
población y desarrollo

A virtual contradiction between international migration and human rights

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Abstract

If there is a geographical area that will be particularly affected by the tragedy of September 11, that will be the international borders of the United States. It is understandable that a country that enters in a state of war after been attacked with enormous losses, reacts by closing its international borders. Such immediate reaction has now been substituted by a more strict control over everything that crosses the border but, a fact remains, the border life is not going to be what it used to be before September 11. In the short run, everything that crosses the border has slowed down by new controls. In the long run many things will return to what it was before that Tuesday, but for a long while, life at the border will not be the same.

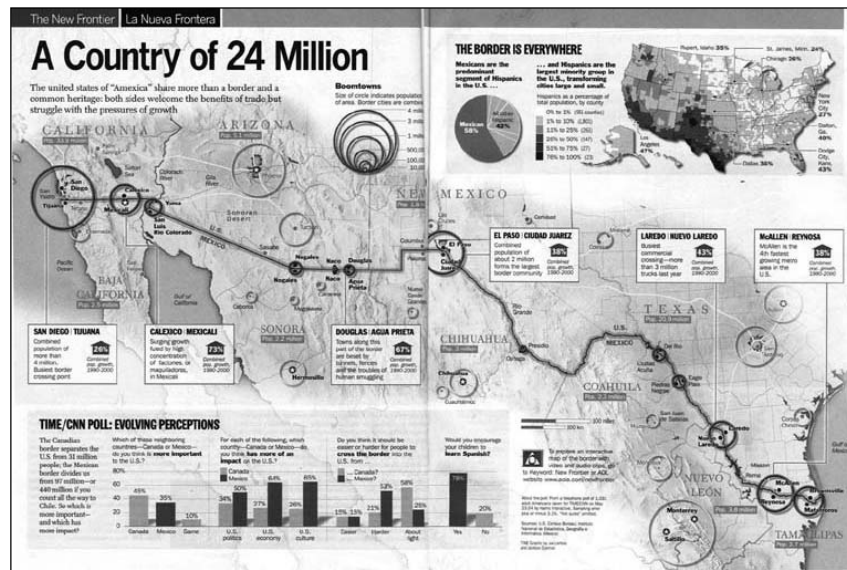
An intense interaction of more than twelve million people from the two sides of the U.S.-Mexico border have made us live in many instances as if the border does not exist. This is the case among many of us in the way we practice our family life. For the planning of weddings, birthdays, reunions, ceremonies, the border is more virtual than real. This is reversed as we get more serious in what it means to the space where institutions, the laws and the governments reminds us that there is a line that marks the beginning and the end of two different nations.

I. Part one: The present

One of the effects of what happened on September 11 is that we border people have been confronted with an increase in the number of instances where we are reminded that the border makes a difference. Our own identities will be pressured to be conscious of which side of the border we really belong to. We might continue to have a lot of things in common with the people of the other side but we are bound to be more frequently reminded that we are not the same at the two sides of the border. The border might be changing from being something that unites to something that divides. Perhaps that is the nature of the concomitant relations between sovereignty and the nation's borders. It is understandable that a country which sovereignty has been violated as viciously as it was that of the United States on September 11, wants to make sure that its international borders are protected regardless of how good the relations are with its neighboring countries. Taking care of the integrity of the national sovereignty is certainly not something that a country could delegate to a neighboring country. This is similar to saying that there is nothing more internal or domestic than taking care of one's own borders. In this sense, an international border cannot be the same during conditions of war than during conditions of peace. Both, Mexico and Canada would have to wait until the conditions of war declared by the president of the United States are significantly modified, to see border life restored back to normal. *Time Magazine* of June 11, 2002 (vol. 152, num. 23) had a lengthy coverage about the border. The main thesis of that unusually broad coverage was how promising the US-Mexico border region was as a place of convergence of the best opportunities for economic

growth that the process of globalization and trilateralization had brought to the three NAFTA countries. *Time Magazine* writers of that issue portrayed a very optimistic scenario based on the realities of a thriving process of integration of the three NAFTA economies, most particularly that between Mexico and the United States and even more particularly at the border region we share. That optimistic scenario was one of the many casualties of the terrorist attack.

Map 1
MEXICANS IN THE U.S.: A COUNTRY OF 24 MILLION



Source: *Time Magazine*, June 11, 2001 (vol. 152, N. 23)

Note: The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations.

From terrorist attack on, the border between United States and Mexico will be making more difference in our lives than ever before. It is likely however, that this will not be something permanent. A lot of new adjustments we, border people, will have to make as a different meaning of the border emerges from the actual crisis. But vital needs will not change. We still have to eat; we still have to provide for our families, we still have to seek the cooperation of our neighbors for the common tasks that geography imposes on us, people of the two sides, such as a shared environment. We still have to seek on the other side what we are lacking in ours. We will continue to have things that the people of the other side still needs. We still have to barter and exchange and share markets across the border. We still have to produce together the rules of the games we share. Those vital needs that geography has made us share will become more concrete, more evident to the people of the two sides. As the trauma of the terrorist attack allow us to see through the smoke of what was left burning and the dust of what it was demolished. We have to learn how to be patient until that happens. We, U.S. border neighbors, will need to be understanding and patient with the measures of control that the United States will have to take to protect herself against terrorism. The border makes us the closest foreigners to the United States. There are times when this is an opportunity. There are also times when that is a challenge for good neighboring. Our sense of solidarity with the American families who lost a loved one had to be followed by our patience until they find the way to collect themselves to go on as a nation. The way we understand each other on the two sides of the border will be followed by the rest of the two countries in the way both will deal with each other. We need an effort to improve our mutual understanding of the way we are because no matter how smart we are, we are not going to be able to change geography.

II. Part two: The history

Let me now change gears to a more specific question of the U.S.-Mexico border relations that will have an impact over all aspects of the border life and of the bilateral relations in general. That is the question of immigration of Mexicans to the United States.

I would like to start my reflections on the phenomenon of Mexican migration to the United States with a historical perspective about how is it that we are where we are on this theme and where it's likely that we will go from here.

Before September 11 it seemed like the governments of Mexico and the United States were closer than ever before to an agreement on the question of migration (*The Economist*). This raises a common sense question, how come it has taken so long? It is only logical that a bilateral agreement is the path to follow for a bilateral problem that is caused by factors located at the two sides of the border.

I think that there has not been enough debate about this question in Mexico. There is not enough historical awareness about certain elements that have made such a rational option of a bilateral agreement so difficult to reach by the two governments. It is certainly not because such an option has escaped the minds of the leaders of the two nations (Olloqui, 2001). I don't think there is enough awareness in Mexico of the extent to which certain laws pertaining to the legal context of labor relations in the United States have been in the way. I am referring, for instance, to the famous Wagner Labor Act of 1935.

This law established the legal frame within which labor relations were to be conducted in the United States, and the meaning was good news for the industrial workers but bad news for the farm workers.

They were not included in the new legal frame under which labor rights were granted to industrial workers. The important point is that such labor legislation excluded farm workers from the legal definition of an “employee” for whom the rights of this law were granted (See, 29 U.S.C. Section 151 sec 152(3)). This Law was amended by the Taft-Hartley Labor Act passed by the U.S. Congress in 1947 and then amended by the Landrum-Griffing Act, which was passed by Congress in 1959; however, the original exclusion of agricultural workers from the right to organize and bargain collectively through representatives of their own choice remain unchanged. This in fact signified a discrimination against farm workers from the legal basis upon which industrial workers were to be treated by U.S. employers. Behind this *de jure* discrimination was the development of a structural context of an asymmetry of power between farm workers and their employers in the United States. The understanding of such an asymmetry of power lies behind the understanding of why it has been so difficult for the United States and Mexico to reach an agreement on the migration question.

As it was demonstrated in the classic study of the *bracero* program made by Dr. Ernesto Galarza, in his book *Merchants of Labor; A History of the Bracero Program*, published in 1964, the *bracero* agreements were thought to be a rational solution to the migrant workers question by the political leaders of the two countries. But, as it was so eloquently explained by Dr. Galarza, far from being a rational solution for the migrant workers, the *bracero* agreements became an instrument at the service of the U.S. growers. The U.S. agribusiness used the *bracero* agreements to legitimize and perpetuate the conditions of exploitation under which the Mexican migrant workers were treated in the United States (Galarza, 1996). This is not to suggest the same peasants were treated any better in Mexico. The post war years were a time when peasants as a social class were increasingly abandoned by the Mexican government and by Mexico’s emergent middle and upper classes, in the context of a dramatic change in the nation (Torres, 1979). At the middle of the Twentieth Century, Mexico changed from being a country based on an agrarian society to a country based on a new urban society that had its economic base on industry and services.

In the Mexican government circles there was for many years the notion that the *bracero* agreements were a model to be followed to regulate the migratory situation. This notion derived from the reading of the written terms of the first *bracero* agreement signed by the two governments in 1942. Indeed, the written texts of that first agreement spoke of very favorable conditions for the Mexican migrant workers (Olloqui, op. cit.). There was, however an enormous distance between the written text and the reality. Ernesto Galarza tried very hard to persuade the Mexican government at the end of the second World War, as one can read in his memoranda to the President of Mexico, found in the Mexico’s National Archives by Jaime Vélez Storey and partially published with John Mraz (Mraz and Veléz-Storey, 1996). Through a series of articles published by the prestigious journal *El Trimestre Económico* in the nineteen fifties, Galarza tried to persuade the Mexican government that the words of the first *bracero* agreement were something substantially different than the reality lived in the United States by the Mexican migrant workers. The asymmetry of power between them and their U.S. employers determined the abysmal difference between the words and the reality of the *bracero* agreement. The history of such an asymmetry of power derived from a historical context in which the United States government persuaded an initially reluctant Mexican government under the presidency of Manuel Ávila Camacho (1942-1946), to sign the first *bracero* agreement negotiated and approved by Mexico under the geopolitical conditions in which the United States entered the Second World War (Ojeda-Gómez, 1971). The Mexican government was not in the position to challenge the emergent power of the United States. I have argued for a long time that the asymmetry of power between the migrant

workers and their U.S. employers was rooted in the asymmetry of power between the governments of the United States and Mexico (Bustamante, Jorge, A., 1992).

The realities of that asymmetry of power were reflected in the racism about the Mexican immigrants expressed at the highest circles of the U.S. government ever since the beginning of the 20th century. John Nance Garner, who was U.S. Vice President years later, once said, “the Mexican race as inferior an undesirable as U.S. citizens as they are, should not worry any one because they are *genetically determined* with a *homing pigeon* instinct of always return to where they came from”.¹ The Mexican government did not have the power, nor the will to protect its people against such “character assassination” statements. Nor to set the record straight that what the United States was referring as an immigration policy was in reality a labor policy. It should be said also that, at the end of the Second World War, there was an increasing gap between the interest of the Mexican peasants and the interest of the Mexican government of the post war years. This was particularly the case under the administration of president Miguel Alemán (1946-1952) (García-Cantú, 1992). Such a gap explained the beginning of the notion that the emigration of Mexican peasants to the United States was an “escape valve”. Under this notion, the emigration of Mexican migrant workers to the United States was seen in Mexico as a sort of solution to the pressures, both real and potential, derived from the increasing abandonment of the Mexican government of an increasingly impoverished peasants. There was an inverse relation of the support the government gave to a new social class of industrial entrepreneurs who led the beginning of the economic growth of industry, and the abandonment of the country side both, by the government and by the Mexican civil society. Behind the “push factors” of the emigration from Mexico to the United States were Mexico’s lack of capabilities to achieve modernization through an industrial development, without abandoning its agricultural sector and its farm workers. Mexico as a nation became enchanted with the illusion of modernization by turning its back to its past of an agriculture based society.

Emigration from Mexico to the United States became an “escape valve” that was viewed by the Mexican elites as necessary to alleviate the pressures and the costs of the abandonment of peasant’s social class. That notion of emigration to the United States as an “escape valve” became a predominant ideology of the Mexican government about emigration to the United States, that obscured the realities of exploitation and rampant violations of human and labor rights of the Mexican immigrants in that country throughout the “bracero period” (1942-1964).

The decade of the 50’s were the years when the Mexican government found that there was no political cost in doing nothing for the Mexican migrant workers in the United States. This marked the context in which the Mexican government tried very hard to cover up the conditions under which the Mexican migrant workers were treated in the United States. I had an argument with a Mexican Consul in a U.S. border State right after I posed as an undocumented immigrant in 1971, as part of the research for my doctoral dissertation, after he flatly denied there were Mexican undocumented immigrants in the United States. I had to refer to my “participant observation” recent experience (Bustamante, 1975). When I asked him how come he had to lie to me denying the existence of what I just had witnessed, he made me promises that I will never reveal his name he let me read a “circular”, an internal memo from the Secretaría de Relaciones Exteriores of the Mexican government where an instruction was very clear, not to expressively recognized nor to make any statement alluding to the illegal presence of Mexican immigrants in the United States. Before 1964 and years after, the Mexican government had as a top priority to persuade the U.S. government of the renewal of the Bracero agreements. This interest was an important factor that explained why the Mexican government was so complacent about the impunity with which frequent incidents of violations of human and labor rights of Mexican immigrants were taking

¹ This and other equally racist arguments can be found in U.S. Congress. House Committee on Immigration and Naturalization, *Seasonal Agricultural Laborers from Mexico*, 69th Congress, 1st Session, 1929.

place mostly in Texas and California. Before 1964 the Mexican government was too busy lobbying for renewed versions of the bracero agreement with an increasing indifference about the distance between the written terms of these agreements and the realities lived by the Mexican migrant workers.

This was helped by an increasing corruption as a way of life at all levels of the Mexican government and, by the political control over the Mexican peasantry through the Confederación Nacional Campesina (CNC), which proved over the years to be a very efficient mechanism of manipulation of the PRI's "peasants' sector" through a mixture of populism and corruption which gave shape to the rise of "caciques", a sort of bosses, who ruled the country side of Mexico by a combination of patriarchal protection to supporters and an iron hand, full of impunity, to handle opponents. This way the PRI ruled most of Mexico from 1929 until the year 2000.

The works of Ernesto Galarza explained the conditions under which it became functional for the two sides; on the one hand, for the interest of the Mexican government of maintaining an "escape valve" of Mexican emigration of an increasingly impoverished, unemployed, uneducated, unorganized underclass of Mexicans and, on the other hand, an interest of U.S. agribusiness in maintaining a source of cheap labor (Galarza, Ernesto, 1970). This explains why at the end of the last bracero agreement in 1964 the Texas and California's growers associations, and the Mexican government, became the most persistent proponents of the renewal of the bracero programs (Craig, 1971).

The ideology of the escape valve inhibited the Mexican government from defending or actually protecting the Mexican migrants in the United States, other than through rhetorical references. Far from being a solution to the problems associated to migration between the two countries, the bracero agreements became concomitant to the rise of the undocumented migration. As it was documented in Julián Samora's book *Los Mojados, The Wetback Story* published in 1972, by the time of the end of the last of the bracero agreements in 1964, there were more Mexicans crossing as undocumented immigrants than the number of "braceros" contracted through the bilateral agreements at the pick of their numbers.

The absence of a political cost for the Mexican government for doing nothing for the Mexican migrants in the United States was not independent of the Mexican civil society's general indifference about their plight.

I had a personal experience associated to such indifference. When I returned to Mexico in the early seventies, after having finished my studies for a doctoral degree in sociology. I returned as a Ph.D. candidate to Mexico to join an institute at the National University of Mexico (UNAM). As a faculty member, I submitted a research project on the Mexican emigration to the United States. This research project was turned down by a panel of scholars from the elite of the social sciences in Mexico. When I was able to obtain a response from one of them about the reasons to turn down my research project he said to me, "frankly speaking, Jorge, you were a disappointment to us", he said. Then added, "you spent so many years in the United States to obtain a doctoral degree in sociology and when you come back, you submit a research proposal on something that is not even a problem". Indeed, the emigration of Mexican migrant workers to the United States was viewed more as a solution than as a problem, not only within the Mexican government, but also among those who held a critical perspective at the highest levels of Mexican academia. The lack of support in Mexico for the research on the phenomena of emigration of Mexicans to the United States forced me to return to the United States where my interest in doing research on the migratory phenomena received support at the University of Texas at Austin where I was hired with a tenure track faculty position. Years later, after publishing extensively in the United States, I was invited to come back to Mexico by El Colegio de México, where I found sufficient support to continue my research interest on the subject of Mexican emigration to the United States.

I have studied that indifference of the Mexican government and the Mexican civil society and I have come up with a hypothesis. That is, that such an indifference was not unrelated to a generally unrecognized Mexican racism. It was not until the “Chiapas rebellion” that the question of Mexican racism, virtually came out of the closet, as a deeply entrenched part of the Mexican culture. The Mexican migrants have been viewed by the Mexican middle and upper social classes as something distant from them. As if the plight of the Mexican migrants about the constant violations of their human and labor rights in the United States and in Mexico was something virtually happening in a different planet, or something that was happening to people with whom the middle and upper classes of Mexico had nothing to do. It was certainly not racism in any pure form. The disdain of the Mexican middle and upper social classes about the problems of the Mexican migrants in the United States had elements of classism. That is, a social distance felt by the middle and upper classes from the peasants of Mexico. This explains why the plight of the Mexican migrant workers was never taken to the streets by any Mexican organization, particularly by any one of those who claim to protect or defend the interest of the Mexican poor or the Mexican peasants. It has not been until very recently that public institutions such as the Mexican Catholic Church have expressed concern and have begun to support few programs in defense of the Mexican migrants. For many decades the principal institutions representing the Mexican civil society, the Churches, the unions, the political parties or students organizations, did no more than rhetorical references when an incident of abuse of the human rights of the migrants reach the mass media and then, reflecting more anti-American sentiments than sincere concerns for the migrants.

This long time indifference of the Mexican civil society about the plight of the Mexican migrants has not been sufficiently studied. It remains as a gross incongruence. The dependence that the national economy of Mexico has had of the remittances of U.S. dollars made by the migrant workers in the United States had no congruence with the rampant indifference of the Mexican middle and upper classes about the problems of the migrant workers. Only exports of Mexican oil, industrial manufactures and tourism, have produced more U.S. dollars per year than the close to ten billion dollars sent to the Mexican economy via the remittances of the Mexican migrant workers from the United States last year alone (Olloqui, op. cit.). There is not enough consciousness in Mexico of what it would be the social consequences of exhaustion or even a diminishing of migrant workers’ remittances from the United States.

Returning to the years of the bracero program, a paradox should be noted. The end of the bracero programs was basically due to the pressures exerted by the AFL-CIO.² Through several decades the AFL-CIO was one of the most important anti-immigrant forces in the United States (García, 1980). Not only were they successful in ending the bracero programs, but also they were the principal proponents of anti-immigrant legislation for decades.³ That ended on February 17, of 1999 when the Executive Committee of the AFL-CIO in a meeting in New Orleans, made a 180-degree change of course. From then on, the AFL-CIO has become the most vocal proponent of a “blanket amnesty” to undocumented immigrants. To be sure this change was not an act of nature. Behind it was the surging of a new *Latino* leadership arriving to the upper echelons of the AFL-CIO.⁴ These new leaders conveyed the message to the top that an inclusion of undocumented immigrants in the rank and file of the AFL-CIO, not only would bring a new source of union fees but a new dimension of international involvement and political clout to an otherwise weakening political strength of the AFL-CIO. It was a matter of watching the demographic trends of the Latino population in various circles of the American life to make sense out of this change.

² México, Secretaría del Trabajo y Previsión Social (STPS), *Los Braceros*, México, D.F.: STPS. 1964.

³ U.S. Congress, Hearings before the Committee on Immigration and Naturalization, 1926. Washington, D.C.: U.S. Government Printing Office. 1926; U.S. Senate, Subcommittee of the Senate Committee on the Judiciary. S1917. Appropriations Hearings. 1953; Taylor, Paul Schuster, *Labor on the Land: Collected Writings, 1930-1970*. New York, N.Y.: Arno Press. 1981.

⁴ This was confirmed in a letter of an AFL-CIO representative in Mexico City.

An important factor in the absence of a bilateral agreement on the migratory phenomena between Mexico and the United States has been the distance between the predominant definitions of this phenomenon in the governmental circles of the two countries respectively, as well as within the political elites and, the predominant views of the public opinion about the presence of undocumented immigrants from Mexico within the United States. From the first economic recession of the 20th Century in the United States in 1907 to all the subsequent ones until the present, a pattern has always appeared basically consisting of the following sequence, a) the rise of unemployment rates and other signs of a recession catch the public attention; b) politicians make an association between the rise of unemployment and the presence of the immigrant workers; c) there is a social construction of immigrant workers as “escape goats” of the recession; d) politicians then propose anti-immigrant measures as a solution to the economic crisis; e) the vulnerability of immigrants as subjects of human rights increases together with the impunity of the abusers; f) the economic recession subsides; g) that is followed by an end of the anti-immigrant furor.

The recession that came as the result of the oil cartel action taken by OPEC countries in 1974 was not an exception to such a pattern. Those were the years when General Leonard Chapman was appointed as Commissioner of U.S. Immigration and Naturalization Service (INS). He coined the phrase of a “silent invasion” in reference to the presence of undocumented immigrants from Mexico.⁵ He gave testimony to various U.S. congressional committees speaking about estimates of 20 million undocumented immigrants from Mexico. It was only after the end of his tenure as Commissioner of INS, that his successor, Leonel Castillo, lowered previous estimates to 3 million. The enormous difference in the estimates that two successive commissioners of the INS presented to U.S. congressional committees made evident the extent to which previous estimates had been a fabrication made to substantiate the notion of a “silent invasion” with some base numbers of ideological origin to the political construction of the Mexican immigrant as an “escape goat”. It was under General Chapman that the rise of anti-immigrant sentiments in the United States crystallized in a definition of a phenomenon of Mexican immigration to the United States as a crime related phenomena. This became a predominant definition in the United States government circles where there was a consensus to reject any recognition of the existence of a demand in the United States of the labor force of the undocumented immigrant, particularly in the agricultural production of California and Texas.⁶ There was a social construction of the Mexican undocumented immigrants as criminals that led to the notion in the United States that the only solution to a “problem” defined as one of criminal nature, was either a police or a military type of solution (Bustamante, Jorge A, 1983). This notion was concomitant to another one that the only solution to the “Mexican illegal question”, had to be unilateral (Senator Simpson (quotation)).

Such a position of the United States prompted a delayed reaction of the Mexican government during the presidency of Carlos Salinas (1988-1994) expressing opposition to what was termed an unfair and unjustified “criminalization” of the undocumented immigrant from Mexico. Through the Secretary of Foreign Affairs, Fernando Solana, the Mexican government came out with a contrasting definition of the undocumented immigration from Mexico to the United States as derived from a de facto international labor market.

The Mexican reaction defining the phenomena of undocumented immigration of Mexicans in the United States as basically a labor phenomena, contradicted the predominant definition of the same phenomena in the United States governmental circles. The net result of this contradiction between the predominant definitions in the two governments about the same migratory phenomenon was a status quo. Although, the position of the Mexican government during the ninety’s was never beyond the confinements of the rhetorical.

⁵ U.S. House of Representatives, Report No. 94-506, 1975.

⁶ Meissner, Doris (Hearings).

President Ernesto Zedillo (1994-2000) saw, that whatever degrees of freedom he had in negotiating with the United States, they were crippled very early in his administration by the crisis of 1994. This not only provoked a drastic devaluation of the peso but a close call for the forfeiture of the Mexican foreign debt. A collapse was avoided thanks to president Bill Clinton decision to bail out the Mexican government by a loan of 20 billion dollars.

President Zedillo owed so much politically to president Clinton that he couldn't find room for any criticism in spite of the deaths of Mexican migrants do to the beginning of the "operation gatekeeper" in 1994. This was designed not to stop, as one would expect from an immigration law enforcement agency, but to deviate the route of entry's of undocumented immigrants from Mexico into the United States toward areas away from the visibility of urban eyes like those of San Diegans. As it was recognized by the chief of the border patrols in a written testimony to a U.S. congressional committee, the design of "operation gatekeeper" was made under the assumption that undocumented immigrants were going to get discouraged by the risk of death presented by the areas of crossing where the migrants were deviated to.⁷ These were mountainous terrain East from San Diego or the deep irrigation channels, such as the All American Canal or the inhospitable desert areas between California and Arizona, where soon enough the number of migrants deaths began to climb. Risks of dehydration in the desert lands or hypothermia during the winter months or drowning in the irrigation channels, did not discouraged the inflow of undocumented immigrants, they caused their death in stead. As it is shown by the increase in the number of deaths of migrants presented in the following maps:

Map 2
LOCATION OF DEATHS OF MIGRANTS IN THE MEXICO-U.S. BORDER. 1995



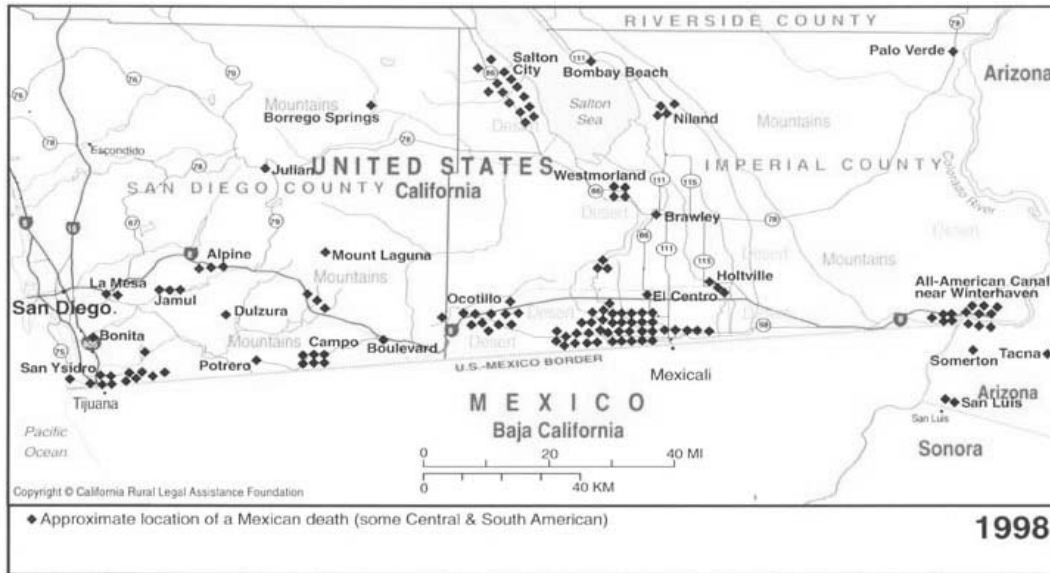
Source: Bustamante, Jorge, "Proposition 187 and Operation Gatekeeper: Cases for the Sociology of International Migrations and Human Rights" in *Migraciones Internacionales* vol. 1, No. 1, julio-diciembre 2001. El Colegio de la Frontera Norte.

Note: The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations.

⁷ U.S. Border Patrol, "Border Patrol Strategic Plan 1994 and Beyond" Prepared testimony for a Congressional Hearings, see, www.stopgatekeeper.com.

Map 3

LOCATION OF DEATHS OF MIGRANTS IN THE MEXICO-U.S. BORDER. 1998

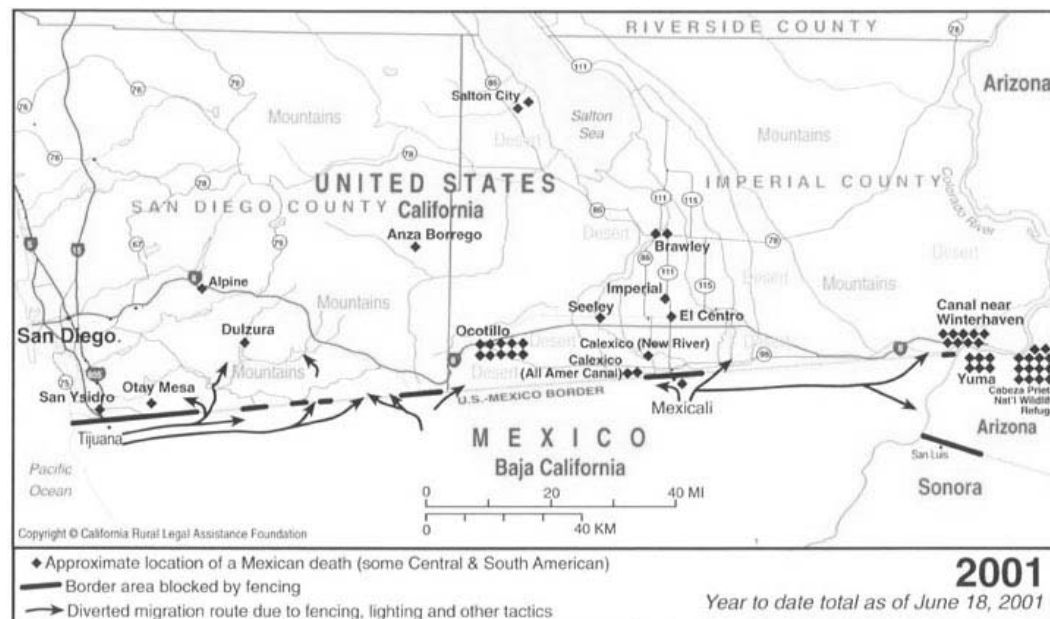


Source: Bustamante, Jorge, "Proposition 187 and Operation Gatekeeper: Cases for the Sociology of International Migrations and Human Rights" in *Migraciones Internacionales* vol. 1, No. 1, julio-diciembre 2001. El Colegio de la Frontera Norte.

Note: The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations.

Map 4

LOCATION OF DEATHS OF MIGRANTS IN THE MEXICO-U.S. BORDER. 2001



Source: Bustamante, Jorge, "Proposition 187 and Operation Gatekeeper: Cases for the Sociology of International Migrations and Human Rights" in *Migraciones Internacionales* vol. 1, No. 1, julio-diciembre 2001. El Colegio de la Frontera Norte.

Note: The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations.

Very soon after the starting of “operation gatekeeper” in 1994 the number of migrants dying in the area where “operation gatekeeper” was put into effect, showed clearly that the assumption based on which “operation gatekeeper” was designed, was wrong. This was a conclusion reached by a report of the GAO of the U.S. Congress after conducting an investigation of the extent to which the “operation gatekeeper” had reached its stated objectives.⁸ What really happened with the immigration flows of undocumented immigrants from Mexico was not a diminishing of the volumes of their flow to the United States but a change of places of entry toward the west from the traditional areas through San Diego. In that process, the number of deaths of migrants has been climbing at a rate of more than one migrant killed per day as an average, in the area covered by “operation gate keeper”. Some non governmental organizations such as the Rural Legal Foundation of California and the American Civil Liberties Union of San Diego and Imperial Counties, criticized their own government for the violation of human rights that “operation gatekeeper” implied as they alleged its implementation was in violation of the chart of human rights of the Pan American Union (OAS). No Mexican institution, let alone the Mexican government, reacted in solidarity to such a criticism made by American NGO’s and by American citizens. In fact, when president Zedillo was invited by governor Gray Davis to visit California in May of 1998, he declared to the Spanish Daily *La Opinión*, in the verge of his visit to California, that the deaths of the migrants were neither a responsibility of the United States nor that of Mexico.

These and many other things changed with the emergence of the political leadership of Vicente Fox. He was able to correctly interpret a general feeling of Mexicans being fed up with the ruling of the PRI, which had been in power for the last 71 years. Vicente Fox ran a political campaign for the election of president of Mexico based on a promise of change, particularly a change from corruption in the practice of government. As a governor of the State of Guanajuato and as a prosperous rancher in that State, he was familiar with the phenomena of emigration of Mexicans to the United States. Guanajuato being one of the Mexican provinces with an oldest tradition of emigration of its people to the United States. Comparably speaking, Guanajuato had a high concentration of population at the beginning of the 20th Century, when the U.S. Congress decided to appropriate some monies to fund the recruitment of Mexican workers. The First World War had stopped the influx of immigrants from Europe. Blacks had gone north from the Deep South to substitute European immigrants in the lowest paid occupations. The conditions of the War had produced a massive need for agricultural production for exports. It had produced also some labor shortages, particularly in Texas and California. The first anti immigrant laws of the United States had succeeded in expelling the Chinese first, and then the Japanese and then the Philippines in the wake of the “Asian bared zone”. This created a sort of a vacuum of cheap labor, the sensitivity of which was taken to Washington by some Congressman of California who after the first economic recession of the 20th Century in 1907, argued in the U.S. Congress that, the Mexicans should be sought after as immigrant workers for which purpose public monies should be appropriated. The idea was approved and recruiters were sent south to Mexico. The U.S. Congressional records tell the story. Congressman from California argued that the “Mexican race” was physically fitted for stoop labor because they were shorter, closer to the ground, as opposed to the white race who was born for stand up work thus, fitted for the industrial production (Feagin, 1999). Racist ideologies of white supremacy had penetrated the ivory towers of U.S. academia at the turn of the Century. Ideas of white supremacy were incorporated in the main stream of U.S. social science (Feagin, op. cit.).

American recruiters were sent south to Mexico with the goal of attracting Mexican workers to fill the vacuums of cheap labor left with the immigration restrictions against immigrants from Asia. U.S. labor recruiters could not find concentrations of people in Mexico right across the

⁸ U.S. General Accounting Office, Report to Congressional Committees, “INS’ Southwest Border Strategy; Resource and Impact Issues Remain after Seven Years” August, 2001, Washington, D.C. U.S. Government Printing Office. 2001.

border. Some of the actually most populated cities of the Mexican northern border, like Tijuana where I live, didn't exist as urban settlements at the beginning of the 20th Century. So, U.S. labor recruiters had to go farther south until they found higher concentrations of population. That is why they reached Guanajuato thus, introducing what soon became a tradition in that State, namely, to emigrate to the United States in search for higher wages.

Vicente Fox knew as a governor of that State, of the importance of remittances of dollars from the United States by the Mexican migrant workers. So, in his political campaign for the Mexican presidency he called migrant workers "heroes" recognizing for the first time the importance of migrant workers remittances in the Mexican balance of payments, which in the year 2002 represented more than 9 billion dollars per year, making these remittances of U.S. dollars within the top sources of dollars for the Mexican economy. Calling migrants "heroes" was quite a change from the ideology that saw migrants as an "escape valve".

Vicente Fox visited the United States and Canada in August of 2000, after his electoral victory that made him president. During such a visit he surprised many Mexicans when he said that the deaths of migrants at the border would be "intolerable" in his administration. He also surprised the United States with his audacious proposals of an open border for Mexican migrants after sufficient closing of the wage gaps between the United States and Mexico. The idea was not accepted in the highest circles of the U.S. government but it certainly made Americans think about it. Fox's proposals on migrant labor had the legitimacy of a "democracy bonus" that had come from an electoral victory under the most free elections in the history of Mexico. The image of Vicente Fox as a champion of democracy, after having been in his past a regional director of Coca-Cola for Mexico and Central America, was not difficult to be swallowed by the American media. Fox came to the United States as president elect, free of the strings attached previously to president Zedillo. Soon enough it became clear that Fox had a powerful ally in the United States, also a former rancher who became president of the United States almost at the same time than Vicente Fox.

None of the U.S. presidents before George W. Bush, including his father, had deviated from the notion that the "illegal aliens" were criminals. This is why the position taken by president Bush during his visit with Vicente Fox at his ranch in Guanajuato, represented such a significant change of U.S. immigration policies. Bush's speech in that occasion included a recognition, for the first time, of a U.S. presence of U.S. labor demands as a factor that shaped the phenomena of immigration of Mexicans to the United States. His speech included also references to the human and labor rights of the Mexican immigrants in the United States and, perhaps the most important change, he referred to the need to negotiate a bilateral solution to the immigration question. The most serious obstacle for a bilateral agreement on the migrant question had been removed. A very efficient diplomacy under Fox's Secretary of Foreign Affairs, Jorge G. Castañeda in preparation of this presidential meeting in Guanajuato was probably an important part of such a change in the U.S. perspective about the presence of Mexican migrants in the United States.

Before this change happened there was an irreconcilable contrast between the predominant definition in the United States of the presence of undocumented immigrants from Mexico as a crime related phenomena that can only be solved by a police or military type of solution that could only come unilaterally and, on the other hand, the predominant definition in Mexico of the same phenomena as one of labor nature, shaped by the factors that create a U.S. labor demand, in interaction with the factors that create a Mexican labor supply. A power asymmetry between the governments of the two countries had maintained a status quo of that contradiction for more than thirty years, ever since the years of General Leonard Chapman, as high commissioner of the U.S. INS who had coined the term of a "silent invasion" that permeated the U.S. political culture as reflected by references in the U.S. mass media.

Under this ideological environment, the abuses of human and labor rights against the Mexican immigrants came to the surface through mass media showing the conditions of impunity under which U.S. law enforcers of various levels from the local to the federal were involved in incidents of violence against Mexican immigrants with no consequences.⁹ These were years when extreme cases of exploitation were reported by U.S. media, such as one who provoked legal action with charges of slavery against a U.S. employer.

The Mexican government was incapable of doing anything concrete against the increasing vulnerability of Mexicans in the United States. During the decades of the 70's, 80's and, 90's the most important source of legal protection of Mexican immigrants came from Mexican American organizations in the United States, such as MALDEF (Mexican American Legal Defense and Educational Fund), National Council of la Raza, LULAC (League of United Latin American Citizens) and, GI-Forum, in addition to numerous community organizations in California, Texas, Colorado and New Mexico.

The legal support and the protection of the human rights of the Mexican migrants were not coming from Mexico during these three decades. As it was demonstrated by the litigation of Brown versus Texas Board of Education, there were lawyers hired and paid by Mexican American organizations who were concerned for the vulnerability of Mexican migrants as subjects of human and labor rights. Such was the case where a federal court in Houston declared unconstitutional to exclude from public schools the children of undocumented immigrants from Mexico. The author was an expert witness in that trial which represented an important victory for the immigrants after a fair recognition that the majority of them pay taxes and social security while they work in the United States.

The role of Mexican Americans in the protection of the human and labor rights of Mexican immigrants has not been sufficiently recognized in Mexico, except for the award “Águila Azteca”, which is the highest granted by the Mexican government to non-nationals for services to Mexicans. This award was received by Antonia Hernández, president of MALDEF, Julián Samora, professor of the University of Notre Dame, Blandina Cárdenas, civil rights activist and scholar of Texas.

There was however, a gradual change from rhetoric only, to a more than symbolic action, during the administration of Carlos Salinas de Gortari, where the Mexican government reinforced consular protection. Political appointees occupied some of the most important Mexican Consul General offices in the United States whose performance showed a change from rhetoric to action. This was expressed in a more conspicuous and closer contacts between the new Mexican Consuls and the local communities of Mexican origin in the cities of Los Angeles, San Diego, Chicago, Houston, and San Antonio, as they were shifting in the predominance of self-denominations from Mexican Americans to Chicanos, to Hispanics to Latinos.

By the time Vicente Fox was elected as president of Mexico the “Latino vote”, had surfaced in the political scene of the United States as a political force to be reckon with. The close victory of Ms. Loretta Sanchez over her republican opponent in 1996 in the District that includes Orange County in California was a clear indication of the difference that the vote of former Mexican undocumented immigrants could make, after they had become U.S. citizens. That election, in what use to be a strong hold of the Republican Party showed a pattern. Mexican undocumented

⁹ *Los Angeles Times* published a series of reports from April 22 to April 24, 1993, including the following text: “Some agents complain that commanders place so much emphasis on amassing drug seizures —thus impressing top brass and law makers in Washington—that supervisors turn a blind eye to evidence of wrongdoing by agents ... Management will let you do whatever you need to do to get the job done to stop drug smuggling. Said Thomas A. Watson a five years Nogales veteran who was fired this month for complicity in the cover-up of a fellow agent’s fatal shooting of a suspected trafficker. Drugs are what the chief wanted. Drugs made the head lines ... Many agents admit that they prefer drug duty —waiting in remote canyons with automatic weapons to waylay traffickers along backcountry trails—to the more prosaic task of apprehending illegal immigrants”.

immigrants becoming legal residents of the United States and then U.S. citizens, who's overwhelming, majority joined the Democratic Party.

President Fox has shown a particular sensitivity for the U.S. minority of Mexican origin referred by themselves and by others in the United States as "Latinos". The fact that more than two thirds of them are descendants of Mexican nationals has led President Fox to explicitly include them as a part of the Mexican population to whom he is supposed to serve as President of Mexico. It could be argued that this is not very orthodox if one takes into account that the majority of Latinos are U.S. citizens, Fox however, has contributed to the blurring of national identities which begun in the preceding *sexenio* (six-year term) with the constitutional reform in Mexico that instituted a virtual "double nationality". In fact, this was a constitutional reform which established that the Mexican nationality will be considered in Mexico as permanent, regardless of the acquisition of other nationalities for Mexicans. If a Mexican citizen gains another country's citizenship, he or she can not exercise his or her citizen's rights, particularly the right to vote in Mexican elections, unless he expressly resigns the other country's acquired citizenship. This reform on Mexican nationality left untouched the constitutional rules for Mexican citizenship. Thus, there can be a dual nationality but not a dual citizenship for Mexicans. This distinction is confusing in the United States where it is common to equate nationality with citizenship. This is not the case in Mexico, where nationality implies certain patrimonial rights given in exclusivity to Mexican nationals by the Mexican Constitution, such as the right to own property within the zone of 50 kilometers parallel to Mexican borders and 100 kilometers parallel to Mexican coastal lines. (Article 27 of the Mexican Constitution). It contributes to the confusion, particularly in the United States, president Fox's insistence, in fact an expressive promise, of granting voting rights to Mexican citizens who reside outside of Mexico in presidential elections (only). This is currently a very controversial issue in Mexico, given the fact that there are more Mexican citizens in the United States (probably 19 million), than in any other Mexican province except the Federal District (the metropolitan area of Mexico City). Part of the controversy in Mexico derives from the technical possibility that an electoral victory which decides who will be the president of Mexico, might come from the way Mexican citizens residing outside of Mexico, would vote. It has been my opinion that Mexican citizens residing abroad, on a permanent or temporary basis, should have the right to vote in Mexican presidential elections. It is the implementation of such a right to vote, particularly in the United States, which I think president Fox and other proponents of this idea, have not thought out carefully. To my knowledge, none of the proponents of the right to vote for Mexicans abroad, has addressed, for instance, the fact that there are laws in the United States which require a license issued by the U.S. federal government to conduct political activities for other countries within the United States territory, with penalties of fines or prison for violators. Nor it has been resolved how the Mexican electoral campaigns in the United States could escape from being subjected to U.S.' own electoral laws, particularly for the electoral propaganda, financing and conducting of an electoral campaign. Even worst. Which country's court system will decide in final instance the eventual electoral controversies? Could it be that the U.S. Supreme Court of Justice could decide who will be the president of Mexico? These and many other questions should be answered in Mexico and in the United States, way before the rules for the implementation of such a right to vote for Mexicans abroad allows for its actual exercise.

The events of last September 11 can only exacerbate the difficulties of these and of any other matter pertaining to the realm of the sovereignty of the United States and that of its neighboring countries.

It might well be that president Fox is ahead of his time. The fact is that he is proceeding as if he was not. At the very beginning of his administration he created a cabinet level position for Dr. Juan Hernandez, a U.S. citizen of Mexican origin (a Latino himself), in charge of matters of "Mexicans abroad". I personally think the creation of such a high level office was a good idea,

corresponding to the importance that the ever growing population of Mexican nationals, Mexican citizens and U.S. citizens of Mexican origin living in the United States should have in the Mexican process of decision making.

Returning to the migratory question, some comments should be made about the options that appear to be more salient in the bilateral negotiations as they were publicly known before the events of September 11. There are two conflicting notions in the United States about how to solve the migratory question with Mexico. Two contentious parties could not have represent that conflict more acutely than, on the one hand, the AFL-CIO promoting a “blanket amnesty” for all undocumented immigrants, on the other, the California and the Texas growers associations promoting a “guest workers program”. Both have respectively important allies. The respective promotions could not be more contradictory. The AFL-CIO side is adamantly opposed to the “guest workers program” claiming that it will be a mechanism of perpetuation of the exploitation of migrant workers as they were the old “bracero agreements”. The side of the growers, in the words of Senator Phil Gramm of Texas, amnesty will pass “over my cold dead body”. On the AFL-CIO side, there are in full support, all Latino organizations of national memberships. On the grower’s side, there are in full support, the wealthiest and more conservative side of the Republican Party.

The general indifference in Mexico about the migrant workers’ plight has prevented a more significant participation of the political parties in a public discussion about the mentioned options for a U.S.-Mexico agreement on migrant workers. In fact, there has not been a comparable debate in Mexico about these or other options on the subject in spite of president Fox unprecedented attention to their plight. There are however important implications for the Mexican migrants. The option that would be more convenient for the average Mexican migrant worker is what ever comes closely to the “amnesty”, a term not accepted by the Mexican government, because it alludes to a pardon granted to criminals by the executive of a government. Some confusion has been created in the United States with the terms “legalization” or “regularization” preferred by the Mexican government’ negotiators. Some Latino organization took, mistakenly, these terms as alternatives to amnesty, for which reason they expressed their opposition. In reality the three terms, amnesty, legalization and regularization mean the same, in there sought after consequences; namely, making “documented” the “undocumented”. This means, the “empowerment” that is brought to the undocumented by getting access to institutional protection such as the police or the court system in the United States, as any other U.S. tax payer, without taking the risk of being deported.

This “empowerment” has not taken place in the past with previous temporary migrant U.S. visas program, particularly with the old *bracero* programs, as it was argued before. The main reason has been, that none of the temporary visa programs (H1, H2, H2A, etc.) have significantly modified the asymmetry of power between the migrant worker and his or her U.S. employer. To the extent that amnesty related options could lead to U.S. citizenship and full voting rights, such options could indeed signify “empowerment”. let alone the right of unionize and of collective bargain. This is not the kind of migrants’ empowerment; the U.S. growers would be interested in pursuing.

Notwithstanding the greater benefit for migrants that could derive from a “legalization” or an amnesty related option, the reality is that this is the least likely option to be palatable for the U.S. negotiators. In fact, president Bush has stated that he is not going to support this option.

Particularly after the results of the November 5 elections were known, highlighting the triumph of the Republican Party gaining control of the two houses of the legislative power, it does not seem to be any chance left for a bilateral agreement on the migratory question. More than a year after September eleven, the resulting xenophobia in the United States has no subsided not helping the development of an attitude toward immigrants in general an non whites in particular that could favor a political climate that could be conducive to a bilateral agreement on the

migratory question. It is not likely that the Mexican government would accept just another *bracero* program. Secretary Castaneda already has said so. Not because any political cost in Mexico for taking that option but, because that option is adamantly opposed by Latino organizations that president Fox have made into his virtual constituency.

Geopolitics between Mexico and the United States have never been so overlapping as it is today and as it looks that will continue to be in the near and not so near future. If there is one factor even more important than NAFTA for such a future, that would be the Latino vote.

Elections in California have shown the political cost that Republican candidates could suffer by supporting anti-immigrant measures. Both the elections of 1996 and, more conspicuously the election of 1998 showed how the Latino vote of California punished the candidates of the Republican Party by giving the victory to Democrats, such as governor Gray Davis and Lieutenant Governor Cruz Bustamante.

The emergence of the Latino vote in California was the result of a paradox derived from the reelection campaign of Pete Wilson, which was based in the support of proposition 187. In the way “propositions” such as that become a source of Law in the United States, “proposition 187” was approved by close to two thirds of the electoral vote of California in the elections of 1994. This turned out to be the most anti-Mexican law in the history of the bilateral relations.

Proposition 187 was placed on the ballots for the gubernatorial elections in California on November 8, 1994. Its main objective was “to prevent illegal aliens in the United States from receiving benefits or public services in the State of California” (Section 1 of the Text of the Proposed Law) and to establish mechanisms aimed at the removal of all undocumented immigrants from California.

According to the *New York Law Journal*, Proposition 187 was described in the official ballot argument as “the first giant stride in ultimately ending the *illegal alien invasion*” (see Stanley Mailman, “California’s Proposition 187 and its Lessons”, *New York Law Journal*, January 3, 1995. p. 3 col. 1). On December 14, U.S. District Judge Mariana R. Pfaelzer of the Central District of California issued a decision to block the implementation of the law until trial. The same court decided years later to declare Proposition 187 unconstitutional, basically because it invaded the jurisdiction of Federal Immigration Law.

Reference by the proponents of extending the limitations established for the undocumented immigrants to all “aliens”, that is to say, to all Mexicans in California including those with a U.S. visa of legal residence, instilled a serious fear in all of Mexican origin population in the State, including U.S. citizens. This did not sound absurd to those who remembered the anti-Mexican campaign in the thirties where U.S. citizens of Mexican origin were expelled from California back to Mexico, as documented by Hoffman in the United States and Carreras de Velazco in México.¹⁰ The paradox was, that a law (“proposition 187”) which was intended against the Mexican undocumented immigrants, produced a “fear of God” in all Mexican origin population of California. Those among them who were U.S. citizens, went to the next elections (1996-1998-2000) in California, ready to vote against all candidates of the Republican Party which political platform has included strong anti-immigrant language ever since the Republican Party’s convention where president’s Bush’s father was elected candidate, to the present.

Public debate on Proposition 187 was marked by the court’s main argument in its first, and again in its final, decision about its unconstitutionality, namely, its violation of the “supremacy

¹⁰ The two best studies on the massive expulsion of Mexicans during the years of the Great Depression are, by Mercedes Carreras de Velazco, *Los Mexicanos que devolvió la crisis 1929-1932*, México, D.F.: Secretaría de Relaciones Exteriores, Dirección General de Archivo, and Abraham Hoffman, *Unwanted Mexican-Americans in the Great Depression: Repatriation Pressures, 1929-1939*. Tucson, Arizona, University of Arizona Press. 1974.

clause” (immigration matters were of the exclusive jurisdiction of the federal government). This was perhaps the main reason why there has not been an in-depth discussion of Proposition 187’s basic premises. It is argued here that Proposition 187 was based on biased perceptions, tainted by racist and xenophobic ideologies, and that its basic provisions represent instances of “institutional racism” against people of Mexican origin, identified as such by the color of their skin. It is further argued that Proposition 187 was made possible by the conditions of “vulnerability” in which an ethnic minority of Mexican origin in general, and Mexican immigrants in particular, have lived in the United States as subjects of human rights.

In order to call a perception “biased”, one has to provide some objective basis to define what the “unbiased” perception would be which gives meaning to the former adjective. This purpose may be served by the concluding remarks of a research report produced and published by the U.S. Department of Labor:

In effect, migrant workers, so necessary for the success of the labor-intensive U.S. agricultural system, subsidize that very system with their own and their family’s indigence. The system functions to transfer costs to workers who are left with income so marginal that, for the most part, only newcomers and those with no other options are willing to work on our nation’s farms (emphasis added).

The most relevant point of this conclusive statement is the positive impact of migrant workers whose presence in the United States implies. So positive, that the U.S. Department of Labor’s speaks of it as a *subsidy* to the U.S. economy. This research finding is in a complete contradiction with the basic “findings” on which Proposition 187 was justified to the voters of California. These “findings”, as they appear quoted below, take the anti-immigrant prejudice of California voters for granted. This explains why there is a reference to “findings” in Proposition 187, with no reference to their source. It is important to point out that the same U.S. Department of Labor study reports that 94 percent of the migrant farm workers included in its research were Mexican nationals.

The quoted paragraph appears on page 40 of the official report entitled: *Migrant Farmworkers: Pursuing Security in an Unstable Labor Market*. It was published as Research Report No. 5, based on Data from a National Agricultural Workers Survey conducted by the U.S. Department of Labor, published in May of 1994. This publishing date is noteworthy since it means that this study was available at the time the text of Proposition 187 was written for the ballots.

The text of Proposition 187 (the following quotations could be found at <http://ca94.election.digital.com/e/prop/187txt.html>.)

Section 1 “Findings and Declarations”:

The People of California find and declare as follows: That they have suffered and are suffering economic hardships caused by the presence of illegal aliens in this State. That they have suffered and are suffering personal injury and damage caused by the criminal conduct of illegal aliens in this State.

Then, in Section 5, entitled: “Exclusion of Illegal Aliens from Public Social Services”, a Section 10001.5 (c) is added to the Welfare and Institutions Code to read:

If any public entity in this state to whom a person has applied for public social services determines or reasonably suspects ... that the person is an alien in the United States in violation of Federal Law, the following procedures should be followed by the public entity... (3) The entity shall notify the State Director of Social Services, the Attorney General of California and the United States Immigration Service (INS) of the person of his or her apparent illegal immigration status.

In a State where INS statistics show that more than 90 percent of apprehensions have consisted of Mexican nationals for decades, the term of “illegal alien” is socially synonymous to Mexican.

Let me now revert to the perspective of the events of September 11.

There is no way of knowing how long the transition will take from the state of war proclaimed by president Bush where we are now, back to the conditions where we were before September 11. Some analysts of the September 24th’s edition (2001) of the *New York Times* estimated between one to two years. I would like to predict that the question of migration between Mexico and the United States would return to where it was before September 11, by the time President Bush begins to warm up for his reelection campaign.

Here is why. There will be basically two factors that will shape the conditions for such a come back. One will be a market force. To the extent to which Americans continue uninterested to do the jobs Mexican migrants do in the United States, at the wages for which they do it, there is going to resurge a U.S. demand for Mexican immigrants’ labor force. As the most prestige American economist, Alan Greenspan said it less than two years ago in a testimony to a Congressional committee; the United States needs more people to produce more and to obtain more taxes if its economy is to expand. A time will come when Alan Greenspan words on immigration will not sound as an aberration as they sound today at the time when Americans are in the process of closing the borders.

Here is a good place to bring again the conclusive remarks of the U.S. Labor study on U.S. agriculture that I quoted before: “In effect, migrant workers, so necessary for the success of the labor intensive U.S. agricultural system, subsidize that very system with their own and their family’s indigence”.

The U.S. needs alluded in this quotation have not disappeared as a consequence of the terrorist attack, nor they will disappear in the foreseeable future. That economic need will bring back the discussion of a bilateral agreement with Mexico on the migration question. As it is known in any city of the Southwest, Mexican immigrant’s labor is needed not only in agriculture but also in many other activities without which the United States do not function on a normal basis. Such is the case of the restaurant business, the hotel business etc. Table 1 and graph 1 show some changes in the U.S. demand for Mexican undocumented labor based on the data gathered for the last eleven years by the Zapata Canyon project of El Colegio de México directed by the author.

Table 1

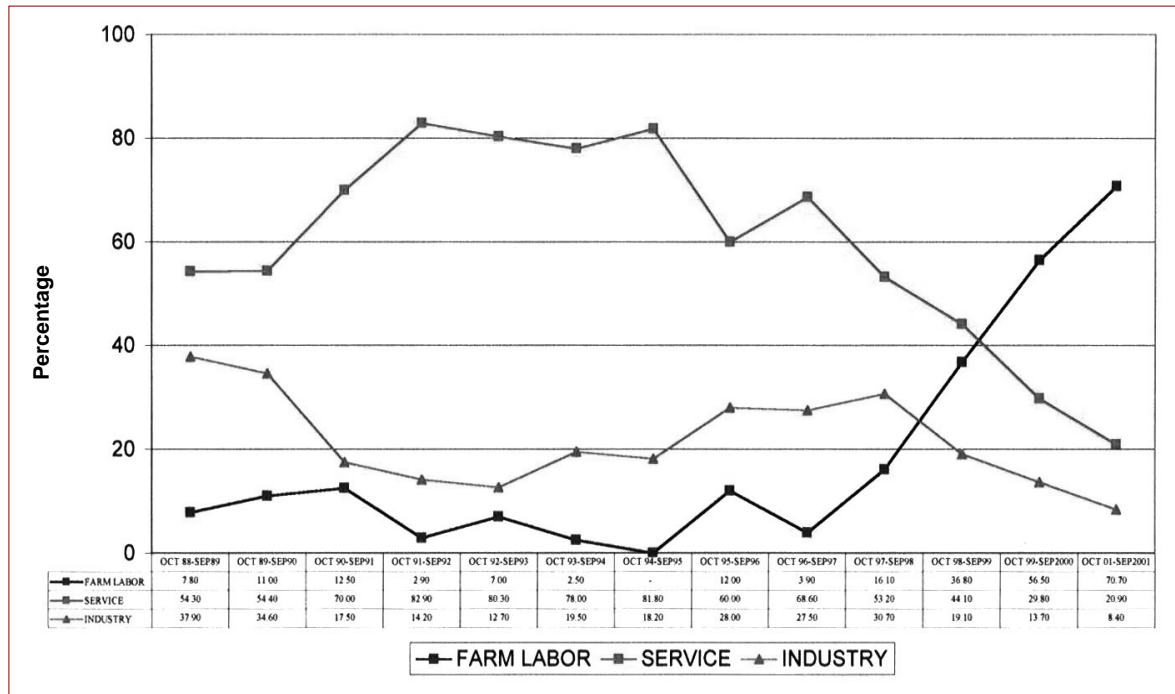
**UNDOCUMENTED MEXICAN MIGRANTS THAT HAVE WORKED IN THE UNITED STATES,
BY TYPE OF EMPLOYMENT. 1988 - 2001**

Activity (%)	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Tourism	8.3	8.2	7.3	8.9	7.9	9.9	8.1	7.9	9.6	10.2	8.4	6.4	6.0	4.7
Domestic service	17.0	23.0	23.3	23.4	21.3	18.2	15.7	15.9	16.7	14.5	14.7	11.0	9.2	8.8
Other services	6.5	7.0	8.4	6.4	6.3	7.2	4.0	3.0	2.0	1.5	1.7	1.1	0.9	0.6
Farm work	35.0	34.2	33.7	25.7	27.3	29.7	34.1	35.0	32.4	32.2	31.3	31.6	43.6	48.2
Manufacturing	9.7	8.3	6.3	6.9	6.4	5.5	5.9	9.3	11.0	12.5	15.2	20.4	13.5	8.8
Construction	18.5	16.0	17.6	23.5	23.9	26.1	25.9	25.4	25.0	26.1	25.4	27.0	25.6	27.6
Self employed	1.6	1.7	1.3	1.0	0.5	0.6	0.4	1.5	0.4	0.2	0.2	0.2	0.0	0.0
Other	3.4	1.7	2.1	4.2	6.4	2.8	6.0	1.9	2.9	2.7	3.1	2.2	1.2	1.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: project Zapata Canyon. Continuous survey of flow of undocumented Mexican immigrants as they cross the U.S. El Colegio de la Frontera Norte. Since 1988 to September of 2001.

Graph 1

TRENDS IN THE U.S. LABOR DEMAND OF UNDOCUMENTED IMMIGRANTS MALE FROM MEXICO, D.F. AS THEY ENTER THE U.S. THROUGH TIJUANA. 1988-SEPTEMBER 2001



Source: Bustamante, Jorge, "Proposition 187 and Operation Gatekeeper: Cases for the Sociology of International Migrations and Human Rights" in *Migraciones Internacionales* vol. 1, No. 1, julio-diciembre 2001. El Colegio de la Frontera Norte.

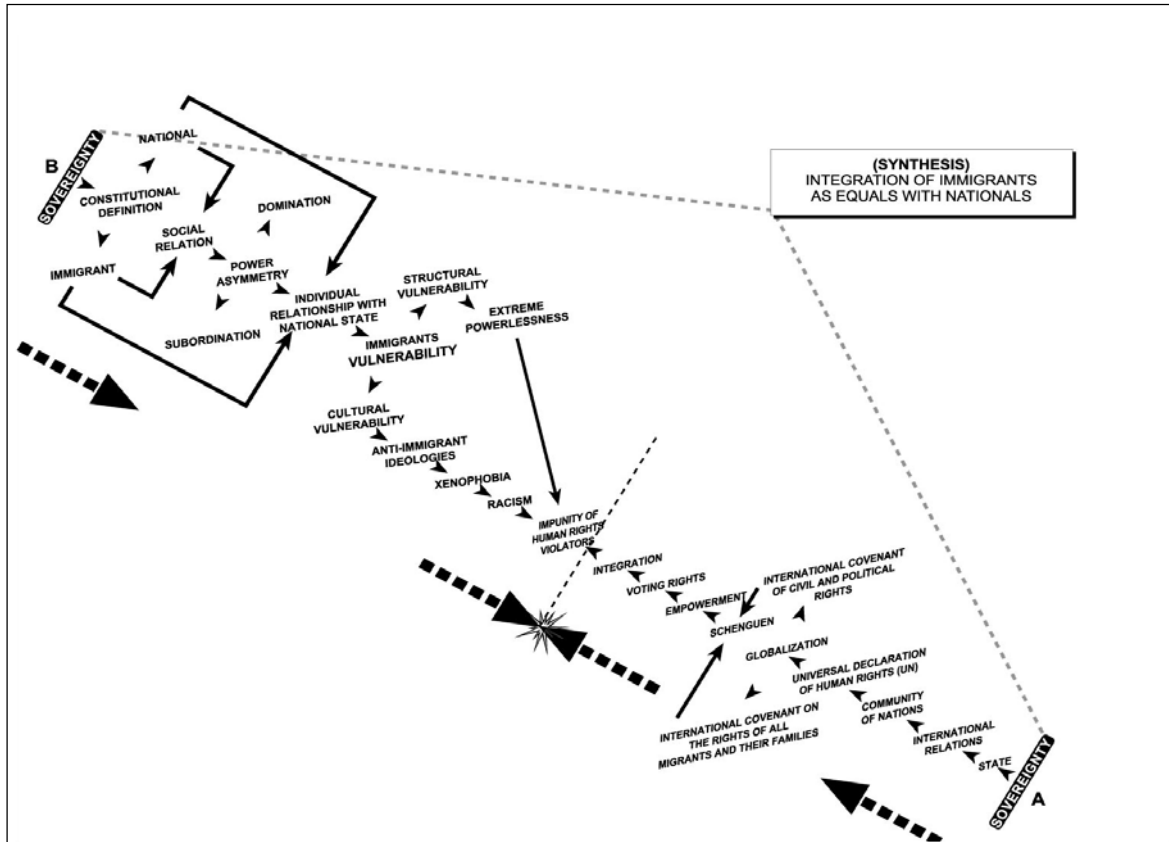
The Mexican immigrant labor is not only necessary for a return to business as usual in the United States, is necessary for the recovery of the U.S. economy. President Bush will hear voices from his own party and certainly from the competency, speaking about the need to rationalize what so far has been a de facto labor market between Mexico and the United States. One where the U.S. demands for immigrant labor is as real as the supply of it.

I said that there were two factors basically in the return of the bilateral relations to where they were before September 11. I referred to the sharing of a bilateral de facto labor market as one factor. The other is of a different nature. It is the "Latino vote". As this is growing as a share consequence of demography, it is bound to be of a crucial importance for the election of a U.S. president in 1904, particularly in the States of California and Texas that might determine who the next president will be. Last elections in California left established an important lesson. The "Latino vote" is not impartial to immigration policies. They vote in favor of proponents of pro-immigrant measures and they vote against the proponents of anti-immigrant measures. That explains why the governor of California and the Lieutenant governor are not of the Republican Party. It is true that Latinos have had a history of low voting records but it is also true that those ethnic differences tend to disappear when controlled by education levels. As Latinos are improving in their education levels they will be voting in greater numbers. Thus, presidential candidates of the two parties are going to try hard to obtain the Latino vote in the whole United States and this factor will work in favor of the return of both governments to the table of negotiations for a bilateral agreement on the immigrant labor question.

Note that I have not alluded to whether the personal relations between the two presidents warms up or cools off. I am making my analysis less dependent of a personal relation between them

and more on president Bush's increasing preoccupation for the impact of immigration on the health of the U.S. macro economy, in the sense alluded by Allan Greenspan, as elections of 2004 get closer. In my mentioning of the Latino vote, I have alluded to president Bush's sensitivity for Latinos. Of the kind he showed when he expressible rejected Pete Wilson's support for the "proposition 187" while he was governor of Texas. In fact I have alluded to his interest in continue taking care of business from the Oval office after 2004.

Graph 2
DIALECTIC OF MIGRANTS VULNERABILITY



Source: Bustamante, Jorge, "Proposition 187 and Operation Gatekeeper: Cases for the Sociology of International Migrations and Human Rights" in *Migraciones Internacionales* vol. 1, No. 1, julio-diciembre 2001. El Colegio de la Frontera Norte.

III. Part three: a theoretical frame

A. The dialectics of the vulnerability of international migrants

The basic thrust of this analysis is that a social process exists that results in a condition of **vulnerability**¹¹ of international migrants as subjects of human rights. The following diagram titled “Dialectic of Migrants’ Vulnerability” depicts this social process, which implies, 1) a socio-legal inclusiveness that arises out of a dialectical process between two legal notions of **sovereignty** and, 2) the social construction of conditions of vulnerability for international migrants, who are displaced by the dynamics of the international relations arising from the **globalization**¹² of international markets.

The theoretical framework (within which the socio-legal inclusiveness implied in the diagram) should be understood, is a dialectical process. This process begins when a country, exercising its sovereignty, duly commits itself to adopting an international standard of human rights and remakes that standard constitutionally into a **law of the land**.

¹¹ This social construct refers to a condition of powerlessness. It precedes the “labeling” understood as an act of power over *vulnerable* people.

¹² For the purposes of this article, Anthony Giddens definition is the most fitting. “Globalization can ... be defined as the intensification of worldwide social relations, which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa. This is a dialectical process because such local happenings may move in an obverse direction from the very distant relations that shape them. Local transformation is as much part of globalization as the lateral extension of social connections of time and space.” Giddens, 1990. *The Consequences of Modernity*, Stanford: Stanford University Press, 1990.

This exercise of sovereignty becomes A) dialectically opposed to another exercise of the same legal nature, B) that which makes a constitutional distinction between nationals, on the one hand, and immigrants as foreigners, on the other. These two exercises of sovereignty depicted in the diagram as dialectically opposed, become interrelated in the practice of international relations arising from the phenomenon of globalization.¹³ Thus, the “thesis” in this dialectical process *à la Hegel* is A), and the “antithesis” is (B); although, historically, (B) has preceded (A).

More will be said below about the synthesis, namely, **integration**.¹⁴

In the past, as human societies have confronted problems of power and authority, the source or locus of authority has moved from God, to the State, to the people. The definition of sovereignty¹⁵ has been based chronologically on the three sources. At their origin in medieval times under the doctrine of Christian unity, the concepts of “sovereignty” and “sovereign” were one and the same, except for the semantic distinction between an attribute and the subject of its enactment.

The diagram above starts from the Hegelian notion of a dialectic process. Here, this process consists of two opposite exercises of sovereignty, each with different objectives and opposed to each other as a *thesis* opposes an *antithesis*, and out of which a *synthesis* emerges. Implicit in this dialectic is the inclusiveness of two cognitive domains, namely, law and sociology. One is of a legal or normative nature and the other of a social nature. The bridge between the two dimensions is the passage from a norm to actual human behavior in the empirical context of social relations. The diagram assumes such inclusiveness in alluding to a social process in which the main actors are those defined constitutionally, as nationals and legally and socially, as foreigners or immigrants. The main feature of this inclusiveness is the dialectical dynamic, energized by the international relations of globalization. In that context, the vulnerability of international migrants becomes the focus of a contradiction between, A) a “classical” notion of the sovereign right of nations to define who is a national and who is not; as well as to control immigration by controlling their borders; and (B), a “modern” notion of sovereignty susceptible of self-controls through a state’s sovereign decision to adhere to international standards of human rights.

Integration *a la* European Union, becomes a true Hegelian synthesis of the dialectical opposition between (A) and (B), to the extent that eliminates the inequalities implied in (A) between nationals and foreigners. By the time an exercise of a sovereign right turns (A) into its opposite (B), the new notion of human rights has erased the previous inequalities between nationals and foreigners. The new product generated by the dialectical relations between (A) and (B), namely **integration**, implies that human rights applies equally to both, nationals and foreigners. Such is the meaning of the Schengen agreements.

¹³ Malcolm Waters’ comments on Giddens’ definition, quoted above, help to clarify the meaning of globalization implied in the diagram: “This definition usefully introduces explicit notions of time and space into the argument. It emphasizes locality and thus territoriality and by this means stresses that the process of globalization is not merely or even mainly about such grand, center-stage activities as corporate mega-mergers and world political forums but about the autonomizations of local life worlds. Globalization, then, implies localization, a concept that is connected with Giddens’ other notions of relativization and reflexivity. The latter imply that the residents of a local area will increasingly come to want to make conscious decisions about which values and amenities they want to stress in their communities and that these decisions will increasingly be referenced against global scapes. Localization implies a reflexive reconstruction of community in the face of the dehumanizing implications of rationalizing and commodifying.” Waters (1995), *Globalization* (London: Routledge).

¹⁴ There are two contrasting notions of *integration*. One, predominant in the United States, derives from the studies of Robert Ezra Park, whose followers, according to Michael Haas, have argued “that differences between ethnic groups are a function of attitudes of prejudice” (Haas, 1992). This thesis assumes that such differences can be removed through intense interethnic interactions, which could lead to a color-blind society. About this assumption, Haas comments: “There are at least four flaws in integrationism. First, it is a theory of assimilation. The closer an ethnic group resembled the dominant culture, the more it would be “tolerated” and ultimately “accepted” and “admitted” to equal status...” The other notion of integration, predominant in Western Europe, is more recent. This is epitomized by the Schengen Agreement, binding for member states of the European Union, where integration means equal rights for nationals and foreigners. The latter notion is the one adopted in this article.

¹⁵ For an in-depth analysis of the historical context in which the notion of *sovereignty* has evolved, see Jens Bartelson (1995), *A Genealogy of Sovereignty* (Cambridge: University Press).

There seems to be a distance of light years between the empowerment to migrants that one can derive from legislation such as that recommended by the Schengen agreements and enacted by countries such as Spain, to grant voting rights to immigrants in local elections and, the conditions of vulnerability of migrants such as those exposed by the “operation gate keeper” at the US-Mexico border. However, when one takes into account the time it took for European countries to evolve from the “Treaty of Rome” in 1952 to the Schengen agreements to speak about “voting rights” to immigrants, one could hypothesize that immigrant’s rights will follow in America the evolutionary line marked in their history in Europe. That is the hypothesis behind the dialectics of vulnerability implicit in the diagram.

A recount of the dialectical contradiction between (A) and (B) includes the notion that all nation states have the sovereign right to define who is a national and who is a foreigner, as well as the sovereign right to control their borders. In both cases, the implication is to define the frontier between the essential inner and outer components of a nation. Most democratic nations have these rights written in their constitutions. Although such legitimate distinctions, in most of the cases, do not explicitly place the foreigner,¹⁶ in a subordinate position vis-à-vis the national, when they interact socially within the receiving country, the duality (national-foreigner) is nevertheless very often transformed, or, socially constructed, into an object of a *de facto* discrimination against foreigners by nationals. As Robert Miles¹⁷ amply discusses, this distinction is implicit at the origin of all kinds of discriminatory practices against foreigners as such, at the personal, group, and institutional level. This implies a power structure wherein nationals are more likely to occupy dominant positions vis-à-vis foreigners, and the latter are more likely to occupy subordinate positions. In this, sort of a metamorphosis from the normative to the social, lies the *virtual* contradiction between *immigration* and *human rights*. In reality, there is no contradiction. The sovereign right that is implicit in the definition of each concept respectively, is of the same legal nature. They are two different notions of sovereignty with dialectically opposite meanings. Such a dialectical opposition was generated from the dynamics of international relations implied in the process of *globalization*. This is a similar paradox than what is implicit in all international agreements that become of a higher legal order than norms of internal legislation by virtue of the *par excellence* outcome of sovereignty, namely the Constitution.

¹⁶ The terms “foreigner” and “immigrant” are used interchangeably in this article.

¹⁷ For a discussion of the dominant/subordinate relation of nationals/immigrants assumed in most recipient countries, see Robert Miles, *op. cit.* (particularly in reference to what he calls the problem of “Euro-racism”).

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