RIGHTS FOR RESIDENCY

Margaret Gray
Graduate School of the City University of New York

Prepared for delivery at the 2001 meeting of the Latin American Studies Association,
Washington, DC, September 6-8, 2001.
In 1986 the Immigration Reform and Control Act (IRCA) allowed for the legalization of
2.8 million undocumented immigrants in the U.S. Almost 80 percent of those legalized were from
Mexico. The average time it takes for a legalized immigrant to naturalize is 8 to 9 years, 10 years
for North Americans. Twelve years after IRCA less than 20 percent of those legalized under
IRCA had become U.S. citizens. Of that group, only 67 percent were Mexicans. Why are
Mexicans responding with ambivalence to the prospect of citizenship? Citizenship offers political
participation -- one can vote and run for office; it also offers extra protection against deportation
of criminals, but aside from that, U.S. residents have all the rights of citizens and undocumented
persons in the U.S. are seeing their rights increase. This paper explores the current struggle to
increase rights for the undocumented in the U.S., particularly day laborers in New York State.
The struggle is also a microcosm of the larger anti-immigration debate currently embroiling the
U.S., particularly in light of President Bush’s negotiations with President Fox to legalize some 3.5
million undocumented Mexicans in the U.S.

Introduction

The shift of U.S. manufacturers to offshore production that began in the 1970s has not yet
run its course. According to the Bureau of Labor Statistics, 180,000 U.S. manufacturing jobs
were lost in 2000, and in the first five months of 2001, more than 450,000 manufacturing jobs
disappeared. Production continues to move to factories in the developing world where U.S.
multinational corporations capitalize on cheap labor -- whether it is Nike in Vietnam, Liz
Claiborne in El Salvador, or Wal-Mart in China. While the eyes of the nation have been fixated
on this hemorrhaging of U.S. labor, there has been much less public indignation about the rights
and conditions of immigrant workers here in the U.S. GATT-WTO, NAFTA, the FTAA, and other international organs continue to facilitate the free flow of capital across national borders. To ensure that human capital does not enjoy the same autonomy, border control has been heightened to restrict the movement of labor along the U.S.-Mexico border. Yet, the demand for low wage, low skill workers in the U.S. remains high -- in construction, agricultural work, lawn and garden services, domestic service, child care, restaurants, other service industries, and as well as in primary production. Undocumented immigration to the U.S., particularly from Mexico, rises in large measure, to fill this demand. Analysts of the 2000 census estimate that undocumented individuals account for as many as eleven million of the U.S. population. (Cohn) How has U.S. immigration policy dealt with the undocumented? Historically, immigration policy has been shaped in response to business’s need for labor. Originally, part of the Treasury Department, immigration was moved in 1903 to the Department of Commerce and Labor, when that department was created. In 1933 immigration became the domain of the Department of Justice. A snapshot history of U.S. immigration policy might include: the 1882 Chinese Exclusion Act and the 1924 Asian Exclusion Acts, which were not repealed until 1943; mass deportation of Mexicans under Operation Wetback in the 1950s; guestworker initiatives like the Bracero program which ran from 1942 to 1964; and the 1986 Immigration Reform and Control Act (IRCA) which granted resident status to 2.8 million undocumented persons. Currently the Bush and Fox administrations are negotiating extending legal status to up to three million undocumented Mexicans residing in the U.S. In each of these efforts, the state found a way of “reducing” a statistically a large population of undocumented immigrants, whether by deportation or by giving them documents. While in most cases, the state chose to toughen control; with the

1 There is a backlog of naturalization applications that could raise these percentage figures in the next few years.
IRCA it ceded its sovereignty – its authority to approve which immigrants pass through its borders – by foregoing its stance on the undocumented in order to reassert that sovereignty at a later time. This action justified, after the fact, a record of U.S. ineffective border control.

(Jacobson, 64)

Immigration policy must also focus on how immigrants are treated and what rights they enjoy. The Constitution affords basic civil rights to the undocumented such as freedom of speech, religion, privacy, freedom from arbitrary government treatment, and the rights to refuse entry into your home and to remain silent (including about immigration status). Moreover, undocumented immigrants subject to deportation have constitutional due process including a hearing and review, and the right to representation and an interpreter, among other procedural rights. (ACLU) The Supreme Court granted these in 1903 under Yamaha v. Fisher. Undocumented workers are also protected from the Immigration and Naturalization Service (INS) entering their workplace without either a search or arrest warrant or permission of the employer. Additionally, some economic and social rights are enjoyed by the undocumented – all full-time workers are entitled to the minimum wage and certain safety standards, children of undocumented immigrants have the right to an education at public schools (Plyer v. Doe), and all immigrants have the right to emergency medical treatment.

Despite these rights, there have been efforts to limit undocumented immigrants’ access to public services, such as the 1994 California Proposition 187, which was later, overturned. Proposition 187 sought to limit access to social services, health services (except for emergencies), and public education including elementary, secondary, and post secondary schooling. Additionally, it would have also required employers and schoolteachers to report to the INS anyone they suspected of being undocumented. Another example is the 1996 Personal
Responsibility and Work Opportunity Reconcilation Act (welfare reform), which removed access to food stamps and supplemental security income to undocumented and documented immigrants. Later supplemental security income was granted to immigrants residing in the U.S. prior to the effective date of the 1996 reforms – August 22, 1996. (Fraser) That same year, one of the most damaging pieces of legislation for Immigrants, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) was passed. IIRIRA increased deportable offenses, and it made them retroactive, as well as removing judicial review. It also streamlined the process for immigration hearing – this meant asylum was granted quicker, but immigrants had less time to prepare their case.

There is an inherent conflict between extending rights to immigrants and preserving citizenship and state sovereignty. At the heart of this conflict is the concept of human rights. Each time a right is extended to a non-citizen the value of citizenship is reduced. For decades we saw this conflict played out on farms and in urban areas where the workers typically were drawn for work. And while the public usually was aware of the conflict, it was because of media coverage, not because they watched the conflict was in the streets near their homes. Both rural areas and cities are environments where the undocumented can easily disappear – in rural areas due to their geographic isolation in labor camps and in the latter because of cities’ multi-ethnic nature and population density. In recent years, there has been a new site of focus – the suburb – as immigrants bypass cities to this new first port of call in response to the labor demands of homeowners who want greener lawns, prettier gardens, and

---

2 Human rights encompass civil and political rights as well as social and economic rights. It is argued that human rights are the most basic rights, those rights that enable individuals to enjoy other rights. See Henry Shue. 1980. *Basic Rights: Subsistence, Affluence, and US Foreign Policy.* Princeton: Princeton University Press. For the sake of this paper I propose that labor rights, which are social and economic rights, are necessary for the fulfillment of
expanded homes. In these mostly white communities, the workers are very visible. One of the central hinges in the conception of modernity with its stable enlightenment picture of the nation-state is yielded to a fluid world vision of post modernity and its criss-crossing transnational allegiances.

The main theoretical point I will be pursuing concerns the role of non-judicial state actors in extending rights to undocumented day laborers in suburbs. The courts in the U.S. have played a role, albeit under pressure from NGOs, in extending rights to immigrants. The courts will continue to be an avenue to pursue the remedy of unjust policies, but non-judicial state actors have begun to use their local power to remedy immigration issues in favor of the immigrants.

Why is it that state actors outside the judiciary are now active in extending human rights? Is it because of the late 20th century political trend of new federalism -- the devolution of authority to local jurisdictions? Is it because local politicians must respond to the demands of their communities and business interests without regard to the greater policy implications for the nation? These implications are a challenge to the ideas of sovereignty and citizenship, like non-citizen residents increasing access to jobs, schools, unemployment insurance, welfare, etc. – all the

---

3 Of primary concern in this paper is the undocumented worker who crosses the Mexican/U.S. border to work in the U.S. An undocumented is one who resides in the U.S. without legal work or residence papers. I refrain from using the terms alien and illegal because both have been invoked through anti-immigrant sentiment to conjure up a strong image of the “other” and this paper has as its base of understanding that there is no “other.” This paper is not concerned with refugees or asylum seekers. I have chosen to focus on workers because of the juxtaposition of the new globalization on finances and the new global workforce, which is specifically represented in low-skill, low wage workers across the globe and manifested by New York State in undocumented day laborers.

4 The Universal Declaration on Human Rights has been cited in 76 federal cases between 1948 and 1994 -- only six of them occurred before 1970 and over three-fourths have occurred since 1980. Over 75% of these cases were related to immigration. A recent example of judicial action on immigrants is the June 28, 2001 Supreme Court ruling that put a limit on the amount of time a deportable immigrant can be held in detention when the country of origin refuses to take the immigrant back. The justices restrained congressional and executive branch power over immigration. They also invoke the Due Process Clause stating it refers to all “persons” in the U.S. The decision overrides elements of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).
rights citizens enjoy except the right to vote and run for office.\textsuperscript{5} Formally speaking, states are either committed to extending human rights to those living within their borders or they reinforce their power by denying such rights.

This paper looks at the attempt by the Suffolk County, N.Y. legislature to fund the building of a center for day laborers. In my treatment of this case study, I will explain the debate around extending rights to undocumented workers. Day laborers are subject to grave exploitation, given that the nature of their work is dependent on the ever-changing need for their labor on any given day. This case study serves as a model study for immigration and rights issues on the national level. The growing population of day laborers is occurring around the nation, the role of national and local organizations in the Farmingville case highlight pressing concerns around the issue such as racism and the policy issues raised by both sides of the debate.

\textbf{The Human Rights Conflict}

Everywhere it seems, human rights are entering into legal judgements, whether at the Hague, where international cases, like the trial of the Rwanda Four or Milosovic, are being ruled upon, or here in the U.S. where courts and states are involved in a tactical war of position over whether to use federal funds to pay for prenatal care for immigrants. For example, a federal ruling in May 2001 upheld a 1996 law that removed the right of pregnant undocumented immigrants to prenatal care under Medicaid (the newborns remain entitled to Medicaid for one year). This decision overturned a 1987 Federal District Court (Brooklyn) decision by Judge Charles P. Sifton requiring the federal government to pay for prenatal care. Eight states including

\textsuperscript{5} The state actors I refer to in my paper are members of New York State government at both the state and county levels. For the sake of my argument, I make a distinction between state actors and members of the judiciary.

\textsuperscript{6} Residents are non-citizens with documentation giving them the legal right to reside and work in the U.S.
California and Texas use state money in such cases, and New York legislators are debating the issue. In the U.S., due to the changing national demographics, the focus has mostly been on the issue of undocumented migrants. The 2000 census shows that Hispanics are the largest ethnic minority in the U.S., accounting for 13% of the population.

Mervyn Frost and David Jacobson, both use the term “piecemeal” to describe the process by which human rights are extended to immigrants. (Frost, 882; Jacobson, 3, 74). Frost discusses the slow emergence of rights that depend on the initiative of individuals. He argues that a “rights practice” will not generally stem from a central government body, but rather, like most social change, the advocacy will occur outside the arena of those often-initially hostile decision-makers. Frost proposes that individual actors, as members of civil society, not as members of the state, have an ethical responsibility to promote such rights.

Frost describes an institutional arrangement on borders between states whereby the acknowledgement of equal ethical rights and responsibilities in civil society drives the players on both sides of the border to act ethically in solving disputes. Rights are recognized in others so long as those others do not violate rights. “Membership is gained either by rights holders granting to others the recognition appropriate to rights holders (whether or not such people have sought such recognition), or by outsiders simply acting as rights holders and thereby becoming members of civil society.” (Frost, 882) Frost imagines a configuration of civil society in which the border ceases to exist. At this point, individuals play a role in democratic governing through the state, and collective action plays a role in the individuals deciding on the extension of benefits and rights. Ethical issues arising from migrancy are complicated by the difficulty in discerning for example, which migrants may be attempting a “free ride.” (Frost, 884)
Frost offers a clear explanation of the ethical justification for extending rights to migrants. He relies on the collective action of individuals, which he equates with the state, to lead the charge for migrant rights. In doing so, he disregards institutional constraints of states, such as a well-established system of representative government, rules about jurisdiction, administration of policy, and competing interests – specifically wealthy interests that have influence on state actors. Additionally, he has an idealist vision for the interaction between members of civil society on opposite sides of national borders. Frost’s call for mutual respect and recognition of civil rights and responsibilities between border crossers and the dwellers in the host state does not conceptualize a power difference between the two. Border crossers are usually in a precarious economic situation or fleeing persecution and the dwellers in the host state have a stake in the property they live on and an interest in maintaining their quality of life. Frost points out that if there is not a true commitment to human rights, then they are weakened, there is no middle ground.

In a similar vein, Adamantia Pollis, in the introduction to *Toward a Human Rights Framework*, affirms that the concept of human rights, as set out in the Universal Declaration, threatens nation-building. Human rights as such claim a higher authority than national sovereignty, and appear to challenge the legitimacy of the entire nation-state system conceived in the wake of the Treaty of Westphalia in 1648. Pollis defines the “ideological underpinnings of the modern world” as state sovereignty and noninterference in the affairs of other states with the relationship between state and citizen at the crux of state sovereignty. (Pollis, 1, 3) She also posits that states cede to human rights, based on their “particular ideology, policies, and domestic political, and economic systems.” (Pollis, 2)
Jacobson describes how international human rights have grown incrementally as states have unsuccessfully dealt with immigration. He also argues that the expansion of human rights compromises sovereignty. As state sovereignty declines, transnationalism grows. He contends that the nation-state is being transformed as states’ ability to define nationals is being overridden by international human rights. (Jacobson 2, 10) Furthermore, the 14th amendment section 1 declares:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Jacobson notes the use of “person” which is explicitly a wider realm than citizen. He argues that the role of the person in international human rights is the individual person, regardless of their citizenship, nationality, or territorial affiliation. This is in direct contrast to national law, which historically recognizes the “citizen.” (Jacobson, 9)

---

7 The issues surrounding undocumented workers are a challenge not only to sovereignty and citizenship, but to scholars of liberal political theory as well. In Multicultural Citizenship, Will Kymlicka tries to resolve the problem of how a liberal tradition of individual rights recognizes the supplementary claims made on behalf of minority groups. While he finds a way to justify minority rights in many cases, there are two groups whom he sets aside: “…it is important to distinguish immigrants from two other Hispanic groups – Cuban refugees and illegal Mexican migrant workers.” (Kymlicka, 16) Kymlicka asserts that these groups are not in a position to integrate into society, including learning English. And, he asserts that for both return is imminent. Since his study is based on ethnic minorities who attempt to be part of the mainstream politics, he puts these two outside his study.

8 The Bill of Rights does not use the term “citizen.”
Legalizing undocumented immigrants has facilitated the further recognition of the conditions of transnational citizenship. With proper papers, immigrants can move freely between borders, whereas the undocumented remain in the U.S. out of fear. The U.S. border patrol is increasingly vigilant and as the natural Mexico-U.S. border crossings are protected, coyotes direct migrants through treacherous desert crossing where the threat of death due to the elements looms large. Yet, those immigrants who have been legalized have chosen not to naturalize for the most part. Only 16% of the 600,000 Mexican immigrants legalized between 1970 to 1979, opted for naturalization by the end of 1992. (Jacobson, 65) Many return periodically to Mexico for short stays, to retire, or to bring family members to the U.S. Jacobson also looks at the effect of transnationalization on the state. He observes that as transnational ties grow stronger among migrant communities in the U.S., state-society dependence is weakening, and there is a growing incompatibility between private and state interests. (Jacobson, 71)

One of the most legally convenient ways for states to justify their accommodation of growing transnational populations is to invoke international human rights. In turn, individuals seeking demands from the state invoke these same codes: “International human rights provide an institutional mechanism with which states are able to take account of these transnational elements. International human rights instruments are designed purportedly to protect persons as a transnational category and thus could fill a void that national laws with their stress on nationality and national jurisdiction, could not fill.” (Jacobson, 73-4) He concludes that as more rights are extended to transnational actors, citizenship is diluted, and as transnational actors press their demands using human rights, we are experiencing significant institutional reform of domestic immigration policy. (Jacobson, 106)

---

9 In 2000, 369 migrants died crossing the border, up more than 40% from 1998. In May 2001, 14 migrants died
While Jacobson’s analysis of this process is based on some sound principles, he overestimates the degree to which international human rights override national law and weaken sovereignty. In particular, he fails to examine the role played by multinational corporations and their complementary international organs like the WTO, FTAA, and NAFTA. For more attentive scholarship on the issue we must turn to the work of Saskia Sassen.

In *Guests and Aliens*, her survey of 200 years of migration in Europe, Saskia Sassen finds that migrant workers follow deeply embedded patterns and habits, such as migration routes, social networks, privileged living location and employers. Sassen posits that immigration flows have three characteristics, they are highly patterned, dependent on factors outside the individual, and have fixed durations. (Sassen, 2000) She also agrees, with other immigration theorists, that receiving countries play a highly active role in attracting immigrants. This is most obvious in the case of U.S. history, from the colonial dependence on indentured labor, through the state’s debt to chattel slavery, to industrial and post-industrial needs of capital for cheap, non-union labor. Sassen addresses the contradiction whereby borders are opening to the exchange of capital and yet closing to immigrants and refugees. The economic links between countries including the organized recruitment practices of government or industry (which are reinforced through kinship ties) call for a more practical response through immigration policy. Sassen points out that non-citizens may claim human rights given that they are not specific to a nation-state and that human rights are strongly influencing state policy toward non-citizens. She contends that global

---

10 *See* *International Social Science Journal* n.165, September 2000 for a comprehensive discussion of theories of immigration and detailed case studies on specific trends, in particular articles by Serim Temur’s article on UNESCO’s studies on immigration, Stephen Castles’ article on types of migration, Joaquín Arango’s review of academic theories of migration, and Raúl Urzúa’s effort to fuse social science and public policy by calling for an interdisciplinary approach.
economic forces are creating an atmosphere in which human rights are increasingly called upon to remedy a whole range of social and political issues. (Sassen, 2000)

In *Human Rights: New Perspective, New Realities*, Pollis and Peter Schwab identify another determinant in the weakening of state sovereignty – globalization – which they characterize as the real-time exchange of information and finances. (Schwab and Pollis, 210)

International business has radically changed in the past few years. From one end of the globe to another, orders for goods can be placed simultaneously with payment, decisions can be conveyed seconds after they are made, and changes can be implemented without threatening waste. Obviously, Corporations can benefit greatly from real-time communication and just-in-time production in which companies like Wal-Mart closely monitor the success of each item they sell and can restock shelves or discontinue an item within days. Contractors around the world respond at lightning speed and impel their workers to labor overtime to meet short-notice orders.

The new globalization puts states at the mercy of multinationals, as witnessed by the increasing liberalization and deregulation of politics, and the cessation of import substitution policy. Additionally, we are experiencing the globalization of the labor pool and of production as evidenced by the exclusion of citizens from decisions about global trade made by bodies through free trade mechanisms such as the WTO and FTAA. Schwab and Pollis also point out that there are no international regulatory authorities akin to those existing on a national level. Global financial and corporate players are allowed to self-regulate. (Schwab and Pollis, 214)

If liberal political theory cannot resolve the question of how to accommodate the rights of migrant workers, how does the modern state deal with the very real problem of a large undocumented workforce? How do politicians respond to constituents who are uncomfortable with the exploitation of the undocumented or the presence of those they deem illegal? How do
employers manage their workload when U.S. immigration policy is not allowing for the increased demand of workers?

**Case Study**

This paper looks at a particular case in Suffolk County in New York State. New York is chosen because of its growing population of undocumented workers, especially day laborers, of Mexican origin. Historically, states like California and Texas as well as the greater Southwest have hosted a transnational population due to their proximity to the border. As transnationals increasingly confront obstacles, most do not expect to return to Mexico on a regular basis. As a result, their presence has extended to the Northeast, Midwest, and Middle Atlantic states. The conflict over rights for undocumented workers, which grows as the numbers of undocumented rise, is more recent in Northern states, while states like California have confronted the issue for decades. It is also interesting to note that while several U.S. state constitutions include the state’s obligation to the poor and needy, only two states – New York and Montana – have upheld the challenge. In 1977 the New York Court of Appeals declared, “In New York State, the provision for assistance to the needy is not a matter of legislative grace; rather, it is specifically mandated by our constitution.” (Tucker v Tois, 43 N.Y.2d 1 at 13)

In New York day laborers are a growing presence in the Westchester towns Ossining, Mamaroneck, Port Chester, Yonkers, Peekskill, Mt. Vernon, Mt. Kisko, and Greenburgh. On Long Island, their numbers are expanding in Glen Cove, Farmingdale, Farmingville, and Huntington. Across the state of New York we see efforts both to extend and limit the rights of the undocumented. In June 2001, in Farmingdale, a hiring center for day laborers operated for fourteen months before being shut down as a result of community protests. The Long Island
towns of Huntington and Glen Cove have overseen hiring sites through non-profits or community development agencies. A June 2001 decision by a governor-appointed board on legal issues recently terminated the funding for programs that offer legal advice for the undocumented. The programs were run out of four New York law schools, and were set up to compensate for the loss of federal funding to give legal aid to the undocumented in 1996. Mt. Kisco in Westchester is working on a model hiring site in consultation with the Health Department and labor unions. Yet, Mt. Kisco’s 2000 school district budget was rejected in objection to funds allocated for the children of day laborers. On April 12, 2001, New York Attorney General, Elliot Spitzer, announced the creation of a task force to investigate labor abuses against undocumented workers. The task force was set up to help the undocumented address grievances against employers, specifically for nonpayment and underpayment of wages. In what follows, I will describe and analyze one attempt to improve conditions for workers and promote practical solution to issues, which are perceived to compromise public safety, community morale, and the quality of life both for citizens and the undocumented.

On March 20, 2001, the Suffolk County legislature, with bipartisan support, approved a bill to allocate $80,000 to Catholic Charities to oversee the construction and organization of a center in Farmingville for day workers who gather on the street awaiting employers. This is exactly along the lines of what Sassen refers to as a practical response to an immigration issue. However, the measure was vetoed on April 4 by the County Executive, Robert Gaffney, on the grounds that it would foster illegal immigration and labor activity. The veto was later upheld by the legislature in a 9-9 vote on April 24. The center had been proposed as a response to community concerns about public safety and quality of life. These concerns had been generated by the activities of the informal shape up on the street. Community members claimed that the
workers posed a hazard, not only to themselves but also to local traffic, and there had also been complaints about the workers loitering and littering. The Farmingville case, like the other New York examples, squarely places both sides of the conflict over rights at the micro level of the county. What is unique about this case is the national attention it has garnered and the number and diversity of active participants who claimed a stake in the outcome of the case.

Why did this proposal and the ones mentioned above emerge at this particular juncture? What is their significance? What was the public’s response? In addition to the Suffolk County government tug of war, I have evaluated public opinion, both in support of, and criticizing these actions. Especially relevant is the way in which the immigration and human rights debate is played out in the media as public rhetoric is represented in letters to the editor, newspaper accounts, and websites.

Farmingville has a population of 15,000 and is home to between 800 and 1,600 undocumented workers. The direct trip from Mexico to Long Island has become what Sassen refers to a migration route. Coyotes have identified Long Island as a willing port of call for new immigrant workers, and as long as the need exists, the workers will arrive directly in towns like Farmingville. As in many municipalities in Suffolk, Nassau, Putnam, and Westchester counties, men from Mexico and Central America congregate early in the morning on the street in the hopes of securing work for the day. As vans and trucks slow down near the prospective workers, the men swarm the vehicles. The workers are hired by contractors, landscapers, and sundry homeowners. Even if they are hired for more than one day, in all likelihood they will still be recruited and contracted at the same informal shape up.

Over the last decade, these workers have proven to be an integral part of the local economy since contractors increasingly have difficulty attracting workers for low-wage manual
labor outdoors. The legal residents of these counties would refuse most of these jobs. The New York summer heat and humidity can be stifling and makes outdoor work intolerable. All but a few of the workers are drafted for the long-term projects, and while most get picked up daily, there is no job security. Hourly rates are negotiated on the spot, and it is not uncommon for employers to underpay workers because they assume the undocumented are not in a position to complain. As for living conditions, workers crowd into houses in order to keep costs low, all other options being too expensive. The men who travel to Long Island for this work leave their families behind and send most of their salaries home. Mexicans working in the U.S. support their families south of the border to the tune of $6.3 billion a year. These workers do not have access to adequate healthcare or transportation, and more often than not, they encounter hostility among members of the community. In September 2000 two Mexican day laborers were the victims of a brutal beating – they were the targets of a meditated act which authorities have labeled a bias crime. The police have identified the two attackers who are awaiting trial. In the climate that resulted from this heinous attack, the debate about the presence of day laborers had a public airing in this community and among policy makers.

More than a year earlier, the Long Island Community Foundation had hired a consultant through the Long Island Unitarian Universalist Fund and the Horace and Amy Hagedorn Family Fund to interview Farmingville community members to see what role philanthropy could play in bettering the laborers’ conditions. On the evidence of several hundred interviews, it was determined that there was strong support for the building of a center for the workers. In December 2000, the State University of New York at Stony Brook held a one day meeting co-hosted with the U.S. Department of Justice Community Relations Service Division (CRS) to address the issues arising from the presence of day laborers and recommend solutions to problems
in the community. The CRS serves to mediate discussions between local government and the community on matters relating to racial and ethnic problems. As a result of this meeting, which culminated two years of effort, a legislative campaign was launched to fund the center and to deal with the problems, which had been informed, by globalization, immigration, racism, and an underground economy. (Endo and Jones, 2001b) As Frost argues, we see the collective action of individuals working to incorporate immigrants into the community and to secure their rights.

Community group members had been in consultation with Gaffney’s staff for more than two years about planning the center. Community groups and legislators were surprised by Gaffney’s change of heart. John Bingham, director of immigrant services for Catholic Charities said, “It’s hard to imagine what might come next. It was the only positive alternative on the table. And it wasn’t something that was just thrown out there. It followed three years of working and reworking the proposal with police, Suffolk legislators, with Mr. Gaffney himself.” (Sheehan)

The center was intended to be a hiring hall and a community opportunity center. It would have provided workers with a sheltered place for hiring their labor, but it could also be used for education, legal and referral services, healthcare, and childcare. The Suffolk county legislature’s presiding officer, representative Paul Tonna (R-West Hills), drew attention to the safety of workers and called for public acknowledgement of the role they play in the regional economy. He also sought to find ways of easing community tension, improving public safety, and enhancing the quality of life in Farmingville. “Immigration in America goes to the very heart of our national character,” said Tonna. “In dealing with any difficult problem we find in our communities, the starting point must be the affirmation of respect and dignity for all people.” (Sloggart) Here, Tonna invoked human rights, as Jacobson describes. Supporters of the bill called it a pragmatic
solution. In a nearby town, the Huntington Supervisor, Frank Petrone, commented on a similar site already built in Huntington, citing safety as the primary issue. (Sloggart)

Opposition to the measure came in many forms. An underlying theme of the opposition was that the integrity of national law and of citizenship is surrendered if rights are extended to the undocumented; this is in line with arguments made by Pollis and Jacobson. Both county officials and community members were particularly concerned that the center would promote the breaking of immigration and tax laws; that day laborers take jobs away from citizens and a center would encourage this; and many felt that the INS should step in to deport the workers. (Sloggart; Burgher) These were the basis of Gaffney’s veto and his argument that the workers should be deported or given legal status. It is a curious phenomena that with rising unemployment in the U.S. there still exists the demand for undocumented workers. As mentioned earlier, most U.S. citizens would not care for the jobs offered to the undocumented, but more importantly, employers have come to rely on the low labor costs involved in hiring the undocumented and do not want to offer these jobs to citizens and residents who would require higher pay, benefits, and better work conditions.

Other municipalities on Long Island including Huntington and Glen Cove had not viewed these concerns in the same light. Indeed they have used government funds for hiring sites, and a recent study by the Los Angeles County Human Relations Commission lists 35 day laborer sites that have been established across the nation – at least 16 of them have used government funds. These responses from around the nation could be described as the piecemeal process that both Frost and Jacobson introduce. New York Attorney General, Elliot Spitzer, criticized Gaffney’s decision and stated in no uncertain terms that Gaffney had misconstrued the law. There was nothing illegal about the hiring center. (Jones, 2001a) Bingham was just as emphatic in his
disagreement, “Taxpayer money is always used for public safety programs. This isn’t new, it’s not radical, it’s not unprecedented.” (Gootman)

My interest in the controversy over the center is not focused on its legality but rather on the community’s reaction to its presence. Pollis, as I have shown, posits that decisions to extend rights are based on “ideology, policies, and domestic political and economic systems.” As for the political and economic systems that Pollis mentions, business is dependent on cheap labor, and policy makers assist business by establishing laws to protect their interests. Corporate welfare is at an all time high. A rudimentary lesson in labor protection would show the grave unjustness in the number of labor inspectors per workplace, particularly workplaces that depend on the cheapest labor – farms and factories. One of business’ main goals is to constantly reduce labor costs; this is accomplished through a policy framework that controls labor, and of course, the use of undocumented workers.

What ideologies come into play in this debate? At an elementary level, racial prejudice is involved. The workers, as a group, are highly visible for their darker skin. Reactions are easily provoked based on skin color and an identification of the workers as aliens or the “other.” In an editorial in Newsday, one writer explains, “hundreds of aliens are allowed to illegally descend [on Farmingville]…the bulk of these needy ones come from Mexico; they look a tad alien.” (Weimer) Indeed, the idea of aliens descending, as if through invasion from above, as opposed to workers/immigrants/new community members arriving/settling/living creates the distance requisite for racist and xenophobic sentiments. On the other hand, there is no way of telling from a worker’s appearance whether they are undocumented or guestworkers, residents, or citizens. Hispanics make up 13% of the U.S. population, 14% of the Long Island population, and New
York City – about an hour and a half away from Farmingville – has one of the most diverse legal immigrant populations in the country, and that population is slowly moving to the suburbs.

Ideology in regard to jobs also exists. The visible presence of day laborers fuels the fear that they are taking away jobs. William J. Lindsay, a Democrat who voted to uphold the veto said, “The hard-working, blue-collar worker that I have represented most of my life is concerned about a legion of undocumented workers being available in our communities to take their jobs.”

Another complaint by opponents is that the undocumented do not pay taxes. A letter to the editor of Newsday praises Gaffney for “taking a stand for all good, hard-working, tax-paying citizens of Suffolk County.” It goes on to say, “The thing that is bothering most of us is not that the laborers are here, it’s that they are just not doing their fair share.” This complaint overlooks the conventional fact that employers are normally charged with withholding taxes from paychecks. The tax fraud in this case is on the part of the employers not the employees, and the employers who cheat the system are saving by not paying taxes, not to mention social security, disability, and unemployment insurance.

Those in support of the measure have their own ideological justifications. Supporters base their arguments on morality, respect for the workers, and community solutions. One Newsday letter focuses, as Jacobson does, on the person not the citizen, “The very beauty of many of our neighborhoods in both Nassau and Suffolk Counties is due to the labor of these hard-working people who have not yet had the opportunity to become citizens…[they] contribute so greatly to our communities.” Another community member writes, “[The center] would have dealt with safety, health and integration issues that the community is morally obligated to address.” Finally, supporters used their ideology to lash out against the opposition, “Where is Robert Gaffney’s
indignation at the citizens who hire the day laborers. [He is] squarely on the side of racist fearmongers who forget that we are all immigrants at some point in our evolution.”

Also at play in the Farmingville debate is the role played by NGOs in lobbying for or against the decision. Brookhaven Citizens for Peaceful Solutions, the Long Island Foundation, Long Island Unitarian Universalist Fund, Catholic Charities in Amityville, and the Hempstead-based Workplace Project, which is an advocate for the day laborers, have all rallied in support of the center. They have been supported by national organizations such as the National Council of La Raza, the nation’s largest Latino civil rights group, the pro-immigrant National Immigration Forum in Washington, D.C., and the Center for New Community, a faith-based organization in Chicago devoted to fighting racism and promoting democracy. The meetings, conferences, surveys, and recommendations conducted by these organizations fall in line with Frost’s argument that the cause will be taken up by those outside the arena of hostile decision makers, as well as his argument that members of civil society, not the state, will initiate the action.

Two local groups that have lobbied against the center are the Sachem Quality of Life Organization and the Farmingville Civic Association. The opposition efforts have been buttressed by support from Washington, D.C.-based Federation for American Immigration Reform (FAIR), a leading immigration control group, the Los Angeles-based American Patrol, an anti-illegal immigration group, and the California Coalition for Immigration Reform. The latter has been labeled a hate group by the Southern Poverty Law Center, which is also closely monitoring the action of the Sachem Quality of Life Groups. Additionally, the National Alliance, a neo-Nazi group, has leafleted extensively in the Farmingville neighborhood.

In July 2001 local and national organizations held a two-day meeting to strategize on how to respond to the success of anti-immigrant groups in blocking the bill. Participant Ed Hernandez
of Brookhaven Citizens, one of the meetings designers pointed out that on Long Island, since the 1980s the Latino and Asian immigrant population has grown to comprise one-seventh of the population. He said, “Hatred and violence will not drive newcomers out, but they threaten to permanently split communities.” (Jones, 2001b) At a subsequent meeting Frank Sharry, executive director of the National Immigration Forum, argued, “The story of America is eventually an embrace of immigrants as ‘us’ rather than isolating immigrants as ‘them.’” (Jones, 2001c)

In response the opposition has organized its own two-day meeting. The August meeting is spearheaded by the Sachem Quality of Life Organization (SQL), the groups most outspoken in its protest against the center. SQL has described the center proposal as treason and argued that the legislation would permit the crime of harboring undocumented immigrants. (Burgher) In response to the legislature’s vote upholding the veto, Ray Wysolmierski, representing SQL claimed, “It was a victory for the Constitution. It was a victory for the law.” He went on to advocate for “mass deportation of illegal immigrants.” (Endo and Jones) In a letter to the editor of Long Island’s *Newsday*, Wysolmierski mentions the “evil, dangerous and ever-growing underground economy” fostered by the day laborers.

SQL is not shy in fanning the flames of anti-immigrant sentiment. The group’s extremist stance, in large part, is a main factor in the controversy, as their inflammatory language incites rejoinder. Consider their rhetoric. The SQL website contains the following alarmist warnings: “Lost your town and your investment in your home?” “The hiring site will act as a magnet to bring more illegal aliens and activity to the host community.” “As illegal aliens bring in their families, they will fill our schools and strain our public services while not paying into the tax base you pay into.” “Protect the opportunities available for your children.” SQL supporters have insisted they are not racist, and are only trying to “protect their community.” At an April 24 rally
in Hauppauge, they carried signs with slogans such as “What Part of Illegal Don’t You Understand” and “They Are Invaders.” In arguing that the day laborers will overly deplete the community’s resources and in conjuring up an apocalyptic climate in order to stimulate a protective response from community members, they have played a role typical of provocateurs.

In a letter to Attorney General John Ashcroft, SQL takes the issue even further by accusing, the invaders of compromising the economy, education and health services, judicial system, as well as threatening the safety of their women and children:

In nearly six years, Farmingville, normally a quiet community of 15,000 has been overwhelmed by an invasion of some 1600 Mexican and Central American illegal alien men…This blatant and routine disregard for the law has spawned a devastating underground economy that has severely eroded our quality of life. Our schools are beginning to host the children of those who don’t pay into the tax base that supports our children’ educational opportunities. Our hospitals and jails are sorely feeling the negative impact of this activity…The illegal aliens solicit our women for sex and our children are no longer safe on our streets. This brings a lingering atmosphere of tension, suspicion, and danger to this community’s residents. Such is the normal legacy of lawlessness.

Finally, in their January 2001 newsletter, SQL raises the tenor of their moral panic even higher:

We have witnessed our neighborhoods being slowly eroded into a state of anarchy due to the unwillingness of government to enforce its laws. This has been compounded by
the subsequent invasion of felony criminal aliens who have nothing to lose by committing any crime in our community. This community is determined to rescue and restore itself to its original character.

In response to such posturing, Ermando Urive, a day laborer, spoke during a 40 hour fast called “Invisible Workers, Hidden Abuses,” sponsored by the New York State Labor-Religion Coalition, “Farmingville has been viewed as a place of disruption, of tension. We would like to begin to change that. We would like residents, all residents -- whether it’s American citizens or Day Laborers -- working together to see the image of the community changed to a positive one.” (Hashagen)

Speaking from the experience of using government funds to maintain a successful hiring site, Thomas Suozzi, mayor of Glen Cove, where a hiring center is maintained through government funds, takes a very practical humanist approach to the issue; “Let’s stop the philosophical debate and let’s solve the problem. The problem is littering, drinking in public, traffic problems, illegal housing and, more important, the exploitation of these day workers, who work hard all day and don’t get paid and are discriminated against by employers and landlords and members of the general public. These centralized shape-up areas solve all those problems.” (Gootman)

Conclusions

At the turn of the millennium, the global workforce faces new challenges. Post-Fordist flexibility is taken to a new extreme when undocumented workers are tolerated during labor shortages, and deported when they are not needed. The institutionalization of this process can be
found in guestworker programs in which limited visas are extended to foreigners on an as-needed basis. Guestworker visas can be extended or terminated, and guestworker legislation traditionally stipulates that workers’ rights are scant. States have a prerogative to protect their sovereignty and citizenship. If, on the other hand, states extend rights to undocumented workers in an effort to find pragmatic solutions to the community problems created by the presence of such workers, states have the privilege to invoke human rights law.

Perhaps the human rights-sovereignty/citizenship conflict is less of a contradiction than it is a convenience since policy makers have easy justification for voting either way. As far as extending rights to undocumented workers, human rights serve as an excellent mechanism with which to argue the case. The concept of human rights is well established and is strengthened each time it is invoked. But as Pollis points out, ideology and political and economic systems have a great influence on the acceptance of human rights. And Jacobson argues:

Human rights codes are taking on such salience not because of any intrinsic normative concerns about human rights in the states involved. The rather marginal movements that devote themselves to human rights have not been a major factor either. International human rights have come to the fore as a result of the piecemeal and incremental strategies of states to confront growing transnational challenges. (Jacobson, 3)

However, if we accept that the essence of human rights does not drive policy decisions, we still must recognize that the concept of human rights is a fair articulation of the moral and ethical obligation that states have to those within their borders.
The Farmingville debate comes at a crucial time when the U.S. is juggling many interests on this issue. Vicente Fox, president of Mexico, has boldly articulated his wish that the U.S.-Mexico border be opened up for the free flow of labor. National trade unions, including the AFL-CIO have changed their stance on the undocumented and are pulling together their resources to organize these workers and advocate for their rights. And with major corporations moving their interests overseas, the U.S. must manage protecting jobs and at the same time attracting business.

The Farmingville case offers several insights for the larger debate. First, the expansion of the undocumented into Northeast suburbs serves as a greater symbol for the growing need and presence of immigrant laborers to fill low-skill, low-paying jobs. As long as middle-class Americans expect a high quality of life that demands a strong service sector, we will continue to see and increase in this labor force. Second, the Farmingville case includes national policy advocates on both sides of the issues and hot spots like racism, xenophobia, and anti-immigrant sentiment are put on the table. Third, the Farmingville center initially has strong bipartisan support. (An exploration into how opponents to the center were able to influence legislators would prove useful.) Fourth, an examination of how the debate boiled down informs greater policy issues. On one side, opponents of the center hinged their response on the expectation that the INS would step in to remove the undocumented, all the while knowing that the INS was unlikely to do so. Supporters of the center, by contrast, represented a practical solution to the problem, which would serve to improve conditions in the community. However, they failed to acknowledge that extending rights can be a slippery slope and that more workers may be attracted to the area because of the respect they gain and/or workers may demand more rights. Fifth, the most recent phase of the debate has been focused on the attitudes and tactics of both sets of
advocates -- time will tell whether this is an important channel of investigation or, if in fact, it
serves only to detract from the policy issues at hand.

Finally, the Farmingville case is an example of the new federalism – local initiatives being
forced because the federal government has devolved its power. It also demonstrates the lack of
resources the federal government offers for dealing with pressing immigration, labor, and social
service issues. While the debate about the state’s responsibility to the undocumented continues,
in practice, civil society with private funding has already stepped in to fill the vacuum. For
example, nineteen of the hiring centers in the Los Angeles County Human Relations Commission
were privately funded.

Transnational citizenship, freedom of movement, the right to work, basic rights and social
services are critical issues in the new economy. As globalization increasingly becomes a fait
accompli, there needs to be initiatives for the free flow of more than just capital across borders.
Whether the solutions are based on human rights or practical concerns, we can be sure that a
piecemeal strategy will be implemented to facilitate rights for the global workforce. We can also
be sure that the piecemeal strategy will be slow in coming and will hardly keep apace with the
advancement of free trade.
Works Cited


Archibald, Randal C. 2001. “Funds Stopped for Legal Programs Helping Illegal Immigrants,” in


Burgher, Valerie. 2001. “Suffolk to Consider Day Laboreres’ Hall,” in Newsday. March 20,

Cohn, D’Vera. 2001. “Census surprise: Millions more undocumented immigrants,” in The
Washington Post. March 18. at

Endo, Emi and Bart Jones. 2001. “Hiring Site Vetoed Gaffney says Suffolk can’t condone


