain a reserve pool of surplus labor.

**Summary**

As evidenced by articulation theory, individuals in the Mexican economy who subsist outside capitalist modes of production play an important role in the migration process.
Subsistence farmers and members of the informal sector supply capitalist sectors of the economy with a reserve pool of cheap labor and a subsidy in the form of subsistence reproduction. In the context of Mexican immigrant labor, these individuals serve the same purpose for U.S. employers when job opportunities or other means of survival diminish in Mexico. This perspective illuminates the intent of the legalization, SAW, and RAW programs: to provide U.S. employers with a reserve pool of cheap immigrant labor and a subsidized labor force.

The world-system perspective makes possible an alternative analysis of the provisions for employer sanctions. Mexican immigrant labor results from imbalances in the economy caused by the penetration of capitalism in Mexico. As long as those imbalances persist, no law will be able to stop Mexican immigrant labor (see Rogers 1985, 188; Larsen 1989, 14-15).

The dual-economy and split-labor-market theories illustrate methods of retaining control over the work force. Because these theories do not consider immigrant labor as supplemental to the national work force, they also do not support the assumption that increased immigration will have an inverse effect on citizen unemployment levels.

The internal colonial model explains the presence of immigrant groups that are fully exposed to the dominant culture but continue to resist assimilation. For these groups, ethnic solidarity provides the means of living outside the mainstream of society with no need or desire to assimilate.

Francisco Alba has summarized the alternative perspective on Mexican immigrant labor: "Migration from Mexico to the United States forms part of a worldwide flow in which labor resources are drawn to highly developed countries from the underdeveloped ones. Immigration in its various forms to advanced industrial economies is not a temporary phenomenon, but is a structural element connected with the maintenance of the system itself" (Alba 1978, 509). Alba adds that the United States needs immigrant labor to maintain its economic system. The availability of an international labor reserve makes it possible to import workers when necessary and export them when they become redundant (Alba 1978, 509).

Also employing this perspective, Jorge Bustamante refers to Mexican immigrant labor as "commodity migrants." He asserts that these immigrant workers share the following characteristics: they occupy the lowest-paying positions of society's occupational structure; they are socially defined as deviants and sanctioned through prejudice and discrimination; they are cast into conflict with the lowest-paid native workers and become a
means of preventing solidarity among workers; and in times of crisis, they are used as scapegoats for allegedly causing social, economic, and political problems, thus displacing the dominant group's responsibility and preventing structural change (Bustamante 1978, 185-86).

AN ALTERNATIVE INTERPRETATION OF MEXICAN-U.S. IMMIGRATION

One of IRCA's major flaws is its failure to address the Mexican perspective on emigration to the United States. Discussing this issue from the other side of the border highlights both the inadequacies of IRCA and the accuracy of the basic assumptions of alternative theory.

The Mexican government historically has taken an ambivalent position on the subject of emigration to the United States, recognizing that it provides an "escape valve" for domestic ills. Indeed, Mexico does benefit from out-migration because labor migration to the United States releases some pressure from overpopulation and unemployment. More important, Mexico receives an estimated one billion dollars per year in remittances from its workers in the United States (see Cockcroft 1986, 84). These benefits also entail certain costs, however.

The highest cost of emigration is the loss of human resources and capital. More and more educated Mexicans are migrating to the United States. Whole families are migrating more frequently, and more migrants are staying in the United States on a permanent basis (see Cornelius 1988b, 13; Briody 1987, 44). Mexico now perceives what was once considered an "escape valve" as a drain on its human resources. In fact, one Mexican senator declared in 1985 that emigration was an obstacle to growth in Mexico (see Bustamante 1988, 120). This change in the Mexican perspective warrants further consideration.

The conditions that motivate migration from Mexico to the United States have been developing for over a century. Raúl Fernández lists three factors that influenced the onset of Mexican migration to the United States: the commercialization of the agrarian sector during the Porfiriato (1886-1911); the penetration of railroads into Mexico's interior, which facilitated the recruiting and transporting of immigrant labor during same period; and the Mexican Revolution of 1910 (Fernández 1977, 97-98).

Alba observes that Mexico's developmental strategy and the spread of U.S. styles of consumption and culture have become primary factors in modern-day out-migration from Mexico (Alba 1978, 504). Since 1940 Mexico's strategy of import-substitution
industrialization (ISI) has coincided with the dislocation of the rural population and the redistribution of farmlands. The use of capital-intensive technology in Mexico's industrialization program has limited the number of manufacturing jobs available for the displaced rural population, thereby swelling the ranks of a reserve army of labor lacking jobs or sufficient income.\textsuperscript{5} Other negative consequences of ISI include scientific and technological dependency on advanced core nations, a huge foreign debt and a balance of payments deficit, concentration of domestic income, and regional imbalances in population and resources (see Alba 1978, 504).\textsuperscript{6} Alba concludes that the penetration of modern styles of consumption and U.S. culture, combined with Mexico's attempt to emulate modernization and developmental patterns of advanced industrialized countries, has resulted in marginalizing a significant portion of the population.\textsuperscript{7} For many Mexicans, emigration has become the only alternative.

In addition to its ISI policy, Mexico promoted capitalist agriculture between 1940 and 1960. The government reversed previous policies that had promoted agrarian technology and financial supports, resulting in the "recreation" of a landless proletariat (see Isaac 1987, 5). Rural reforms of the early 1970s calmed political unrest in the countryside but did little to absorb the landless rural labor force. Subsequently, the López Portillo administration (1976-1982) rejected rural reform strategies and promoted an economic development policy based on agricultural export earnings and internal industrial development. These policies increased internal migration as well as emigration to the United States while adding to the crisis in agricultural production. During this period, emigration provided a vent for growing rural militancy and unrest (Isaac 1987, 6).

Foreign economic influences may also have contributed to the migration flow. For example, Mexico's Border Industrialization Program, particularly the maquiladoras, may have stimulated migration from the interior to the border cities. These migrants may then "become prime candidates for illegal immigration when they are unable to obtain jobs on the Mexican side of the border" (Rogers 1985, 163-64).

James Cockcroft adds that Mexico's current crisis is directly related to the U.S. economic recessions of 1973-1975 and 1981-1983. He describes the interdependence of the two countries' economic systems: "Because of the States's role in Mexico's industrial and agrarian transformation, and because of increased domination by domestic and foreign monopolies, Mexico's economic system can be characterized as dependent, state-guided monopoly capitalism. U.S. capital does not control Mexico's economy, but it wields sufficient influence to make a critical difference, and therein lies Mexico's economic dependence" (Cockcroft 1986, 105).
While Cockcroft may overstate Mexico's dependency, its economy is undoubtedly tied to the global capitalist system. A global recession cuts Mexico off not only from primary U.S. markets but from alternative markets as well. Indeed, in the middle of the global recession between 1981 and 1983, Mexico erupted in financial crisis. The peso was devalued to less than one-tenth of its previous value relative to the dollar in 1976; capital flight increased at an alarming rate; thousands of workers were laid off; and numerous small business and farms closed. These factors contributed to unemployment and in turn increased immigration. The peso devaluation also helped spur undocumented immigration in the 1980s by increasing the wage differential between the two countries (see Gregory 1986, 274).

As the current economic crisis in Mexico deepens, emigration continues despite efforts in the United States to stop the flow. The Mexican economy has not grown in six years, and the annual inflation rate in 1987 reached at 159 percent, although it fell to 40 percent in 1988. Some 52 percent of the Mexican work force was underemployed in 1982; by 1988 five million Mexicans were unemployed (Cockcroft 1986, 129). In 1982 individual income in Mexico averaged thirty-one hundred dollars per year, compared with more than twelve thousand in the United States (Chiswick 1986, 93). Mexican wages lost half their value between 1983 and 1988.

Consequently, one of the most pressing challenges for the new administration of Carlos Salinas de Gortari is to provide economic growth while servicing Mexico's foreign debt of 106 billion dollars. Additionally, Mexico will have to provide some one million jobs annually until the year 2000 just to absorb its youthful entrants into the labor force. In 1984 Mexico's population reached seventy-eight million people (Chiswick 1986, 93), and experts predict that the population will double by the year 2010. Moreover, nearly half of Mexico's population is under fifteen years old. Thus an estimated fifteen million young persons will enter the Mexican labor market at a rate of one million per year between 1984 and 2000 (see Casteneda 1986, 123). Meanwhile, the United States will begin to experience a shortage of young workers entering the labor market by the year 2000 (see Fullerton 1987). While low-skilled, low-entry-level jobs are becoming more prevalent, U.S. youth are increasingly shunning such jobs because of low wages and the availability of social services (see Cornelius 1988a, 7; 1988b). Clark Reynolds has predicted that the United States will need an estimated five million foreign workers in the labor force (about four hundred thousand per year) by the year 2000 just to maintain a growth rate of 3 per cent (see Gregory 1986, 203).
These figures underscore the social conditions motivating Mexican workers to migrate to the United States and the need for immigrant workers in the core country. The result is a large pool of reserve labor at the U.S. border, with the core country having the ultimate task of regulating the flow.

THE ROLE OF THE STATE

According to Saskia Sassen-Koob, international labor migration did not evolve as an important system of labor supply until the consolidation phase of the world capitalist system (1981, 66). Labor migration began as a form of migration induced through force and systematic employer recruitment (Sassen-Koob 1981, 66). Eventually, migration evolved along with capitalist penetration into peripheral areas in a process of self-induced selection (Portes and Bach 1985, 53). Portes and Bach assert that the present form of immigration has become a self-propelled flow in which agencies of the state are used to regulate an ever-present supply of immigrants (1985, 53).

In the United States, the state serves a dual purpose: to promote and assist in the accumulation of capital and to resolve conflicts within the society (Bach 1978, 540). In the case of international migration, the state resolves conflicts between citizen labor and immigrants while simultaneously protecting the interests of employers in the accumulation of capital. This dual function presents a dilemma for the state in general and for the Immigration and Naturalization Service (INS) and the U.S. Border Patrol in particular. Sassen-Koob describes the dilemma:

The enforcement of national borders contributes to the peripheralization of a part of the world and the designation of its workers as a labor reserve. Border enforcement is a mechanism facilitating the extraction of surplus labor by assigning criminal status to a segment of the working class--the illegal immigrants. Foreign workers undermine a nation's working class when the state renders foreigners socially and politically powerless. At the same time, border enforcement meets the demands of organized labor in the receiving country insofar as it presumes to protect native workers. Yet selective enforcement of policies can circumvent general border policies and protect the interests of capital sectors relying on immigrant labor. This shows the contradictory role of the state in the accumulation process. . . . (Sassen-Koob 1981, 70)
This process and the contradictory role of the state is reflected throughout IRCA. The state cannot totally stop the flow of undocumented immigrant labor and at the same time protect the interests of employers. Consequently, while the goal of Section 274A is to stop the flow of undocumented immigration, Sections 245A, 216, and 210 guarantee a reserve pool of cheap immigrant labor.

On another level of analysis, Sections 245A and 210 were promulgated in order to create a marginal group of new immigrant labor with criminal status. Those who do not qualify for these "amnesty programs" will be forced further outside the margins of society. Moreover, the loopholes in the employer sanctions provisions will increase this "rapidly growing sub-stratum of new illegals" (Portes 1978, 482).

A CRITIQUE OF IRCA

After analyzing IRCA from the alternative theoretical perspective outlined above, it is my contention that IRCA cannot and will not work because of the contradictory roles of the U.S. state, especially the INS and the Border Patrol, in stopping the flow of undocumented workers while guaranteeing employers a reserve pool of cheap immigrant labor. The provisions of IRCA clearly illuminate this contradiction.

On another level of analysis, IRCA reveals the "hidden agenda" of creating a new group of powerless illegal immigrant workers who occupy an even more precarious position. The loopholes in the employer sanctions provisions and the stringent eligibility requirements for legalization create a new substratum of undocumented workers who are vulnerable to exploitation. Let us now consider how IRCA relates to the four stages of the migration process.

The Origins or Causes of Migration

Section 274A, the employer sanctions provisions, assumes that such sanctions will stop the flow of undocumented immigration and eliminate the opportunity for employment in the United States for undocumented immigrants already in residence. This assumption stems from the failure to consider the real cause of Mexican immigration—the economic imbalances between the United States and Mexico. As long as such imbalances exist, Mexicans will find a way to enter the United States. Not surprisingly, the evidence indicates that IRCA has not stopped the flow of undocumented Mexican immigrants.17 Because immigrant labor is a structural element connected with maintaining the world capitalist system (Alba 1978, 509), fining employers will not change the structural dynamics that create both the supply and the demand for cheap foreign labor.
Stability of Migrant Flows

Section 274A assumes that the state can stop the flow of an institutionalized pattern of migration. Yet the Border Patrol and the INS cannot stop the flow of Mexican immigrant labor because an intricate networks enable undocumented Mexican immigrants to continue to gain entry to the United States and find employment. The Reverend Rick Mattey describes one such network in which undocumented Mexicans cross near El Paso and go north to destinations as far away as Chicago and New York. In his opinion, IRCA will pull undocumented workers further into the U.S. interior, where the INS and Border Patrol are less active.¹⁸

Such networks become stable over time and can resist fluctuations in economic and political conditions. Once in place, they are difficult to eliminate through sporadic attempts. Such an undertaking would require widespread effort and huge outlays of resources.

Moreover, completely stopping the flow of Mexican immigrant labor would contradict half of the state’s dual function. When U.S. public concern over the entry of undocumented workers mounted, Congress passed employer sanctions yet guaranteed employers a steady flow of immigrant labor by passing Sections 245A, 216, and 210. Those who drafted IRCA assumed that these provisions would encourage legal immigration and help stop the flow of undocumented labor while employer sanctions were reducing the opportunities for undocumented workers.

This argument is inadequate in two respects. First, loopholes in the employer sanctions provisions and the legalization programs limit their effectiveness (as will be described in the next section). Second, while the legalization, H-2A, SAW, and RAW programs do increase the supply of immigrant labor with legal status, it makes little difference to an employer whether an immigrant worker is undocumented or legal. One reason employers hire either category of immigrant workers is that they are powerless. As Sassen-Koob points out, "if we only consider wages, immigrants are not necessarily that much cheaper than low wage national workers; it is their powerlessness which makes them profitable" (Sassen-Koob 1981, 72).

Thus Sections 245A (general legalization), 216 (H-2A), and 210 (SAWs and RAWs) all provide employers with legal, but relatively powerless, immigrant workers. While these workers have legal rights in the United States, they are reluctant to pursue them for fear of retribution or deportation (see Chapter 5, note 11). In terms of the stability of migrant
flows, Sections 216 and 210 represent an attempt to guarantee the flow of cheap immigrant workers to the United States.

Section 216 enhances the flow of immigrant labor by streamlining the legal requirements for importing temporary agricultural workers. H-2A workers, however, are tied to one employer for the duration of their labor contract. Thus while these workers are "legal," they remain cheap, docile labor.\(^1\)

Section 210 facilitates employers' hiring foreign agricultural workers by making SAW provisions less stringent than the 245A legalization program. And if some SAWs decide to leave their agricultural jobs, as the evidence predicts, the U.S. Congress has guaranteed employers a supply of replenishment agricultural workers, or RAWs.

The Uses of Immigrant Labor

Section 274A contains gaping loopholes that make it a symbolic and unenforceable law.\(^2\) One effect of these loopholes is to create a new marginal group of powerless undocumented workers. Those applicants who do not meet the stringent legalization requirements will join the growing substratum of "criminal" immigrants. I will now examine the loopholes in Section 274A and the effect of Section 245A eligibility requirements on the uses of immigrant labor.

The first loophole in IRCA's employer sanctions provisions is the stipulation that employers must "knowingly hire" undocumented workers to violate IRCA regulations. Employers are not required to verify the authenticity of a prospective employee's documents but simply to certify on the form 1-9 that they saw the employee's documents and that, to the best of their knowledge, the documents appeared to be genuine.\(^3\)

Thus employers can fall back on the affirmative defense that they completed the 1-9 in good faith without "knowing" that any employee was illegal. To respond, the government would have to rebut this defense and somehow prove that the employer knew that the employee was in the country illegally at the time of hire, or any time after hire. This approach would require the U.S. government to prove the employer's subjective intent, that is, to determine what was actually going through the employer's mind when he or she completed the I-9. Needless to say, the government will have difficulty in meeting this burden of proof, leaving the employee to bear the brunt of the law.

A second loophole gives employers three days from the date of hire to complete the I-9. Under this loophole, employers can "hire" an undocumented worker, let him or her work for three days, then dismiss the worker at the end of the third day. This provision
could lead to abuses of employees and thus exacerbate the precarious nature of temporary employment of undocumented workers. Due to the worker’s undocumented status, he or she has limited legal recourse against potential abuses (see Chapter 5, note 11). If a prospective employee does not have the necessary documents, he or she has up to twenty-one days to provide them. This provision too could lead to temporary employment abuses. Another loophole requires the INS to give three days’ advance notice prior to visiting employers to check for I-9 violations. Thus with the exception of an INS raid (which would be illegal under IRCA regulations), employers would have three days to either complete the I-9s or dismiss undocumented workers before the inspection. Moreover, workers fired on the day of an INS inspection have no legal recourse.22

Undocumented workers employed prior to 6 November 1986 are exempt from the law. But these "grandfathered" employees must stay with the same employer and are therefore subject to that employer’s demands. If a worker wishes to change employers or quits his or her job, he or she must provide proof of authorization to work in the United States. Such a worker, who is still "illegal" according to the INS, could not get another job without fraudulent documents if he or she fails to apply or is ineligible for legalization.23 This situation increases "grandfathered" employees’ vulnerability to abuse and exploitation.

Employers of seasonal agricultural workers are given preferential treatment under IRCA. These employers were not required to complete the I-9 until 1 December 1988. Prior to this date, the INS only "urged" agricultural employers to complete the I-9. Meanwhile, the INS cannot enter the fields to inspect workers’ documents without the employer’s permission or a search warrant. Thus a grower could dismiss undocumented workers prior to granting the INS permission to enter the fields.24

Section 274A contains a final loophole that allows the recruitment of foreign workers. Under Section 274A(i)(b), a recruiter may sign up foreign workers if he or she reasonably believes that a shortage of domestic workers exists. This provision allows recruiters to circumvent the Department of Labor’s determination regarding domestic worker shortage and provides the means for maintaining a reserve pool of foreign labor.

In the final analysis, it is employees--not employers--who will bear the brunt of IRCA regulations. Employees must verify their authorization to work under penalty of perjury, while employers are merely required to inspect documents for a reasonably genuine appearance. Employer sanctions therefore will not effectively stem the practice of hiring undocumented workers as long as the workers’ papers appear to be legal.

The INS has stated that it will hold employers to a reasonableness standard--that is to say, employers will not be sanctioned if employees’ documents reasonably appear to be
genuine. This provision opens the door to fraud. Employers are not trained to recognize the authenticity of documents like driver's licenses, voter registration cards, birth certificates, or social security cards. Prospective employees can easily obtain and offer falsified drivers' licenses and social security cards to satisfy verification requirements.

The use of fraudulent documents presents a problem in effectively enforcing employer sanctions. If the employee presents a fake document that reasonably appears to be genuine, the employer must simply inspect it and certify that he or she saw the documents. Employers and employees are not required to keep their employment verification documents on hand. Therefore the INS would have to find out that an employee is undocumented through some means other than the I-9.

Research has shown that using falsified documents for employment purposes is common in the undocumented community. According to Wayne Cornelius, 41 percent of undocumented workers interviewed in the San Diego area since 6 November 1987 admitted purchasing or using falsified documents in order to gain employment. This figure could be conservative because, according to Cornelius, undocumented workers generally prefer to avoid using bogus documents and thus would be reluctant to admit doing so (Cornelius 1988b, 27).

Section 245A was intended to be the "humanitarian" provision of IRCA. Congress intended that the legalization program be implemented in a "generous, liberal fashion." Yet the law and its implementing rules and regulations were promulgated in such a way that many undocumented workers can never qualify. The plight of these workers is worse than before because fewer employers are hiring undocumented workers for long-term employment. This outcome is evident from the problems that potential applicants have encountered with the program. The most serious problem has been the documentation requirement. Many undocumented workers have not kept the necessary records (check stubs, rent receipts, and income tax returns) to establish a prima facie case of eligibility. According to Catholic Social Services of Albuquerque, caseworkers have had to turn down many applicants for lack of documentation. Although applicants with insufficient documents were told to come back, many never returned. Of some ten thousand participants in Catholic Social Services legalization workshops at the beginning of the program, only two thousand completed the application process at that agency.

Other problems include the cost of filing an application, travel time, and distance. In New Mexico, some applicants had to travel 150 to 200 miles to file legalization papers. Some potential applicants were unable to make the trip from rural areas to the
Albuquerque legalization office. Others could not take time off from work to file applications. Although it was not obligatory to have an attorney prepare and file legalization applications, some attorneys charged legalization applicants fees ranging from five hundred to one thousand dollars for their services. Other potential applicants could not afford even the basic fees for filing and medical examinations.

Finally, many potential applicants did not file applications because they lacked accurate information. For example, rumors spread within the Albuquerque community that persons who had received public assistance would be ineligible for legalization. Yet only certain forms of public assistance, such as Aid to Families with Dependent Children (AFDC), would actually disqualify a potential applicant. Those who received public cash assistance or were excluded because of felony or misdemeanor convictions were denied legalization.

For undocumented Mexicans who are ineligible for legalization or fail to apply for the program, only two alternatives remain: staying in the underground undocumented working class or returning to Mexico to scarce jobs and limited opportunities. The evidence thus far shows that while some have returned to Mexico, many have chosen to stay in the United States.

Families with members who are ineligible face the possibility of deportation. While the "family fairness doctrine" may cover a child or ineligible spouse, when that child reaches the age of eighteen and enters the labor force, he or she will still be undocumented and vulnerable to exploitation. Moreover, under the family fairness doctrine, the INS can deport ineligible family members, a considerable hardship for families.

One final problem with the legalization program is the requirement that each temporary resident complete the second phase to obtain permanent residency. All applicants must provide an additional fee for filing the second-phase application, plus medical fees (if applicable) and testing fees. The total would exceed one hundred dollars for an individual and three hundred dollars for a family.

Some temporary residents will not be able to pass the English and civics requirements. Although the final rules exempt persons under fourteen or over sixty-four, many others will not be able to attend the necessary number of course hours. The INS requires that the applicant show a proficiency in English and U.S. civics. Yet according to final rules, those who choose to take classes to complete the second phase need only show progress. This discrepancy could create an inconsistency in INS policy if local INS officials call for proficiency while the regulations require only that the applicant show progress.
Others may simply fail to apply for permanent residency due to confusion regarding the time frame for filing second-phase applications for adjustment to permanent residency. If the temporary resident fails to file a timely application for any reason, he or she loses temporary residency status and becomes deportable.

In addition to fostering a growing substratum of criminal immigrant labor, IRCA also creates a new reserve pool of legal immigrant labor through the legalization program and Title III provisions for temporary immigrant workers. The H-2A provisions increase this pool of legal immigrant workers.

As noted, Section 216 offers growers a source of powerless, cheap labor. The H-2A program does so in two ways. First, immigrant workers are available on demand, while the sending community bears the costs of subsistence reproduction. In the case of Mexican immigrant labor, Mexico bears the costs of feeding, clothing, and raising children to become workers while U.S. employers take advantage of this subsidy. Second, H-2A workers are tied to one employer. If a worker has a disagreement with that employer, the latter can simply fire the worker, call the INS, and petition for another immigrant worker. The employer could even file such a petition before the worker quits or is fired, thus minimizing slack time between workers.

A related problem is that H-2A provisions cover only immigrant workers in the agricultural sector, thus excluding the increasing number of Mexican immigrant workers who are employed in light-industry and service sectors (see Cornelius 1988b, 18). If employers face a shortage of workers in these sectors, they would have to pursue the slower channels under H-2 provisions, hire an undocumented worker for short periods of time, or hope to hire a SAW who is eligible to change jobs. Either way, employers can obtain cheap laborers who have limited access to legal protections.

Finally, Section 210 guarantees the future supply of immigrant labor by making the eligibility requirements for SAW status less stringent than the rest of the legalization program. These lax requirements encourage fraudulent applications from immigrants who have never worked in agriculture before (see Cornelius 1988b, 27). Those who qualify can leave the agricultural sector after one year in the fields, but the RAW program essentially guarantees U.S. employers a similar reserve pool of powerless immigrant labor.

Adaptation to the Host Society

The legalization programs were designed to encourage the assimilation of qualified applicants. Those who pass the second-phase English language and U.S. history and
civics requirements are expected to assimilate into the mainstream society. Such an assumption is debatable, but in any case, it completely fails to take into account the dismal prospects of assimilation for those who "fall through the cracks" of the IRCA provisions.

Those who fail to qualify for legalization and recent arrivals are either taking temporary jobs or using false documents to obtain permanent employment. They are ineligible for basic social services such as public housing and are discouraged from integrating into mainstream society. Yet contrary to the predictions of some experts, these individuals are not returning to Mexico in large numbers. Most seem to be "waiting it out" while the rest of U.S. society ignores them.\textsuperscript{33}

As for legalized residents, IRCA prolongs their marginalization by denying them social services for five years. Those who are eligible for temporary resident status under Section 245A are denied access to AFDC, Medicaid, and food stamps for five years. SAWs, in contrast, are eligible for all social services except AFDC.\textsuperscript{34} These provisions encourage SAW applications and discourage general legalization applications, a bias that guarantees a steady supply of agricultural workers while increasing the marginalization of those who qualify for temporary residency under Section 245A. Furthermore, those legalized under Section 245A are ineligible for legal services (see Interpreter Releases 66:157), a rule that keeps yet another group of immigrants marginal. Meanwhile, most immigrant workers are paying into public funds for these services via income taxes, gross receipts taxes, and other kinds of withholding from wages (see Chapter 2, note 39).

CONCLUSION

Analyzing IRCA from an alternative perspective illuminates the dual function performed by the state in protecting the interests of employers while mediating conflicts within society. From this perspective, the loopholes in Section 274A and the contradictory provisions under Sections 254A, 216, and 210 become evident. It also becomes clear that the United States cannot stop the flow of immigrant labor nor is it in the country's interest to do so. These contradictions create a new category of criminal immigrant labor subject to employer abuses.

Nevertheless, the INS insists that IRCA is working on local and national levels. Citing reductions in border apprehensions, INS officials argue that employer sanctions are helping stop the flow of undocumented workers. But although fewer border apprehensions may have resulted partially from the passage of IRCA, many other factors are also involved: an increase in INS and Border Patrol enforcement practices in the U.S. interior;
the number of 245As and SAWs who return to Mexico less frequently since IRCA was enacted; the severe drought of 1988, which created a surplus of unneeded agricultural workers in the United States; and the rise in permanent migration due to restrictive immigration policy.

One argument made by the Federation of American Immigration Reform (FAIR) is that it takes time for employer sanctions to work. FAIR Assistant Director Patrick Burns insists that employer sanctions in European countries are now working after three or four years. He believes that IRCA will follow the European pattern: "Just as U.S. employers divested themselves of child labor in the 1930s over several years, so will they divest themselves of illegal immigrant workers." 35

Unfortunately, Burns's analysis is faulty in two respects. First, he fails to take into account the fact that U.S. employers had immigrant labor to rely on while "divesting" themselves of child labor. Moreover, in some cases, employers have hired immigrant children in violation of the very child-labor law that he cites. Second, although Burns seems to suggest that the United States will emulate European laws, European countries will be repealing their employer sanction laws in 1992 in favor of a common market of goods and services. Thus workers in Europe will soon be able to cross international borders freely. 36

Contradicting the INS and FAIR perspectives are other analysts on both sides of the border who argue that IRCA is not stopping the flow of Mexican undocumented workers into the United States. Wayne Cornelius found a significant deterrent effect operating during the first twelve months of the law. But more recent data from the INS and El Colegio de la Frontera Norte indicate that "beginning last December [of 1987], illegal entries at the U.S.-Mexican border began to exceed the previous year's levels" (Cornelius 1988a, 19). Cornelius adds that sending communities in Mexico became "virtual ghosttowns" in May 1988. Residents who remained in Mexico affirmed that "more migrants came to the U.S. from these communities in 1988 than in any previous year" (Cornelius 1988a, 19). Cornelius's research indicates that new arrivals rely on relatives and casual day-labor to survive.

Jorge Bustamante's findings concur with Cornelius's assertion that IRCA is not working. Researchers at El Colegio de la Frontera Norte in Tijuana have observed areas where undocumented workers cross into the United States. Their findings indicate that IRCA has not significantly affected the number of persons crossing the borders illegally every day (Bustamante 1978, 1988).
The most convincing evidence that IRCA is not working to stop the undocumented flow is found in the number of Border Patrol and INS apprehensions in March 1989. Local authorities apprehended 126 undocumented immigrants in Albuquerque during the first week of March. At the national level, immigration agents apprehended 206 undocumented immigrants in airports across the country during the same period. These figures substantiate the continued flow of undocumented immigrants well after IRCA took effect.

Meanwhile, the Bush administration is planning to dig a ditch between Tijuana and San Diego in an attempt to stop vehicles that are "smuggling aliens and narcotics." This latest example of the U.S. government’s unilateral approach to policy-making has been characterized as "opening a new wound" in the already strained relations between the United States and Mexico.

One might argue that the real impact of IRCA can be perceived in return migration by Mexicans who could not find jobs in the United States after IRCA took effect. A report by the U.S. Government Accounting Office (GAO) dated February 1988 indicates that Mexico has not experienced the anticipated "flood" of workers returning to join its labor force. On the contrary, the impact of IRCA on Mexico in this regard appears thus far to have been minimal.

Similarly, social services employees in Denver reported that as many as fifteen thousand undocumented persons have stayed in the Denver metropolitan area to "wait out" the employer sanctions. These workers seek temporary employment in groups so that one member can keep watch for the INS. Others workers around the country have become "trapped" in the United States by debts and a lack of resources to fund the trip back to the border. One might ask why they do not turn themselves into the INS for free transportation to the border. The answer is that these workers have nothing to return to in Mexico: no jobs, no opportunities, and no future. They remain in the United States in hopes of being able to send some money back to their families in Mexico.

This "substratum" of powerless immigrant workers is beneficial to employers, but it runs counter to the interests of the larger society in denying immigrant workers access to basic social services and legal representation. The next chapter will outline the changes that are advisable if the U.S. government wants to deal effectively with the immigrant flow that it has encouraged and partially created.
CHAPTER 5: AN ALTERNATIVE POLICY PROPOSAL

The legislative history of IRCA includes a statement that identifies two causes of undocumented immigration to the United States: "The primary reason for the illegal alien problem is the economic imbalance between the United States and sending countries, coupled with the chance of employment in the United States."\(^1\) As has been shown, however, IRCA directly addresses only the second issue and virtually ignores the first.\(^2\)

Any policy directed toward Mexican labor migration should address the issues on both sides of the border. As former Secretary of Labor Ray Marshall stated, "Ultimately, the problem of Mexican immigration to the United States will be solved by equalizing economic conditions on both sides of the border" (Marshall 1978, 163). Those convinced of this necessity have suggested a variety of policy options that authorizing a new temporary worker program, creating a bilateral institution to exchange information with Mexico on immigration, creating a separate U.S. government agency to deal with Mexico on various bilateral issues including immigration, and creating a common market with open borders. While all these proposals have their merits, they also have their drawbacks. Authorizing a new temporary worker program would still be approaching the issue unilaterally by addressing the needs of U.S employers but not those of Mexican labor. Creating a bilateral institution for exchanging information would likely accomplish little toward reaching a solution to undocumented immigration, and creating a separate U.S. agency would be expensive. Creating a common market with open borders might be acceptable to both sides someday, but only if the benefits of such a policy did not accrue solely to the United States.\(^3\)

Jorge Bustamante, a leading authority on Mexican migration to the United States, suggests that the United States should negotiate with Mexico in an effort to reach a bilateral treaty on the issue of Mexican immigrant labor in the United States.\(^4\) The parameters of such an agreement could include provisions regarding the human rights and working conditions of Mexican workers, the length of their stay, and the conditions of their return to Mexico. While such a pact might appear to be a throwback to the old bracero agreements, it would differ in three major ways: it would cover all workers in all employment sectors, not just agriculture; it could stress the needs of both countries, not just the United States, by placing both countries on an equal negotiating plane; and it would strictly enforce human rights and working conditions of immigrant laborers. Such an agreement would cover only temporary labor migration, however, because as Bustamante stresses, Mexico will not accept the idea of permanent migration to the United States.\(^5\)
Given the population projections for both countries and IRCA's inadequacies, the time is ripe for a bilateral approach to the issue of Mexican migrant labor. It is now in the best interests of both the United States and Mexico to negotiate a comprehensive agreement on Mexican immigrant workers in the United States. If the United States continues its course of militarizing the southern border, the country could pay considerable long-term costs for helping foment political instability and social unrest in Mexico.

AN ALTERNATIVE PROPOSAL

This chapter will first discuss the implications of legalizing the Mexican immigrant work force and then propose some changes in U.S. immigration policy designed to implement such an agreement. Emphasis will be placed on qualitative and quantitative controls and methods for promoting economic development in sending communities.

Legalization of All Mexican Immigrant Workers

If the U.S. government genuinely wants to stop the flow of undocumented workers, the first step it must take is to legalize the flow of Mexicans who genuinely desire to work in the United States. This goal could be accomplished by statutorily creating a separate category for Mexican nonimmigrant workers, which could be called "H-2M" (a modification of the existing category of H-2s, temporary workers admitted during times of domestic shortage). Creating a new category of this kind would not require a major overhaul of the Immigration and Nationality Act but only relatively simple amendments to the INA designed to implement a binational agreement covering Mexican immigrant workers.

The objective would be to encourage legal migration. Eliminating the criminal status of undocumented workers would itself reduce the incentive to cross the border illegally. Such a step would also help protect immigrant workers from potential abuses.

It should also be pointed out that all foreigners are protected by U.S. law during their stay in the United States. All workers, including undocumented workers, have the right to unionize, the right to sue employers or any other persons who abuse their rights, and the right to protections under the Fair Labor Standards Act and the Migrant and Seasonal Agriculture Workers Protections Act.

Although Mexican workers already have these rights, they generally do not take advantage of them for fear of losing their jobs or being deported. Immigrant workers, undocumented as well as documented, fear retribution from employers if they complain about pay or working conditions. According to Viviana Patino, an attorney for Texas Rural
Legal Assistance (TRLA), immigrant workers are manipulated because they lack the support to exercise their rights.\textsuperscript{12}

This lack of support derives from several factors. First, undocumented workers are ineligible for federally funded legal services. Such individuals, who are regularly turned down by TRLA, must seek a private attorney who will agree to take the case on either a pro bono or a fee-generating basis.\textsuperscript{13} Second, groups like TRLA are too understaffed to handle all the complaints, with the result being that even some legal workers see no benefit in trying to assert their grievances through legal channels. Finally, the insecurity of being in a foreign country adds to immigrant workers' fears of retribution. Those who immigrate alone lack the support that their families could provide during a labor or legal dispute. Thus although immigrant workers have rights on paper, they are limited in practice.

Legalizing the Mexican immigrant work force under a bilateral agreement would have several implications. A "flood" of immigrants might be expected from Mexico if the United States were to implement an open-border policy.\textsuperscript{14} The concept of an open U.S.-Mexican border is not new, however, and several analysts have come to the conclusion that it would not create a flood at the border. For example, Carl Schwarz believes that the solution to undocumented labor lies in simply enforcing the existing Fair Labor Standards and allowing a "natural deterrence [to take place] through the competitive forces of the free labor market" (see Schwarz 1983, 97). Sylvia Pedraza-Bailey concurs: "If the rights to a minimum wage and to collective bargaining were extended to all sectors of the American labor force, in particular to the agriculture and service sectors, the migration of Mexicans would not rise to job displacement and illegals would cease to hold an allure. Then the play of the marketplace would more fairly decide among contenders and excessive immigration would be checked" (Pedraza-Bailey 1985, 75). Thus if immigrant workers were given legal status, they would compete equally in a "free" labor market.\textsuperscript{15}

Another implication of legalizing Mexican immigrant labor is its effect on wages. It could be argued that legalization would push labor costs too high for employers to stay abreast of foreign competitors who employ cheaper labor. The experience of the Arizona Farmworkers Union, however, suggests otherwise. When employers hired workers under collective bargaining agreements that provided for higher wages and better living conditions, they found that in the long-run, workers were more motivated, more reliable, and more productive. Darien Cabral summarizes the result of the first AFW contract under a new collective bargaining agreement:
The contract . . . was revolutionary. It went against decades of U.S. agriculture policy. Over a four-year period, during which workers continued to struggle, Martori [the grower] eventually constructed air-conditioned worker barracks with a dining hall and recreational facilities. The workers began earning upwards of fifty dollars per day. In return, Martori received a stable and committed work force, whose employment at the ranch was based on seniority. Production per worker increased dramatically, profits went up. (Cabral 1984, 6)

Thus unionization and higher wages need not spell disaster for U.S. business.

Labor unions on both sides of the border could be a key component in enforcing workers’ rights. On the Mexican side, unions could provide informational networks and educational programs to organize workers and could plan strategies for their stay in the United States. Meanwhile, U.S. unions could provide needed support to enforce labor laws and help insure decent working conditions. It would be in the best interest of U.S. labor unions to legalize and unionize the Mexican immigrant work force because doing so would reduce employers’ reliance on undocumented laborers as strikebreakers.

To summarize, a logical alternative policy is to provide legal status to all Mexican immigrant workers. With their criminal status removed, immigrant workers would have to compete on an equal basis with domestic workers. While the tendency would be to pay immigrant workers less than their native counterparts receive, strict enforcement of U.S. labor laws could check employer abuses. Indeed, during the debate over immigration law reform, several analysts suggested simply enforcing U.S. labor laws in response to undocumented immigration. This approach would also assure Mexican authorities of the well-being and fair treatment of Mexican nationals in the United States.

Even if an open-door policy increased Mexican immigration, the result would still be preferable to the current situation because the flow would be legal and regulated by quantitative and qualitative controls. Moreover, it would fit into the context of a bilateral agreement that could promote economic development in sending communities, thus helping reduce the economic imbalances and the incentives to migrate. The following sections outline the provisions of such an agreement.

Quantitative Controls

Unlike the H-2A program, a new "H-2M" classification would cover any Mexican immigrant worker in any economic sector where a shortage of domestic labor exists. All
applicants would be required to obtain a nonimmigrant visa for entry to the United States. This requirement would not entail a major overhaul of the INA because visa quotas do not apply to nonimmigrants.\textsuperscript{17} Undocumented workers already in the United States would be required to go to the nearest port of entry to obtain a nonimmigrant visa. All existing grounds for exclusion under the INA would continue to apply.\textsuperscript{18}

Second, the need for additional workers would be determined by employers, the U.S. Department of Labor, and state employment agencies. A point system could be implemented to give preference to those who could prove family ties or employment opportunities in the United States. Such a policy would coincide with the family reunification goal of the INA and would help ensure a social network to support immigrant workers. A letter from a U.S. employer indicating the reasons for hiring a foreign worker could serve two purposes: proving the existence of employment opportunity in the United States and documenting a shortage of able and willing domestic workers.

An H-2M classification would not eliminate statutory mechanisms for controlling temporary immigrant workers. It would adopt the regulations under the H-2A program designed to streamline the labor certification process (see Chapter 3, notes 21-22). But this new classification would eliminate the stipulation that workers can work for only one employer, a requirement that can lead to employer abuses (see Chapter 4).

**Qualitative Controls**

Under the proposed policy, each potential migrant worker would have to demonstrate a genuine desire and capacity to work in the United States. The worker would have to provide written proof of employment history, experience, and skills in the visa application. A note from a U.S. employer would also help ensure qualitative controls. The Mexican government or an independent private agency could also participate in quality control of immigrant workers by creating an agency that would recruit workers and oversee all international labor contracts.

**Duration of Stay**

A new category of "H-2Ms" could be allowed to stay in the United States for up to three years, if steadily employed. At the end of that period, all workers would be required to return to Mexico. Those who had developed family ties could apply for adjustment of status to permanent residency in the United States. But the thrust of such a program would be to discourage permanent migration to the United States, in accordance with the views of the Mexican government.
Each worker would receive a temporary residency card with his or her name and a number. A computerized registry at the border could verify whether the card had expired. Failure to show employment history during the three-year temporary stay in the United States would result in an order to show cause and a deportation hearing. Violation of immigration laws, including possession of an expired temporary residency card or a serious violation of U.S. law would have the same result.19

Workers would be free to work for more than one employer during their temporary stay. If workers lost their jobs or wished to change jobs, they would need to contact local immigration authorities and verify the new employment. Similarly, if an employer lost one of these workers, the employee would have to notify the local employment agency and the INS. These requirements would help authorities keep track of workers and their status.20

The United States could establish community action agencies to assist new immigrant workers in finding jobs. Such an agency would act as a "clearing house" for employers to advertise new openings and to contact immigrant workers if domestic workers failed to fill those jobs. New workers lacking a note from a U.S. employer or family ties in the United States could go to the community action agency to contact employers.

A similar system already exists in the United States under the H-2A program, the Interstate Clearance System. Growers are required to file an interstate clearance order with the state employment commission. The state employment agency then advertises the job opening and issues a clearance order if no native workers apply for the job.21 The problem with the system, according to TRLA’s Patino, is that state employment agencies are not getting the word about job vacancies out to workers, whether native or foreign-born.22 A separate community agency would be more effective in this role by limiting its service to Mexican immigrant workers. Mexican consulates could also assist in making certain that new immigrants had job contacts.23

Remittances

A bilateral agreement could include provisions designed to reduce the economic imbalance between the two countries. The United States could take steps designed to reduce such imbalances through U.S. immigration policy. It could draw on an economic development model based on unionizing immigrant workers and establishing cooperative funding projects in sending communities.

The Arizona Farmworkers Union (AFW) and the Cooperativa sin Fronteras (CSF) together constitute such a model. AFW membership was about 85 percent undocumented
workers in 1988. Under AFW contracts, which include collective bargaining agreements, employers set aside twenty cents per worker per hour for an economic development fund. These funds are divided in half, with ten cents in cash being matched by ten cents used for the purchase of machinery. The AFW then sends the cash and machinery to the CSF, its sister organization in Mexico. The funds are used in sending communities for grass-roots economic development projects like irrigation systems, pig farms, tortilla factories, and sewing cooperatives (see Conover 1985).

It is important to emphasize that these funds do not come out of workers' pockets. Rather, employers pay into the fund. The union negotiates wages and working conditions separate from the employers' responsibility to contribute to the economic development fund.

U.S. employers could also assist in economic development in Mexican sending communities by withholding social security and retirement deductions and placing them in an economic development fund. Many Mexican workers receive no benefit from deductions for social security and retirement nor from the taxes they pay to local economies (see Chapter 2, note 39). Richard Sinkin, Sidney Weintraub, and Stanley Ross have suggested that the United States could return social security and retirement deductions to workers when they return to Mexico (see Sinkin, Weintraub, and Ross 1981). Doing so would provide an incentive for workers to leave the United States after their visas expire and to use these funds in Mexico. Although Mexican workers may be eligible to receive U.S. Social Security benefits in Mexico, many do not work the necessary amount of time in the United States to receive these benefits or do not apply.

Funds generated by the AFW-CSF model and social security deductions differ from individual remittances. Mexico receives approximately one billion dollars per year in remittances, but those funds mostly go to individuals and their families, seldom to community economic development projects (see Alba 1985, 289-98). Economic development funds should be used for the community as a whole, and workers from urban areas could send these funds to a cooperative representing their colonia, or neighborhood.

Economic development projects should be managed by the workers, or the workers' families, with minimal outside interference. Agricultural cooperatives could emphasize small-scale, labor-intensive agricultural production designed to increase profitability as well as production. Urban cooperatives could emphasize labor-intensive industry. Not all projects need be cooperatives, however. Other development projects could include public works with limited budgets or short-term grass-roots development projects.
The goal of all economic development projects should be to reduce Mexican workers' dependence on employment in the United States by providing job opportunities in Mexico for them and their families. This approach would eventually help alleviate the economic imbalances between the two countries, thereby eliminating the key incentive to leave Mexico for U.S. destinations.

Enforcement Mechanisms

A bilateral treaty on Mexican immigrant workers must contain adequate enforcement provisions to protect against abuses. In Bustamante's proposal for a bilateral approach, he suggests that the United States and Mexico form a bilateral commission "whose main objective is to conceptualize and assess the major costs and benefits of undocumented migration" for both countries (see Bustamante 1988b, 119-20). The commission's findings would become the basis for formal negotiation of a bilateral agreement.

I would propose that such a commission--comprised of individuals representing the two governments, labor, and business--should function under a bilateral agreement to ensure compliance with treaty provisions. A bilateral commission would oversee treaty operations and enforcement. The lack of such an entity proved to be a major problem in the earlier bracero agreements, one that led to employer abuses.

Treaty enforcement would require channeling sufficient resources and energy to the Border Patrol, the INS, and the legal staffs of public agencies. Employer sanctions would remain but in a form amended to eliminate loopholes. Enforcement activities would focus on insuring employers' compliance and legalized workers' return to Mexico. It is especially important that immigrant workers be eligible for legal services. Such eligibility would require sufficient allocation of funds for legal staffs to handle all claims against employers. More staff members in government and private agencies are needed to enforce workers' rights.25

CONCLUSION

Put simply, Mexican immigrant labor is a "bilateral issue that requires a bilateral solution" (see Bustamante 1988c, 76). A comprehensive treaty between the United States and Mexico covering temporary Mexican immigrant workers would represent the first step toward a short-term solution. A bilateral agreement would offer a number of benefits for both countries: it would reduce undocumented entry by allowing workers to cross the border legally; it would eliminate the need for smugglers (or "coyotes") who often take
advantage of those who pay to enter the United States illegally; and it would eliminate farm-labor contractors, who also can abuse workers; A bilateral agreement would help reduce population pressures and unemployment in Mexico; it would eliminate immigrant workers' illegal status and strengthen their rights against employer abuses by enabling them to compete equally for jobs in the United States; and it would provide U.S. capital with immigrant labor to help address the projected shortage of domestic labor in low-entry-level, low-skilled jobs. Finally, a bilateral agreement would help eliminate economic imbalances between the United States and Mexico.

A precedent for solving problems along the U.S.-Mexico border have been established by bilateral agreements on environmental issues (see White 1989). A treaty on immigrant workers could be tied to other issues such as trade, foreign debt, and border economic development. In the long run, a bilateral solution to the issue of undocumented immigrant workers could be the first step toward a North American common market that would serve both countries' mutual interests on an equal basis.
NOTES

NOTE TO CHAPTER 1


NOTES TO CHAPTER 2

1. James Nafzinger cites Alexander de Tocqueville’s Democracy in America in explaining how the American public faithfully accepts the "dominant mythology" about undocumented Mexicans: "In the United States, the majority undertakes to supply a multitude of ready-made opinions for the use of individuals, who are then relieved from the necessity of forming opinions of their own. Everybody . . . adopts great numbers of theories on philosophy, morals and politics, without inquiry, upon public trust" (Nafzinger 1977, 65).

2. The modernization theory of societal development grew in popularity during the 1950s and 1960s. David Lerner, Edward Banfield, and David McClelland are noted for their work on the sociological perspective of modernization theory (see Evans and Stevens 1987). In an effort to modernize its economy and society during the 1950s and 1960s, Mexico adopted a developmental strategy that reflected assumptions taken from modernization theory (see Chapter 4).

3. Portes and Bach distinguish between orthodox and unorthodox migration theories in their chapter on orthodox theories (Portes and Bach 1985, 1-28). For a discussion of alternative theories, see Chapter 4 of this paper. Equilibrium theory applies to the first three steps. Assimilation theory provides the orthodox view of immigrants’ adaptation to the host society but does not include the final stage of cyclical migration, the return home. This stage has only recently been assessed from a theoretical perspective (see Alba 1985, 274).

4. Most Mexicans immigrate from the states of Jalisco, Michoacán, Zacatecas, and Chihuahua (see Portes and Bach 1985, 82). Approximately 70 percent of all undocumented Mexican workers come from towns with populations exceeding twenty thousand, and 50 percent from cities of one hundred thousand or more (Alba 1978, 504).


6. Alba describes the majority of Mexican immigrants as sojourners (Alba 1985, 276; see also Portes and Bach 1985, 80).

7. López reported in 1981 that only 11 percent of Mexican immigrants become permanent U.S. residents, contrary to the popular view that about one-third become permanent residents (López 1981, 625, 677).

8. See Jenkins (1978). Known as the labor-scarcity theory, this argument traces the availability of low-skilled workers in the U.S. labor market to "peculiar labor scarcities" characteristic of
advanced industrial society (or the inability to secure domestic workers to do the "dirty work") (Jenkins 1978, 516). The result is a powerful pull drawing workers from less-developed regions of the world into more-developed countries. Immigrant workers are, according to labor scarcity theory, a "purely supplementary phenomenon, filling jobs that are left vacant by domestic workers" (Jenkins 1978, 524).

9. In critiquing labor-scarcity theory, Jenkins remarks that it "ignores a central feature of labor markets, namely that such markets are a central means of structuring economic and political relations between classes within a capitalistic society" (Jenkins 1978, 524).

10. Ellwyn Stoddard describes the "us versus them" perspective in this way: "Most persons view the illegal Mexican (hereafter IMA) problem as solely a function of the alien himself, a pathological condition brought into our society by persons who continue to enter the United States in violation of the law. This view not only pictures the IMA as an undesirable, but it also serves to provide a visible scapegoat for domestic U.S. unemployment while absolving the United States and its citizens from the blame with regard to the illegal practices [of exploiting immigrant workers]. This self-deception enables us to overlook the forces within our own society which contribute to the support of the IMA phenomenon even while we publicly condemn it" (Stoddard 1976, 157).


12. The last two decades of the nineteenth century saw a wave of anti-immigrant sentiment in the western United States directed primarily at Chinese and Japanese immigrants. Under pressure from anti-immigrant labor groups, Congress passed the Anti-Contract Labor Law in 1885. Its purpose was to prevent importation of cheap immigrant labor, but it was directed primarily at Chinese and other Asian workers. This period marks the beginning of "de jure" restrictionist immigration policy designed to cut off Asian immigration. At the same time, this "exclusionary" policy allowed Mexican immigration to continue under a loophole in the Anti-Contract Labor Law and the subsequent Chinese Exclusion Acts (Act of 6 May 1882, 22 Stat. 58; extended in 23 Stat. 332, 25 Stat. 566, 27 Stat. 25, 32 Stat. 176, 33 Stat. 428; repealed in 1943, 57 Stat. 600). This loophole allowed foreigners temporarily residing in the United States to continue working here, thus providing an exception for recruiting Mexican nationals as temporary workers (note that the Chinese Exclusion Acts flatly barred Chinese individuals from residing in the United States). Employers perceived Mexican workers as a convenient source of cheap labor that was easily recruited and readily deportable when not needed (see Cockcroft 1986, 35-63). The policy of using Mexican immigrant workers as temporary laborers continued throughout the twentieth century and has been extended under IRCA (see Chapter 4).

13. On anti-contract-labor provisions and the immigration head tax, which the 1917 law retained, see White (1989, chap. 2). The new law also required that all immigrants sixteen years of age or older be literate in their native language.

14. This provision was a temporary one designed to allow a short-term labor force during the war. Employers were permitted to contract temporary Mexican labor under Article 4, Proviso 9 of the 1917 law. The forces underlying this provision and its implications are discussed in White (1989, chap. 2, nn. 85-86).
15. Three hundred thousand persons were deported to Mexico between 1930 and 1940 (see Flores 1983, 294).

16. Portes and Bach describe the pattern of Mexican immigrant labor during this period: "More than any other movement, Mexican immigration has followed an ebb and flow pattern, both at the aggregate and individual levels. At the level of aggregate processes, high demand for Mexican workers in agriculture, mining, and railroad construction gave way to a post-Depression period in which this demand not only disappeared, but Mexicans were blamed for domestic unemployment" (Portes and Bach 1985, 79). The same pattern exists today and will continue under IRCA (see Chapter 4).

17. According to Portes and Bach, "A campaign of forced repatriation followed [the Depression] in which not only immigrants, but United States-born Mexican Americans were returned to Mexico" (Portes and Bach 1985, 79; see also de la Garza 1985, 99).

18. Although the bracero program is commonly identified with Public Law 78 of 1951, the program began with a series of agreements between the United States and Mexico that started in 1941. These agreements continued the use of "temporary" Mexican immigrant workers.

19. Each of the above changes in the law resulted from an "immigration crisis" perceived by the U.S. public as "a threat to the nation." Each change has fostered confusion and a mistrust of immigrants, who in turn mistrust immigration officials. Cafferty et al. characterize U.S. immigration policy thus: "Every new international crisis has its immigration ramifications. Because different aspects of immigration are presented from time to time as 'the' immigration problem, the government is encouraged to handle immigration policy piecemeal, managing each crisis as it arises, and finally arriving at a policy that is more often than not inconsistent, incomprehensible, and incompetent. The false impression is conveyed that immigration is out of control, but in truth it is the policy-making process that is out of control" (Cafferty et al. 1984, 57).

20. Racism and xenophobia have been well-documented as factors contributing to restrictive legislation during this period (see White 1989, chaps. 1-2). According to Kitty Calavita, popular social theory played a large part in reinforcing racism and xenophobia: "Social Darwinism was a central ingredient in anti-immigrant racism. This distortion of the Darwinian theory of evolution and its application to the social world announced that the fittest survived and, therefore, that the polarization of social classes was merely a reflection of inherent abilities" (Calavita 1984, 104). Late-nineteenth-century authors spread social Darwinism by describing immigrants as "outcasts of an imperfect race . . . or degenerate offspring of an injured and defective stock" (1984, 104). Traces of social Darwinism still exist in the United States today (see White 1989, chap. 2, n. 54).


23. A widely-cited source on this question is North and Houston (1976). See also Bustamante (1984) and Stoddard (1976, 166).
24. See Zoldberg (1983); and on the impact of immigrants on earnings of youth in the United States, see Matta and Popp (1988).

25. A total of 601,516 immigrants were admitted in 1987. The number of immigrants admitted during the 1980s has averaged about 575,000 per year, with Mexico contributing the highest number of immigrants during the 1980s at 538,651 per year. These figures are based on data taken from the 1987 Immigration Statistics, published by the INS and the Department of Justice (Washington, D.C.: USGPO). The number of undocumented immigrants is evidently unknown (see White 1989, chap. 2, n. 71).

26. Braceros and undocumented laborers have been used to undermine incipient labor organizations among domestic farmworkers throughout the U.S. South and Southwest (see Portes and Bach 1985, 68).

27. Portes and Bach add that organized labor "did not hesitate to resort to racist agitation and xenophobic campaigns to achieve its goals" of restrictionist immigration policy (Portes and Bach 1985, 50).

28. Cárdenas describes the complicated puzzle in the debates surrounding the National Origins Quota Laws of the 1920s: "capitalists argued that Mexico was a source of cheap, abundant labor and thus an economic asset to the country. The Department of Agriculture asserted that Mexican labor was needed for [federal] reclamation projects; the Department of State contended that immigration quotas on Western Hemispheric countries would adversely affect efforts at Pan Americanism. In opposition was organized labor, which maintained that Mexicans displaced Americans in the labor market because of their alleged willingness to work for lower wages. Moreover, they argued that in doing so, possibilities for labor organization were thus thwarted. Racists argued that Mexicans posed racial threats to the homogeneity of the American people because of their biologically inferior status" (Cárdenas 1975, 69). Mexicans countered that if they lowered wages, contributed to poor working conditions, and thwarted labor's ability to organize, it was because they lacked clout to demand union wages. As they were not allowed to unionize, they had no choice but to work for lower wages and in poor working conditions (López 1981, 662). Ironically, the same type of debate was to take place more than fifty years later between representatives of the same groups.

29. López adds, "In the face of a post World War recession, an increasingly powerful domestic labor movement, and mobilized restrictionist sentiment, the success of the southwestern employers during the 1920s was remarkable. So too was their intricate and ingenious domestic strategy, which had two goals: first, gaining federal exemptions for temporary immigrant labor, and second, keeping the migrant labor pool large, fluid and unorganized. Employers argued that domestic workers, despite the recession, would not fill available jobs at any wage" (López 1981, 658). Proviso 9 gave the U.S. Commissioner of Immigration and Naturalization discretionary power to admit otherwise inadmissible aliens applying for temporary admission to the United States. Subsequently, the bracero program supplemented the means of admitting temporary foreign labor. The Immigration and Nationality Act includes temporary worker provisions. Promulgated in 1952, Section 101(a)(15)(H)(ii) provides for the entry of temporary workers in areas where a domestic shortage exists. These workers are known as "H-2s." Today the H-2 provisions and undocumented immigration serve the same purpose. Thus the same strategy described by López continues today. For further discussion on this point, see Chapter 4 of this paper.

31. A group of congressmen from Texas blocked a proposal to include employer sanctions in the 1952 INA. The Texans' successful bid to derail employer sanctions became known as the "Texas Proviso." It exempted employers from penalties for hiring undocumented workers. Thus under Sections 274 and 289(a)(3) of the 1952 Act, harboring, transporting, and importing undocumented aliens were all illegal activities but hiring them was not.

32. Cárdenas explains that the INS first began a concentrated effort to regulate the pool of undocumented Mexican immigrants in 1947, when it located 182,986 persons in this category (Cárdenas 1975, 81).

33. According to Edward Galarza, two major factors contributed to the implementation of Operation Wetback: public opinion following National Farm Labor Union strikes of 1951 and 1952, which the public believed were caused by "wetbacks"; and the success of the bracero program in procuring temporary labor (1966, 142).

34. After the program ended, 50 to 83 percent of the former braceros eventually obtained U.S. residency (see Rogers 1986, 204).

35. One notable exception was the International Workers of the World, or "Wobblies," which recruited and organized immigrant workers, although they were mostly of European origin.

36. Cockcroft adds that "while the diagnosis of the cause and [labor's] perception for the remedy were unrelated, the actual causes and potential cures for the crisis, served, intentionally or not, to divert attention from the true problems facing the workers" (Cockcroft 1986, 41).

37. See Sierra (1987), 51; and UFW v. INS, Federal Supplement, ED Ca. Civil No. 87-1064-LKK.

38. See Cockcroft (1986), 175-208. For further discussion of other groups that support and organize immigrant workers, see White (1989, chap. 2).


NOTES TO CHAPTER 3

1. This assumption is flawed in two respects. First, it contradicts orthodox theory, which argues that immigrants take jobs vacated by domestic workers as they move up the wage and occupational hierarchy. According to this theory, immigrants with low skills and low education cannot compete with domestic workers. In fact, Mexican immigrants average only seven years of education (a relatively high level of education in Mexican society) and fill "low-wage positions both in the secondary (agriculture) sector and the low tier of the primary (industry) labor market" (Portes and Bach 1985, 37). An increasing number of Mexican immigrants are taking low-skilled, entry-level jobs in the tertiary (service) sector. Second, there is no evidence that domestic workers are taking jobs vacated by undocumented workers. Studies show that following INS raids, undocumented workers return to the same jobs. After one Southern California employer fired his undocumented work force due to IRCA, he could not find domestic workers to take the vacant jobs (Cornelius 1988a). Evidence shows that Southern California firms relying on undocumented labor have continued to do so after the passage of IRCA (see Cornelius 1988a).
2. Neither the House bill (H.R. 5872) nor the Senate bill (S. 2222) included provisions to amend the grounds for exclusion.


5. 8 United States Code, Sections 1101-1525 (1982).

6. See Section 274A(a)(1). Section 274(h)(3) defines an unauthorized worker as an alien not lawfully admitted for permanent residence or one not authorized by the Attorney General to be employed. See the third chapter of White (1989) for detailed citation of this section.

7. Employment of casual laborers, such as babysitters or those performing one-time handiwork, is exempt from employer sanctions (see Roberts and Yale-Lehr 1986, 1-2).

8. The phrase "pattern or practice" is not defined under the act. Case law in other areas indicates that it would apply to regular or repeated and intentional activities (see Roberts and Yale-Lehr 1986, 1-10).

9. Certain grounds of exclusion are waivable (see Reinhardt 1987, 3-1 through 3-68).

10. Receipt of food stamps or Medicaid cannot be used against legalization applicants (Interpreter Releases 64:234). According to this rule, those determined by the INS to be likely to become a public charge are ineligible for legalization.


12. The three-day period for completing the I-9 form and the three-day notice requirement of INS inspection created gaping loopholes that render effective enforcement of employer sanctions nearly impossible for the INS (see discussion in Chapter 4). For final rules, see 52 Federal Regulations 16, 189-16, 228 (1987), compiled in Interpreter Releases 64:524-63.

13. It is still too early to determine the impact of the "knowingly hire" defense. For the results of employer sanctions cases, see White (1989, chap. 3, n. 47).

14. The next step for restrictionist legislation is to require all workers in the United States to carry an identification card verifying work authorization. Such a requirement could have search and seizure implications under the Fourth Amendment of the Bill of Rights as well as discriminatory impact.


21. Ayuda v. Meese, 687 Federal Supplement 650 (DDC 1988); see Interpreter Releases 65:345, 347. To be eligible for legalization, an applicant's illegal status must have been known to the government before 1 Jan. 1982. For a discussion of developments in this case, see Interpreter Releases 65:784, 900, 929, 958, 1012, 1131, 1260.

22. LULAC v. INS, Federal Supplement 650 (CD Cal.), filed 22 July 1987; see Interpreter Releases 64:818. An estimated one hundred thousand potential applicants did not apply for amnesty because of INS policy on reentry. According to a court order in the LULAC case, persons who can prove that they were adversely affected were given until 30 Nov. 1988 to file a late application for amnesty. Under a stipulated stay order, the INS agreed to accept applications and to grant a stay of deportation and work authorization to affected applicants for the duration of the court's stay. Those persons who were apprehended and might qualify for a "LULAC extension" were issued an order to show cause for a stay of deportation. They were to be released on their own recognizance and given thirty days to file an amnesty application. See Interpreter Releases 65:937.


25. See Interpreter Releases 65:988. Applicants have two ways to meet this requirement: one is to pass an INS examination in which the applicant must demonstrate "minimal understanding of ordinary English and knowledge of U.S. history and government." The other is to pursue a course of study satisfactorily, which includes five options: completing forty hours of a recognized sixty-hour course; getting a high school diploma or general equivalency diploma; attending at least one year in a state-accredited school and passing at least forty hours of English, U.S. history, and government; taking an INS-certified course; and passing a proficiency test and completing forty hours of home study.

26. The Secretary of Agriculture is to determine which products fall under the category of "perishable commodities" for purposes of the SAW program.

NOTES TO CHAPTER 4

1. Considerable disagreement exists among contemporary Marxist theorists over the concept of mode of production. Roxborough views the concept as characterizing a "totality which encompasses as a necessary condition, relations of production and distribution of a class structure and a set of political institutions which form a unity with the economic base" (see Goodman and Redclift 1982, 56). Other theorists, such as Alavi and Banaji, view mode of production as "an abstract concept which defines the laws of motion and underlying structural regularities of a social formation, which is a specific concrete historical reality. The concepts of mode of production and social formation, although of quite different levels of theoretical abstraction, thus coincide" (Goodman and Redclift 1981, 57). Disagreement also exists about the usage of noncapitalist and precapitalist modes of production. Precapitalist refers to a society that will eventually succumb to the natural laws of motion of capital and complete the transformation from primitive forms of accumulation to capitalist forms of accumulation. Noncapitalist refers to a society that exists outside or alongside capitalist society. Many authors use the two terms interchangeably. The important distinction for articulationists is that precapitalist or noncapitalist societies exist in articulation with a dominant, capitalist society. I will use the term noncapitalist modes of production to mean the relations of production, distribution, and the economic base of a subordinate segment of society that exists in articulation with the dominant, capitalist society.

2. One example of such imbalance is maintaining wage scales that bear little relation to costs of consumption. During 1984 real minimum wages in Mexico equaled 1965 levels, and real average wages equaled 1970 levels (see Casteneda 1986, 127).

3. Oligopolies are market situations resulting from large firms controlling a significant portion of their respective markets and being able to pass on costs to consumers through their control of the markets.

4. The informal sector consists of unregulated economic activity, such as self-employment.

5. An estimated ten million Mexicans were underemployed in 1982 (see Cockcroft 1986, 129).
6. Fernández adds, however, that the system that created a demand for peasant labor in the southwestern United States already existed prior to the U.S.-Mexican War. According to Fernández, the landed monopolies that prevailed during the Spanish and Mexican periods changed hands but remained largely intact during the transition from Mexican to U.S. sovereignty. After the 1848 Treaty of Guadalupe Hidalgo, the economy of the Southwest was "swiftly transformed from a feudal monopoly into a capitalist monopoly in the land" (Fernández 1977, 95). Fernández characterizes this monopoly thus: "ownership of property in the means of production, e.g., land, equipment, tools, etc., is the privilege of one group or class in the society. The other class is dispossessed and owns no property in this particular sense. Thus the only effective ownership that a person in the latter class can exercise is ownership over his/her own ability to labor, i.e., labor power" (1977, 94). This transformation resulted in an "empire" of large farms, especially in California, which employed Chinese, Japanese, Mexican, and even East Indian and Filipino workers (Fernández 1977, 96).

7. See Alba (1978), 507. David Goodman and Michael Redclift echo Alba's thesis, emphasizing that policies of rapid industrialization and promotion of commercial agriculture following the Cárdenas era led to the proletarianization of campesinos in Mexico (Goodman and Redclift 1982, 186-213).


10. See also the video in Spanish by Isabel García Gallegos, Redes Cinevideo (1988).


16. For general population projections in the United States, see Schale and Willis (1988, 5-8).

17. See Cornelius (1988a, 1988b) and Bustamante (1988). Research at the University of California at San Diego consisted of interviews with nonagricultural employers in Southern California, recently arrived undocumented immigrants, and residents of sending communities in Michoacán, Jalisco, and Zacatecas. Research at El Colegio de la Frontera Norte consisted of a sequence of photographs taken in the late afternoon at Cañón Zapata, on the outskirts of Tijuana, and at "El Bordo," an international "no man's land" between San Ysidro and Tijuana. This research also included short interviews with emigrants at popular crossing points located in Tijuana, Mexicali, Nogales, Ciudad Juárez, Nuevo Laredo, and Matamoros.

19. Not all H-2As are powerless. For example, those who are members of the AFW work under contracts that include collective bargaining agreements.

20. Kitty Calavita describes how lawmakers promulgate symbolic laws to placate public concern temporarily over a given issue. There are at least four ways to provide a symbolic resolution of conflict: by promulgating laws with large enough loopholes to allow illegal activity to continue; by addressing a narrow and insignificant aspect of the conflict; by failing to provide enforcement procedures; and by failing to provide sufficient funds for enforcement (see Calavita 1984, 52). Immigration laws often display all four characteristics of symbolic laws. For example, the Foran Act of 1885 (an anti-contract labor law) contained loopholes allowing Mexican contract labor to continue. The 1882 Chinese Exclusion Act, which required immigration authorities to inspect each immigrant, was impossible to enforce due to manpower shortages. According to Calavita, up to nine thousand immigrants entered the United States each day following the 1882 Act, making it impossible to inspect all entrants. Other symbolic immigration laws include the Acts of 1917 and 1952, both of which allowed importation of Mexican immigrant workers. While IRCA addresses a significant aspect of the immigration debate and provides a funding mechanism for implementing enforcement procedures, it too contains several major loopholes.

21. A copy of the INS I-9 form may be found in Appendix B of (White 1989).

22. In a similar loophole, IRCA exempts employers who hire domestic workers in a private home on an intermittent or sporadic basis. This loophole allows employing undocumented maids and other domestic workers for short periods of time and then firing them. It is conceivable that an "undocumented domestic worker circuit" could develop in which maids and gardeners alternate employers, thus providing employers with another pool of workers on an intermittent basis.

23. The employer is exempt from sanctions, but the worker is still undocumented. It is up to "grandfathered" employees to apply for legalization.

24. The argument here is not that the INS should be given the right to inspect the workplace without employers' permission. Rather, notice to employers gives those who are not complying with IRCA the opportunity to dismiss workers prior to inspection, thus circumventing the law. This situation increases undocumented workers' vulnerability to employer abuses and contributes to the marginality of undocumented workers who have no legal recourse vis-a-vis employers. The solution is not employer sanctions but legalized status of all Mexican workers (see Chapter 5).

25. For example, the INS may discover an undocumented worker's illegal status as a result of a traffic stop. At least two notices of intent to fine that were issued in the Albuquerque area resulted from traffic stops. In one instance, after detaining an undocumented worker for a traffic violation, the Albuquerque Police Department called the Border Patrol to "translate" for the arresting officer. The Border Patrol then learned of the worker's unauthorized status and mailed letters to his employer announcing the agency's intention to inspect I-9s. Interview with Doug Brown, INS Director of the Albuquerque office, 9 Feb. 1989.


30. The Reverend Rick Mattey reported that some ineligible family members have already been deported in the El Paso area under the family fairness doctrine. Interview, 17 Feb. 1989, El Paso.


34. See section 245A(h)(i)(B) and Section 210(f).


36. It is arguable whether European employer sanctions were ever successful (see Tiano 1988, 107-8).


NOTES TO CHAPTER 5


2. IRCA Section 601 creates the Commission for the Study of International Migration and Cooperative Economic Development. The commission's purpose is to "consult with the governments of Mexico and other sending countries in the Western Hemisphere" on the effects of immigration. While this agency represents a step toward a bilateral solution, it still takes a unilateral approach. As Bustamante observes, "To consult with another government is not equal to negotiating with another government" (see Bustamante 1988b, 112).

3. An exchange of information would not necessarily lead to a bilateral solution, particularly if the United States continues to implement its immigration policy from a unilateral perspective. Furthermore, creating a bilateral institution would be expensive and time-consuming. The International Border and Water Commission constitutes a precedent for such a commission, but when the option arose to use it as a model for handling other environmental issues, the United States and Mexico ultimately signed a bilateral treaty on environmental protection (see White 1989). The recent U.S-Canadian free-trade agreement came under fire from the opposition party in Canada for serving U.S. interests only. Any of the above proposals could work in the long term. But in the meantime, the United States needs to find a workable, short-term solution to Mexican immigrant labor.

4. Interview with Jorge Bustamante, 24 Feb. 1989, Tijuana, Baja California.

5. Statements made during my interview with Bustamante. Mexico may officially view permanent emigration as a drain of human resources, but in practice, such emigration could still provide an escape valve for militancy and social unrest. It may be therefore be in the interest of the Mexican government to remain ambivalent. At any rate, as Bustamante points out, Mexico cannot restrict emigration under its constitution. The most the Mexican government can do is advocate the protection and fair treatment of its citizens abroad.

6. For other proposals regarding temporary immigrant workers, see Sinkin, Weintraub, and Stanley (1981), app. F, 344, 346-59, and Cornelius (1981). The main flaw in the first proposal is its unilateral approach, which fails to address the Mexican perspective and assumes that the United States can "phase out" Mexican immigration without directly addressing the factors that motivate Mexicans to emigrate to the United States. I have expanded on the Cornelius proposal by discussing advisable changes in immigration law and policy in order to implement a temporary worker program. I nevertheless differ with Cornelius in two respects: his proposal rejects the necessity of a bilateral agreement and consequently excludes Mexicans from participating in implementation and oversight; and his proposal fails to enumerate specific steps that the United States can take in addressing the factors motivating emigration.

7. As noted in the introduction, Mexicans come to the United States for various reasons: to be with relatives, to avail themselves of better educational and health services, and to take advantage of greater job opportunities. The proposed treaty would focus on Mexican immigrant labor. The factor underlying most emigration to the United States is the desire to attain a higher standard of living. Any bilateral agreement would have to take this motive into account and establish ways to help eliminate the economic disparity between the United States and Mexico.


13. Pro bono work is free legal service; a fee-generating case involves a monetary award, of which an attorney would usually take one-third.

14. As noted in the introduction, this paper does not directly address the current wave of Central American immigrants seeking political asylum. Their migration results from distinct sources, partially from failed U.S. foreign policy. This immigration "problem" revolves around the U.S. standard of demonstrating a well-founded fear of persecution to establish successful claims to political asylum and is thus a separate issue.

15. One might argue that equal competition would spur capital flight or "runaway shops" because of the higher costs of labor and goods. But such an argument might not prove accurate in view of the fact that nonagricultural employers in Southern California pay undocumented workers the equivalent of minimum wage or more (see Cornelius 1988b, 20).

16. Joaquín Avila, President and General Consul of MALDEF, testified, "We must recognize that undocumented workers already here are subject to incredible exploitation by unscrupulous employers. It is precisely because of their undocumented status that they are so vulnerable. But the response to the problem is not employer sanctions. Rather, the answer lies in allocating resources for more vigorous enforcement of our labor laws." See statement of Joaquín Avila, President and General Consul of MALDEF before the U.S. Senate Subcommittee on Immigration and Refugee Policy, Washington, D.C., 25 Feb. 1983; see also Portes (1983) and Schwarz (1981, 97).

17. The INA distinguishes between immigrants and nonimmigrants in INA Section 101(a)(15), codified at 8 U.S.C. Section 1101(a)(15) (1982). Immigrants are defined as all persons who wish to establish residency in the United States. INA Section 202(a), codified at 8 U.S.C. Section 1152(a), limits immigrant visas to twenty thousand per year per country. Nonimmigrants are temporary foreign workers who do not intend to establish residence in the United States. There is no limit to the number of visas that can be issued to nonimmigrants. On the admission of nonimmigrants, see INA Section 214, codified at 8 U.S.C. 1184 (1982); see also Alienikoff and Martin (1985, 97).

18. For the specific grounds for exclusion, see Section 212, codified at 8 U.S.C. Section 1182 (1982). Applying all grounds of exclusion would limit entry to those persons who want to work in the United States on a temporary basis. The issue of excluding nonimmigrants on moral grounds falls outside the scope of this paper (see Alienikoff and Martin 2985, 183).

19. For example, a felony conviction or three misdemeanor convictions could propel a person in the proposed H-2M category into deportation proceedings. An order to show cause is a notice of
a deportation hearing.


21. Ibid.


23. The Mexican Consul in Albuquerque, Miguel Angel Soto Reyes, commented that although it is not the Mexican consulates' duty to assist Mexican nationals in finding jobs, they could take an active role in seeing that Mexican immigrant workers make contact with employers and in helping protect workers' rights. Interview, 23 Feb. 1989.

24. For a discussion of the AFW and CSF, see Lewis (1979, 130-35), and Conover (1985, 43-52). Don Deveroux, a journalist in the Phoenix area and cofounder of the AFW, reported that the union's future is uncertain due to urban expansion in Maricopa county and the concomitant reduction in farms. The life of the AFW's partner union, the CSF, is also limited to the lifetime of the AFW. Deveroux added that infighting among CSF staff and the board of directors has limited its success during the past two years. He nevertheless affirms that the concept of grass-roots development established by the CSF model is sound. Telephone interview, 22 Feb. 1989.

25. Viviana Patino reported that currently, two staff attorneys at the TRLA are supposed to cover farmworkers' claims for the entire West Texas region.
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