

**“ILLEGALS” IN THE LAND OF OPPORTUNITY:
THE PRESS AND THE LABOR RIGHTS
OF UNDOCUMENTED WORKERS**

A dissertation presented

by

Ana Ilha

to

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ABSTRACT OF DISSERTATION

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ABSTRACT OF DISSERTATION

This dissertation analyzes the U.S. national and regional press discourse concerning labor violations and the rights of undocumented (“illegal”) immigrants in American workplaces; these workers’ undocumented immigration status renders them especially vulnerable to employers’ abuses, since many are silenced into submission by fear of deportation.

More specifically, this dissertation examines how the U.S. press has covered two instances where alleged violations of labor laws have become news events through public campaigns to bring attention to the issue. The two case studies analyzed in this dissertation are: the DKNY campaign involving garment manufacturing workers in Manhattan, New York; and the Taco Bell campaign involving tomato pickers in Immokalee, Florida. In both case studies, local labor organizations representing the workers, launched campaigns to bring attention to the responsibility of large corporations who were primary purchasers of their products, although not their direct employers. This dissertation also examines whether and how the press coverage discussed the fact that many of the workers in these industries (garment manufacturing and agriculture) are undocumented immigrants.

The results of the press analysis show that most of the U.S. national and regional press coverage did not focus on the workers' undocumented immigration status, and that the campaign organizers did not attempt to address this issue. Rather, the labor campaign organizers in the case studies believed it was in their interest to keep immigration status

out of the press coverage, because they wished to focus on the labor violations, but also because they believed American readers would be less sympathetic to the workers' plight if they were informed that some of the workers may be undocumented immigrants. This dissertation argues that this silence in the press concerning labor violations committed against undocumented workers in the U.S. impoverishes public discourse about "illegal" immigration by leaving this significant human rights concern out of the general debate, and ultimately also impoverishes policy debates about comprehensive immigration policy solutions.

DEDICATION

To my grandfather,
who treasured his extensive library
more than my grandmother loathed it,
therefore acquiring the right to fill up several wardrobes
in their cramped apartment
with books rather than clothing.

One hot summer in Rio, as a young teenager,
I read “Lolita” rather than going to the beach.

He agreed:

“Reading is often more pleasant than socializing—
because reading is having a conversation with the author
and authors are generally very interesting people.”

Because Alzheimer’s will never
erase shared memories.

Mestre Helio Livi Ilha

(April 3, 1921—June 17, 2007)

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Though it appeared that time had stopped while I was writing this dissertation, in reality my life had turned upside down. I had fallen in love, left Boston and travelled four continents in six months, and then moved to Ottawa, Canada—right before taking my comp exams. Love and travels, and the move north of the border (when I was writing about the Mexican border to the south), at times shifted my focus and created hurdles. But all these changes translated into unemployment, giving me lots of free time to research and write—because Amir Attaran, my best friend and partner in seeing the world, cat parenthood and other adventures, also made this dissertation possible by providing full financial support through the “Attaran Foundation.” For that, I am extremely grateful.

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At Northeastern, I am mostly indebted to my advisor, Gordana Rabrenovic; her warmth, enthusiasm and courage are beyond measure. I also thank Professors Martha Davis and Michael Tolley, my dissertation readers, and Professor Luis Falcon, my literature reader, who also seemed to read my mind—your comments provided much

needed dialogue during a lonely writing process. I am especially grateful to Professors Rabrenovic, Davis and Falcon, for being patient and kind, and giving me space during the past three years to explore my ideas.

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Chapter 1: Introduction

Undocumented Immigrants in the Land of Opportunity: Workplace Abuses and the American Press

“I pledge that I (...) shall be prepared to set aside my livelihood, comfort and personal interests to answer the call to protect the Sovereignty of the United States of America against all predators from within or from beyond our shores. (...) I shall be vigilant and not fearful, for I am a Minuteman, a Patriot who is accountable to God and Country.”

The Minuteman Pledge¹

“The men and women volunteering for this mission are those who are willing to sacrifice their time, and the comforts of a cozy home, to muster for something much more important than acquiring more "toys" to play with while their nation is devoured and plundered by the menace of tens of millions of invading illegal aliens. Future generations will inherit a tangle of rancorous, unassimilated, squabbling cultures with no common bond to hold them together, and a certain guarantee of the death of this nation as a harmonious "melting pot."

The result: political, economic and social mayhem.

Historians will write about how a lax America let its unique and coveted form of government and society sink into a quagmire of mutual acrimony among the various sub-nations that will comprise the new self-destructing America.”

The Minuteman Project²

¹ The Minuteman pledge is available online at http://www.minutemanproject.com/pdf_files/minuteman_pledge_2006.pdf.

Immigration and the press. In a country of immigrants, immigration is a powerful news story. This dissertation argues that the American press coverage of immigration, while ebbing and flowing according to economic, political, and ideological tides, has largely failed to convey a significant aspect of the reality of thousands of the most vulnerable U.S. immigrants—low-wage workers without proper work permits, generally referred to as “undocumented” or “illegal”—who have endured unlawful labor standards in the workplace. The risk of labor violations and workplace abuses is especially prominent in particular industries which employ a large proportion of immigrant workers, such as agriculture, garment manufacturing, meatpacking, and construction; inadequate news coverage of workplace abuses suffered by undocumented immigrants silences an important dimension of the immigration discourse in this country. The social construction of immigrants’ identity in the United States, their rights and entitlements, inclusion and exclusion, takes place through public discourse about immigration and their journey toward the “American dream;” when some workers’ American journey is tainted by workplace abuses, press coverage of the issue may help to shape more effective solutions to the undocumented immigration problem—solutions which take into account the workers’ reality of labor standards violations—as well as shed new light on undocumented workers’ identity within our national polity.

Over the course of the nation’s history, the American press has devoted prominent coverage to immigration—particularly during crucial stages of political debate about the size, provenance, and socioeconomic characteristics of immigrant flows. (Simon 1993; Chavez 2001) Contradicting the generous immigration narrative of the “New Colossus”

² This quote was excerpted from the “About Us” section in the Minuteman Project website, available online at <http://www.minutemanproject.com/>.

welcoming the “huddled masses” of the “tired and poor”³—the U.S. history of immigration news coverage reflects social tension and misgivings about the foreign born. The most comprehensive analysis of U.S. press coverage of immigration, which examined 110 years of periodicals published from 1880 until 1990, concluded that newcomers have received an “ambivalent welcome” which echoed the restrictionist and anti-immigrant sentiments expressed by U.S. Congress and the American public throughout the 20th century. (Simon 1993: 244-245)

News coverage plays a significant role in the social and political processes that shape public opinion and policy agendas. Public opinion research shows that citizens’ “attention to governmental issues tracks rather closely on media coverage of these issues.” (Kingdon 2003: 57-58) Media content also establishes *boundaries* for public discourse (Noelle-Neuman 1984; Grossberg 2006: 371-373) by emphasizing certain issues or viewpoints to the detriment of others; since news stories are a central locus through which democracies debate and define contentious social issues, historical events are articulated in news reports into particular concepts which become predominant in social discourse—and become the “reality” or official history of particular eras or events. (Grossberg 2006: 211-212) Limited portrayals of social issues effectively rule out particular realities; if it is not in the news, it does not exist—if violations of labor standards against undocumented immigrant workers in the U.S. are not depicted in the press, that aspect of the immigrant experience in the U.S. is forgotten.

The analysis of press coverage in this dissertation will focus on two case studies, which represent two instances where violations of labor standards in immigrant industries (garment manufacturing and agriculture) were brought to the attention of the local and national press by grassroots labor campaigns: the Chinese Workers and Staff Association and the National

³ Emma Lazarus’s “New Colossus” poem is quoted in Johnson, 2004: 1.

Mobilization Against Sweatshops' DKNY campaign, and the Coalition of Immokalee Workers' Taco Bell campaign; these case studies are briefly described at the end of this chapter. The press analysis of the case studies in this dissertation utilizes linguist Norman Fairclough's model for critical discourse analysis. Fairclough's model analyzes the power of language to establish meanings and boundaries in social discourse, and calls for the researcher to focus on the relationship between press discourse and the social context in which it occurs—in this case, against the background of undocumented workers' vulnerability and reports of labor violations in migrant industries.

The critical discourse analysis in this dissertation was guided by three hypotheses⁴: (1) that the press coverage in the two cases studies would be minimal, and especially insignificant given the social magnitude of the problem, i.e., deterioration of labor standards in migrant industries; (2) that the press coverage of the two campaigns would present the issue as “storytelling” and focus on conflict and deviance as political entertainment, rather than explore the social problem of the deterioration of labor standards in depth; finally, (3) that the news coverage would not approach labor rights as rights *de jure*, in these case studies involving undocumented workers, to avoid placing “illegal” workers in a position of inclusion and entitlement to labor protections in the United States.

Hypothesis (1) was fully confirmed in the first case study, the DKNY campaign; coverage was minimal in both the national and the local press in New York City. In the Taco Bell campaign, however, while the coverage was minimal in the national press, it was very significant in the local press, reflecting the fact that the Florida local press is knowledgeable and engaged in agricultural labor relations issues.

⁴ The reasoning for these hypotheses is provided in Chapter 5.

Hypothesis (2) was partially confirmed in the DKNY case study, since the New York press portrayed the workers' campaign as a conflict between garment workers and the designer Donna Karan—but conflict was much less prominent in national press coverage. Press coverage of the Taco Bell campaign was very different, especially in the Florida local press, which in general provided context about the labor relations between farm workers and growers, and focused much less on conflict than the New York local press in the DKNY case study, thus providing numerous opportunities for nuanced and knowledgeable news stories.

Concerning hypothesis (3), press discourse analysis in the DKNY case study showed that both the national and local press avoided portraying undocumented workers as lawfully entitled to labor protections in the United States by not mentioning workers' "illegal" immigration status. The press coverage of the Taco Bell campaign was similar to the DKNY case study in most instances, and the press generally avoided this "entitlement dilemma" by not mentioning workers' undocumented immigration status; but the Taco Bell analysis also provided a useful contrast to this "silence" about undocumented immigration—the news stories that mentioned immigration status also explored the issue of exploitation. In effect, the news reports that mentioned workers' undocumented immigration status also provided a larger context about unauthorized migration to U.S. These news stories also frequently segued into descriptions of workers' reality in the U.S., their tenuous situation, not only in the workplace, but also in relation to other social issues, e.g., housing, health care, education. Critical discourse analysis emphasizes that language creates and maintains social beliefs and structures; this study concludes that press silence about labor violations in migrant industries contributes to silences public and policy discourse about the costs of excluding unauthorized immigrants from labor protections in U.S. society.

The remainder of this chapter will introduce current trends in low-wage, undocumented immigration to the United States. Some of the current issues in U.S. immigration law and policy are discussed in more detail in chapters II and III, while chapter IV offers further reflections on the role of the press in public policy. Chapter V describes the methodological approach utilized in the case studies, while the case studies per se are developed in chapters VI and VII. Chapter VIII offers concluding thoughts on the role of the press in the national debate about undocumented immigration, specifically in what refers to workplace abuses committed against “illegal” immigrant workers.

Border patrols and the national soul. The American immigration debate has developed a renewed sense of urgency after September 11th, 2001—with the spotlight on “securing the border,” including circumstances where “Minutemen” civilians⁵ attempt to function as a Border Patrol militia to chase Mexican and Central American workers crossing the border into the U.S. job market. Yet this continuous annual flow of unauthorized immigration into the United States is perhaps the tip of the iceberg, galvanizing national concern over recent increases in immigration and the apparent inability of the United States to control its borders.

In effect, immigration over the past 40 years has had enormous impact on U.S. demographics (size, composition, and distribution of the population). The role of immigration in population growth at the national, statewide, and local levels has expanded considerably—especially among youth and young adults. While the U.S.-born population expanded by about 21 million during the 1990s, the foreign-born population grew by nearly 11 million. However, immigrants amounted to roughly 10 percent of the

⁵ See Minuteman quotes from the organization’s website on page 1.

total number of U.S. residents. (Martin 2003b: 20) In other words, immigrants are not just plentiful, but they are also growing faster than the U.S.-born population.

This numerous and growing foreign-born population is also overwhelmingly nonwhite, non-European; most immigrants today arrive from Latin America and Asia. Their presence is being felt around the country. A recent analysis of Census results shows that nonwhites are the majority in about 30 percent of the most populous counties in the United States. In almost 10 percent of the less populous counties, nonwhites also constitute the majority; that is to say that one in every ten American districts is more Hispanic, Asian, African and African-American than it is white. In larger metropolitan areas, every third U.S. district is predominantly nonwhite. (Roberts 2007) In some metropolitan areas this trend is clearly pronounced—e.g., in Los Angeles County, 40 percent of mid-1990s residents were of Mexican origin; only 15 percent of the Angelenos born in Mexico had arrived before 1970. Over half were very recent immigrants, having arrived since the mid-1980s. (Ortiz 1996: 247) This large minority population, both foreign born and their U.S.-born offspring, is “making the American populace more diverse.” (Martin 2003b: 21) This rapid diversification of the population means that majority status for nonwhites in the U.S. is on the horizon—generating tension over American identity and its future. (Doty 1996, 2003; Benhabib 2004; Huntington 2004; Johnson 2004)

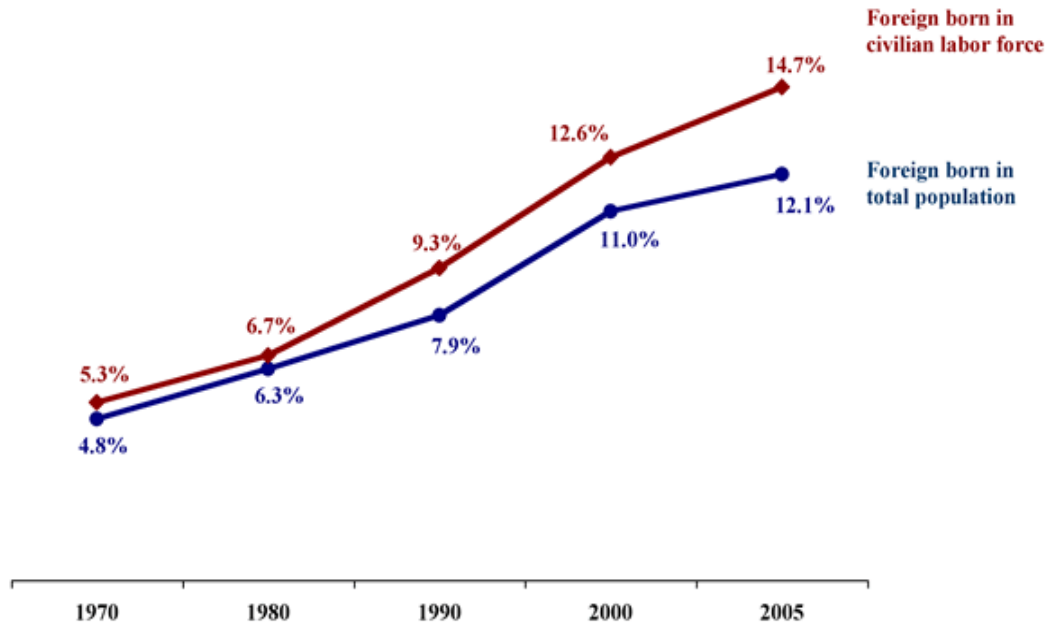
The gates of America. Yet the United States is also a country of historically unbridled immigration—and foreign-born workers have long been a staple of the country’s economy, becoming significant in the constructions of the American national identity. In

fact, for the six decades spanning from 1860 until 1920, the foreign-born population amounted to almost 15 percent of the national total. The numbers of foreign born began to decline from the 1920s on, until by the 1970s those born outside the U.S. had become less than 5 percent of the total population. The dwindling of the foreign born during the 1970s occurred after a 45-year period of regulatory restrictions (1920-1965), economic depression and war. During the 1930s, the country received 500,000 new arrivals, and that number rose to only 1 million during the 1940s. By way of comparison, the first decade of the 20th century (1901-10) had seen almost 9 million new immigrants arriving on American shores. (Daniels 2004: 5, Tables 1.1 and 1.2)

Since the mid-1960s, the nation's gates began to open once again through generous immigration policies of family reunification, increasing provisions for temporary work visas, and refugee admissions—and unauthorized migration to the United States has also become an issue of political concern. Thus through both legal and unauthorized channels, the cycle of low immigration has been reversed and the foreign-born population today constitutes about 12 percent of the national total and almost 15 percent of the American workforce.⁶

⁶ Estimates include both legal immigrants and unauthorized residents. Graph 1 was retrieved from MPI Data Hub at www.migrationinformation.org, a web-based data resource offered by the Migration Policy Institute (www.migrationpolicy.org). Sources for the graph are: Integrated Public Use Microdata Series (IPUMS), 1970-2000; Current Population Survey March Supplement, 2005.

Graph 1: The U.S. Foreign-Born Population in 1970-2005



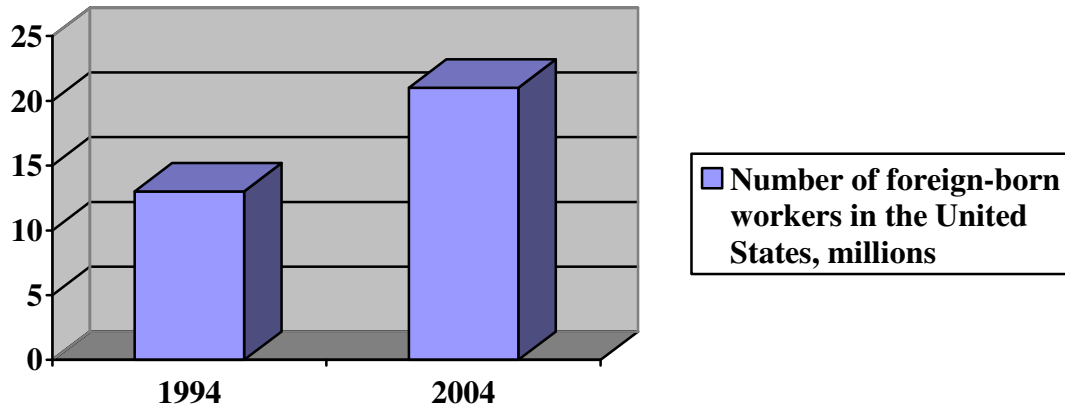
Yet the 1965 Hart-Celler Act not only increased immigration, it also unintentionally shifted its demographics—because it abolished country-of-origin quotas in place (in some form or another) since the 1920s, and established generous family reunification provisions, the 1965 Act also opened the doors to a transformation of the U.S. immigrant population. While the 1965 Act was intended to benefit eastern and southern Europeans, whose entry had been curbed under previous country-of-origin quotas, the result was a historically unprecedented increase in Asian immigration, and an intensification of Hispanic and Caribbean labor, refugee, and family reunification movements (Waldinger 1996). This upsurge in the U.S. Hispanic and Asian population has been dubbed the “new immigration.”

Unexceptional immigration levels. It is important to emphasize that though the ethnic origin of immigrants has shifted, the current U.S. foreign-born workforce is unexceptional from a strictly quantitative perspective. Immigrants flows are much higher today than during the historic low reached in the 1970s (when the foreign born amounted to only 4.8 percent of the American population); yet the period of restricted immigration from the 1920s until the 1960s was the exception, not the norm in American history. If immigrants are again a significant portion of the national workforce, “the commonly held perception that America is receiving an unprecedented proportion of immigrants is false;” historian Roger Daniels points out that the current share of foreign-born (12.1 percent in 2005) is still below traditional levels (nearly 15 percent from 1860 until 1920). (Daniels 2004: 4)

Notwithstanding historic trends, the ethnic shift and upward trend in immigration to the United States has caused political unease and propelled immigration center-stage in political debates at the national, state and local levels. The change is clear: the U.S. non-citizen population rose from only 3.5 million in 1970 to almost 18 million in 2000. (Fisk 2005: 403) Chart 1⁷ (below) depicts the recent expansion in the foreign-born workforce in the past decade alone: in 1994, 13 million workers had been born abroad, or one in ten; by 2004 that number had expanded to one in every seven workers. Of the 21.4 million foreign-born workers estimated to participate in the U.S. labor force in 2004, half of that population, or 10.5 million workers, had arrived since 1990. In effect, “during the past decade, foreign-born workers accounted for more than half of the growth of the U.S. labor force.” (CBO 2005: 2)

⁷ Data from the Congressional Budget Office based on the Bureau of the Census and Current Population Surveys. (CBO 2005: 2)

Chart 1: Growth in Foreign-Born Workers, 1994-2004



Global movements of people. It is also worth noting at this point that the U.S. immigration inflows, though significant, are not unique. In reality, the foreign-born population in Australia, for example, is proportionally a great deal more significant than in the United States.

The United States is thus not the only developed nation experiencing higher levels of immigration. Improvements in transportation and communication during the 20th century have increased not only the movement of capital and trade, but also expanded and diversified the movement of labor across international borders. (Cornelius 1994: 129; Ghosh 2000a; Bhagwati 2003) Today, more than 190 million people worldwide live outside their country of origin; according to United Nations estimates for 2005, about 38 million of those expatriates live in the United States, 12 million in Russia, 10 million in Germany, and almost 6.5 million in France. (MPI 2007b) The relative ease of access to international travel, coupled with “migration

pressures” in developing nations, has generated a significant flow of refugees and economic migrants to rich countries.⁸ (Jordan 2002; Hatton 2005)

In the New World, both Australia and Canada have a higher proportion of immigrants than the United States: 20.3 percent of the population Down Under was born abroad, and in Canada the foreign born comprise 18.9 percent of the total population. (MPI 2007a) In the United States, the total foreign-born population today constitutes about 12 percent of the national total and almost 15 percent of the American workforce.⁹ Even European nations without the New World immigration tradition are experiencing the same trend: in Switzerland, 22.9 percent of the population is foreign born. The foreign born amounted to 8.3 percent of the total population in the United Kingdom in 2001, up from 4.2 percent in 1951. Sweden’s numbers are in effect very similar to the U.S.: the foreign born amounted to 11.8 percent of the total population in 2002, up from 6.7 percent in 1975.¹⁰

Some nations (e.g., Singapore, New Zealand, Spain, Italy, and Greece) actively seek foreign workers at all skill levels, including workers in construction and agriculture. Many more countries, such as the United Kingdom, Australia, Canada, United States, Hong Kong and France, recruit foreign skilled workers in specific professions with high demand (e.g.,

⁸ The top ten countries with the highest proportion of foreign-born residents are: United Arab Emirates (71.4 percent); Kuwait (62.1 percent); Singapore (42.6 percent); Israel (39.6 percent); Jordan (39 percent); Saudi Arabia (25.9 percent); Oman (24.5 percent); Switzerland (22.9 percent); Australia (20.3 percent); and Canada (18.9 percent). (MPI 2007a)

⁹ Estimates include both legal immigrants and unauthorized residents. Information retrieved from MPI Data Hub at www.migrationinformation.org, a web-based data resource by the Migration Policy Institute (www.migrationpolicy.org). Sources for the graph are: Integrated Public Use Microdata Series (IPUMS), 1970-2000; Current Population Survey March Supplement, 2005.

¹⁰ Information for Australia, Canada and the United Kingdom retrieved from the MPI Data Hub, Country and Comparative Data, available at www.migrationinformation.org. The source for Australia is the Government of Australia, Australian Bureau of Statistics. The source for Canada is Statistics Canada, Census of Canada, 2001. The sources for the United Kingdom are the Census – Office for National Statistics; General Register Office for Scotland; and the Northern Ireland Statistics and Research Agency. The source for Sweden is Statistics Sweden (Statistiska Centralbyran).

information technology and engineering), and sometimes in the trades (e.g., plumbing). (MPI 2006b, 2006a)

Unauthorized immigration as policy failure. Policy is the driving force in *legal* immigration. Yet when regulations for authorized migration fail to reflect the labor market needs of the host country, as well as migration pressures in the developing world, then *unauthorized* immigration becomes the driving force of movements across borders. (Martin 2003b) The phenomenon of unauthorized immigration is also not unique to the U.S.; it is prevalent in many countries around the globe, from Europe to Asia and Oceania—in effect, virtually all rich countries (or those richer than its neighbors) have experienced large inflows of undocumented migration. The United States and several other rich countries around the world have therefore experienced high levels of unauthorized immigration, from both refugees and workers looking for better opportunities. (Cornelius 1994; Zolberg 2001; Borjas 2005c) In Europe, some host countries (i.e., Spain, Italy, and France) have resorted to repeated amnesty programs to legalize unauthorized workers and bring them out of the “black labor market.” (Reyneri 2001; Arango 2005a; Calavita 2005) Australia has also experienced large inflows of refugee claimants. (Dauvergne 2004; Moorehead 2005)

“Illegal” immigrants in the U.S. Though recent political debates have stressed the need to solve the problem of undocumented immigration,¹¹ and thus possibly exaggerated its

¹¹ Due to the politically charged use of the term “illegal immigrant,” I will avoid using it, or utilize quotation marks when employing that terminology (Benhabib 2004; Dauvergne 2004). Though these workers are generally called “illegal immigrants” in the news media, I will use the language seen throughout the law and sociology literature: unauthorized, irregular or undocumented. However, historian Roger Daniels remarks correctly that the term “undocumented” is inaccurate, since unauthorized immigrants *do* have documents of some sort, though not the proper immigration status (Daniels 2004). Still, the term “undocumented” is widely employed, and most likely derives from the French immigrant

relative magnitude, the majority of immigrants today have legal authorization to work and reside in the United States. As a matter of fact, about 40 percent of foreign-born workers currently in the country are naturalized U.S. citizens. Another 30 percent of the foreign born employed in the U.S. are either legal residents or have temporary work visas. The remaining 30 percent, 6 to 7 million immigrant workers, are undocumented¹². (CBO 2005: 2, 5) 2006 estimates place the unauthorized population at 12 million¹³ (which represents almost one third of the total 38 million foreign born residing in the U.S.). About 56 percent of these unauthorized U.S. residents came from Mexico, and another 22 percent from other countries in Latin America—such that 78 percent of the total unauthorized population is Hispanic;¹⁴ most of these irregular U.S. residents arrived within the past 10 years (66 percent) and 40 percent arrived since 2000. (Passel 2006)

rights movement called the *Sans Papiers* (without documents). The term “undocumented: also implies transience and the possibility of change in status as migration rules shift and legalization programs take place, while “illegal” is more static. Immigration law researcher Susan Coutin notes in “Your Friend, the Illegal” how it was cumbersome for the U.S. press to report stories about the transition after the 1986 Immigration Reform and Control Act legalization program, because those who were considered “illegal” were now legal residents.

¹² The estimate for the foreign born in relation to the total U.S. population is derived from the US Census Bureau Current Population Survey (CPS). Note that data for the unauthorized population consists of estimates derived from rough calculations, such that the unauthorized population includes many who are waiting for decisions on their residency applications, as well as persons who were granted *temporary protected status* in the United States; up to 15 percent of those classified as unauthorized today are in fact petitioners with full legal status pending. For more on this issue, refer to the forthcoming SOAP section on U.S. immigration policy.

¹³ Unauthorized immigrants comprise those who are *not* U.S. citizens, are *not* lawful permanent or temporary residents of the U.S., and do *not* have temporary visas authorizing them to work and reside in the country. The estimate for the foreign born in relation to the total U.S. population is derived from the 2005 US Census Bureau Current Population Survey (CPS). The majority of the unauthorized population consists of two categories: (a) those who crossed the border without authorization, and (b) those who entered the country with authorization to visit, study or work—and overstayed those permits. Note that data for the unauthorized population derives from approximate calculations that include those persons who are waiting for decisions on their asylum applications, as well as persons fleeing conflict who were granted *temporary protected status* in the United States (e.g., Haitians, Guatemalans, Salvadorans); therefore about 10 percent of those classified as “unauthorized” are in fact petitioners with full legal status pending (Passel 2005b, 2005a, 2006).

¹⁴ Although there are cultural and language differences between Latinos and Hispanics, for the purposes of this analysis those are not significant and the two terms will be used interchangeably.

While it is difficult to estimate precisely how many unauthorized workers are currently in the U.S., researchers assert that “nationwide, a large and crucial segment of the workforce is undocumented.” The assumption is that “immigrants (both legal and undocumented) contribute \$1 trillion per year to the Gross Domestic Product” in 2001. (Fisk 2005: 403) In fact, since American manufacturing has declined, restructuring in the job market has shifted labor demands to both professional and low-wage service employment. Service employment, both low-wage jobs and technical and professional occupations, “skyrocketed from 12 percent to close to one third of all workers.” (Portes 1990: 57) This has led some immigration analysts to conclude that “the working-age population in the United States cannot possibly meet the demand for ... employees in jobs with lower level salaries and qualifications;” there are also demographic concerns and warnings that the threat of an economic slowdown “can be avoided only by “importing” the foreign workforce necessary to fill the shortages created by the aging of the U.S. working population.” (Francese 1994; Bustamante 1997: 214) Professor Douglas Massey argues that so much of this required workforce is undocumented because of the failure of immigration policy to provide work visas for foreign laborers; Americans cannot fill all lower-wage jobs and international migrants are “pulled” into the U.S. labor market by the availability of jobs—in other words, they arrive without work authorization because they do not have the option of securing the necessary employment visa. (Massey 2002)

It is known that low-skilled workers far outnumber skilled immigrants among the U.S. undocumented population: 49 percent do not have a high school diploma. In contrast, only 15 percent of the unauthorized have a bachelor’s degree or more education. (Passel 2005b: 23) Many of the jobs filled by undocumented workers are in the informal

economy. (Grasmuck 1984; Samers 2001) Over 6 million unauthorized workers, representing about 5 percent of the work force, are currently employed in the country, most of them in occupations which require lesser education, and provide inferior wages. In agriculture, for example, forty-eight percent of workers are reckoned to lack work authorization. (Fisk 2005) “The share of unauthorized who work in agricultural occupations and construction and extractive occupations is about three times the share of native workers in these types of jobs,” and 33 percent of undocumented workers are estimated to work in the service sector. (Passel 2005b: 26)

Unauthorized international migration and labor standards. The unauthorized international migration trend is expected to continue accelerating, unless host nations devise more efficient policies to manage projected flows of foreign labor. (Durand 2001; Massey 2002; Hatton 2005) Every year about 700,000 new unauthorized immigrants arrive in the U.S. (Passel 2006). These labor flows have generated tensions over jobs, wages, and fiscal concerns that the unauthorized population uses more public resources (e.g., education, health care) than the public income and taxes it generates. (Borjas 2001; Borjas 2005d)

One of the consequences of these irregular, unmonitored foreign labor flows has been so far largely disregarded in the U.S. national discourse about immigration: the deterioration of labor standards in industries heavily dependent on foreign-born workers. This problem is not exclusive to the U.S., as there are numerous examples of this phenomenon around the world in countries experiencing high levels of unauthorized immigration of low-skilled, low-wage workers—e.g., unauthorized textiles, construction, agriculture, and domestic workers in Spain; manufacturing in the Italian informal economy; meatpacking, garment factories, domestic, and

farm labor in the United States. (CESR 1999; HRW 2001; Schlosser 2003; Compa 2004; Calavita 2005)

The nation and its immigrants: fair labor standards and undocumented workers. While some aspects of this new immigration, especially the perceived burdens and dangers of low-skilled, unauthorized immigration, its fiscal costs, and long-term economic prospects for the nation, have received much attention in the ongoing U.S. debate on immigration—other significant considerations have been all but buried in mainstream political discourse. This dissertation will focus on less prevalent analyses of immigration, focusing on the rights of undocumented aliens in the United States to fair labor standards.

At the same time as the nation focuses on the economic effects and perils of an “invasion” by low-skilled, poorly educated Hispanic workers—many of these immigrants are toiling in under-the-table and/or subcontracted employment in myriad industries from agriculture to meatpacking to garment sewing to janitorial services, a situation which has been corroding social and economic rights for *all* workers nationwide. Indeed, exploitation and disregard for workplace standards (minimum wage, workers’ compensation, overtime pay, leisure time, maternity leave) in the employment of unauthorized foreign-born workers threatens to downgrade human rights and decent employment not only for unauthorized workers, but for American citizens (especially Hispanic, but also black, Asian, and white) employed in the same industries. What is more, without opportunities to move ahead in their pursuit of the American dream, a life of underemployment, mistreatment and poverty for foreign-born U.S. workers may translate into a generation of under-nourished, under-educated and frustrated future

American citizens—the children of these immigrants, victims of the poverty and degrading treatment suffered by their parents.

In 1960, then Secretary of Labor James Mitchell (interviewed by Edward R. Murrow in the 1960 CBS Report “Harvest of Shame”) opined that: "It seems to me that in our kind of a country we no longer quarrel with the idea that a man is worthy of his hire, a fair day's work for a fair day's pay. After all, the employers of this country as indeed the workers are part of our way of life. And it's morally wrong, it seems to me, for any man, any employer, to exploit his workers. In this day and age I don't think we should tolerate it." (Harvest of Shame / CBS Reports Series 1960) Mitchell referred to U.S.-born farm workers who were poorly housed, meagerly fed and exploited in farm fields across America. Almost 50 years later, Mitchell’s logic could be applied to many of the low-skilled foreign-born workers toiling in American homes, farms, restaurants, factories, and construction sites.

While current immigration flows tell a story about the future of this country, how the country treats foreign-born residents also speaks to who we are and who we wish to become; sociologist Douglas Massey notes that the “American side of the bargain,” how America reacts to its new residents, is at least as important as who the immigrants are and what they do. (Massey 2004)

Educational attainment of foreign-born workers. Who are the new immigrants to America? Many current analysts of immigration are concerned about the “quality” of current immigrant flows, as measured by educational achievements and earnings—and whether workers’ lesser education and earnings translates into smaller economic gains for

the country. Researchers have found that “to a considerable extent, educational attainment determines the role of immigrants in the labor market.” (CBO 2005: 1) Most immigrants today are either highly-skilled (college degree or some graduate studies) or low-skilled without a high-school diploma. (Peri 2006a, 2006b) Hence immigrant incorporation into the mainstream labor force today happens at both the top and bottom of the U.S. labor market. (A Price Worth Paying? 2002) This “bifurcation” is not exclusive to the foreign-born population; rather, it “mimics that of (American) society as a whole.” (Clark 2001: 159) However, among immigrants low-skilled workers far outnumber highly-skilled immigrants; recent data indicates that 49 percent of unauthorized immigrants and 25 percent of legal immigrants do not have a high school diploma. In contrast, only 15 percent of the unauthorized and 32 percent of legal immigrants have a bachelor’s degree or more education. (Passel 2005b: 23) “In 2004, among workers ages 25 and older who lacked a diploma, nearly half were foreign born.” (CBO 2005: 1) The scenario painted by recent surveys of American immigrants indicates that there has been (1) a general rise in immigration, as compared to post-World War II numbers (approximately 1.5 to two million yearly newcomers—roughly half legal immigrants, half undocumented—compared to 250,000 in the 1950s); and (2) these immigrants are filling jobs both at the top and bottom of the labor market. In 2002 a news story in *The Economist* noted that “thanks in large part to its technological lead, the United States attracts flows not just of unskilled labour, but of skilled labour and capital too” but also warned that “at the bottom of the labour pile, however, the proportion of immigrants with only the scantiest education is much higher than among indigenous workers.” (A Price Worth Paying? 2002)

Immigration has had stronger effects in some regions of the country; in California, the shift has been dramatic. “In many of the state’s industries ... wages and working conditions had deteriorated after employers eliminated or weakened unions in the 1970’s and native workers were increasingly replaced by immigrants;” today, foreign-born Latinos represent over 17 percent of the California’s workforce. (Fisk 2005: 404)

Source country of foreign-born workers. A large number of low-skilled workers in the United States are of Mexican and Central American origin (CBO 2005: 1-2). Mexican immigration can be traced back to the 19th century. However, current flows of low-skilled workers date to the beginning of the *Bracero*¹⁵ Program during World War II. This program was based on an agreement between the United States and the Mexican government, which allowed American farmers to bring into the country a limited amount of agricultural workers from their neighbor to the south. It is widely agreed that the seemingly unstoppable flows of Mexican low-skilled workers north of the border have their origin in the social networks developed by the early *braceros*, some of whom became legal residents of the U.S., sent for their families, and began clusters of Mexican communities in several American states—primarily California and Texas. *Braceros* became so numerous because, although designed to provide limited inflows of workers during the labor-tight years of the Second World War, the “influence of agribusiness kept the Bracero Program alive until 1963.” During the two decades of the program, many workers learned enough English to leave the agricultural fields and developed ethnic niches of employment in better-paying jobs in urban centers such as Los Angeles and San

¹⁵ Roughly translated, the terms means “arm worker” in Spanish—or those who work with their hands and arms.

Francisco. “By 1964, when Congress abolished the program, networks between the United States and sending villages throughout Mexico were already in place” and thus provided information and jobs “to keep the migrants coming, whether or not they had documents in hand.” (Waldinger 1996: 10)

Most Salvadorans and Guatemalans arrived much more recently than their Mexican counterparts. They have crossed the border north into Mexico and the United States since the early 1980s pushed away from their home countries by both political and economic factors. While a few of these workers have some college or university degrees which granted them access into the American middle class, most have little education and poor command of the English language. They have fully integrated into the economy, yet most find jobs in low-wage service and manufacturing. In the Greater Los Angeles area, Central American immigrants are “among the hardest-working and most poorly remunerated of Angelenos, almost literally a servant caste whose labor makes possible the emerging middle-class L.A. lifestyle: dual breadwinner families who entrust their lawns, laundry, and their children to Central American and Mexican workers.” (Lopez 1996: 300) Lopez, Popkin and Telles go as far as stating that “Los Angeles today needs Salvadorans and Guatemalans or other groups that can be similarly exploited.” (Lopez 1996: 302)

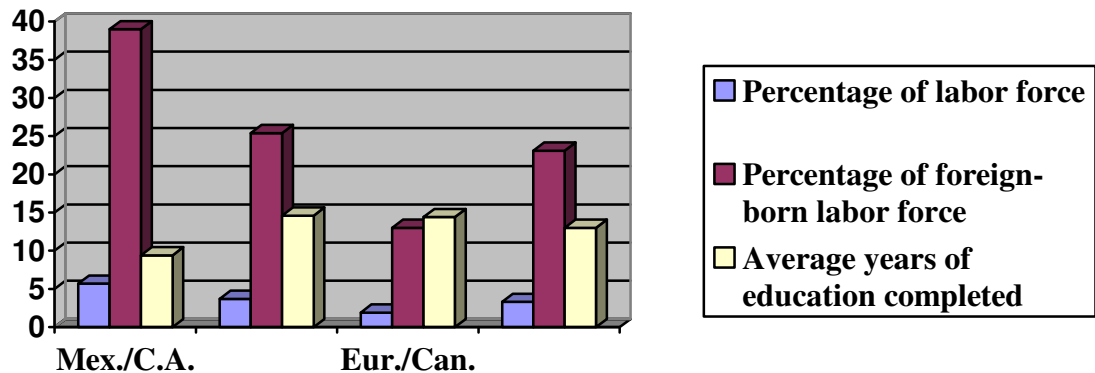
Aside from low-skills and poor educational levels, there is a correlation between Hispanic workers (especially from Mexico, and also Central America) and undocumented immigration status. Since 1990 about 70 percent of Mexican immigrants to the U.S. have been unauthorized, 57 percent of the total unauthorized population comes from Mexico, and 49 percent of the undocumented do not have a high school diploma. (Passel 2005: 4,

16, 23) There is, thus, a correlation between Mexican origin, undocumented status, and low educational levels. Recent studies have concluded that “sharp differences exist between the educational attainment of workers from Mexico and Central America and that of workers from other parts of the world.” (CBO 2005: 3) Since most recent immigrants to the U.S. (legal and unauthorized) are from Mexico or Central America, there are concerns about the desirability of these workers to the American economy (Borjas 2005d); George Borjas has argued that because of differences in earnings and educational attainments, national origin plays a crucial role in the suitability of new immigrants capable of successful incorporation into today’s skills-intensive economy. (Borjas 2001)

Chart 2¹⁶ (below) estimates foreign-born workers in the U.S. by region of origin, exhibiting the stark differences in levels of education depending on whether workers arrived from Mexico and Central America, or Asia, Europe, Canada, and other regions of the world. While workers from Asia have an average of 14.6 years of completed education, those from Mexico and Central America average 9.4 years of formal education. Workers from Honduras scored lowest: Honduran workers in the U.S. average 8.8 years of completed education. Foreign workers from India, on the other hand, scored the highest – almost twice as many years of education as Hondurans. Indian workers in the U.S. have an average of 16.1 years of education. “Those differences are important because the education and skills that foreign-born workers bring to the job largely determine the impact those workers have on the U.S. labor market.” (CBO 2005: 3)

¹⁶ The chart was composed with information from the Congressional Budget Office, based on the Bureau of the Census and Current Population Surveys, 2004. (CBO 2005: 6, Table 2) (CBO 2005)

Chart 2: Foreign-born Labor Force by Region/Country of Origin

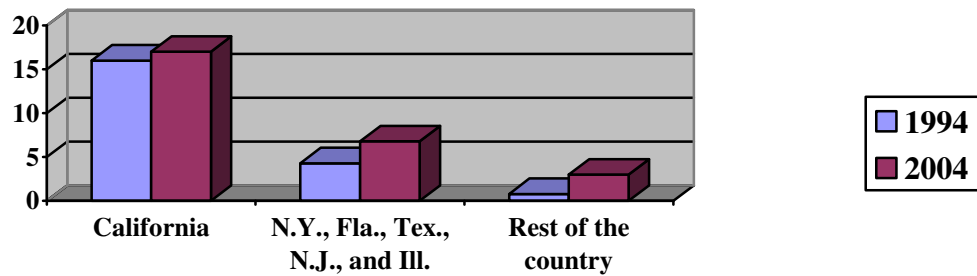


Analysts concerned about current immigration flows lament the fact that most of the foreign-born workers in the U.S. do not come from India or China—but from Mexico and Central America. (Borjas 2001) Almost 40 percent of foreign-born workers employed in the U.S. were from Mexico and Central America, compared to 25 percent were from Asia, including the Philippines, India, China, Vietnam, and Korea.

Chart 3¹⁷ (below) points to a few significant trends in the geographic distribution of Mexican and Central American immigrants during the past decade or so. There was a very small increase in California from 1994 to 2004: from 16 to 17 percent. This may have been caused by increased border policing in the state, shifting immigration to other states, especially Arizona. It may have been caused by the formation of social networks in new areas of the country. The proportion of immigrant workers in other traditional immigration states also rose slightly: from 4.3 percent in 1994 to 6.8 percent in 2004.

¹⁷ Data from the Congressional Budget Office based on the Bureau of the Census, Current Population Surveys, 1994 and 2004. (CBO 2005: 7, Table 3)

Chart 3: Mexican- and Central American-born workforce, 1994 and 2004



In fact, the largest proportional increase took place in regions not traditionally populated by immigrants, and specifically not accustomed to Mexican and Central American foreign-born workers: from 0.8 percent in 1994 to 3 percent in 2004—the population tripled. In 1994, there were 0.6 Mexican- and Central-American born workers in non-traditional immigration states; by 2004, that number had risen to 2.7 million. It is also interesting to note that these states experienced less of an increase in immigrants from other parts of the world (from 3.4 percent in 1994 to 5.4 percent in 2004, or 2.7 million in 1994 to 4.8 million in 2004)—thus the growth in foreign-born population (from 4.2 percent to 8.3 percent of the labor force in the “rest of the country”) was evenly distributed between Mexicans and Central Americans and other immigrant groups. But the rise in Mexican and Central American immigrants was likely to be the most perceptible shift of the decade in these regions of the country.

Residential patterns of foreign-born workers. Immigrants work and reside throughout the country, but they are concentrated in a few states, particularly in metropolitan areas; two-thirds of foreign-born workers are clustered in only six states (California, New York,

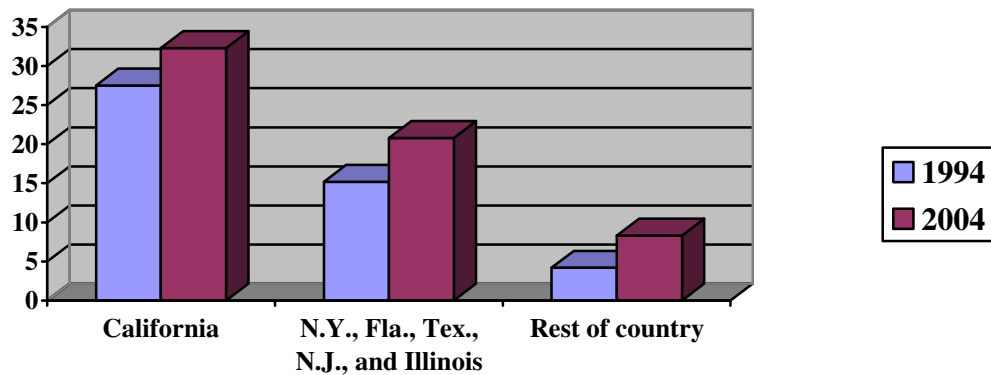
Florida, Texas, New Jersey, and Illinois; see Chart 4¹⁸, below), and seven consolidated metropolitan areas. Data from 2000 shows that 38.4 percent of immigrants were concentrated in just four metropolitan areas: New York, Los Angeles, Chicago and San Francisco. (Borjas 2005b: 19) In California, immigrant workers comprised 32 percent of the labor force in 2004; in fact, 16 percent of the entire foreign-born workforce nationwide lived in the Los Angeles metropolitan area (3.2 million immigrant workers). (CBO 2005) While Los Angeles is home to numerous foreign-born workers from Asia and the rest of Latin America, immigration scholars call Los Angeles the “capital of Mexican America”; it has the largest concentration of Mexicans outside of Mexico City. (Ortiz 1996: 247) And this trend is true in other immigrant centers; over 60 percent of the labor force in Miami was born overseas. In 2004, foreign-born workers averaged 21 percent of the labor force in Florida, Illinois, New Jersey, New York and Texas. (CBO 2005)

However, the share of immigrant workers in the rest of the United States has doubled in the past ten years. California and New York are not only areas with large numbers of foreign-born workers, but they are also “gateways” to other parts of the country. A 2005 Congressional Budget Office report on “The Role of Immigrants in the Labor Market” makes the observation that “internal migration has recently had a substantial effect on the growth of the foreign-born population of states such as Arkansas, Georgia, Nevada, and North Carolina.” Direct migration to some of those states has also increased significantly. The proportion of foreign-born workers in non-traditional immigration states has grown from 4.2 percent in 1994 to 8.3 percent in 2004. (CBO

¹⁸ Data for Chart 4 from the Congressional Budget Office based on the Bureau of the Census, Current Population Surveys, 1994 and 2004. (CBO 2005: 7, Table 3)

2005: 3, 7) Thus the economic effects of immigration are not limited to certain regions of the country—the increase in foreign workers is now a nationwide phenomenon, affecting many different areas in the United States. This dispersal of immigrants results from (a) immigrants establishing new communities in other states of the country, such as Colorado, North Carolina, Georgia, and Virginia; and (b) the move of minorities (primarily Hispanics and blacks) to the suburbs. (Hernandez-Leon 2000; Roberts 2007)

Chart 4: Geographic Distribution of Foreign Born Workers, 1994 and 2004



Almost 68 percent of the *undocumented* population resides in eight U.S. states: California (24 percent); Texas (14 percent); Florida (9 percent); New York (7 percent); Arizona (5 percent); Illinois (4 percent); New Jersey (4 percent); and North Carolina (3 percent). Until the early 1990s, however, most immigrants (both legal and irregular) were concentrated in only six states—Arizona and North Carolina were *not* traditional immigration areas. This new trend derives from the fact that “since the mid-1990s, the most rapid growth in the immigrant population in general and the undocumented population in particular has taken place in new

settlement areas where previously the foreign born were a relatively small presence.” (Passel 2005a) The expansion of unauthorized immigration into the “American heartland” is a recent but significant phenomenon in U.S. immigration. (Light 2007)

Public opinion, the U.S.-Mexico border and policy “windows of opportunity.” The policy problem of an immigration system that is widely perceived as “broken” has loomed large. Since the last comprehensive immigration legislation, the Immigration Reform and Control Act of 1986 (hereafter IRCA), a total of 21 new immigration acts were passed by Congress (Daniels 2004: 236) but none of them directly addressed the millions of unauthorized immigrants currently living in the country. Immigration reform instituted in the 1990s has dealt with availability of public benefits to immigrants (both legal and undocumented) and increased border control measures. (Gimpel 1999; Massey 2002)

Policy theorist John Kingdon considers that Congress is the branch of government most susceptible to public opinion; hence on issues where there is lack of consensus among American voters, Congress is likely to respond with inaction. (Kingdon 2003: 38) Americans are indeed unsure on the best approach to increased immigrant flows. Public opinion is divided between focusing on the country’s immigrant past and compassionate identity, while also fearing for their “sovereignty and destiny.” (Schuck 2001: 11) Historian Roger Daniels calls it a “dualistic attitude that most Americans have developed toward immigration and immigrants, on the one hand reveling in the nation's immigrant past and on the other rejecting much of its immigrant present.” (Daniels 2004: 6) In a study comparing national reactions to immigration policies from 1970 through 1995, sociologist Rita Simon describes American public opinion as “rose-colored glasses turned

backwards.” That is to say that Americans have “positive and approving attitudes” toward immigrants from the past—but express “negative sentiments about those who are coming at whatever time a survey is being conducted.” (Simon 1999: 5) Hence public opinion polls provide evidence that U.S. natives tend to feel favorably toward immigration as a concept, yet economist Julian Simon notes that Americans are consistently alarmed about its public costs and possible threats to their jobs—despite cherishing the nation’s image as a country of immigrants. It is also interesting to point out that most Americans have generally been satisfied with “present levels” of immigration, whatever the “present levels” consist of at the time. (Simon 1989: 349-51) In a recent national survey, the Pew Research Center for the People concluded that “the public remains largely divided in its views of the overall effect of immigration.” (Pew 2006b: 1) Perhaps due to public ambiguity, the issue has never had strong voter appeal; immigration has not traditionally defined voters’ decisions at the polls. (Gimpel 1999)

However, the current perception that the United States is being invaded by “illegal aliens,”¹⁹ coupled with economic insecurities and the loss of good manufacturing and service jobs to outsourcing may have reinforced the “emotional symbolism” of immigration²⁰—such that U.S. citizens’ “patterns of engagement” (Bennett 2001) in immigration policy increase substantially. Indeed, news coverage of the 2008 presidential

¹⁹ Concern over unauthorized immigration has driven numerous grass-roots reactions around the country, such as the well-known Minutemen movement to patrol the U.S. border or the “Save Our State” initiative in California—which has galvanized supporters to protest outside Home Depot stores, where undocumented construction workers frequently gather to seek employment (Jordan 2006). A study of the U.S. news coverage of immigration during election time from 1996-2006 shows that “illegal” immigration was a very significant frame in the press discourse, demonstrating that the undocumented population has become a popular campaign issue (Kim 2007).

²⁰ Political scientists Lance Bennett and Robert Entman claim that a “relatively unregulated and highly commercialized” media industry works to restrict “public involvement in many policy matters;” yet in some policy areas there is “lively and opinionated popular engagement. This pattern of engagement in the policy sphere exists largely on social policy matters that readily yield up emotional symbolism, such as welfare, abortion, and various civil rights issues.”

nomination campaigns seems to indicate that immigration is gaining appeal as a significant issue for a diversity of voters (Santora 2007); this pattern is probably more pronounced in the new immigration states, where some localities have reacted very strongly to the recent and expanding influx of unauthorized immigration. (Light 2007)

Another reason that immigration may be boosting its voter appeal is the Hispanic electorate. (Archibold 2006; Wayne 2007) While the juggling of Hispanic public opinion had already become a political concern for both Democrats and Republicans, terrorism swept the political agenda and became the dominant national problem for a few years after September 11th, 2001. Security concerns seemed to abolish all hope of comprehensive immigration reform. In fact, President George W. Bush had attempted to place immigration reform on the policy agenda during his first year in government (Brownstein 2001; Zolberg 2006: 442), but the terrorist attacks of September 11th 2001 interrupted any “legislative momentum.” (Martin 2003a: 1287; Daniels 2004: 263)

However, in 2005 the immigration problem appeared to have found another “policy window”²¹ of opportunity: heightened security concerns over the southern border with Mexico and possible links between immigration and terrorism placed the issue back in the spotlight, since a porous border seemed antithetical to the “war on terrorism.” Despite renewed interest in immigration policy to focus on the U.S. border with Mexico²²,

²¹ The concept of the “policy window” of opportunity for legislative action here derives from John Kingdon’s definition in *Agendas, Alternatives and Public Policies* (Kingdon 2003): at particular moments, for a variety of reasons, specific issues appear on the “agenda” of politicians and bureaucrats, engendering an opportunity for policy making.

²² Focus on border control is not new; it has been a prominent focus of U.S. immigration policy, ebbing and flowing during the 20th-century. But the efforts to “regain control” of the border with Mexico have not proven successful. It is arduous to regulate entry into the United States from Mexico—due to an extensive, arid and largely uninhabited border region. Thus tolerance of unregulated flows has varied enormously over the years depending on the U.S. economic and political mood. It is estimated that cross-border movements between the two countries since the 1800s have been largely unfettered—providing cheap Mexican labor to American employers,

Congress has not been able to reconcile border security and the legalization of unauthorized residents currently in the U.S.—and the upcoming election removed immigration reform from the high priority agenda. Meanwhile, border enforcement measures have largely failed to contain unauthorized crossing, while increasing the risks involved in the perilous journey; migrant deaths at the border have increased since IRCA-mandated intensified policing of the Mexican border. (Andreas 2001; Andreas 2003b; Durand 2004; Orrenius 2004; Kil 2006)

Immigration raids and state legislatures. With no comprehensive immigration reform in sight, continued flows of unauthorized immigration, and a dispersal of the undocumented into new states (non-traditional immigration destinations) in the U.S., three significant developments have occurred: (1) federal and state agencies' re-interpretation of labor provisions, as well as litigation in state courts, to define unauthorized workers' entitlements to U.S. labor protections; (2) White House executive decisions to contain irregular migration with security initiatives both at the border and inland through immigration raids; and (3) enactment of legislation in individual states dealing with immigration issues in various policy spheres regulating access to employment, education, health, identification (e.g., driver's licenses), law enforcement, and other resolutions. (Belluck 2006; Broder 2006; Lyman 2006; Preston 2006) State action on immigration increased after 1996, when Welfare Reform provisions affected immigrants' (legal residents and undocumented) access to federally-funded benefits such as health care and welfare assistance. The 1996 Personal Responsibility and Work Opportunity

traditionally in agriculture, and most recently in manufacturing and services. (Martin 1988; Martin 1994; Massey 2002; Cornelius 2005)

Reconciliation Act (PRWORA) obliged states to decide whether to provide their own benefits for immigrant families, since some of the programs lost eligibility for federal funding, and thus would have to become fully funded by the individual states. (Singer 2004: 28-29) The impact of immigration on public coffers appears to be “substantially negative at the state and local levels.” (NRC 1997: 12) Hence states have the fiscal incentive to legislate benefits for immigrants. As of November 2007, a total of 50 U.S. states had legislated over 1,500 pieces of legislation, of which 244 had been enacted in 46 different states.²³ (NCSL 2007b)

At the national level, the Department of Homeland Security (DHS) has carried out immigration enforcement drives to inspect workplaces and homes. A focus on high-profile workplace raids has been coupled with a few home drives targeting undocumented immigrants with criminal records. (Bernstein 2007; Gorman 2007)

Wages and the economics of immigration. In addition to the Mexican border and internal enforcement, immigration scholars, politicians and the news media have also focused on whether these unauthorized U.S. residents (a) take jobs from low-skilled American workers and depress wages in some low-wage employment sectors and/or (b) represent a fiscal loss to the U.S. government (through contributing less to public coffers than the services they consume, e.g., education for their children and emergency hospital care).

Economic analyses of immigration are inconclusive since most of the positive effects of immigration related to production and income are difficult to segregate from other factors in

²³ It is worth noting that not all the recently enacted state legislation moved to restrict unauthorized immigrants' access to public benefits. In effect, in 2006 the states of California, Maine and Rhode Island enacted laws that liberalized access to public health benefits; Rhode Island, for example, decided to continue payment of state Medicaid benefits to unauthorized immigrant children who were already enrolled in the program (NCSL 2007a).

order to be accurately measured. (Borjas 2006; Peri 2006a) However, the aggregate effect of immigration appears to be positive (Borjas 2001; Card 2005; Peri 2006a); as mentioned above, state and local levels bear most of the costs associated with services rendered to immigrants. Immigration is thus generally beneficial to the national economy as a whole²⁴ even as lower levels of government bear higher expenses than the federal coffer.

Recent analyses have also focused on long-term economic consequences of welcoming low-skilled immigrants with few years of formal education (Borjas 1998, 2001; Borjas 2005d). The claim that poor immigrants are a threat to the U.S. standard of living is not new; it has been echoed since 19th-century social and political movements to restrict immigration (e.g., the Know Nothings). (Simon 1993; Daniels 2004) Yet economists today recharge that traditional claim with the fact that the 21st-century labor market demands a higher level of education and skills; thus the benefits of welcoming the “wretched and poor” of the traditional immigration narrative have dissipated. (Borjas 1998, 2004, 2005a; Borjas 2005d)

In effect, the availability of immigrant workers appears to depress wages in some low-wage sectors and may increase unemployment among U.S.-born disadvantaged communities. (Borjas 2003; Briggs 2003; Borjas 2004, 2005b, 2006) Yet the aggregate contributions of immigration to the national economy may be enough to offset the possibility of negative effects to some U.S.-born workers; many analysts also conclude that the immigration effect on wages and unemployment is probably insignificant compared to other factors afflicting American-born minorities, such as declining union membership, a stagnant minimum wage and dwindling welfare benefits. (Ong 1996; Chapman 2002; Parrott 2004; Borjas 2005a; Card 2005; Peri 2006a, 2006b)

²⁴ Much of the dispute centers on whether immigration is substantially beneficial to the national economy (Peri 2006a) or only marginally positive and offset by immigrants’ use of public services and lower income levels—which translates into lower contributions. (Borjas 2001).

America remains the “land of opportunity” for millions of Mexicans who for the past several decades have migrated back and forth across the border sending remittances to their families at home and accruing wealth. (Cornelius 1994; Massey 2002; Cerrutti 2004) In 2005, worldwide workers’ remittances to developing countries totaled US\$192.9 billion; Mexico received US\$21.8 billion during that year from citizens working abroad, the vast majority in the U.S. (MPI 2007d)

The children of immigrants. Social analyses broaden the economic debate to include studies of the second generation (the children of immigrants) and their prospects in the U.S. economy and labor force. (Zhou 1997; Portes 2001; Suarez-Orozco 2001; Zhou 2001b) Diverse experiences prevail among the second generation: some children of low-skilled immigrants are on a successful path to elite American colleges, while others join an underclass of disadvantaged minorities, who have insufficient educational credentials to excel in the current job market. (Zhou 1997; Suarez-Orozco 2001) There is some indication that ethnic cohesion is a positive factor in ensuring higher levels of educational attainment for the second generation (e.g., in the Chinese and Vietnamese communities). (Zhou 2001b, 2001a, 2004) Immigrant groups’ incorporation into social networks that provide better jobs also seems to play a strong role in placing the second generation into a successful path—rather than being assimilated into the low-wage economy. (Portes 1990, 2001)

Cultural threats and the “illegal” immigrant. Negativity and fear of immigration must always co-exist with what sociologist Rita Simon calls America’s “rose-tinted” history as a *nation of immigrants*. (Simon 1993) Yet the unauthorized status of about 700,000 new immigrants every

year strengthens the doomsday narrative. The positive immigrant narrative is also weighed against the loss of the country's Anglo (or European) identity (Lipset 1990)—which since the 1970s has been “jeopardized” (in Samuel Huntington's view) by overwhelmingly non-European immigration flows. (Huntington 2004) Indeed, in 1970 Italy and Germany still provided more immigrants to the U.S. (10 and 9 percent, respectively) than Mexico (8 percent). In 2006, Mexico was the source country for 31 percent of all foreign-born residents of the United States. (MPI 2007c) As in the 1800s and early 1900s, U.S. citizens are polarized against immigrant workers; then it was the Irish, Chinese, Japanese, Polish, Italian or Jewish immigrants. (Daniels 2004) Now the immigrant threat is the Mexican, the Central American, the Asian, or simply the “illegal”—as a consequence of today's heightened immigration restrictions and border control, is not only ethnically different, but also frequently unauthorized. (Johnson 2004)

“Illegals” in the Land of Opportunity: this research project. Part I of this dissertation will build on this introduction to some of the main themes in today's academic debate about undocumented immigration America. In Part II, to exemplify and explore the muted discourse about the exploitation of low-skilled immigrant workers in America this dissertation will analyze the national and regional press coverage of two labor campaigns: one in Immokalee, Florida, and the other in Manhattan, New York City. In both cases, low-skilled workers (farm workers and seamstresses) initiated legal and public-relations campaigns to denounce their abusive conditions of employment. In both cases, the press coverage was scant and mostly apathetic, failing to probe into the causes and consequences of workers toiling under such dire conditions in 21st-century America;

these two events were named for the purposes of this study the DKNY and Taco Bell campaigns, after the corporations targeted by the workers' protests. The conclusion, will revisit some of the themes introduced here (exploitation and its consequences for human rights in America) and offer concluding remarks on the current state of public debate about low-skilled immigration. Below, the two last sections of this introductory chapter offer a foreword on the DKNY and Taco Bell case studies.

Donna Karan: "Treated Like Slaves" in New York City garment factories. The Center for Economic and Social Rights²⁵ (hereafter CESR) issued a report in December of 1999, accusing Donna Karan International, Inc. (hereafter DKNY) of hiring sweatshops as their U.S. contractors. About 20 percent of DKNY's production takes place in the United States. This is an excerpt from the report: *"A few NYC garment workers have come forward this year to expose sweatshop conditions typical of the sub-contracting system, while stitching exclusively for Donna Karan International in mid-Manhattan factories. Chung Suk Choe operated the Choe factories in Manhattan's fashion district at 330 West 38th Street, 6th Floor. The contractor stitched exclusively for Donna Karan International, Incorporated. The workers, about 70 Chinese and Latina women, sewed high-end evening gowns, jackets and coats for 9 to 11 hours a day, six-days per week, under extremely oppressive conditions. Despite the fact that the factories were unionized, with Local 89-22-1 of UNITE, the workers were never paid overtime. They were not allowed to use the phone or receive calls, even during emergencies, or go to the bathroom unless they had finished stitching their quota. They faced a constant*

²⁵ Quote from the Center's web site: "The Center for Economic and Social Rights (CESR) was established in 1993 to promote social justice through human rights. In a world where poverty and inequality deprive entire communities of dignity and even life itself, CESR promotes the universal right of every human being to housing, education, health and a healthy environment, food, work, and an adequate standard of living." CESR is based in New York.

barrage of verbal harassment from the supervisors to stitch faster and were forbidden from looking up. When one of the workers stood up to challenge the conditions after enduring them for seven years, she was fired.” As can be deduced from this excerpt, employment practices at the Choe factories seemed to violate domestic and international labor regulations.

Since a New-York based non-governmental organization focusing on human rights published a report specifically on DKNY, this fact alone renders the issue newsworthy enough to receive some press attention. The publication of the report by the CESR in 1999 report was, in fact, one of the first steps in a series of newsworthy ‘events’ in the DKNY workers’ fight. Before the report was issued, a garment worker’s lawsuit demanding overtime pay had been settled out of court by a specific DKNY contractor and garment workers had staged protests in front of the Donna Karan flagship store in New York City.

After the publication of the CESR report, a class action suit ensued in June of 2000 for back pay of overtime owed. The lawsuit was litigated by the Asian American Legal Defense and Education Fund (hereafter AALDEF), while the Chinese Workers and Staff Association (hereafter CWSA) and the National Mobilization Against Sweatshops (hereafter NMAS) helped the workers organize further protests highlighting the low pay in the garment industry and denouncing work conditions in DKNY contractors’ factories.

Aside from the central legal ‘event’ (the lawsuit), CWSA and NMAS continued to organize anti-sweatshop protests (two in 1999) outside DKNY stores in New York City. These protests took place during the high season, such as holiday shopping in December. At first DKNY denied legal or business connections to the case. A statement from Donna Karan claimed that the designer’s firm “does not own or operate any factories. This is a personal dispute between a unionized contract manufacturer and some of its employees.

We have absolutely nothing to do with their employment or working conditions.” (Metro Business; Seamstresses Protest Factory Conditions 1999) In another statement, Donna Karan declared: “we are not involved in their day-to-day operations and cannot dictate their business decisions ... When issues between the management of the factory and its workers continued to surface, pending their appropriate resolution we decided to place this work with other union contractors.” (Wong 1999) In 2003, the company settled in a confidential agreement, for an alleged US\$500,000 paid to the 20-some workers directly involved in the case, although it had been filed as a class-action suit. The analysis of the local and national press coverage of this campaign will cover both the demonstrations and the lawsuit; chapter VII focuses on the DKNY case study.

Taco Bell and Florida tomato pickers. The Coalition of Immokalee Workers (hereafter CIW), an advocacy group primarily composed of and lead by immigrant farm workers, has experienced great success in public campaigns for wage increases and greater monitoring of labor rights for tomato pickers. The region of Immokalee (southwest Florida) is home to several tomato farms, some of which produce exclusively for some of the major fast food corporations in the world: Taco Bell, MacDonald’s, and Burger King. Since 2005, CIW has joined with several NGOs in the *Campaign for Fair Food*—to bring improvements in labor conditions for tomato pickers working for fast food corporations such as Mac Donald’s and Burger King²⁶.

The discourse analysis in chapter VIII focuses on the press coverage of CIW’s first campaign, which focused on a boycott and national campaign against Taco Bell and its corporate parent, Yum Brands. The Taco Bell campaign achieved its goal: Taco Bell and

²⁶ See www.ciw-online.org for more information on all CIW campaigns.

its parent company “agreed to meet demands to improve wages and working conditions for the farm workers. In what both sides called an unprecedented agreement, the fast-food company said it will increase the amount it pays for tomatoes by a penny per pound, with the increase to go directly to workers’ wages.” Under the agreement, Taco Bell also consented to monitor its farmers’ salaries to workers and “promised help the farm workers’ efforts to improve working and living conditions.” (Nieves 2005)

Part I

Chapter II: U.S. Policy and the Undocumented Social Problem

Immigration policy today: *why can't we solve the 'illegal immigration problem'?* The policy problem of an American immigration system that is widely perceived as “broken” has loomed large since the early 1990s—while a rising number of unauthorized foreigners have entered the U.S. or remained in the country without permission from immigration authorities.

Since the last comprehensive immigration reform, the Immigration Reform and Control Act (hereafter IRCA) in 1986, a total of 21 new immigration acts were passed by Congress (Daniels 2004: 236), yet none of them has directly addressed the millions of unauthorized immigrants currently living in the country. Immigration reform instituted in the 1990s has dealt with availability of public benefits to immigrants (both legal and undocumented) and increased border control measures. (Gimpel 1999; Massey 2002)

Policy theorist John Kingdon claims that Congress is the branch of government most susceptible to public opinion; hence on issues where there is lack of consensus among American voters, Congress is likely to respond with inaction. (Kingdon 2003: 38) Americans are indeed unsure on the best approach to increased immigrant flows. Public opinion is divided between focusing on the country's immigrant past and compassionate identity, while also fearing for their “sovereignty and destiny.” (Schuck 2001: 11) Historian Roger Daniels calls it a “dualistic attitude that most Americans have developed toward immigration and immigrants, on the one hand reveling in the nation's immigrant past and on the other rejecting much of its immigrant present.” (Daniels 2004: 6) In a

study comparing national reactions to immigration policies from 1970 through 1995, sociologist Rita Simon describes American public opinion as “rose-colored glasses turned backwards.” That is to say that Americans have “positive and approving attitudes” toward immigrants from the past—but express “negative sentiments about those who are coming at whatever time a survey is being conducted.” (Simon 1999: 5) Hence public opinion polls provide evidence that U.S. natives tend to feel favorably toward immigration as a concept, yet Americans are also consistently alarmed about the fiscal costs and possible threats to their jobs posed by new immigrant flows—despite cherishing the nation’s image as a country of immigrants. (Simon 1989: 349-351) Hence, although a slight majority of Americans are generally in favor of limiting immigration, about 40% view immigration as a source of strength and talent to the country. (Simon 1999: 6) Indeed, a recent national survey by the Pew Research Center for the People concluded that “the public remains largely divided in its views of the overall effect of immigration.” (Pew 2006b: 1)

Perhaps due to this ambiguity in public perceptions, the immigration issue has not generally held strong voter appeal; immigration has not traditionally defined voters’ decisions at the polls (Gimpel 1999). However, in the last decade or so, the perception that the United States is being invaded by “illegal aliens”²⁷ crossing the Mexican border, coupled with economic insecurities and the loss of good manufacturing and service jobs

²⁷ Concern over unauthorized immigration has driven numerous grass-roots reactions around the country, such as the well-known Minutemen movement to patrol the U.S. border or the “Save Our State” initiative in California—which has galvanized supporters to protest outside Home Depot stores, where undocumented construction workers frequently gather to seek employment (Jordan 2006). A study of the U.S. news coverage of immigration during election time from 1996-2006 shows that “illegal” immigration was a very significant frame in the press discourse, demonstrating that the undocumented population has become a popular campaign issue (Kim 2007).

to outsourcing may have reinforced the “emotional symbolism” of immigration²⁸—such that U.S. citizens’ “patterns of engagement” with the issue increased substantially (Bennett 2001). Immigration scholar Jorge Durand has noted that “with the border as a dramatic prop, immigrants (have) become symbols in a battle of images. For some they symbolize the American dream; for others, the loss of control in a global economy.” (Durand 2004: 1) Indeed, news coverage of the 2008 presidential nomination campaigns showed that immigration may be gaining appeal as a significant issue for a diversity of voters (Santora 2007); this pattern is probably more pronounced in the new immigration states, where some localities have reacted very strongly to the recent and expanding influx of unauthorized immigration (Light 2007), even as immigration remains less influential than national security, health care and the economy as most important issues in voters’ political agendas.

The first section of this chapter will provide a brief history of central developments in U.S. immigration policy, while section II will consider current developments in immigration policy and debate; section III considers the potential for successful management of migratory flows—and also introduces the topics discussed in the chapter III.

²⁸ Political scientists Lance Bennett and Robert Entman claim that a “relatively unregulated and highly commercialized” media industry works to restrict “public involvement in many policy matters;” yet in some policy areas there is “lively and opinionated popular engagement. This pattern of engagement in the policy sphere exists largely on social policy matters that readily yield up emotional symbolism, such as welfare, abortion, and various civil rights issues.”

Section I

U.S. immigration policy since 1882: from ethnic exclusion and quota systems to family reunification, undocumented immigration and employment-based visas

The Chinese Exclusion Act and the birth of American immigration bureaucracy. The first immigration restriction in American history was instituted in 1882 with a racist statute, the Chinese Exclusion Act. Historian Roger Daniels states that this “marked the moment when the golden doorway of admission to the United States began to narrow;” after the May 1882 statute, the federal government developed a growing bureaucracy and regulatory system to exclude, limit and control entry into the country. (Daniels 2004: 3) The Chinese Exclusion Act was conceived to exclude Chinese nationals, yet by the early 1900s it had grown into a federal immigration service²⁹. At the end of World War I, legal immigration rules excluded eight categories of persons. Aside from Asians (with the exception of Japanese and Filipinos), immigration admission officials ruled out individuals deemed “dangerous” or “undesirable” (certain types of criminals and radicals; those with particular diseases and disabilities; the poor; the illiterate). (Daniels 2004: 27) Early immigration restrictions also prohibited the hiring of contract laborers—due to

²⁹ “Like much of what Congress has done about immigration since then,” the Chinese Exclusion Act “was conceived in ignorance, was falsely presented to the public, and had consequences undreamt by its creators.” (Daniels 2004: 3) Historian Roger Daniels also notes that the immigration service was the first government institution to act against the interests of its constituency: “while the Department of Agriculture spoke for farmers, the Department of Labor spoke for working people, the immigration service ... lobbied against the interests of legal immigrants, especially those of color and those who seemed to them un-American.” (Daniels 2004: 26)

fears by trade unionists³⁰ that many “contract journeymen,” recruited to enter the country, were stealing American jobs.³¹

National Origins Quota Acts: ethnic preference and family reunification policies. The proportionally largest flow of immigration in United States history occurred between the 1880s and the 1920s—when restrictive measures were put in place. The early Great Migration brought in about twenty-six million newcomers in the course of four decades. In 1910, 15 percent of the population was foreign-born. (Borjas 2001: 7)

The National Origins Quota Acts of 1921 and 1924 were the first attempts at comprehensive U.S. immigration regulation. The Acts placed caps on the number of visas available per country—which depended upon the percentage of U.S. residents from each country in 1920, a process which favored European immigrants. Besides limiting immigration to country of origin, the quota system was also restricted to the Eastern Hemisphere. “Immigration from the Western Hemisphere was exempted from quotas. The motivation behind the quotas was to maintain the country’s ethnic composition in proportions roughly equivalent to its national origin composition in 1920.” (Sorenson 1992: 18)

³⁰ This marked the beginning of a century of U.S. labor unions’ opposition to immigration—which ended recently, when AFL-CIO announced its new policy in favor of legalization programs for undocumented workers. See Chapter III for more on labor unions and immigration.

³¹ However, early immigration service opposition to contract work was not universal and gave employers some leverage in acquiring foreign-born workers when native labor was scarce: “as continues to be the case with employer sanctions, there were numerous exceptions. The most significant enabled employers to bring in foreign skilled workers if and when native “skilled labor” could not be obtained.” For example, there was no prohibition on foreign-born temporary agricultural workers, primarily since there was no shortage of native workers available, and thus no need to import labor—however, this would help shape the U.S. agricultural industry later on, when native workers did leave the agricultural industry, and a dependence on foreign-born (primarily Mexicans) workers took shape. (Daniels 2004: 28-29)

The 1921 Act included the first residency and work visa distribution system in the U.S.; when a country's quota was reached, family-related criteria went into effect. Preference was given first to parents and husbands of citizens, and then to wives and children of resident aliens. Starting in 1924, the wives and children of U.S. citizens were permitted to enter the country outside of any quota. The first priority of immigration regulation in the 1920s was ethnic origin, then family reunification. Employment-related criteria played a small role in granting extra resident visas: persons skilled in agriculture were given first preference (along with parents and husbands of citizens) for over-the-quota countries. Before the quota was exceeded, however, there were no restrictions or preferential systems based on employment. (Sorenson 1992: 250; Daniels 2004; Legomsky 2005)

Post World War II: the need for highly skilled workers. In 1952 another Congressional Act, the Immigration and Nationality Act (INA), reaffirmed the country-based caps—but changed the over-the-quota system to favor skilled workers needed during the post-WWII era. Analysts believe the INA still had a strong ethnic motivation to benefit European countries since previous quotas remained intact, but the preference system underwent an ideological shift in what regards market-based immigration. “First preference was given to highly skilled workers whose services were needed in the United States.” (Sorenson 1992: 19) The Act also introduced another regulatory element to the immigrant admission process: labor certification. Immigrants admitted under the labor preference system “could be excluded from the United States if the secretary of labor determined that there were sufficient numbers of able and willing workers already in the country or if the

immigrant’s employment would adversely affect wages and working conditions of similarly employed people.” (Sorenson et al: 19) Labor certification was created to protect U.S. workers, yet the process was only utilized if the Department of Labor (DOL) received a complaint³²—and not actively employed in screening over-the-quota new immigrants. All in all, however, since the 1952 Act, “one central value that United States immigration laws have long promoted, albeit to varying degrees, is family unity.” (Legomsky 2005: 250)

1965: Immigration and American identity. The 1965 Amendments to the Immigration and Nationality Act of 1952 introduced two major shifts: they (1) abolished a national origins quota that had been the norm since the early 1920s; and (2) instituted priority to family reunification, which led to new highs in immigrant admissions. (Bean 1990: 1)

The 1952 INA was amended in 1965 primarily to banish the quota system, regarded as “blatantly discriminatory.” (Sorenson 1992: 23) While the 1965 amendments still restricted overall number of alien entries by establishing immigration ceilings for both the Eastern (170,000 entries) and Western (120,000 entries) hemispheres, and limiting the number of visas per country for the Eastern hemisphere—it maintained unlimited immigration for all the immediate relatives of U.S. citizens. Thus a major ideological shift took place in the preference system: family-related criteria regained their central role in U.S. immigration. The 1965 amendments allotted a mere 10 percent of the

³² In 1964 and 1965 different labor certification systems were introduced which involved more active DOL regulation and enforcement. The first program was exclusively for Mexicans: following the demise of the *Bracero* agricultural initiative in 1964 (which recruited temporary workers for American farms), the DOL instituted an individual certification process for every Mexican entering the U.S. to work. Certification was granted based on U.S. labor market conditions “at the place where the alien was to be employed and if wages and working conditions in the United States would not be adversely affected.” (Sorenson 1992: 22)

total number of visas to occupational preferences³³; in the 1952 INA, 50 percent of the preference-system visas had been slotted for highly-skilled immigrants.³⁴ (Sorenson 1992: 23)

As a result of the 1965 amendments, U.S. immigration experienced an upsurge—and it also underwent an impressive geographic shift. As recently as the 1950s, over two-thirds of legal entries into this country came from Europe or Canada; nearly 70 percent of immigrants originated from Canada or Europe, and the other 30 percent came from Asia, Latin American and the Caribbean. By the 1970s, only 20 percent came from Canada or Europe; now, 75 percent of newcomers arrived from Asia, Latin American and the Caribbean islands. In the 1980s, this new development persisted such that over 80 percent of American immigration came from Asia, Latin American and Caribbean, while 15 percent were Canadians or Europeans. (Bean 1990) And in the 1990s, a mere 17 percent of the immigrants originated in Europe or Canada, whereas almost half arrived from Latin America and 30 percent from Asia.³⁵ (Borjas 2001: 9) Thus race became a defining feature of U.S. immigration, as it had been with previous flows of Irish, Jewish, Polish

³³ Under the 1965 regulations, labor market needs were rated third (professionals and artists of exceptional ability, no need for actual job offer) and sixth (skilled and unskilled labor for occupations for which U.S. workers were in short supply; additional requirement of job offer) in the preference system.

³⁴ Moreover, labor requirements instituted in 1965 required the secretary of labor to exclude aliens unless there were no “sufficient similar workers” and “no adverse effects on U.S. workers.”³⁴ (Sorenson 1992: 24) Up until 1965, exclusion of alien workers had been predicated upon availability of domestic labor; in 1965 the burden shifted to the alien worker and the Department of Labor to demonstrate no negative repercussions to the U.S. labor market. This labor certification process was especially significant for Western hemisphere immigrants—for whom the country-based preference system did not apply; all of them, except for U.S. citizens’ immediate family, were required to receive labor certification. “Thus, the 1965 amendment made labor certification a more integral part of the admissions process by expanding the categories of immigrants required to obtain it and by mandating the secretary of labor to use it.” (Sorenson 1992: 24)

³⁵ Economist George Borjas argues that this shift in national origin played an extremely significant role in determining educational levels of U.S. immigrants; newcomers from developed countries such as Switzerland or New Zealand have between 14 and 16 years of schooling, whereas those from Guatemala and Mexico have between 5 and 8 years of formal education. Schooling helps predict economic achievement: “it is well known that an additional year of schooling increases earnings by at least 5 percent in the United States.” (Borjas 2001: 46)

and Italian immigrants. (Simon 1993; Daniels 2004) Immigrants were not only more numerous, but also “more visible” than they had been in decades. (Bean 1990: 1)

Further changes to INA. The next step in regulatory policy was taken in 1976, with new amendments to the INA, which set limits (20,000 entries) per country for immigrants from the Western hemisphere. The 1976 amendments also created their own preference system for the Western hemisphere. “These changes came largely as a result of the long waiting lists that had developed for Western hemisphere immigrants.”³⁶ (Sorenson 1992: 25) The regulatory changes in 1976 thus reinforced the significance of family criteria in immigration policy.³⁷ Then in 1978 Congress introduced further changes to INA by abolishing regional divisions and creating one ceiling for both the Eastern and Western Hemispheres (290,000 visas in total). U.S. citizens’ immediate relatives were still granted unrestricted entry, but a universal preference system was signed into law, still following the stricter requirements instituted in 1976.

Since the 1960s and 1970s experienced an increase in undocumented immigration from Mexico, this exacerbated the racial shift already occurring in legal immigration flows. The unauthorized stream of migrant workers across the Mexican border intensified

³⁶ The first-come, first-served system had proven inefficient to address family reunification: “an immediate relative of a permanent resident and the adult brother of a citizen, for example, had the same chances of receiving a visa as someone with no family connections at all.” (Sorenson 1992: 25)

³⁷ They also made employment-based immigration requirements even more stringent: now both professionals and artists of exceptional ability and skilled and unskilled labor for occupations for which U.S. workers were in short supply had to produce job offers in order to be certified. The only exception now was made for applicants with occupations listed under Schedule A; they were granted visas without the need for an employer on file. The DOL also amended the INA to include two additional requirements that “had the effect of placing a larger part of the burden of certification on the employer”: (1) the criterion for determining availability of U.S. workers shifted from the regional to the national level, so that now employers had to show that there was a national shortage of labor, not just in their region; and (2) employers were required to “take specific steps to recruit a U.S. worker before labor certification could be issued to the immigrant.” (Sorenson 1992: 26)

in 1964 after the demise of the *Bracero* Program.³⁸ The policy response to these significant shifts was the creation of a governmental task force to study the effects of immigration to American society: the Select Commission on Immigration and Refugee Policy, which was established in 1978. Its mandate was to study and present solutions to all aspects of U.S. immigration policy. In 1981, the commission's final report concluded undocumented immigration was the central concern in U.S. immigration policy. The general public also became alarmed by high volumes of unauthorized flows, especially in areas of high immigration. For example, 87 percent of respondents in an early 1980s survey in southern California³⁹ thought that "the illegal immigration situation" was currently either "somewhat serious" or "very serious." (Bean 1990: 2)

1986 IRCA: Immigration and American identity. "After several false starts reflecting continuing debate and controversy," Congress passed the Immigration Reform and Control Act in October 1986, and a month later IRCA was signed into law. (Bean 1990: 2) As with current immigration policy debates, "issues pertaining to the size, growth, and impact of the illegal population in the United States were debated vociferously before the enactment of IRCA."⁴⁰ (Bean 1990: 3)

³⁸ The *Bracero* Program was an agreement by the United States and Mexico for (legal) temporary workers in agriculture. "At that time, the number of illegal labor migrants coming from Mexico started to rise. The immigration of persons who entered the country legally and then stayed beyond their visa expiration dates also increased." (Bean 1990: 1-2)

³⁹ There seems to be a substantial difference in public opinion on immigration according to proximity to the border; our "capacity to care" for others diminishes at the border, where competition with foreigners for resources tends to be higher, and thus individual levels of compassion plummet. (Dauvergne 2005: 67)

⁴⁰ Thus if the IRCA policy process repeats itself, the country will wait a few years to see a new round of comprehensive legislation on the issue of undocumented immigration.

To this day, “IRCA constitutes the most sweeping revision of U.S. immigration policy since the national origins quota system was abolished in 1965.”⁴¹ (Bean 1990: 2) Its major objective was to reduce illegal immigration. IRCA sought to accomplish that goal through (1) legalization of illegal immigrants already in the U.S. and (2) reduction in future flows through imposing penalties on employers for hiring unauthorized workers—reversing a practice which had allowed the United States to “expressly authorize” American employers to “hire foreigners entering the country in violation of its own immigration laws.” (Bustamante 1990: 212) IRCA was largely a political response to economic concerns about unauthorized immigration. “Its two central provisions were employer sanctions and a legalization program. The sanctions were aimed at deterring illegal immigration by fining employers who hired undocumented immigrants. At the same time, the law offered undocumented immigrants who had been in the United States for at least five years or who had worked in agriculture for a specific period of time the opportunity to adjust to legal resident status.” (Sorenson 1992: 27)

The “regular legalization” application process lasted from May 5, 1987 until May 4, 1988. The Immigration and Naturalization Service (INS) reported 1.8 million applications; this figure was lower than the 2 million INS had predicted. INS estimated approving 90% of these petitions.

It is remarkable to note that although undocumented immigration hailed primarily from Mexico, most Mexicans were unable to qualify under the legalization process specified by IRCA—since undocumented immigrants had to prove continuous residency in the United States since January 1, 1982. Mexicans’ migration pattern, however,

⁴¹ The other immigration act passed in the 1980s was the Refugee Act of 1980—of limited scope.

included frequent return trips home to visit family.⁴² Hence most Mexicans applied for legalization under the IRCA provision for “special agricultural workers.” The application period for “special agricultural workers” lasted until November 30, 1988. The INS received 1 million applications, but the INS reported many applications in this category with “fraudulent documents.”(Bustamante 1990: 212) This led migration scholar Jorge Bustamante to conclude that, despite high levels of undocumented Mexicans residing in the U.S., “IRCA’s legalization programs were designed disproportionately to favor non-Mexican undocumented immigrants, by creating a condition for permanent residency that is contrary to the practice of Mexican immigrants who come and go between Mexico and the United States every year. On the other hand, it appears that IRCA’s legislators wanted Mexican migrants exclusively for agricultural labor, because they designed requirements most likely to be filled by Mexicans.”⁴³ (Bustamante 1990: 223) Bustamante also charged that IRCA was designed to favor employers’ needs for cheap, vulnerable undocumented labor by maintaining “the flow of those undocumented immigrants who made salaries lower;” in effect, he notes that by 1990, only four years after IRCA was signed, violations in the California minimum wage law had tripled since IRCA. (Bustamante 1990: 224)

⁴² In fact, sociologists find that Mexican migrants today still do not wish to necessarily settle in the United States, due to an historic pattern of return migration between the two countries; most Mexicans obtain resident visas because that is the only option for legalization. (Durand 2001)

⁴³ While the IRCA regulations do appear racist, IRCA fits the American model of settlement rather than temporary labor flows; as many immigration scholars have noted, new immigration policies which accommodate transnational, global workers and return migration patterns would require a larger adjustment in the identity of immigration-as-settlement (and settlement-as-membership in the polity). (Lipset 1990; Baubock 1994; Beiner 2003; Daniels 2004; Dauvergne 2005) This is not to say, however, that racism does not play a role in current resentment against flows of undocumented Mexicans into the United States—as legal scholar Kevin Johnson suggests. (Johnson 2004) Both these issues will be explored further in chapter III.

The Immigration Act of 1990: new employment-based categories of admission. Policies drafted in the 1990s increased diversity and focused on filling vacancies in the labor market. “The immigration debate has historically focused on economic issues” (Borjas 2001: 18) and in some ways the labor market has always been a concern in regulations of foreign worker flows, but mostly “immigration restrictions have been justified, at least publicly, by arguing that those restrictions improve the economic well-being of native workers.” (Borjas 2001: 62) The Immigration Act of 1990 was the first since 1952 to focus on employment-based visa allocations; while the emphasis on U.S. market needs was much stronger than in the previous decades, the 1990 Act maintained a strong focus on family criteria. “Congress’s main goals in passing the legislation were to increase the diversity⁴⁴ of the country’s immigrants and to allow entry to greater numbers of skilled workers. At the same time, the law increases family immigration and creates a new category for individuals from countries that have not sent large numbers of immigrants under previous laws.” (Sorenson 1992: 28)

The most significant policy shift in 1990 was that market considerations were placed in their own category; a shift in the preference system removed traditional links between employment-based categories and the family-preference system by creating “two separate avenues of entrance, one for independent or employer-sponsored immigrants, and one for family-connected immigrants.”⁴⁵ (Sorenson 1992: 28) Two years

⁴⁴ A skills-based subcategory addresses the diversity concern; “diversity” visas are earmarked for individuals with job offers who hail from countries underrepresented in previous immigration policies. There are also “Green Card lotteries” for national of countries underrepresented under other legal immigration petition processes—who are awarded residency permits to immigrate to the United States. (Sorenson 1992; Massey 2002)

⁴⁵ The 1990 Act created five main categories for employment-based visas: (1) Priority workers (aliens of extraordinary ability in the sciences and arts); (2) Professionals with advanced degrees; (3) Professionals with bachelor’s degrees, as well as some skilled and unskilled workers; (4) Special immigrants (such as

after the new policy was implemented, the new skills-based immigration system had already translated into a 130 percent rise in the number of visas available for workers and their families⁴⁶ (an increase from about 56,000 to 140,000 annually). Under the Immigration Act of 1990, professional and skilled workers receive most of the visas⁴⁷, while unskilled workers receive only 10,000 visas annually.⁴⁸ (Sorenson 1992: 29)

Yet the strongest immigration policy emphasis continues to be family reunification. While the 1990 Act “opens the door wider to employment-based immigrants, such immigrants will remain a small proportion of total immigration. The large majority of immigrants will still enter through family relations.” (Sorenson 1992: 29)

Section II

Immigration policy today: recent developments

The Hispanic votes. A significant factor contributing to the current immigration debate and its voter appeal is the Hispanic electorate (Archibold 2006; Wayne 2007). While ethnic and civil rights groups lobby have acted to shape recent immigration legislation⁴⁹,

religious emissaries); (5) Immigrants willing to invest at least \$1 million in the United States, or \$500,000 in rural or high-unemployment areas. (Sorenson 1992: 29)

⁴⁶ Of the 140,000 skills-based visas granted on an annual basis, about 60,000 do not go to the workers themselves, but to those workers’ immediate families.

⁴⁷ A 1992 Urban Institute report notes that any selected “immigrants are not going to be that different (in their economic performance) from family-preference immigrants unless they are explicitly selected because of their higher skills.” (Sorenson 1992: 5)

⁴⁸ Skills-based selection tends to favour particular national origins where there are more highly-skilled workers available to immigrate: “Information from the Office of Immigration Statistics indicates that 40 percent of the immigrants from India who came to the United States in fiscal year 2003 were admitted on an employment-based preference, whereas only 3 percent of immigrants from Mexico and Central America were admitted on that basis.” (CBO 2005: 3)

⁴⁹ In the design and implementation process of both the 1986 Immigration Reform and Control Act and the Undocumented Immigration Reform and Responsibility Act of 1996, ethnic lobbying played a strong role: specifically, “pro-Hispanic groups succeeded in reducing the severity of the undocumented immigration

the immigration issue was not prevalent enough to guide electoral politics per se. (Gimpel 1999)

Yet expanding Latino votes may challenge traditional assumptions about American public opinion and electoral commitment to immigration as a significant issue (Brownstein 2001; Kirkpatrick 2006). In 2004, the Hispanic population in the United States totaled 40.4 million, of which more than 22 million were native-born. In some metropolitan areas Hispanic immigration is clearly pronounced, e.g., in Los Angeles County, 40 percent of residents in the mid-1990s were of Mexican origin. This trend is recent: only 15 percent of the Mexican-born Angelenos had arrived before 1970, and over half had arrived in L.A. since the mid-1980s (Ortiz 1996: 247). Most of the Latino population in the U.S. (63 percent) is from Mexico, which is also the largest source country for unauthorized immigrants—suggesting that ethnic ties may be important. In effect, a 2002 poll found that a majority of Hispanics have favorable views of “illegal immigration” and believe that unauthorized immigrants “help the economy by providing low-cost labor”—51 percent of English-speaking Hispanics believe irregular immigrants help the economy, compared to 26 percent among U.S.-born whites and blacks. Among bilingual Hispanics, an even larger group (66 percent) thinks that undocumented workers help the U.S. economy. Moreover, 44 percent of Hispanics believe that “discrimination is preventing Hispanics from succeeding in the United States.” (Pew 2005a: 4-5; 20)

The influence of Hispanic voters has also increased with demographics shift: Latinos are not only growing in numbers, but they are also moving to less traditional immigration states, spreading their influence across the country and affecting polls in a wider variety of electoral

clauses and ensured the inclusion of anti-discrimination provisions in the employment clauses.” (Samers 2001: 138)

districts (Passel 2005a, 2006). Moreover, birth rates among Hispanics are higher than in any other cohort, so Latinos are likely to grow faster than U.S.-born whites and blacks (Pew 2004, 2005a; Kirkpatrick 2006). Latino presence is also influencing business, advertising and cultural production in the United States (Davila 2001). Although Hispanic votes are expected to amount to only 6.5 percent of voters in the 2008 election (based on past voter turnout), they constitute a sizeable share of the electorate in four “swing states:” New Mexico (where the Latino vote amounts to 37 percent), Florida (14 percent), Nevada (12 percent), and Colorado (12 percent) (Taylor 2007).

Immigration reform and the business lobby. An important policy actor in U.S. immigration reform is the business sector—sometimes defying anti-immigration fears among the wider American public. An analysis of public opinion during the 1986 and 1996 immigration reform Acts provides a useful example of the role of business interest groups. According to the American National Election Studies, during legislative procedures to enact the IRCA (Immigration Reform and Control Act) of 1986, 48.8 percent of Americans supported immigration decrease, and 8.1 percent backed an increase; in 1996, when the Personal Responsibility and Work Reconciliation Act (PRWRA) was enacted, 57.6.2 percent of Americans supported immigration decrease, while 5.3 percent wanted to see an increase in the legal immigration. (Gimpel 1999: 36) Despite unfavorable public opinion, the 1986 immigration reform granted amnesty to long-term undocumented residents, while seeking to increase control of illegal work through employer sanctions that proved too mild and under-funded to become effective (see analysis of IRCA below). And while the 1996 PRWRA legislation reduced public

benefits for immigrants as part of welfare reform; legal immigration, favored by the business lobby, was not reduced⁵⁰; the congressional politics of immigration reform in 1996 was such that the business “forces combating restrictions had developed a formidable network that could not be taken for granted.” (Gimpel 1999: 315)

Interest groups enhance their power and influence on policy making the greater their economic significance, ability to affect the population at large, and cohesion—or ability to convince the government that a particular interest group represents ‘the voice’ of those being represented. (Kingdon 2003) Pro-immigration business lobbies have not only the ability to affect the national economy (e.g. through threats to take jobs into other countries), but, according to Gimpel and Edwards, the business sector has also been unified in their defense of less immigration restrictions.⁵¹ (Gimpel 1999: 315) Now that the pro-immigration business lobby has begun to “fight on behalf of the 11m undocumented workers it surreptitiously employs,” (Business v Bush 2003) this could greatly influence the dynamic of possible solutions to the current problem of unauthorized immigration to the U.S.

Terrorism and the policy window for immigration. Business interest groups and Hispanic public opinion had become powerful pro-immigration forces in the U.S.

⁵⁰ The 1996 PRWRA Act denied several public services to immigrants (including legal immigrants, regardless of citizenship status). (Johnson 2004) While the 1996 legislation has been largely considered a victory for anti-immigrant movements due to the public service restrictions imposed on immigrants, Gimpel and Edwards argue that business interest groups won a less visible but significant fight for more legal immigration—immigrants lost public benefits, but legal immigration was not reduced despite the negative public opinion. “In the absence of a truly national outcry demanding restrictions on legal immigration, the future of policy in this area rests largely in the hands of the Washington interest group community.” (Gimpel 1999: 315)

⁵¹ On the other hand, academic findings on the impact of immigration to American labor markets have been inconclusive, less unified, and thus less influential than they might otherwise have been (Card 2005; Peri 2006a)—especially compared to the business lobby.

political arena for both Democrats and Republicans—when terrorism swept the political agenda and became the most significant national concern after September 11th, 2001. Anxieties about national security seemed to abolish all hope of comprehensive immigration reform. In fact, President George W. Bush had attempted to place immigration reform on the policy agenda during his first year in government (Brownstein 2001; Zolberg 2006: 442), but the terrorist attacks of September 11th 2001 interrupted any “legislative momentum.” (Martin 2003a: 1287; Daniels 2004: 263) Then in 2004-2005 the immigration problem appeared to find another “policy window”⁵² of opportunity. The post-September 11th 2001 policy window for immigration appeared not *despite terrorism*, but because of it—and this fact has largely limited immigration discourse to security-related concerns (i.e., the porous U.S.-Mexico border).

Worries about the fate of Mexican and other undocumented workers dwindled after September 11th. However, heightened security concerns over the southern border with Mexico and possible links between immigration and terrorism placed the issue back in the spotlight, since a porous border seemed antithetical to the “war on terrorism.” Since 2004, immigration reform has been frequently in the national news⁵³, and policy proposals flowed from Congress and the White House⁵⁴. Yet Congress has not been able to reconcile border security and the

⁵² The concept of the “policy window” of opportunity for legislative action here derives from John Kingdon’s definition in *Agendas, Alternatives and Public Policies* (Kingdon 2003): at particular moments, for a variety of reasons, specific issues appear on the “agenda” of politicians and bureaucrats, engendering an opportunity for policy making.

⁵³ E.g., the *New York Times* published more than 70 National News reports and editorials concerning American immigration policy in April and May 2006. In all of 2005, the *Times* had published less than 30 stories on the issue (author’s calculations).

⁵⁴ Congress debated immigration reform and voted on various immigration bills, most of which attempted to reconcile immigration control and a legalization path for the 12 million undocumented immigrants currently estimated to live in the United States. Senate proposals were consistently more generous—while a House bill passed in 2006 (H.R. 4437) provided no path to legalization and provided no access to guest-worker status, Senate proposals created a temporary worker program that increased the number of visas available for both skilled and unskilled workers and provided paths to legalization which included the possibility of legal permanent residence. (Konet 2007) Yet the last Senate attempt at immigration reform

legalization of unauthorized residents currently in the U.S.—and the upcoming election removed immigration reform from the high priority agenda.

Historically, policy decisions in immigration have been strongly influenced by interest groups and therefore harmonized various concerns from ethnic, business, faith, and other organizations (Simon 1993; Gimpel 1999). Yet the failure of IRCA to contain employers from hiring unauthorized workers and new migrants from crossing the border has led to public outcry against legalization programs. Instead of viewing legalization as a separate effort to bring irregular workers out of the informal labor market, as has been done in Spain and Italy, the U.S. expected the IRCA combination of “amnesty” and “control” to actually halt incoming flows (Cornelius 1994; Martin 1994; Massey 2002; Calavita 2005; Massey 2005). When IRCA didn’t work to contain irregular flows, the perception was that legalization had been useless—when in reality the objective of incorporating unauthorized workers into legal employment was successful (Hernandez-Leon 2000). Since another round of generous regularization with a path to U.S. citizenship is perceived as unpalatable, temporary or “guest” worker programs have become central to the U.S. immigration narrative. Guest workers would appease business interests, but meet strong opposition from labor unions (AFL-CIO 2007). Previous guest-worker programs (e.g., Turks in Germany) have demonstrated that most “guest workers” do not return to their countries of origin but instead claim permanent residency in this host nation. However, immigration scholar Douglas Massey claims that Mexicans in the U.S. have already established a circular, temporary labor pattern—and thus temporary work programs could work in the America. If temporary employment grants visas to the workers themselves and allows them to leave jobs where they suffer abuses, the exploitation of workers which marred the

died in June 2007, and both “supporters and opponents said the measure was dead for the remained of the Bush administration, though conceivably individual pieces might be revived.” (Pear 2007)

1940s-1960s *Bracero* program for agricultural workers could be largely avoided. (Massey 2002, 2003)

The White House 2004 Temporary Worker and Immigration Reform Proposal.

President Bush proposed a temporary worker program to Congress in January of 2004. The administration's immigration reform proposal was based on five guiding principles (Fact Sheet: Fair and Secure Immigration Reform 2004; President Bush Proposes New Temporary Worker Program: Remarks by the President on Immigration Policy 2004): (1) "Protecting the Homeland by Controlling Our Borders,"⁵⁵ which was to be achieved through agreements with countries whose nationals participated in the temporary worker program. The White House plan emphasized the risks of border crossings and focused on border control; (2) "Serve America's Economy by Matching a Willing Worker with a Willing Employer," which focused on efficiently matching foreign labor with U.S. employers—provided that no American worker was available to fill the job; (3) "Promoting Compassion: granting of temporary worker status to currently undocumented workers," a policy with the objective to prevent exploitation of undocumented workers by employers. Through temporary worker status, undocumented workers would be protected under the same employment practices afforded to citizens and residents; (4) "Providing Incentives for Return to Home Country," which required that temporary workers return to their home countries after their work status expired;⁵⁶ (5) "Protecting

⁵⁵ While the program was designed for the regulation of temporary workers, note that the first basic principle guiding the proposal was based on controlling national borders.

⁵⁶ There would be a one-time fee to register for an initial three-year temporary worker status program, and an opportunity for renewal (time unspecified by administration). The administration's proposal also instructed the legislation to contain provisions allowing temporary workers to move freely across the border, to ensure workers can maintain roots in their home country.

the Rights of Legal Immigrants,” a policy allowing participant temporary workers to seek residency status (the “citizenship path”⁵⁷) through existing immigration channels, but conferring no advantages for currently undocumented workers to gain residency rights through the temporary worker program. According to the administration’s proposal, undocumented workers would lose eligibility in the (unspecified) future, and only foreign workers outside of the United States would be eligible. The proposal did not support amnesty (outright granting of residency rights) to currently undocumented workers; instead, they would have to apply for temporary-worker status and demonstrate they had a willing employer who could not find American workers for the job. The Temporary Worker Program also called for: an increase in immigration enforcement against companies hiring illegal workers; incentives for foreign-born workers to return home, such as allowing them to receive retirement credits in their countries of origin, as well as the creation of savings accounts which workers could only collect upon return to home countries; and an intention to increase the annual numbers of legal immigrants in order to discourage unauthorized border crossing.

In immigration reform, George W. Bush’s White House thus played an essential (if as yet unrealized) role to bring forth temporary worker proposals despite post-September 11th anti-immigration sentiments. Yet members of the House and the Senate, concerned about public opinion, the interests of their constituencies, and lobbying from business and immigration advocates, did not achieve consensus in shaping specific provisions and language in immigration reform. (Kingdon 2003: 36) Since “Congress reflects public

⁵⁷ The administration also suggested intensifying the hurdles to obtain citizenship, which President George W. Bush called the “path of work, and patience, and assimilation.” (President Bush Proposes New Temporary Worker Program: Remarks by the President on Immigration Policy 2004).

opinion” in a very direct manner—when there are opposing interests and “lack of consensus” about policy issues, this often results in slow Congressional action. (Kingdon 2003: 38) Congress held hearings on the White House guest worker proposal and other immigration issues, most specifically on border control and national security. Congress submitted on May 12, 2005 a legislative proposal referred to as the “Secure America and Orderly Immigration Act” (same text in both House and Senate) for immigration reform. Titles I and II of the Act concerned security issues (“Border Security” and “State Criminal Alien Assistance,” respectively), mirroring President Bush’s proposal and its emphasis on border security as a central element in immigration reform. Title III introduced an “Essential Worker Program” which followed the White House guidelines on admissibility, time limit, and conditions for employment of for temporary workers in the United States. Though an historical analysis of congressional politics on immigration, with its focus on compromise (see analysis of IRCA below), would suggest that legislation such as the “Secure America and Orderly Immigration Act” (containing provisions for both temporary worker status and border control) would eventually succeed—the House and Senate ended up drafting their own separate and often disparate immigration bills.

Legislative initiatives. Partisanship is playing an increasingly significant role in immigration reform, where “the quantity and quality of immigration have been responsible for a diminishing consensus on immigration policy,” (Gimpel 1999: 302) such that increasing Republican concern with the costs of low-wage, poor immigrants to their constituents’ public coffers has increased opposition to generous immigration

provisions, providing a strong counterpoint not only to Democrats' ties to the immigrant community, but also to the pro-immigration business lobby.⁵⁸

In this divisive climate on the appropriate language of immigration reform—the House of Representatives bill H.R.4437 (Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005)⁵⁹, though supported by the White House (Statement of Administration Policy 2005), focus on border control and punitive measures against undocumented immigrants, while failing to address other concerns. Among other provisions, H.R. 4437 would make living in the United States illegally a federal crime, and increased fencing along the U.S.-Mexico border and monitoring barriers to prevent entry, such as road lighting, cameras and sensors. H.R. 4437 did not include any provisions for the legalization of unauthorized residents or a temporary worker program. (Sensenbrenner Bill 2005) The split in public opinion about U.S. immigration thus appears to have solidified political divides along party lines⁶⁰, and H.R. 4437 was drafted and supported by Republican Representatives (who had majority in the House at the time the bill was passed). However, partisanship on immigration is not as polarized in the Senate. Although Senators voted somewhat along party lines, enough Republicans sponsored a Senate bill (S. 2611) that differed significantly from the House version. (The Debate Over Immigration Reform 2006) The Senate bill included some of the harsher immigration enforcement provisions found in the House bill (e.g., tougher penalties for smuggling aliens⁶¹), as well as fencing and vehicle barriers along the Mexican border; in general, however, S. 2611

⁵⁸ For example, Republicans in 1996 worked on business interests concerning increased availability of highly-skilled foreign-born workers, yet demanded restrictions on benefits for poor immigrants.

⁵⁹ H.R. 4437 also became known as the Sensenbrenner Bill, for its primary sponsor, Rep. Sensenbrenner, a Republican from Wisconsin.

⁶⁰ Immigration is historically a polarizing campaign issue; the last Congressional debate on immigration policy, which took place in 1996, had already demonstrated a vote largely split along party lines. (Gimpel 1999)

⁶¹ Though, different from the House bill, S. 2611 also contained exceptions to those providing humanitarian assistance to undocumented immigrants.

was more lenient on border security than H.R. 4437. In effect, S. 2611 placed more focus on worksite enforcement—it would give employers much less time to comply with new federal electronic verification systems (18 months as opposed to six years in the House version); it also stipulated heftier fines for employing undocumented workers. The Senate plan differed most from the House on its solution for current unauthorized residents. While the House bill provided no path to legalization and provided no access to guest-worker status, the Senate created a temporary worker program that increased the number of visas available for both skilled and unskilled workers and provided paths to legalization which included the possibility of legal permanent residence. In the end, neither the Republican majority of 2005-2006 nor the Democratic majority after the 2006 elections managed to coalesce around immigration reform (Gelatt 2006)—and the U.S. Congress appears to have postponed the issue until after the 2008 presidential elections.

In the end, despite the fact that President George W. Bush's policy focus for immigration reform has been a guest worker program, he tried to find common ground between his pro-immigration stance and those in the Republican ranks who oppose more immigration of any kind and denounce any legalization path for undocumented immigrants⁶²—the common ground was strict border surveillance. Thus the White House has proposed and implemented several security enforcement plans for the border with Mexico, including a substantial increase in the National Guard troops dedicated to the border region.

⁶² Although the President has usually referred to unauthorized residents as 'hard-working families', and emphasized the need for realistic and generous legal channels for those seeking work in the U.S., he also spoke against the idea of a blank 'amnesty' for illegal residents by proposing penalties (e.g., fines) for undocumented immigrants.

Border politics. Tolerance of unregulated migrant flows crossing the U.S.-Mexico border has varied depending on the U.S. economic and political mood. It is estimated that cross-border movements between the two countries since the 1800s have been largely unfettered—providing cheap Mexican labor to American employers, traditionally in agriculture, and most recently in manufacturing and services. (Martin 1988; Martin 1994; Massey 2002; Cornelius 2005)

In effect, the 1882 Congressional measure placing a fifty-cent head tax on all ship passengers to “defray immigration expenses” excluded Mexican border crossers. All those who walked or took the train from the bordering nations, Canada and Mexico, were exempt. (Daniels 2004: 27) A century later, in 1986, the U.S. Congress passed IRCA, which for the first time in U.S. history has significantly intensified efforts to control the Southern border with Mexico. Mexican migration scholar Jorge Bustamante emphasizes the importance of border control to current U.S. immigration policy: “IRCA was not created to end undocumented immigration, so much as to respond politically to the ideological reasons behind the most restrictive provisions, such as those reflected in the phrase, “We have lost control of our borders.”” (Bustamante 1990: 223)

Heightened levels of travel and international trade have increased international movements of labor, which in turn strengthened border control mechanisms.

Globalization has also contributed to greater knowledge about international migration flows; undocumented labor flows from Mexico to the United States may have increased in the past few decades,⁶³ but it has also become a visible problem—whereas a few decades ago undocumented border-crossers were considered a normal part of life in border regions. (Massey 2002) Also, as a result of terrorism fears, border control has

⁶³ Since border controls were generally lax before 1986, it is in fact difficult to determine whether migration flows have increased or simply become more visible due to Mexicans settling in U.S. cities. (Massey 2002)

become a central political concern in many countries: defense and immigration were the top issues in the 2001 Australian election, where “irrespective of partisanship, voters across the board identified defense and immigration as the key issues” in the 2001 election campaign. (Duck 2003: 18)

While border enforcement may become effective in the long-term, the costs could be exorbitant. To date the success of border control strategies (even with increased resources and personnel) has been “marginal,” resulting in (a) increased deaths of border-crossers, (b) increased length of migrant workers’ stay (and possible settling) in the U.S., and (c) increased incidence of human smuggling. (Massey 2002; Reyes 2002: 82; Massey 2005)

The U.S.-Mexico border today. Heightened border control began after 1986 as a consequence of border enforcement provisions in IRCA. Yet sociologist and population researcher Douglas Massey found that most Border Patrol officers had grown more involved in drug interdiction efforts—and thus, despite the growth in patrolling and increased cost to U.S. taxpayers, apprehension of unauthorized border crossers fell “dramatically” during the 1990s. (Massey 2002: 116) More recent intensification of the immigration policy focus on the Mexican border reflects national security concerns after the attacks of September 11th, 2001. (Andreas 2003a; Flynn 2003; Serrano 2003; Cornelius 2005) A focus on the border allows governments to show tangible efforts against unauthorized immigration in the absence of long-term policy solutions. (Andreas 1999: 614) It also satisfies both those concerned about national security and immigration critics, who consider “securing the border” a crucial issue. (Brimelow 1995; Beck 1996)

The increased militarization of the Mexico-U.S. border between 1985 and 2000 has seen a six-fold increase in border enforcement spending, such that the number of Border Patrol officers has doubled—to the point where today “the Border Patrol is the largest arms-bearing branch of the U.S. government outside of the military itself, with a budget in excess of \$1.3 billion a year.” (Durand 2004: 11) Since the early 1990s “border enforcement spending and the number of agents patrolling the border have both tripled.” The first phase of the border enforcement strategy involved the deployment of resources and agents to San Diego and El Paso. During the fiscal year 1998, implementation of the second phase of enforcement strategy began, with resources and agents reallocated to Tucson and southern Texas—which had experienced an increase in unauthorized border crossings. (Reyes 2002: 77) Yet September 11th, 2001 changed the “nature of the border enforcement policy discussion” from a focus on a “bilateral agreement to legalize Mexican workers in the United States and to develop a safe, legal system for future migration”⁶⁴ to the virtually exclusive focus on border security, involving increase in personnel and resources at entry points both on the Mexican and Canadian borders, as well as a “thorough investigation” on undocumented immigrants residing in the U.S. (Reyes 2002: 78)

Investments in the Border Patrol have resulted from merged national security and border control efforts; an example of this effort is the legislation to reform intelligence-gathering, enacted in 2004, which “mandates the hiring of 2,000 additional Border Patrol agents each year for the next five years, nearly doubling the size of the Border Patrol. The

⁶⁴ In fact, Canada, U.S. and Mexico have considered a “security perimeter” for the North American Free Trade Agreement (NAFTA) countries, which would “facilitate the flow of commerce and people between the NAFTA partners, while harmonizing policies among members and increasing restrictions on nonmember countries.” (Reyes 2002: 80)

stated rationale for this provision was that would-be terrorists may try to sneak into the country along with unauthorized labor migrants.” (Cornelius 2005: 789-790) The federal government has also consolidated immigration, customs and agricultural border functions under the “One Face at the Border Initiative,” which was instituted in 2002. Yet the outcome of this renewed attempt at increased border patrolling is still unclear: in 2005, Migration Policy Institute evaluations of the “One Face at the Border Initiative” argued that despite increases in staffing and the positive role of technology in improving border monitoring efficiency, efforts to tighten border controls have “overpromised” and “oversold” results and provided no actual evidence of increased border security. (Meyers 2005a: 38-39, 2005b)

Unauthorized border crossers. The U.S.-Mexico border remains porous despite increased policing efforts. It is increasingly dangerous to traverse—the numbers and proportion of migrant deaths while attempting to cross has increased since the U.S. began strengthened policing of the Mexican border. (Andreas 2001; Andreas 2003b; Durand 2004; Kil 2006) In the early 1990s, tighter enforcement in California shifted unauthorized crossings from traditional (and safer) crossing sites to Texas and Arizona. (Cerrutti 2004; Orrenius 2004) These perilous journeys have resulted “in a tripling of the death rate at the border” due to tightened border controls (Massey 2005: 1); the estimated yearly death toll in the Sonora desert is 350 migrants. (Massey 2002: 114) The exclusive focus on border policing has increased the proportion of dangerous desert crossings (from about 45 percent in 1980 to almost 70 percent in 2002), and the probability of apprehension has declined from approximately 35 percent in 1980 to about 5 percent in 2002. (Massey 2005: 1; 7)

The evidence also indicates that undocumented border-crossers are “taking longer and more dangerous trips, paying more for them, suffering more deaths while crossing, and staying longer once they get here.” (Reyes 2002: 77) Therefore tighter border policing may have translated into longer U.S. stays immigration for many undocumented Mexican workers. (Andreas 2001; Massey 2002; Porter 2003; Reyes 2004) The Mexican Migration Project⁶⁵ estimates that “between 1965 and 1985 (when the border was relatively open) 85 percent of undocumented entries were offset by departures, yielding a relatively modest net increment to the U.S. population.” Most of the workers were young males who left families behind in Mexico—and thus intended to return. (Durand 2004: 6) Since increased border control, a shifting demographic composition of Mexican immigrants (increased number of women engaging in migration, as well as a “growing number of nonworking dependents, a shift out of agriculture, and a redirection of flows to new destination states”) has resulted in the “declining probability of return migration.”⁶⁶ (Durand 2004: 7)

Finally, it is worth noting that the focus on border policies is not a uniquely American phenomenon; many other rich nations also demonstrate alarm over transnational labor mobility—especially of low-skilled unauthorized migrants. (Andreas 1999: 614) Irregular entries by needy immigrants are perceived as damaging to the costly welfare structures of health care, education and poverty-alleviation benefits available to European citizens. (Baubock 1994; Jacobson 1996; Jordan 2002) Similar to unauthorized Mexicans who cross the border

⁶⁵ The Mexican Migration Project has carried out annual ethnosurveys in different Mexican communities since 1987—and mapped out these communities’ specific destination areas in the U.S. Interviewers are then sent to migrants’ U.S. destination cities to produce a “comparable data set on long-term U.S. residents or settlers.” (Durand 2004: 2-3)

⁶⁶ “Before 1992, the probability of returning from a first undocumented trip to the United States generally ranged between .60 and .70” but “by 1996 stood at around .45. The drop in the odds of return migration was particularly acute among nonagricultural workers.” (Durand 2004: 12)

into the United States, also African refugees and economic migrants attempt the journey by sea to Europe. (Calavita 2005; Moorehead 2005) Australia, Japan and other nations (especially in the Middle East and Asia) have also experienced increased unauthorized migration, primarily from neighboring countries, and alarm over the problem of containing irregular entries. (Cornelius 1994; Duck 2003; Dauvergne 2005)

Immigration raids. In immigration enforcement, efforts to improve border control have been joined by Department of Homeland Security (DHS) drives to inspect workplaces and homes. A few high-profile workplace raids have been carried out; for example, in December of 2006 1,297 undocumented immigrants were arrested by Immigration and Customs Enforcement (ICE) in meatpacking and processing plants⁶⁷ in six U.S. states. In September of 2007, over 1,300 unauthorized immigrants were arrested (mostly in their homes) in Southern California—though most of the individuals detained were accused of identity theft, had criminal records or had evaded prior deportation orders. (Gorman 2007) Home raids have focused on deporting immigrants who have committed crimes—yet these initiatives have also absorbed irregular immigrants who share the same address, even if they do not have a criminal record (Bernstein 2007).

Deportation procedures can be complicated by the fact that many undocumented parents have children who are U.S. citizens by birth. For example, a recent California report finds that 85 percent of children in immigrant families statewide are American citizens—regardless of their parents' immigration status. (Children in Immigrant Families: A California Data Brief 2007) The Pew Hispanic Center estimates that nationwide nearly two-thirds of the children

⁶⁷ Meat packing is another industry with high concentrations of undocumented workers—violations of workers' rights and workplace health and safety standards were recently highlighted in a Human Rights Watch report (Compa 2004).

living in unauthorized families (those where at least one parent is undocumented) are U.S. citizens by birth—based on data from the 2005 Current Population Survey, that corresponded to 3.1 million children. (Passel 2006: 2) In response to criticism concerning the consequences of raids to U.S.-born children of unauthorized immigrants, the Immigration and Customs Enforcement (ICE) has released softer guidelines on deportation procedures for “single parents, pregnant women, nursing mothers, and other immigrants with special child or family care responsibilities who are arrested in raids,” who may be permitted to await deportation with their families. (Preston 2007)

Aside from the fact that many deported immigrants have U.S.-born children, immigration lawyers and activists express concerns over immigration raids and their ability to create an environment where lack of immigration status is prioritized over workplace standards, resulting in augmented risk of labor rights violations going unreported. (Smith 2007) The recent deportation raids in immigrants’ homes and workplaces is expected to further increase unauthorized workers’ fear of the U.S. government such that they avoid interactions and refrain from reporting violations and abuse at work—and perhaps even crime in their communities (e.g., thefts, sexual abuse).

State and local initiatives. While immigration policy is determined and implemented at the federal level, local communities shoulder most of the impact of federal policies, including costs with social services and increased infrastructure demands due to population growth—and many states and municipalities have reacted against federal control over immigration policy. Proposition 187 (a referendum denying several public services to undocumented immigrants in California), interpreted as symbolic of social

and racial tensions (Johnson 2004), is also representative of a federal-state struggle over the funding of social programs. (Samers 2001) Some cities (Miami, New York, Houston, and Los Angeles) have institutionalized their own local responses to immigration, such as providing bilingual education programs; sponsoring community-based services that cater to the needs of specific immigrant populations; and creating special departments for immigrant affairs. (McCue 2002) Several U.S. states have been dealing with immigration issues in various policy spheres regulating access to employment, education, health, identification (e.g., driver's licenses), law enforcement, and other resolutions. (Belluck 2006; Broder 2006; Lyman 2006; Preston 2006) As of November 2007, a total of 50 U.S. states had legislated over 1,500 pieces of legislation, of which 244 had been enacted in 46 different states.⁶⁸ (NCSL 2007b) Geographer Michael Samers refers to the legislative activity at the city and state levels as a “down-scaling” of immigration policy, which occurs most frequently in areas with large numbers of unauthorized residents—and “especially when federal mandates are not accompanied by federal funding, such as in health care and education” for the children of undocumented immigrants. (Samers 2001: 138)

Additionally, individual states affect Congressional politics through constant feedback as constituencies. Thus Congress members and their staff react to how new policies change geographical distributive elements and affect their particular districts and states. (Kingdon 2003: 39) Because unauthorized immigration is has spread out to a variety of American states, the politics of immigration are no longer restricted to

⁶⁸ It is worth noting that not all the recently enacted state legislation moved to restrict unauthorized immigrants' access to public benefits. In effect, in 2006 the states of California, Maine and Rhode Island enacted laws that liberalized access to public health benefits; Rhode Island, for example, decided to continue payment of state Medicaid benefits to unauthorized immigrant children who were already enrolled in the program (NCSL 2007a).

traditional immigration states, such as California, New York, Florida, Texas, and Arizona. (Passel 2005a) This new reality of small-town and suburban immigration patterns has opposing consequences to the politics of immigration reform: while undocumented workers' presence in new constituencies increases negative reactions to the costs of low-skilled immigration in education, health, and other public services, on the other hand the ethnic minority vote is likely to gain magnitude in national, state and local elections around the United States.

Section III

Managing international migration: solutions to control unauthorized flows

U.S. policy options. At the moment, the “dual strategy” of U.S. immigration policy is to maintain a “relatively open policy on legal immigration for the purposes of family reunification and work,” especially for highly skilled migrants, “while combining it with enforcement of work sites and intensified border control.” (Samers 2001: 137)

Among the host of policy options available to U.S. policymakers for reducing unauthorized immigration, priority has been given to internal enforcement (workplace inspections; targeting of criminals within undocumented population; expedited removal of unauthorized immigrants)—but especially to increased border enforcement strategies. Alternatives such as reducing employers' incentives to hire undocumented workers (through the enforcement of labor laws and employer sanctions), or the establishment of extensive guest-worker programs across all skill levels, along with foreign direct

investment in source countries of unauthorized immigration—have been all but ignored.⁶⁹
(Reyes 2002: 82)

The current approach to undocumented immigration, in theory, involves a four-prong approach: border control, employer sanctions, monitoring of labor standards, and immigration law enforcement.⁷⁰ In effect, both immigration services and the Department of Labor (DOL) are responsible for carrying out employer inspections. (Samers 2001: 137) However, the primary emphasis, particularly since the Immigration and Naturalization Service (INS) became Citizenship and Immigration Services (CIS), and folded into the Department of Homeland Security (DHS)⁷¹, has been on immigration raids—together with border control. The second and third elements of U.S. immigration policy designed to curb undocumented flows (employer sanctions and monitoring of labor standards) have been neglected in favor of stringent measures during a time of terrorism fears and economic decline.⁷² Immigration analyst Michael Samers notes that

⁶⁹ Another policy option to help identify undocumented U.S. residents would be the introduction of a national identification card, though it would be very costly and may lead to privacy issues. The legalization or “earned regularization” of undocumented residents has also been utilized (in the U.S. context, with the 1986 IRCA) to diminish incentives to informal employment. Its clear disadvantage: it “does not deter future illegal immigration and may encourage more.” (Reyes 2002: 82)

⁷⁰ Regularization programs, such as the IRCA provisions to legalize undocumented residents and agricultural workers, have played a small role in U.S. immigration.

⁷¹ The Homeland Security Act of 2002 (HSA), a direct consequence of the events of September 11, 2001, led to a “radical restructuring” of the federal government agencies responsible for immigration enforcement—and national security. While the Immigration and Naturalization Service (INS) was previously responsible for immigration law enforcement and services, HSA has brought a myriad of varied national security agencies “under a single new umbrella, the Department of Homeland Security (DHS).” Immigration law professor Stephen Legomsky writes that “even before September 11, ideologically diverse voices had called persistently for splitting the INS into two separate agencies—one for law enforcement, and one for service functions, such as the processing of applications.” (Legomsky 2005: 3) DHS has been further separated into two law enforcement bureaus, so that the department is divided into three agencies: the enforcement branches of the Bureau of Customs and Border Protection (CBP) and the Bureau of Immigration and Customs Enforcement (ICE), while the new immigration service agency is called the U.S. Citizenship and Immigration Services (USCIS).

⁷² “In Arizona, a movement to revive the sentiment of Proposition 187 in California is taking shape with the PAN initiative, short for “Protect Arizona Now.” It is a “citizens’ initiative to require proof of citizenship to register to vote, and proof of eligibility for nonfederally mandated public benefits.” Much like Proposition

the militarization of the border with Mexico is a “proxy” for the federal government’s “obsession” with unauthorized immigration—a dynamic that “reflects contradictions between capital accumulation and political legitimacy.” (Samers 2001: 137)

While U.S. businesses demand cheap labor, political legitimacy determines the need for a “political spectacle” of containment at the border. Legalization programs, for example, often vilified as undeserved “amnesty” for unlawful residents, are a much more economical option than border enforcement; and some analysts believe that legalization would “increase national security and reduce crime” by “connecting now-clandestine immigrants to public networks, making their lives less underground and vulnerable and more secure,” as well as cutting border containment costs, and reducing the fatal risks to migrants in current border-crossing patterns. (Kil 2006: 181-182) In the end, “political and economic pressures force policymakers into compromises that do not solve the problem.” (Reyes 2002: 92) IRCA, for example, failed not only to reflect circular migration patterns of most undocumented Mexicans in the U.S.—thus excluding many long-term undocumented workers due to the IRCA residency requirements—but it also constituted a “paradox” when compared to labor and demographic predictions. Data collected by the Department of Labor’s Office of Labor Statistics predicted that between 1986 and 2000 the occupations with “greatest demand” would be in the service sector, and specifically those “in which more than half the undocumented population works.” (Bustamante 1990: 213) Hence IRCA has been (not surprisingly) ineffective in curbing unauthorized labor flows—and most undocumented residents, as predicted, work in the service sector (33 percent). (Passel 2005b: 26)

187, which was later deemed unconstitutional in federal court, this initiative seeks to make state and local governments responsible for enforcing federal immigration law.” (Kil 2006: 180)

Border policing, immigration raids and other “tough” control mechanisms that only take into account the domestic political legitimacy of immigration regulations may help assuage the cultural and economic fears of many Americans—but these policies fall short in managing international migration effectively.⁷³ Immigration policy analysts have noted that “even when potentially effective controls have been approved, as when employer sanctions were included in IRCA, they have been implemented in a way that made them ineffective” (Reyes 2002: 92); workplace inspections and employer sanctions may increase apprehensions and possibly scare unauthorized immigrants, while holding employers accountable and discouraging the employment of unauthorized workers. Yet American businesses’ interest in cheap labor and ensuring that work shifts flow uninterrupted by inspections, along with potential civil rights violations involved in workplace raids (a danger increased by the current paucity of CIS data on those foreign-born workers who are legally entitled to work in the U.S.)—all of these factors pose serious risks to the successful implementation of employer sanctions, even if enough resources and political will were to be dedicated to the program. (Reyes 2002: 82)

Each immigration policy option provides a different set of advantages and disadvantages; for example, analysts believe that targeting criminals⁷⁴ may increase detention and deportation of criminal unauthorized U.S. residents, increase smuggling fees, and may even prove useful for terrorism control—but detention costs would be high, and there are civil rights concerns, especially when it comes to indefinite

⁷³ “Ultimately,” Reyes, Johnson and Swearingen admonish, “as the U.S. and Mexican economies become more interconnected, as long as economic opportunities in Mexico continue to be limited and a large wage difference between the two sides of the border persists, it will be difficult to deter those seeking a better standard of living for themselves and their families.” (Reyes 2002: 92) Hence the need for migration *management* rather than an ultimately unfruitful attempt at unilateral control.

⁷⁴ Punishing and deporting criminals—as opposed to the majority of undocumented immigrants, who are not involved in criminal behavior or activity.

detentions. Guest-worker programs formalize international migration into an orderly process, and are much safer than unauthorized border crossing. But unless the program is well designed, implemented, and maintained, the bureaucratic process risks becoming prohibitively long.⁷⁵ What's more, since guest worker programs do not effectively lower the economic incentive for employers to hire undocumented workers, it is also necessary to implement significant employer sanctions and other inspection measures—such as routine enforcement of labor laws, not only to guarantee worker protections, but also to reduce the incentives to exploit vulnerable foreign labor. (Reyes 2002: 82) Labor law enforcement is would require more personnel and resources than DOL currently employs, but without such mechanisms long-term containment of undocumented labor is likely to continue to fail. In the end, “crafting a successful immigration policy requires balancing a multitude of complex tradeoffs” because “no single policy can address all facets of unauthorized immigration.” (Reyes 2002: 91-92)

In the policy drafting process, technical issues sometimes take center stage to political concerns; Congress staffers, civil servants and bureaucrats may be influential in defining which of these policy alternatives will make it into the law.⁷⁶ Academics, researchers, consultants, and interest groups are also key players in delineating policy

⁷⁵ An International Labour Office (ILO) comparative study of temporary foreign worker programs in five countries (Germany, Kuwait, Singapore, Switzerland, and the U.S.) concluded that regardless of design differences, most of these programs had similarly “adverse consequences,” including: (1) the emergence of “immigrant sectors” in the labor market; (2) continued vulnerability of immigrant workers to exploitation by both recruiters and employers; (3) native workers’ negative response to guest worker programs; (4) and continued inflows of undocumented workers. The author concludes that there is a need for new policy designs that learn from current mistakes and improve temporary worker programs—opening opportunities for foreign workers of all skill levels. (Ruhs 2003: 1; 26-31)

⁷⁶ Specific agenda alternatives or proposals increase their chance of being advocated or favorably received by the policy community if: (1) they are technically feasible, and likely to be implemented without unanticipated (negative) outcomes; and (2) deemed socio-culturally acceptable (based on values held by the policy community). These values encompass what the community expects from government in terms of its size and role in regulation, and in achieving social goals (i.e., equity and efficiency). (Kingdon 2003: 142-143)

options. At this stage, public opinion is influential to impose limits—negative public opinion may keep the government from acting on particular policy options. For example, if legalization proves extremely unpopular, it is likely to be dismissed as a viable option, and undocumented U.S. residents may be required to enter into some form of temporary work program, or some other solution to avoid straightforward regularization. (Kingdon 2003: 142-143) Yet many migration analysts caution that border enforcement without legalization policies will never work; border control has to be accompanied by regularization *and* a realistic allocation of visas for Mexican workers who wish to seek employment in the U.S. Mexico’s unique position as America’s neighbor, combined with the inequality between U.S. and Mexican standards of living, has historically translated into regular migration flows to the North.

Current limits on Mexican labor flows are perceived as a “contradictory policy on North American integration” that has liberalized trade while attempting to stall migration flows; an exclusive focus on border policing increases the proportion of “non-traditional crossings” (from about 45 percent in 1980 to almost 70 percent in 2002), and the probability of apprehension has declined from approximately 35 percent in 1980 to about 5 percent in 2002. (Massey 2005: 1; 7) Kil and Menjivar note that “immigration policy and enforcement need to change to reflect the human rights crisis along the border.”⁷⁷ A “sealed” and controlled border is simply impossible in an increasingly interconnected

⁷⁷ The anti-immigrant Arizona PAN initiative, for example, “would further discourage undocumented immigrants from seeking medical aid and access to public networks by requiring state and local government workers to check the immigration status of everyone seeking public services. Thus basic education and emergency health care would not be affected, but access to public libraries and Medicaid would be. Moreover, state-supported humanitarian aid, like the thirty-eight water tanks that Humane Borders—an interfaith group in Arizona—puts out in the desert to help immigrants who suffer dehydration when crossing, would also cease. “Our worst fear is that this initiative will criminalize compassion,” said the Rev. Robin Hoover, Humane Borders director.” (Kil 2006: 180-181)

world, and the economies of sending countries are unfortunately not likely to become prosperous in the near future.” (Kil 2006: 181)

Nevertheless, America is not alone in its focus on border control policies; many other countries of immigration also demonstrate alarm over current levels of international labor mobility—especially when it comes to low-skilled unauthorized migrants. (Andreas 1999: 614) Irregular entries by needy immigrants are perceived as damaging to the costly welfare structures of health care, education and poverty-alleviation benefits available to European citizens. (Baubock 1994; Jacobson 1996; Jordan 2002) Similar to unauthorized Mexicans who cross the border into the United States, also African refugees and economic migrants attempt the journey by sea to Europe (Calavita 2005; Moorehead 2005). Australia, Japan and other nations (especially in the Middle East and Asia) have also experienced increased unauthorized migration and alarm over the problem of containing irregular entries (Cornelius 1994; Duck 2003; Dauvergne 2005). So far, most of the “efforts to limit or control overall levels of migration have all too often resulted in limited success and unforeseen consequences. However, well-informed policies by governments and the private sector that seek to manage and channel migration can enhance migration’s benefits and minimize its costs.” (O’Neil 2003: 7-8)

Bilateral and multilateral management of international migration. Immigration scholars Douglas Massey and Jorge Durand wrote a comment for *The American Prospect* entitled “Borderline Sanity.” The authors considered the reasons for the current inadequacy of United States immigration policy: “basing policy on the Cold War hysteria and economic panic of the early 1980s rather than hard facts. The fantasy is a tight

border; the reality is North American integration. ... Policy makers have refused to recognize that inevitably labor markets (under NAFTA) will also merge in an integrated economy. In reality, Mexican immigration cannot be stamped out. But it can and should be cooperatively managed, just as the flow of goods or capital across the border is managed, to maximize its benefits and minimize its costs on both sides.” (Durand 2001)

Yet subsequent to the attacks of September 11th, 2001, instead of cooperative international efforts— U.S. immigration *management* has translated into immigration *control*.⁷⁸ As a result, the Mexico border has been militarized, and the immigration debate has been closely linked with national security, restriction and punishment of unauthorized flows, and the protection of U.S. jobs. As was mentioned above, the same tendencies to limit international migration are also found in other countries of immigration in Europe, Australia and Asia.

In contrast, Bimal Ghosh of the New International Regime for Orderly Movements of People (NIROMP) has cautioned that the appearance of border and labor market “control” afforded by unilateral measures is misleading:

“A very distorted and persistent source of demand for labour lies elsewhere – in the fast expanding informal sector or the black economy of many of these countries. An increasing number of less competitive firms and sunset industries seek to survive in this sector by using cheap, docile, and mostly irregular migrant labour while evading taxes. The black economy now accounts for 16 per cent of the European Union's GDP, compared to 5 per cent in 1970. Between 10 and 20 million jobs, corresponding to between 7 per cent and 19 per cent of declared employment, are located in the informal sector, and a high proportion of them are occupied by irregular migrants... In addition, public revenues suffer.” (Ghosh 2000a: 12)

⁷⁸ At least in relation to low-wage, undocumented flows, the focus is very much on immigration control; Michael Samers notes that while NAFTA has increased undocumented migratory flows, American cooperation with Mexico has been restricted to bilateral efforts concerning the “war on drugs.” Other bi-national immigration efforts, such as the establishment of U.S. immigration posts at foreign airports, do not work to manage unauthorized immigration—yet contribute further to a focus on border control. (Samers 2001: 138)

Similar issues with irregular immigrant labor (and the emergence of sweatshop industries) are also true in the United States.⁷⁹ In effect, most countries of immigration today display striking similarities in their immigration regulations, public reactions to immigration flows, and/or analogous consequences to current immigration policies. (Cornelius 1994; Watts 2002; Ruhs 2003; Calavita 2005) Comparative studies in the early 1990s examining nine industrialized democracies⁸⁰ inspired two hypotheses: the “convergence hypothesis,” which claims that there are “growing similarities among industrialized, labor-importing countries,”⁸¹ and the “gap hypothesis,” which predicts that “the gap between the goals of national immigration policy (laws, regulations, executive actions, etc.) and the actual results of policies in this area (policy outcomes) is wide and growing wider in all major industrialized democracies, thus provoking greater public hostility toward immigrants in general (regardless of legal status) and putting intense pressure on political parties and government officials to adopt more restrictive policies.” (Cornelius 1994: 3)

Despite the fact that international migration (with increased flows of undocumented labor) affects most of the developed world *and* that most immigration policies converge in both design and failed outcomes—the international community in

⁷⁹ While Ghosh concedes that the black economy issue is “less serious in the USA,” he also warns that in America: “As the labour market has tightened and the wages for regular workers gone up, there has been a noticeable trend for companies to rely on ‘sweat shops’ using irregular immigrant labour in the USA to reduce labour costs. Following the trend, in California, even regular manufacturing companies are using legal immigrants and traffickers to recruit irregular migrants from Mexico in order to profit from cheap labour. ... The distorted demand will continue to be a powerful pull factor while encouraging human trafficking.” (Ghosh 2000a: 14)

⁸⁰ The countries studied in a 1994 book edited by Cornelius, Martin and Hollifield are: United States, Canada, Britain, France, Germany, Belgium, Italy, Spain, and Japan. (Cornelius 1994)

⁸¹ These similarities include: “(1) the policy instruments chosen for controlling immigration, especially unauthorized immigration and refugee flows from less developed countries; (2) the results or efficacy of immigration control measures; (3) social integration policies (the measures adopted by labor-importing countries that affect the extent and rate of social, economic and political integration among immigrants who become long-term residents); and (4) general-public reactions to current immigration flows and evaluations of government efforts to control immigration.” (Cornelius 1994: 3)

general has avoided international (bilateral or multilateral) migration management. The United Nations has asserted the need for international management of migration flows—stating that only efficient management can channel the development potential of labor flows, both for sending and receiving countries. (International migration and development 2006) Yet aside from long-term efforts to reduce emigration pressures in developing countries⁸², the international community has not succeeded in finding concerted solutions for the management of migratory flows. For example, in 2003 the Cooperative Effort to Manage Emigration (CEME) project studied the bilateral relationship between Morocco and Spain to evaluate their migration management practices, and discovered failed attempts on many fronts. The study concluded that (1) concerning emigration pressures, although many Spanish NGOs were helping Moroccans (especially Berber women) to develop skills and literacy—it was still unclear that local development programs would work to prevent emigration. On the other hand, (2) joint management initiatives between the two countries were complicated by the volume of unauthorized migration across the Strait of Gibraltar, and the Spanish perception that the Moroccan government does not do enough to contain these flows (similar to United States complaints about the porous border with Mexico). Finally, (3) the Spanish job market, as with other countries in Europe and also in the United States, appears to prefer undocumented labor to legal guest workers, suggesting the need for better workplace

⁸² Foreign direct investment (FDI) is a “long-term strategy to reduce unauthorized immigration”—and since development is known to increase migratory flows, at least initially, it is possible that FDI may actually cause a short-term increase in migration. (Reyes 2002: 82) In any case, Bimal Ghosh notes that “despite the public announcements by policy-makers in numerous regional and international fora for a concerted use of aid, trade, and foreign investment to reduce emigration pressure in labour-abundant countries, there is little evidence that the strategy is being consistently applied or that it is making a real impact at the global level.” (Ghosh 2000a: 17)

enforcement and other internal policies to manage immigration more effectively. (Arango 2005b: 258; 268-269)

A leading Mexico-U.S. migration scholar, Jorge Bustamante, believes that current immigration policies are designed to be inefficient. IRCA, which claimed to tackle undocumented flows, yet in reality worked to provide flexibility to the U.S. government: the choice to tighten or expand monitoring of the border with Mexico depending on domestic needs for cheap labor.⁸³ Hence policies such as IRCA are “more convenient alternative to bilateral or multilateral negotiations” for U.S. businesses, “because negotiations would have raised the value of foreign labor;” unilateral U.S. measures without consultation with Mexico allow for “greater control over migrant flows and over the labor market in which undocumented immigrants participate.” (Bustamante 1990: 224-225) Canadian legal scholar Catherine Dauvergne offers a less cynical perspective; Dauvergne claims that flexibility may have been the only politically plausible means to achieve porous borders during the 1990s—for the benefit of businesses, but also for humanitarian purposes. Flexible and inefficient immigration policies maintained an illusion of control for political purposes; the option to “continue with restrictive laws but to also permit and accept very lax enforcement of them” may have been the “politically possible humanitarian option in migration.” (Dauvergne 2005: 67) That preserved national governments’ ability to fulfill economic goals with easily accessible cheap immigrant labor, yet without damage to national sovereignty—by allowing the government to step in and curb flows whenever necessary. For vulnerable, displaced

⁸³ “IRCA was designed as a precautionary instrument for times of economic recession, during which it would be necessary to take drastic measures to diminish the stock of undocumented immigrants, and that in times of economic expansion the law could function with a maximum of flexibility, bordering on ineffectiveness.” (Bustamante 1990: 224)

workers from developing nations, the result of these failures in immigration policies has been continued access to developed countries' labor market—yet as undocumented workers in an informal or sweatshop economy, these workers lack even the most basic protections against exploitation.

Immigration policy and public opinion: the ethnic fight for resources. In the 1890s, foreigners made up almost 15 percent of the total American population. (Daniels 2004: 5)

Historian Roger Daniels describes the national mood on immigration at the time:

“Attitudes toward immigration underwent an important transition that was shaped by the contemporary economic crisis and the growing apprehension that many or most of the contemporary immigrants were of the wrong sort. To be sure, a similar rise of anti-immigrant feeling took place in the 1840s and 1850s, and another would occur in the late 1980s and early 1990s, but neither equaled the movement begun in the late nineteenth century, which sustained itself for four decades and culminated in the Immigration Act of 1924. This end-of-the-century anti-immigrant feeling reflected the great increase in the number of immigrants, even though the relative incidence of immigrants in the population was remarkably constant.” (Daniels 2004: 30)

The movement against immigration starting in 1890s reflected a national awakening to shifts in immigrant composition; Daniels points out that the United States Immigration Commission's 1911 report made “a case for major restriction” by capturing “the existing prejudices that stigmatized the so-called new immigrants—Southern and Eastern Europeans, largely Italians, Jews, and Poles.” (Daniels 2004: 30) Yet aside from race and religion,⁸⁴ the national concern with the “new immigrants” also derived from labor

⁸⁴ Immigrants in the early 20th century were labeled as “politically incompetent” and thus “easily corruptible;” in fact, the term “new immigrants” became “part of a calculated program” by interest groups to “change American immigration policy. The most effective such group was the Immigration Restriction League,” (Daniels 2004: 31) founded in 1894 by Harvard graduates. The League, writes Daniels, “may have been the first organization that sought to influence and “educate” both elites and the wider public with a specific legislative agenda in mind. Led by Boston Brahmins and wannabe Brahmins who found “their” city more and more firmly in the grip of Irish and Irish American politicians, the League's goal, as described by historian Barbara Miller Solomon, was to save “the nation by preventing any further inroads on Anglo-Saxon America by strangers.”” The League and its members urged the “American people” to

competition, as is made evident in this excerpt from the United States Immigration

Commission's 1911 report:

“The old immigration movement was essentially one of permanence. The new immigration is very largely one of individuals, a considerable proportion of whom apparently have no intention of permanently changing their residence, their only purpose in coming to America being to temporarily take advantage of the greater wages paid for industrial labor in this country.”⁸⁵

If today's reader were to cross out the reference to “industrial labor” and instead replace it with “service labor,” the 1911 Immigration Commission report more or less accurately describes public sentiment in the early 21st century.

The current immigration debate has re-ignited unease by focusing on unauthorized cross-border flows from Mexico and Central America, not only because many citizens feel that the country has “lost control of its borders,” but also because to many Americans “the costs of immigration appeared increasingly to outweigh the benefits.” (Bean 1990: 2) Unlike the early 1900s, however, when immigration policy was poorly defined, the current levels of unauthorized immigration flows produce distrust in already established immigration policies and control mechanisms. Since the 1970s, national public opinion seems to be marred by the belief that the government cannot prevent illegal entry “at a time when tens of thousands of legal petitioners [are] waiting to obtain entry visas.” (Bean 1990: 2) Corroding public trust in the ability of the government to control and manage cross-border flows leads to suspicion and cynicism concerning immigration. Meanwhile, since American workers feel threatened by competition from foreign-born workers, and American social cohesion is predicated upon

decide whether they wished the country to be “free, energetic, progressive” or “down-trodden, atavistic and stagnant.” To achieve the former entailed restricting immigration to British, Germans, and Scandinavians. The latter adjectives were associated with the Slav, Latin and Jewish races. (Daniels 2004: 31)

⁸⁵ Washington: GPO, 1911, 1-24, quoted in Daniels 2004: 30-31.

the rule of law (Lipset 1990), the scenario is rife for an “illegal immigrant” witch hunt.⁸⁶

Pulled into U.S. labor markets by strong social networks of employment and lax immigration enforcement,⁸⁷ undocumented workers become the victims of exploitation by U.S. employers—and guilty of being “illegal,” disenfranchised and blameworthy. Sang Hea Kil notes that there are more humane policy options available to the United States, which reject a populist approach to the ethnic fight for jobs and resources and the ensuing “militaristic criminalization of immigrants, the brutalizing racism” which focuses on the “division between citizen and noncitizen” and labels the undocumented immigrant as national “enemy.” Less divisive immigration discourse and policies “would enable the immigrants to improve their condition and cease to live clandestinely in “legal nonexistence” so that they could live dignified lives as full members of the society to which they contribute in multiple ways.” (Kil 2006: 181-182)

Labor rights of undocumented immigrants in America. Today, without any comprehensive immigration policy solutions in sight, the reality for many undocumented immigrant workers in this country is a job market without labor rights, earning illegally low wages, and exposed to hazardous working conditions. (Kwong 1997b; CESR 1999;

⁸⁶ One example of this witch hunt is the widespread concern over low-wage immigrants and their use of public services. In fact, *The New York Times* recently reported that: “As the debate over Social Security heats up, the estimated seven million (to eleven million) illegal immigrant workers in the United States are now providing the system with a subsidy of as much as \$7 billion a year. While it has been evident for years that illegal immigrants pay a variety of taxes, the extent of their contributions to Social Security is striking: the money added up to about 10 percent of last year's surplus - the difference between what the system currently receives in payroll taxes and what it does out in pension benefits.” (Porter 2005)

⁸⁷ European migration scholar Stephen Castles suggests the term “forced migration” to include not only refugees and asylum seekers, but also those in a situation of “development-induced displacement”—those workers who are affected by labor market shifts in their home countries, regions, or cities, and are thus forced to look for employment elsewhere. Castles reminds us that forced migration “has become an integral part of North-South relationships and is closely linked to current processes of global social transformation,” including “social networks” of economic migration. (Castles 2003: 13)

Kim 1999; Ghosh 2000b; Smith 2007) Scant monitoring of labor conditions in the United States and other host countries of international migrant workers has also encouraged networks of slavery or indentured servitude—not only in the sex trade, but also in agriculture and domestic labor. (Kwong 2001; Bales 2005; Naím 2005)

Yet globalization has not only enhanced movements of labor—it has also amplified the international flow of ideas and consolidated the perceived universality of human rights principles and standards. (Appadurai 1996; Jacobson 1996; Ignatieff 2000; Kuper 2005; Clapham 2006) While nation-state’s sovereign ability to control national borders is being challenged by the pressures of labor movements, another 20th-century phenomenon is at odds with the nation-state’s political sovereignty to exclude: international human rights claims that individuals (regardless of nationality and immigration status) have universal rights and should be protected from harm. (Benhabib 2002: 144; Blau 2005; Dauvergne 2005) In effect, today’s high level of international migration is transforming the meaning of citizenship in the context of globalization. (Schuck 1985; Soysal 1994; Schuck 1998; Eder 2001; Aleinikoff 2002; Beiner 2003) And while it may appear obvious that “illegal” immigrants should be excluded from having rights in a society into which they were not invited—effectively continued exclusion of unauthorized immigrant workers from the entitlements enjoyed by citizens and legal immigrants has its own costs, which is one of the topics discussed in chapter III: workplace abuses committed against undocumented immigrants in the United States endanger the U.S. social fabric, and hence affect *all workers* in this country. The next chapter will discuss the state of legal *inclusion* of undocumented workers under U.S. and international law; in other words, which labor rights do “illegal” immigrants enjoy in the workplace?

Part I

Chapter III: “Illegals” v. United States of America: Undocumented Workers and Labor Rights

Undocumented workers and the law. This research project focuses on U.S. press coverage about undocumented status, specifically undocumented workers’ labor rights in U.S. workplaces. However, while the press provides a pivotal forum for public debate about “illegal” immigration, offering myriad opportunities for defining and challenging the meaning of immigration status and immigrant inclusion into the American fold—ultimately undocumented status is demarcated by law. Hence this chapter will focus on the legal meaning of undocumented status, both domestically and internationally, and discuss how the U.S. courts have dealt with and reassessed whether and how to provide undocumented workers with the same rights and entitlements as citizens and legal residents—in light of changing societal contexts, especially the human rights paradigm of inclusion, which emphasizes *rights regardless of status*.

As was discussed in chapter II, U.S. immigration policies have failed to deter or efficiently manage unauthorized flows of workers into the United States. According to Pew Hispanic Center demographer Jeffrey Passel, there are now about 12 million undocumented residents in this country, approximately 7 million of whom have jobs, which represent an estimated 5 percent of the U.S. workforce (Passel 2005b, 2005a, 2006). There are myriad consequences to these immigrants and their families, who live in fear of deportation; as was discussed in the previous chapters, immigrant families (especially Hispanics) are more likely than native-born families to live in poverty, which raises concerns about their access to a

standard of living that is likely to help their children live the American dream of upward mobility. This chapter focuses on a particular aspect of underprivileged immigrants' plight in their unauthorized U.S. residency: exploitation at work.

Chapter III will begin with a description of the violations of labor standards taking place in contemporary America in workplaces employing undocumented immigrants—and discuss the human rights (in this case, labor rights) of unauthorized immigrants: do 'illegals' have any labor rights? Should they? In Section II of this chapter, I will examine the role of the U.S. judiciary in determining the extent to which undocumented workers have equitable rights as compared to American citizens and legal foreign-born residents. Finally, Section III will describe the place of undocumented workers' labor rights within international human rights law, and section IV will offer some brief remarks on the state of immigrants' labor rights in Western societies.

Section I: Deterioration of labor standards, indentured servitude, human smuggling—a continuum of exploitation and human rights violations

Unauthorized U.S. residents: industry concentration and labor standards. Undocumented workers are concentrated in a few industries where they are over-represented; since most of these immigrants are poorly educated or have limited English ability, these are generally low-skilled occupations.⁸⁸ For example, in farming, cleaning, and construction undocumented

⁸⁸ Undocumented workers are commonly estimated to constitute 4.9 percent of the U.S. labor force, or 7.2 million workers. (Passel 2005b) However, these immigrants appear to be highly concentrated in particular occupations and industries. Another reason for this concentration of workers in particular industries, aside from lack of educational credentials and poor English skills, is the role of extensive ethnic hiring networks (Portes 1985; Martin 1988; Light 2000; Waldinger 2001a) which result in a clustering pattern of immigrant workers.

workers are estimated to comprise from 12 to 19 percent of the total work force.⁸⁹ In specific occupations, the proportions of workers who are unauthorized may be even higher: for example, 25 percent of meat and poultry workers in the United States are estimated to be undocumented, 23 percent of agricultural workers, 21 percent of roofers and 18 percent of sewing machine operators. Hence specific industries (what demographer Jeffrey Passel calls “migrant industries”) have high concentrations of workers with irregular immigration status.⁹⁰ (Passel 2005b: 26-29)

When undocumented workers represent a sizeable proportion of workers in particular industries, this affects the politics of labor in these industries; undocumented immigrants’ perception of their role in the workplace and their relationship to labor unions become significant in the occupations and industries where they are numerous. (Watts 2002) Many undocumented workers survive in the informal economy without labor protections, earning illegally low wages, and exposed to hazardous working conditions. (Kwong 1997b; CESR 1999; Kim 1999; Ghosh 2000b; Smith 2007) There is also reason to believe that scant monitoring of labor conditions in the United States and other host countries of international migrant workers has encouraged networks of slavery or indentured servitude—not only in the sex trade, but also in agriculture and domestic labor. (Kwong 2001; Bales 2005; Naím 2005; Bowe 2007)

Despite these circumstances, even when unauthorized immigrants are aware of U.S. labor standards which their employers should observe—apprehension over deportation makes most

⁸⁹ According to Passel’s 2005 estimates derived from 2004 CPS data, some of the occupations where unauthorized workers are most concentrated include: farming (19 percent); cleaning (17 percent); construction (12 percent); food preparation (11 percent); production (8 percent); and transport (5 percent).

⁹⁰ Some of the most concentrated “detailed industries” are: landscaping services (26 percent); animal slaughter and processing (20 percent); services to buildings and homes (19 percent); dry cleaning and laundry (17 percent); cut & sew apparel manufacturing (16 percent); crop production (16 percent); private households (14 percent).

“illegals” eager to avoid contact with authorities and decreases the chances that these workers will complain about labor violations by their employers⁹¹. Furthermore, a deterioration of labor standards in migrant industries generally translates into lesser rights for *all* workers in those industries, also affecting the co-workers of undocumented immigrants: permanent residents or American citizens who toil alongside unauthorized workers in service and manufacturing industries. (Massey 2002: 121; Compa 2004: 117)

Low-wage immigrant workers: American dreams, American sweatshops. For low-skilled immigrants, American jobs “involve much physical effort but demand little in the way of cognitive skills, all the while providing few physical amenities.” (Waldinger 2001b: 266-267)

Describing Yucatecan workers in Dallas, Rachel Adler calls attention to the fact that “few of the men receive benefits such as health or dental insurance or paid vacations. [For the women who mostly work *en casa* as domestic workers] job security and working conditions are largely contingent on the personality of their *patrona* (boss).” In the late 1990s, the average salary for Yucatecan men in Dallas (both undocumented and those with legal authorization to work) was about \$7.10/hour. The average income for Yucatecan women working *en casa* was \$7.25 and \$5.12 for those working in fast-food restaurants. (Adler 2004: 39-40)

Human Rights Watch published three reports in the past decade which focus on low-wage labor and working conditions in the United States. A 2000 study by labor law scholar Lance Compa focused on freedom of association—and found that “freedom of

⁹¹ Since many of these workers are employed by co-ethnics, there is a possibility that ethnic solidarity may also keep workers from denouncing labor violations (Kwong 1997b, 2001).

association is a right under severe, often buckling pressure” for American workers who “attempt to form unions and bargain with their employers.” (Compa 2000: 10-11) The report noted that in the 1998 alone, 23,580 workers “were victims of discrimination leading to a back pay order by the NLRB” due to reprisals for exercising their right to freedom of association. (Compa 2000: 13) A 2001 Human Rights Watch study on live-in migrant domestic workers reported numerous violations of basic labor standards, such as: minimum wage (workers’ median hourly wage was only 42% of the federal minimum wage); long hours with no overtime pay (median workday was 14 hours); restrictions on their freedom of movement (employers impose prohibitions and threaten workers who leave the home without permission). On the other end of a continuum of exploitative working conditions, domestic workers are also victims of human trafficking, indentured servitude and forced labor. (HRW 2001: 1) Finally, a 2004 study (also by legal scholar Lance Compa) highlights working conditions in the American meat processing industry; immigrant workers, particularly undocumented workers, are a growing proportion of the industry’s labor force. The report concludes that despite the fact that meat processing plants cannot offer “rose-garden workplaces,” the workers “contend with conditions, vulnerabilities, and abuses which violate human rights,” including “predictable risk of serious physical injury” in the interest of processing line speed, and denial of workers’ compensation when the injuries occur. (Compa 2004: 1) And the workers’ efforts to organize and fight for better working conditions are “crushed” by their employers, infringing upon their freedom of association.

Social scholar Abel Valenzuela examined another occupation with a high concentration of low-wage, undocumented immigrant workers: day labor.⁹² Day laborers face employer harassment: “violence in the workplace can erupt because contractors are trying to avoid paying workers or fulfilling their contractual agreements, are dissatisfied with the help they hired, or are simply being bullies.” (Valenzuela Jr. 2006: 207) He concludes that day laborers are particularly vulnerable to violence because “they have second-class status by virtue of their illegal immigration status and their poor command of the English language. These factors alone largely explain why immigrants are likely to encounter abuse and exploitation in their search for work and while working day labor;⁹³ they also explain why so many abusive acts committed against day laborers go unreported.” (Valenzuela Jr. 2006: 207-208) While Valenzuela was referring specifically to day laborers, his findings are significant for undocumented, low-skilled workers in other occupations: construction, restaurants, janitorial services, garment production, agriculture, and domestic work—all employment sectors where undocumented workers are over-represented. (Passel 2005b, 2005a, 2006)

Many low-skilled immigrants find jobs through social networks—and that contributes to their concentration in particular industries and occupations. Yet while these social networks provide survival, they function “less efficiently in moving immigrant men to jobs of adequate quality.” (Waldinger 2001a: 107) Low-skilled immigrant social networks began in small businesses which hired unskilled (and mostly unauthorized)

⁹² Day laborers are also “routinely harassed by gangs and individuals who yell at them, threaten them, or throw dangerous objects at them and go as far as to assault them.” (Valenzuela Jr. 2006: 207)

⁹³ “Other factors are day laborers’ recency of arrival (a full third have been in this country for less than one year), their low levels of education, and their inability to make wage claims and obtain other forms of government redress. Employers, merchants, residents, police, and others who wish to inflict harm, obtain an economic edge, or intimidate day laborers into leaving a neighborhood (or leaving the country) know that they can take advantage of the vulnerable position of these workers and get away with committing crimes against them.” (Valenzuela Jr. 2006: 207-208)

foreign-born workers or, in the case of immigrant businesses, employed friends, relatives and acquaintances from their home countries; some immigrant workers became supervisors, and many acquired legal status after the legalization program included in the 1986 Immigration Reform and Control Act. As these foreign-born supervisors turned to their friends and family to fill vacancies in both mainstream and ethnic enclave businesses, new ethnic niches of employment were created. Philip Martin notes that it was the “employer’s decision to turn work force recruitment and supervision over to an ethnic foreman who could hire illegal alien friends, relatives and countrymen and workers” that created ethnic niches of employment. “Small businesses that had suffered from the high turnover of American workers soon realized that illegal immigrant workers gave them, at least for a while, the same reliable work forces as those enjoyed by mainstream businesses, but without raising wages or improving labor standards.” (Martin 1988: 69)

American businesses began to focus on hiring immigrant workers because of their perceived advantages: “soft skills” such as “a strong work ethic” and the willingness to work “at substandard pay”, as well as “people skills, teamwork skills, demeanor, motivation, flexibility, initiative, work attitudes, and effort;” immigration scholar Ivan Light notes that “as a result, ethnic minority groups have saturated certain occupations. They have been able to develop niches in unskilled labor, factory work, landscaping, domestic service, hotel and restaurant positions, garment assembly, and other endeavors.” (Light 2000: 211) However, their freedom of association to fight for better pay and working conditions has been severely curtailed—as Human Rights Watch concluded in its reports. An example of that dynamic took place in Morganton, North Carolina, where Guatemalan and Mexican workers (some with legal

residency status or refugee claims, and others undocumented) encountered stiff opposition in their surprising determination to unionize a poultry processing plant. (Fink 2003) Many undocumented immigrants from Mexico and Central America have a traditional pattern of circular migration, with workers returning to their country of origin after a few years. (Margolis 1995; Sales 1998; Reis 1999; Durand 2001) The temporary nature of circular migration combined with their apprehension over deportation contributes to make undocumented workers avoid authorities—and thus less likely denounce labor violations. Against the odds, however, immigrant workers have attempted to challenge workplace exploitation.

The people trade. The International Labour Organization estimates that worldwide there are at least 12.3 million people kept in situations of forced labor, bonded labor, and sexual servitude.⁹⁴

According to a 2004 Free the Slaves report on slavery in the United States, at any given moment, the most conservative estimates point to 10,000 victims of forced labor—from 1999-2004, cases of forced labor were reported in 90 American cities scattered across the country. Even so, forced labor is primarily concentrated in regions with significant immigration, such as California, Florida, New York and Texas.⁹⁵ Most victims

⁹⁴ http://www.ilo.org/global/Themes/Forced_Labour/lang--en/index.htm

⁹⁵ These states are also “transit routes for international travelers;” in 2003, for example, the U.S. Department of Justice reported that the “largest concentrations of survivors of trafficking who received federal assistance resided in California, Oklahoma, Texas and New York.” In 2002, 31% resided in Texas, 19% in Florida, and 14% in California. (Bales 2004: 10)

of forced labor currently in the U.S. are trafficked from about 35 countries;⁹⁶ the largest number of victims comes from China⁹⁷, followed by Mexico.⁹⁸ (Bales 2004: 1)

The notorious episode of the *Golden Venture* ship that ran aground in the New York harbour in the spring of 1993 brought attention to U.S. people smuggling operations. The ship was carrying 286 would-be immigrants, Chinese men and women from Fujian province, on board an old freighter; they had each promised to pay about US\$30,000 to their smugglers if they reached American shores. (Kwong 1997b: 1-2)

Until the mid-1990s, when tighter anti-smuggling operation by the U.S. Coast Guard and Navy were put in place, ship would sail directly to U.S. shores, generally to the California shores: “during the spring of 1993, before the Golden Venture incident, four vessels were caught carrying almost 700 illegals off the California shore.” (Kwong 1997b: 79) Today, being smuggled from Fujian province into the United States takes unauthorized Chinese through more elaborate routes including Southeast Asia, Africa and/or Latin America, sometimes crossing the Mexican border, and costs about US\$60,000 per person; according to Moisés Naím, editor of *Foreign Policy* magazine

⁹⁶ This is not to imply that all victims of forced labor in the U.S. are foreign born; in fact, the 2004 Free the Slaves notes that “some of the victims are born and raised in the United States and find themselves pressed into servitude by fraudulent or coercive means.” (Bales 2004: 1)

⁹⁷ Though Mexicans and Central Americans make up the vast majority of undocumented immigrants in the U.S., unauthorized Chinese migrants are more likely to be coerced into forced labor. That may derive from Mexicans’ traditional migration patterns and social networks that place workers in legitimate employment situations, rather than indentured servitude. Yet the cost of smuggling is also likely to play a role in Chinese workers’ situation of indentured servitude; the cost of being smuggled from Fujian province in China to the United States can run up to US\$60,000, which leads poor Chinese workers to a situation of bonded servitude: the migrant borrows most of that large sum from the traffickers to pay for transportation, which establishes a debt relationship for the migrant and his/her family in China. The debt is often set arbitrarily, as well as the interest rates—so the amount changes over time. Deductions for housing, food and other daily expenses also add to the workers’ burden, thus the need to pay for expenses and fluctuating debt may result in several years of servitude to employer in the U.S. (Kwong 1997b; Bales 2004) For Mexican migrants, on the other hand, the cost of crossing the border is currently estimated at around US\$2,000. (Massey 2002; Reyes 2002)

⁹⁸ Estimates indicate almost 10,000 Chinese victims, 1,500 Mexican victims and 200 Vietnamese victims—the 3 most predominant groups. Other nationalities with an estimated 100 to 200 victims of forced labor in the U.S.: Thailand, Bangladesh, Russia, Vietnam, and the Philippines. (Bales 2004: 13)

and author of “Illicit,” worldwide human smuggling and trafficking⁹⁹ has become one of the most profitable of the global illicit trades (second to drugs) and the fastest growing, with up to 2 million people being trafficked across borders each year, and the “people trade” generating an estimated US\$7 to \$10 billion yearly. (Naím 2005: 87, 88, 97) Because tightening in Coast Guard controls has made it more difficult to reach the country by sea, smuggling by ship has moved down the Pacific Coast to Mexico and Central America. (Kwong 1997b: 79) And the recent boost to U.S.-Mexico border control, as was mentioned in chapter II, has rendered border crossing more treacherous and increased the power of coyotes and snakeheads. (Reyes 2002: 61)

In 2000, the U.S. instituted the Trafficking Victims Protection Act (TVPA), with the objective to protect victims of human trafficking, prevent trafficking activities, and prosecute human smugglers and traffickers. TVPA calls for both domestic and international initiatives on trafficking—and involves five federal departments in various aspects of its implementation.¹⁰⁰ On the international front, TVPA mandates yearly reports by the Department of State; the 2006 report emphasized for the first time the issue of forced labor: “form of human trafficking that can be harder to identify and estimate

⁹⁹ Moisés Naím points out that although smuggling and trafficking are technically different (smuggling occurs with consent, whereas in trafficking the person being traded is deceived or coerced into servitude or slavery), in practice many smuggled individuals end up in a similar situation to trafficked persons: indentured servitude until they pay off their smuggling debt. (Naím 2005: 88-89) A PBS documentary on illicit migration, “Dying to Leave,” showcases two examples of the tenuous line separating smuggling from trafficking: two individuals, a Mexican agricultural worker in Florida and a Chinese restaurant service worker in New York, were smuggled into the United States only to find themselves under threats against themselves and their families at home—and seemingly endless debts to pay for their journey. (Hilton 2003)

¹⁰⁰ The US government has initiatives to combat human trafficking which include: (1) The Department of Health and Human Services, [Administration for Children and Families, Office of Refugee Resettlement](#) certifies victims of human trafficking and allows them to receive the same benefits and services as refugees; (2) the Department of Justice investigates and prosecutes traffickers; (3) the Department of Labor offers counselling for victims of trafficking and investigates complaints of labor law violations; (4) the Department of Homeland Security investigates cases of human trafficking and awards visas to victims; (5) the [Department of Labor, Employment Standards Administration, Wage and Hour Division](#). (www.acf.hhs.gov/trafficking)

than sex trafficking” because “it does not necessarily involve the same criminal networks profiting from transnational trafficking for sexual exploitation. More often, it involves the enslaving of one domestic servant or hundreds of unpaid, forced workers at a factory.”¹⁰¹ (DOS 2006) Although TVPA places the United States at the forefront of international and domestic initiatives to combat human trafficking (Naím 2005), there are weaknesses in the legislation. According to journalist John Bove in his 2007 book “Nobodies,” sources in Congress told him off-the-record that TVPA was “manipulated” to protect the interests of farmers and corporate America: stricter provisions for those who profited from slave labor were dropped from the anti-trafficking Act—such that today only labor contractors (the “lowest rung of employers”) are criminally liable for slavery¹⁰². (Bowe 2007: 56-57) Forced labor is predominantly found in five sectors of the US economy; almost 50 percent of all forced laborers work in prostitution or sex services, another 30 percent in domestic services, 10 percent in agriculture, 5 percent in sweatshops, and 4 percent in food services.¹⁰³ (Bales 2004: 14) Forced labor represents the extreme scenario in low-wage American industries, the opposite end of an exploitation continuum that begins with less severe practices against vulnerable employees, such as denial of overtime pay, and poor pay and working conditions; “forced labor persists because of low wages, lack of regulation and monitoring of working conditions, and a high demand for cheap labor.”

¹⁰¹ This excerpt is part of the brief Introduction to the 2006 Trafficking in Persons report.

¹⁰² Provisions for criminal liability for “knowing, or having reason to know” that a worker was engaging in forced labor are still in place, however, in the case of sex slavery.

¹⁰³ The two case studies examined in this dissertation (in Chapters VI and VII) examine cases of labor standards violations in agricultural work in Florida, and sweatshops in New York. In Immokalee, Florida, where workers have run mostly successful campaigns for higher wages, several instances of slavery have been discovered. In the other case study, situated in midtown, Manhattan, garment factory sweatshops violated overtime pay requirements and obstructed their employees’ freedom of association—but there were no specific forced labor claims. However, factories and restaurants in the same ethnic Chinese community have been known to use forced labor, mostly resulting from forced labor due to trafficking costs. (Kwong 1997b)

(Bales 2004: 1) Julia Perkins, an activist with the Coalition of Immokalee Workers, describes the situation: “the sweatshops give rise to the slavery.” (Perkins 2008) Sweatshops are also susceptible to forced labor because they often operate within the informal economy, frustrating attempts to monitor and enforce labor law regulations. Also, ethnic networks of trafficking and smuggling are frequently connected to employment providers in large urban centers, such as Chinatown, New York; the smugglers have connections within the community who employ the workers. (Kwong 1997b)

Hence forced labor exists in the same labor market that employs many low-skilled immigrants: in the lower rungs of the U.S. employment market. In general, immigrant workers are in fact concentrated in “certain low-skill sectors.” (CBO 2005: 2) The concentration of undocumented immigrants in certain industries (Passel 2005b) points to foreign-born workers’ vulnerability in particular sectors of the labor market (and thus the potential deterioration of labor standards in those sectors), but also to the possibility of effective enforcement of labor standards in these sectors. The 2004 Free the Slaves report calls for “better protections for workers in sectors vulnerable to forced labor and trafficking,” such as agriculture, domestic labor, sweatshops, and food service. (Bales 2004: 52)

In effect, one of the five key recommendations¹⁰⁴ in the 2004 Free the Slaves report about forced labor in the United States was to “promote accountability in those

¹⁰⁴ The other four recommendations are: (1) awareness campaigns, especially within immigrant communities; (2) improve “institutional capacity” in the governmental bodies combating trafficking and slavery, both in law enforcement at the federal, state and local levels, and for service providers; (3) immigration policy reform that grants guest worker visas to the workers themselves, rather than tying workers to particular employers; and (4) stronger protection and rehabilitation programs for survivors of forced labor and trafficking. (Bales 2004: 51-52)

sectors, especially agriculture and garment manufacturing, that use subcontracting systems which violate labor laws and practices. In particular, there is a need for the Department of Labor to deepen its monitoring and enforcement activities in low-wage sectors.” (Bales 2004: 52)

Unauthorized immigrant workers and human rights. Allowing entry to immigrants is a sovereign decision about *whether* to welcome foreigners and *who* to receive as new members of the society based on their expected contributions to the nation. (Borjas 2001; Huntington 2004) Protecting the human rights of irregular immigrants (i.e., through enforcement of labor standards in low-wage industries) may be perceived to conflict with the nation’s sovereign desire to exclude them, which they have violated by entering the country; Canadian legal scholar Catherine Dauvergne notes that in immigration law, “the most unambiguous right is the right of the nation to exclude all outsiders.” (Dauvergne, 212) Thus when foreign-born workers arrive without authorization, do they have rights to protection from exploitation by virtue of being in U.S. territory?

It is important to consider here that globalization has not only enhanced movements of labor—it has also amplified the international flow of ideas and contributed to a perceived universality of human rights principles and standards. (Jacobson 1996; Ignatieff 2000; Kuper 2005; Clapham 2006) While nation-state’s ability to design immigration policies that effectively control national borders is being challenged by the pressures of labor movements, another contemporary phenomenon is at odds with the nation-state’s political sovereignty to exclude: international human rights claims that individuals (regardless of nationality and

immigration status) have universal rights and should be protected from harm.¹⁰⁵ (Blau 2005; Dauvergne 2005) Judith Blau and Alberto Moncada note that human rights “entail ethical responsibilities that we have to safeguard the rights of others. That is, human rights have to do with actively promoting the developmental freedoms of all people and taking others’ development as the index of human development generally.” (Blau 2005: 18) Therefore, under human rights doctrine, one could argue that whether immigrants have authorization to reside and work in a country is irrelevant—their basic human rights (including the right to be free from exploitation and slavery in the workplace) remain unaffected by their irregular immigration status.

Yet the tensions between border control as a matter of national sovereignty and the human rights of unauthorized immigrant workers play a significant role in international migration management. For example, a recent international mechanism specifically designed to ensure that international migrants have the same protections as citizens in their countries of employment, the ICMW (International Convention on Migrant Workers and their Families), denies undocumented workers the right to form trade unions. While these rights are guaranteed to those workers with regular immigration status, they are denied to those with irregular immigration status “mainly because these entitlements are inextricably connected with the sovereign interests of the state of employment.” (Cholewinski 1997: 188)

Section II: The Role of the U.S. Courts

The policy gap: U.S. Courts come to the rescue? Given the unsatisfactory outcomes of federal immigration policies to control and manage current flows of international

¹⁰⁵ The role of international law in international migration is discussed further in this chapter.

migration—state and local governments¹⁰⁶ have stepped in to legislate on issues related to immigrants and their integration into the host society. Often times state and local initiatives to regulate immigration are limited by the courts’ tenet of enforcing Congressional power over immigration (Legomsky 2005: 2)—in one recent example, New York’s highest court “applied strict scrutiny to strike down a law differentiating between aliens based on length of residency in the United States.”¹⁰⁷ (Stumpf 2008: 1607)

As with state and local governments, U.S. courts have also attempted to resolve this ‘policy vacuum’; in many countries of immigration, judicial intervention has become a common mechanism to manage increased flows of unauthorized foreign-born workers. (Baubock 1994) This section will discuss the role of the U.S. judiciary in resolving tensions between American territorial sovereignty and the inclusion of undocumented workers under the same domestic labor standards designed to protect U.S. citizens and legal residents. The question of whether and how much undocumented immigrants are protected under international human rights standards will be returned to in the next section, which focuses on the international context.

Unauthorized workers’ labor protections in the U.S. Unauthorized workers are considered “statutory employees” under federal and state statutes and thus *should* enjoy most of the same labor protections as United States citizens. (Wishnie 2004; Fisk 2005; Bosniak 2006; Barenberg 2007; Smith 2007) In effect, the Supreme Court has

¹⁰⁶ This was discussed in chapter II, concerning *State and local initiatives*.

¹⁰⁷ The case mentioned here is *Aliessa v. Novello* (752 N.E. 2d 1085, N.Y. 2001). In another recent case, *Soskin v. Reinertson* (353 F. 3d 1242, 10th Circuit 2004), a Colorado court upheld that state’s law withdrawing Medicaid coverage from non-citizens residents of the state.

consistently “rejected the proposition that a person’s unlawful immigration law status places her beyond the protective bounds of the Constitution. A century ago *Wong Wing* established that even aliens who are in the country illegally enjoy the protections of the Fifth and Sixth Amendments, and in *Plyler*, nine Justices agreed that undocumented aliens are to be considered “persons” for Fourteenth Amendment purposes, notwithstanding their status under the immigration laws.” (Bosniak 2006: 64) These foundational Supreme Court decisions have originated a “broad line of cases that treat the fact of an alien’s unauthorized status as entirely irrelevant in determining her standing in various spheres of public and private life in our society;” some important rights include: access to suing for breached contracts, and protected employee status under the National Labor Relations Act (hereafter NLRA), Title VII, and workers’ compensation for work-related injuries. (Bosniak 2006: 64)

Before the Immigration Reform and Control Act (hereafter IRCA) was signed into law in 1996, U.S. courts faced less of a conflict about whether labor rights and immigration enforcement can be harmonized; courts could protect the labor rights of undocumented workers without appearing to ignore immigration control objectives. As legal scholar Michael Wishnie notes: “Any lingering pre-IRCA doubts as to coverage of undocumented workers were eliminated by the Supreme Court’s 1984 decision in *Sure-Tan, Inc. v. NLRB.*”¹⁰⁸ (Wishnie 2004: 502) *Sure-Tan* held that undocumented workers are considered employees under the NLRA, and harmonized unauthorized workers’ NLRA coverage with their violation of immigration laws by noting that the enforcement of labor standards creates disincentives for employers to hire undocumented workers—by

¹⁰⁸ In *Sure-Tan* the Supreme Court “reviewed the language, history, and purpose of the NLRA definition of “employee,” and easily concluded that while Congress had made numerous express exemptions to the statutory definition, none implied an exemption based on immigration status.” (Wishnie 2004: 502)

enforcing the same labor regulations for all workers in U.S. territory.¹⁰⁹ Yet “in seeming contradiction to the inclusive statutes governing the workplace, in 1986 Congress enacted the Immigration Reform and Control Act (IRCA), which made it unlawful for employers to hire undocumented immigrants.” (Nessel 2001: 347-348) The application of labor regulations to unauthorized workers became substantially more ambiguous when IRCA made it illegal for employers to hire workers undocumented workers.

After IRCA, employers revived their legal challenges to the status of undocumented workers as “statutory employees;” post-IRCA state and federal court decisions in general continued to follow the guidance provided by *Sure-Tan*. (Wishnie 2004: 502-503) However, different courts had their own interpretations of which remedies remained available to undocumented workers.¹¹⁰ (Garcia 2003: 745)

Hoffman Plastic and the future of equality under labor laws. Against a “backdrop of confusion” in how to reconcile federal labor statutes with new immigration policies contained in IRCA¹¹¹ (Bollerup 2003/2004: 1020), the Supreme Court agreed to hear a

¹⁰⁹ The *Sure-Tan* Court decision, as quoted by Wishnie: “If an employer realizes that there will be no advantage under the NLRA in preferring illegal aliens to legal resident workers, any incentive to hire such illegal aliens is correspondingly lessened. In turn, if the demand for undocumented aliens declines, there may then be fewer incentives for Aliens themselves to enter in violation of the federal immigration laws.” (Wishnie 2004: 502)

¹¹⁰ Sara Bollerup noted in a comment in the *New England Law Review*: “Courts have been presented with conflicting rules and policies concerning undocumented workers in the United States and have had to interpret different federal statutes enforced by different federal agencies. This lack of integrated policies has resulted in deep splits among circuit courts of appeals.” (Bollerup 2003/2004: 1021)

¹¹¹ Aside from IRCA, a few other federal and state campaigns and legislation represented a movement toward curtailment of immigrant rights prior to the *Hoffman* decision: (1) California Proposition 187, which contained denial of welfare benefits to undocumented families and certain classes of legal permanent residents; (2) the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), which represented the curtailment of judicial review of certain executive branch decisions; (3) and the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which increased states and federal government jurisdiction over benefits available to unauthorized immigrant families. Legal and Hispanic studies scholar Kevin Johnson argues that there are clear connections between these curtailments of immigrant rights and racism: “since 1965, people of color have comprised a majority of all immigrants. Nine of the top ten immigrant-sending countries for fiscal year 1997 were Mexico, the Phillipines, China, Vietnam, India,

petition for review which raised the issue of undocumented workers' entitlement to labor protections. In March 2002, only a few months after the terrorist attacks of September 11th of 2001, the Justices' majority opinion did not harmonize IRCA with labor laws—instead, it prioritized immigration status over labor regulations.

The *Hoffman* decision stated that the Immigration Reform and Control Act of 1986 (IRCA) prevented the National Labor Relations Board (NLRB) from awarding back pay to a worker (Castro) because of his irregular immigration status. (*Hoffman Plastic Compounds, Inc., Petitioner v. National Labor Relations Board* 2002) Jose Castro had been laid off by his employer, Hoffman Plastic, after becoming involved in union activity. The company had been ordered by the NLRB to pay lost earnings to all the workers concerned in the incident because their firing violated the National Labor Relations Act (NLRA). Hoffman Plastic settled with the other employees, but when Castro's unauthorized status was revealed, the Administrative Law Judge presiding over the case denied him back pay because such an award would be in conflict with IRCA. Hoffman Plastic claimed it did not know that the worker was illegally in the country, since Jose Castro had presented a friend's birth certificate as proof of employment authorization. The NLRB then reversed that decision, avoiding conflict with IRCA by considering Congress' intention in IRCA as promoting "expanded enforcement of existing labor standards" to deter illegal employment. The NLRB also noted that at the time Castro applied for a job, IRCA was not fully implemented, and thus the worker was

Cuba, the Dominican Republic, El Salvador, and Jamaica." (Johnson 2000: 524) While Johnson acknowledges that "race unquestionably is not the full story behind the various restrictionist measures; class, social, and economic considerations also factor into the analysis" specifically "competition from cheap immigrant labor" and "fear that poor immigrants will sap public resources." (Johnson 2000: 533-534).

not prohibited from “using another's birth certificate or documents to obtain employment.” For the NLRB, the case was not a “comparative judgment of Castro's misconduct in securing the job versus Hoffman’s misconduct in firing him” for union activity. The NLRB focused instead on whether Castro was eligible for back pay—they decided to limit Castro’s back pay award to Hoffman Plastic’s compliance with IRCA: “at the time Hoffman hired Castro, it complied with IRCA, and from that date until it learned he is unauthorized, nothing prohibited his continued employment.” (Fisk 2005: 418)

The Supreme Court, however, after being satisfied that the company was unaware of the worker’s irregular immigration status, revoked NLRB's decision. For the Supreme Court, the violation of IRCA was paramount and if the employer was not at fault, then the worker had to be responsible for the violation—and thus could not profit (i.e., be awarded back pay) for violating immigration rules.¹¹² And the Supreme Court majority opinion was almost completely silent on “Hoffman’s own illegal conduct in firing Castro for his union activities.” (Fisk 2005: 428) Thus, a worker who violated IRCA could not be granted an award of back pay—regardless of the (also illegal) action by the employer in firing workers for involvement in union activity. In effect, the Supreme Court's decision in *Hoffman* focused on Castro’s behavior as “criminal” despite the fact that there were no actual criminal convictions against him. In one example of the Court’s concern with immigration enforcement over labor rights and standards (in this case, undocumented worker’s right of association): “Justice Kennedy leaned forward to ask if it would be lawful if a union “knowingly uses an alien for organizing activity.” Wolfson answered

¹¹² Though Michael Wishnie notes that Supreme Court Justices in *Hoffman Plastic* did not challenge Sure-Tan’s definition of “employee” to include workers with irregular immigration status. (Wishnie 2004: 502-503)

that ... undocumented immigrants are included in a bargaining unit, but Kennedy pressed the unexpected, and unmistakably hostile, point. “And that doesn’t induce illegal immigration? ... Here what you’re saying is that a union can, I suppose even knowingly, use illegal aliens on the workforce to organize the employer...”¹¹³

Consequences of the Hoffman Plastic decision. *Hoffman* seems to have established a hierarchy in legal regulations: the immigration enforcement objective contained in IRCA was deemed to constrain labor entitlements for undocumented workers. Legal scholar Lori Nessel notes that IRCA was a “dramatic and sweeping legislation” that “served to expand the INS’s jurisdiction from the nation’s borders to the workplace and “deputized” employers to act as the government's agents in policing the workplace. This overlap of immigration and labor laws in the employment setting highlights the tension between the nation’s broad national labor goals and restrictionist immigration policy.” (Nessel 2001: 347-348) In other words: labor laws are designed to be *inclusive*; they ought to embrace all workers in order to be effective. Immigration legislation has the opposite goal: of *limiting* access to the United States.

As a result of this tension, the Supreme Court decision in *Hoffman* expressed greater concern with the “trivialization” of immigration enforcement rules than with the effectiveness and enforcement of labor regulations. The effect has been chilling: legal scholar Catherine Fisk noted that New York immigrant workers, “perhaps cowed by the reduced protection against retaliation, reported fewer labor violations” since the *Hoffman* decision. (Fisk 2005: 432)

¹¹³ Excerpts from telephone interview with Paul R.Q. Wolfson (March 1, 2004) where he describes his argument before the Supreme Court in *Hoffman Plastic*. (Fisk 2005: 426)

Before *Hoffman*, government agencies generally assumed that unauthorized workers enjoyed the same labor protections as U.S. citizens and legal residents. After *Hoffman*, the rights of workers with irregular immigration status had to be reinterpreted; “the first wave of legal developments after Hoffman occurred in executive branch agencies” concerning the issue of labor remedies under regulations outside those prescribed in the NLRA. Most federal agencies “assumed Hoffman barred backpay and reinstatement,” but maintained the scope of all other remedies to undocumented workers. (Fisk 2005: 433) The Equal Employment Opportunity Commission (EEOC) declared that workers in irregular immigration status were still considered statutory “employees” for purposes of compensatory and punitive damages, but issued a new directive on Title VII of the Civil Rights Act of 1964, rescinding their eligibility for back pay. The Department of Labor (DLO) maintained that all workers, regardless of immigration status, remain protected by the Occupational Safety and Health Act, and the Mine Safety and Health Act, which guarantee that undocumented workers retain the right to complain about unsafe workplace conditions. DLO also reaffirmed that unauthorized workers were still “covered employees” under the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act—specifying that all workers were eligible for both minimum wage and overtime compensation for work already performed. (NILC 2005) The NLRB has also confirmed in a post-*Hoffman* case that unauthorized workers are eligible for damages, yet only for work already performed. In contrast, the NLRB General Counsel, which sets enforcement policy for the NLRB, has determined that even “employers who *deliberately hire undocumented workers* are exempt from backpay liability.”¹¹⁴ (Fisk 2005: 433-434)

¹¹⁴ My italic emphasis.

At the state level, some agencies have been more generous than others in their interpretation of the *Hoffman* decision. Both California and Washington agencies decided that “nothing in Hoffman preempted state laws allowing backpay.” On the other hand, New York declined to “express a view” on the award of back pay to undocumented workers. (Fisk 2005: 434) About 7 percent of all workers with irregular immigration status live in New York, while California is estimated to have the largest number of undocumented workers (2.4 million, or 24 percent of the national total) in the country. (Passel 2005b: 11)

Both federal and state courts have litigated on *Hoffman*-related issues, and three conclusions can be drawn from their opinions: (1) immigration status is no impediment to recovery of damages for work already performed; (2) at the state level, most courts decided that unauthorized workers may recover lost wages under tort law or in worker compensation cases; (3) compelled disclosure of a worker’s immigration status is “irrelevant” and discovery has been generally barred.¹¹⁵ (Fisk 2005: 434-435)

Additionally, the NLRB has declared that Hoffman does not affect undocumented

¹¹⁵ One of the earliest cases barring discovery of workers’ immigration status was *Liu v. Donna Karan*, which is also discussed in Chapter VI. In *Liu*, a federal court in New York denied the request by Donna Karan International, Inc., “requesting discovery into the immigration status of plaintiffs in an unpaid wages case filed pursuant to the Fair Labor Standards Act. Karan argued that, based on the Supreme Court’s decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, 122 S. Ct. 1275 (2002), defendants were entitled to information regarding the immigration status of each of the plaintiffs in order to preserve a factual record on the issue. Karan suggested that defendants might be willing to enter into a confidential agreement restricting the disclosure of any information obtained in the discovery process. However, the court held that it was unclear *Hoffman* even applied, since the case before it involves unpaid wages for work already performed. *Hoffmann* concerned post-termination back pay for work not actually performed but awarded as compensation under the National Labor Relations Act for a worker’s unlawful firing. The court held that even if such discovery were relevant, the risk that it would result in intimidation and possibly destroy the underlying claims outweighed the defendants’ need for the disclosure of such information.” The case is: *Zeng Liu, et al. v. Donna Karan International, Inc., et al.*, 00 Civ. 4221 (WK), 2002 U.S. Dist. LEXIS 10542 (June 11, 2002). (NILC 2002)

workers' right to unionize and engage in collective bargaining. And it is seeking to limit employers' ability to use immigration status as an excuse to halt the investigation of labor violations. (NILC 2005)

Labor unions and immigrant workers. In 2000, after a century of opposition to immigration, labor unions “formally and quite dramatically changed their position;” the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) announced that it now opposes the employer sanctions in IRCA, and has “formally endorsed passage of a legalization or amnesty program for undocumented immigrants. Moreover, in the past few years, unions and labor rights groups around the country have become integrally involved in organizing in sectors of the economy where undocumented immigrants are concentrated.” (Bosniak 2002: 503-504)

Because of the vulnerability of undocumented workers, most unions generally considered them too difficult to organize. While citizens and documented non-citizens may have other (structural and site-specific) impediments to workers' mobilization, undocumented immigrants are in a delicate position of weighing fear of deportation against their working conditions. (Nessel 2001: 347-348) Hence during most of the 20th century, unions showed not only “indifference” toward undocumented workers; that is partly because the labor sectors where most of the undocumented found employment were not generally unionized (agriculture, services and garment manufacturing, for example)—yet in some cases, such as the Service Employees International Union and the International Ladies Garment Workers Union, among others, unions have reached out to and campaigned specifically to organize undocumented workers, helping them to understand their rights under U.S. labor law. (Bosniak 1988: 995)

However, most unions into the 1990s did not just ignore undocumented workers, but they also spoke out against immigration—since the early twentieth century, most American unions had opposed liberal immigration policies fearing depressed wages due to employers’ ability to import cheaper and more vulnerable labor from abroad. (Daniels 2004) Prior to IRCA in 1986, the “law prohibited violation of the border, but not participation in wage labor.” (Bosniak 1988: 987) Neither the undocumented worker nor the employer was penalized for their employment association; the worker was penalized only as an immigrant residing in the U.S. without authorization. (Wishnie 2004) Yet the workplace has traditionally been a primary site of immigration raids, well before IRCA and the more recent initiatives to locate unauthorized immigrants at work (and penalize their employers). Although some employers would share their employees’ interest in evading immigration raids, and some would actually help hide their employees from immigration officials—employers would also frequently utilize immigration raids as a strategy against unionization efforts by workers.¹¹⁶ (Bosniak 1988: 991-992)

The result is that employers often benefited from workers’ undocumented status to avoid engaging in labor negotiations concerning working conditions and wages.¹¹⁷ And after IRCA, the power dynamics between employers and employees has not exactly shifted—while employers are now liable for knowingly hiring workers in irregular

¹¹⁶ Note that deportation threats may constitute an inducement to involuntary servitude under the 2000 TVPA (see above section on human smuggling and trafficking); immigration scholar Michael Wishnie also points out that immigrant workers could challenge employers’ deportation threats under the Alien Tort Claims Act—for violating international law prohibitions on involuntary servitude and forced labor (see the concluding remarks in this chapter). (Wishnie 2004: 504) In reality, though, as Linda Bosniak suggests, these intimidation tactics by employers occur all too often with the consent of U.S. immigration authorities, since investigations of labor intimidation is beyond the scope of immigration raids; as pointed out by the organization Free the Slaves, only labor monitoring could correct this situation of endemic abuse and violations of basic labor standards in immigrant industries. (Bales 2004)

¹¹⁷ Linda Bosniak notes that “if the employee was concerned about safety conditions in the plant, if she was being paid below the minimum wage or was required to work overtime without pay, the likelihood that she would report such violations to the state, assuming she was aware of her rights, decline due to the fear of exposing herself to deportation.” (Bosniak 1988: 993-994)

immigration status, the fines are insufficient and the standards of proof too basic (for employers to claim they hired workers unknowingly) to deter U.S. employers from both (a) hiring undocumented workers and (b) utilizing immigration raids as a means of intimidation against workers' complaints concerning labor violations. (Bosniak 1988: 1035-1038) For example: the 1997 case *Montero v. INS* in the Court of Appeals for the Second Circuit decided that an unauthorized garment worker, who was reported by her employer to the INS in retaliation for Montero's union organizing activities, could nonetheless be deported.¹¹⁸

Immigration has also had dramatic effects to the labor market in some U.S. states, which had helped reinforce union opposition to immigration; in California, where foreign-born Latinos represent over 17 percent of the workforce, many industries have seen both wages and working conditions deteriorate "after employers eliminated or weakened unions in the 1970's and native workers were increasingly replaced by immigrants." (Fisk 2005: 404)

¹¹⁸ "In a garment sweatshop in New York City, management instituted a requirement that its employees work forty-nine hours a week without overtime pay. The largely immigrant workforce's attempt to unionize in response to the company's unilateral action was met with a flagrant antilabor campaign. This campaign prompted the filing of five separate unfair labor practice charges with the National Labor Relations Board ("NLRB"). After an investigation, the (...) NLRB issued a lengthy complaint finding that there was good cause to prosecute the company for its egregious violations of the National Labor Relations Act ("NLRA"). As alleged by the NLRB, the company repeatedly threatened to call the Immigration and Naturalization Service ("INS") if the workers persisted in their union campaign. The unionization effort was ultimately successful. (...) However, in the midst of the union's efforts to gain recognition and management's determination to avoid unionization, the employer's attorney, who happened to be the former District Director of the INS in New York City, violated the protections guaranteed by the NLRA and actually contacted the INS to report that there might be undocumented workers at the company. It would be unusual for a company to risk sanctions by reporting its own workers to the INS. However, after the employer contacted the INS, the agency arranged for a consensual search of the employer's business, notifying management in advance as to the date and time of the visit. Conveniently, on the prearranged date of the INS raid, pro-management undocumented workers were told not to report to work. When the undocumented union supporters showed up for work that day, INS officers intercepted, questioned, and arrested them. After the raid, based upon additional charges filed by the union, the NLRB amended its complaint to add new allegations of unfair labor practices(...). While the employer's conduct was clearly prohibited by the NLRA, the Board of Immigration Appeals' decision to admit the illegally obtained evidence for the purpose of deporting the workers was upheld." *Montero* decision, discussed in Lori Nessel. (Nessel 2001: 346-347)

Yet the relationship of unauthorized immigrants to the American workplace has shifted considerably since 1986. Now, the AFL-CIO official policy on immigration claims the Federation “proudly stands on the side of immigrant workers,” acknowledges the contributions of undocumented residents and their families “to their communities and workplaces” and calls for nothing short of permanent legal status as a legalization program where there is “no distinction based on country of origin.” Moreover, the AFL-CIO rejects guest worker programs as a solution to unauthorized immigration flows, and calls for a “system that targets and criminalizes employers who recruit undocumented workers from abroad for economic gain,” rather than the limited IRCA employer sanctions provisions. (AFL-CIO 2007)

In the past few years labor unions, not only in the United States, but also in Western Europe, have adopted pro-immigrants tactics: “the economic and political conditions that once encouraged labor leaders to adopt a restrictive immigration stance have changed indelibly. Since the 1970s, globalization has challenged state capacity to control immigration, diminished the competitiveness of highly regulated labor markets, and threatened traditional union organization. Today, many labor leaders see immigration as an inevitable consequence of globalization and believe restrictive immigration policies cannot stop the flow of immigrant workers. In fact, many labor leaders in Western Europe and the United States have come to believe that restrictive policies do little more than force immigrants into a precarious legal and economic position, which ultimately undermines the wages and working conditions of all workers. As a result, most labor leaders today favor policies that promote, rather than restrict, immigration.” (Watts 2002: 2) In other words, Watts notes that labor organizers today are in favor of *managing* international migration—to control and establish legal immigration routes,

rather than push immigrants into an underground economy with deteriorating working conditions.

Undocumented immigrants' allies: faith and student groups. The *Hoffman* decision may have in fact consolidated alliances among pro-immigrant and pro-labor interest groups; these alliances have traditionally been crucial not only in providing services to needy immigrants, but also to accomplishing federal immigration reform in the U.S. (Gimpel 1999) Faith and student groups have joined with labor and human rights organizations to campaign on behalf of unauthorized immigrants and workers; for example, the “Alliance for Fair Food”¹¹⁹ founding committee consists of, among social rights organizations, the Presbyterian Church (U.S.A.), Interfaith Action and the Student/Farmworker Alliance—and its members include Amnesty International USA, Oxfam America, the Center for Constitutional Rights, AFL-CIO, the Service Employees International Union (SEIU), the Episcopal Church USA and the United States Student Association.

Workers in some immigrant industries have joined together with labor unions and/or community-based organizations to protest against poor workplace conditions and low wages; one well-known example is “Justice for Janitors,” a Service Employees International Union (SEIU) movement which has campaigned for better wages, job security, and benefits for janitorial workers since 1985.¹²⁰ More recently, deliverymen in New York have protested against low pay by restaurant owners (workers claim they are

¹¹⁹ The Alliance works to “promote principles and practices of socially responsible purchasing in the corporate food industry that advance and ensure the human rights of farmworkers at the bottom of corporate supply chains” (<http://www.allianceforfairfood.org/>)

¹²⁰ More information about the “Justice for Janitors” movement can be found at <http://www.seiu.org/property/janitors/>.

paid \$1.75 an hour, as opposed to the \$4.85 required by state law). (Gonnerman 2007) In other instances, foreign-born workers, regardless of immigration status, have sued employers for violations of labor regulations—and until 2002 their claims for equality under United States’ labor regulations had generally prevailed. (Wishnie 2004)

The future after Hoffman Plastic. The *Hoffman* decision reflects a situation where judges resolved tensions between immigration and labor regulations by prioritizing IRCA over the NLRA—hence immigration law scholars believe *Hoffman* was a defining moment for unauthorized workers in the U.S. (Wishnie 2004: 498) Furthermore, the *Hoffman* decision has come to be understood as a need to place blame for immigration violations in a labor case involving undocumented workers: either the employer violated IRCA, or the worker did. An example of this interpretation of *Hoffman Plastic* can be found in *Sanango*, a 2004 decision by the Supreme Court of New York Appellate Division: “Under the IRCA regime, it is impossible for an undocumented alien to obtain employment in the United States without some party directly contravening explicit congressional policies. Either the undocumented alien tenders fraudulent identification, which subverts the cornerstone of IRCA’s enforcement mechanism, or the employer knowingly hires the undocumented alien in direct contradiction of its IRCA obligations.” (Sanango v. 200 East 16th Street Housing Corp. 2004)

In effect, the *Sanango* case provides an interesting and apt illustration of post-*Hoffman* decisions. On July 2, 1998, Arcenio Sanango sustained serious injuries when he fell 15 feet from a ladder while he was working at a construction site. Gorgonio Balbuena suffered a similar incident. The work-related accidents both occurred in New York and

neither worker was paid damages or lost earnings by their employers. Mrs. Sanango and Balbuena are also among an estimated 17 percent of undocumented U.S. workers employed in construction and extractive occupations (Passel 2005b). While the lower courts granted standard damages to the workers, the employers appealed and the cases were brought before the Supreme Court of New York and decided simultaneously on December 28, 2004. (*Balbuena v. IDR Realty* 2004) In this decision, the Court resorted to an unusual compromise solution: though finding that undocumented workers deserved compensation for injuries suffered, medical care, and work not performed (which correspond to salaries not earned) due to the injuries they suffered, the Court devised a creative solution to avoid a perceived clash between the workers' entitlement to labor protections and the immigration rules which Gorgonio and Arcenio violated by taking jobs in the United States. The Court ordered that compensation be paid—in the currency of the workers' home country. Thus for an injury sustained in the state of New York, the Court ordered that the workers should be awarded “wages that, but for injuries, plaintiffs would have been able to earn in country of origin.”¹²¹ (*Sanango v. 200 East 16th Street Housing Corp.* 2004)

The NY Supreme Court *Sanango* and *Balbuena* decisions were being guided by *Hoffman Plastic*, which in turn had privileged immigration concerns over labor

¹²¹ Both cases began with lower courts granting plaintiffs some compensation. In the *Sanango* case, the worker had been awarded substantial damages for his injuries – mostly for pain and suffering, but also a recovery of \$96,000 for lost earnings. The award was clearly based on evidence concerning potential earnings in the United States. The NY Supreme Court confirmed the merit of the damages for injuries, but granted the defendant's appeal for lost earnings. The plaintiff was entitled, without regard to immigration status, to recover damages for items such as pain and suffering and medical expenses; yet the lost earnings should be paid at the pay rate of the country of origin. In the *Balbuena* case, New York County had denied the motion by a third-party defendant for partial summary judgment dismissing Balbuena's claim for lost earnings due to his unauthorized immigration status. The Supreme Court affirmed, but decided that “rather than simply dismiss the lost earnings claim, however, we limit plaintiff's recovery for lost earnings to the wages he would have been able to earn in his home country, since an award based on a prevailing foreign wage would not offend any federal policy.” (*Balbuena v. IDR Realty* 2004)

regulations. However, since IRCA has not accomplished its stated objective of stemming irregular immigration, U.S. courts today are faced with questions not just on how to apply IRCA—but what to do with the cumbersome fact that unauthorized workers remain employed in the American job market *despite IRCA*. Since unauthorized workers comprise up to 30 percent of the labor force in some industries, their limited-protection labor status translates into ineffective labor regulations. Yet the debate on comprehensive immigration reform may take “several years.” (Wishnie 2004; Fisk 2005: 436)

Current migratory patterns are significantly connected to a global search for better pay and living conditions. (Jordan 2002) Yet immigration law scholar Ruben J. Garcia points out that today both U.S. labor regulations *and* immigration policy are inadequate to protect the poor and vulnerable in a global economy of cross-border financial and labor connections: “Domestic labor law has been shown to be inadequate to protect workers’ rights in the international economy, and national migration laws have proved inadequate to control migration or to respect international human rights. Thus, until both bodies of law are reformed to better reflect international realities, courts need to interpret these laws in a way that better reflects our interconnected world.” (Garcia 2003: 765)

Section III: International Law, its Application in the U.S., and the Labor Rights of Undocumented Immigrants

The world of labor is interconnected, with increased levels of international migration—but globalization has affected not only financial, manufacturing, and labor markets, but also the market of ideas. The globalization of the idea of “human rights” began in the early 20th century

with the establishment of minority rights in the League of Nations, followed by the United Nations Charter¹²², the Genocide Convention, and the Universal Declaration of Human Rights (UDHR) in 1948.

International legal scholars Philip Alston and Henry J. Steiner note that today “human rights is characteristically imagined as a movement involving international law and institutions” when in reality “internal developments in many states have been much influenced by international law and institutions, as well as by pressures from other states trying to enforce international law.” (Steiner 2000: 57) International law guided nation-states during the 20th century, and domestic regulations and jurisprudence are often times inspired by human rights principles. (Baubock 1994) The notion that human beings have certain fundamental rights is thus one of the most powerful “exports” of the last century. A significant example of the potentially powerful role of international law in shifting interpretations of domestic law is the Japanese context, where the national constitution refers to the social and economic rights of *kokumin* (“the people”). While the Japanese government “had traditionally interpreted this as guaranteeing social rights only to nationals,” this policy became “untenable” when Japan acceded to the ICESCR, “which guarantees social rights to everyone, including the right to social security and social assistance.” (Gurowitz 1999: 8)

Section III of this chapter will discuss the international legal status of a particular set of human rights: undocumented workers’ labor rights. Labor rights encompass the right to humane working conditions, a safe workplace environment, overtime and minimum pay, and the right to associate with other workers to question conditions of employment—i.e., the freedom of association to form or join trade unions. This section will also analyze whether and how these international labor rights principles are applied in the U.S. domestic context.

¹²² Specific human rights concerns can be found in the Preamble, and Articles 1, 55, and 56.

International human rights law: labor rights as social and economic rights. The 1948 Universal Declaration of Human Rights (hereafter UDHR) includes several rights related to the right to “just and favourable conditions of work,” such as equal pay without discrimination of any kind, and the right to leisure and rest, limited work hours and holidays with pay, as well as the right to form and join trade unions.¹²³ UDHR, a broad international human rights declaration, has developed into covenants covering specific sets of rights, e.g., rights of the child, environmental rights, and indigenous peoples’ rights.

Labor rights in international human rights law are contained more specifically in the International Covenant on Economic, Social and Cultural Rights (hereafter ICESCR). The Covenant specifies several rights that workers should enjoy in their place of employment: fair wages; “equal remuneration for work of equal value;” “safe and healthy working conditions;” freedom to form and join trade unions;¹²⁴ and rest and leisure time, as well as a “reasonable limitation” in working hours and “periodic holidays with pay.”¹²⁵ Specific documents such as

¹²³ Article 23 of the UDHR states that “1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment; 2. Everyone, without any discrimination, has the right to equal pay for equal work; 3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection; 4. Everyone has the right to form and to join trade unions for the protection of his interests.” Article 24 of the UDHR states that “Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.” <http://www.unhcr.ch/udhr/lang/eng.htm>

¹²⁴ The right to form and join trade unions is limited to interests of national security and public order and must be exercised within the boundaries of each party’s regulations (countries that are party to the Covenant). See footnote 36, below, Article 8.1.

¹²⁵ Article 7 states: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.” Article 8

ICESCR have served the important function of identifying and developing particular rights¹²⁶—but covenants have also “split” rights into seemingly independent groupings, giving rise to hierarchical systems of classification. For example, ICESCR and the International Covenant on Civil and Political Rights (hereafter ICCPR) were both drafted in 1966 and ratified in 1976. Yet according to the classic approach to international human rights, civil and political rights are first-generation rights. This historical inaccuracy in the terminology illustrates its hierarchical reasoning. “The official position (...) is that the two covenants and sets of rights are (...) ‘universal, indivisible, and interdependent and interrelated.’ But this formal consensus masks a deep and enduring disagreement over the proper status of economic, social and cultural rights.”¹²⁷ (Steiner 2000: 237) This debate endangers what is recognized as “one of the greatest values of the international human rights legal framework,” its recognition that all rights are inherently interconnected. (Albisa 2006: 351)

states: “1. The States Parties to the present Covenant undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations; (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.” http://www.unhchr.ch/html/menu3/b/a_ceschr.htm

¹²⁶ Sociologists Judith Blau and Alberto Moncada note that the “current generation of human rights doctrine has been shaped by the very particular ways that globalization and global interconnectedness have affected people and their habitats. Labor rights, although established earlier, have played an increasing role in international and national discussions in the 1990s, but there are also has been greater concern about people’s habitats and, therefore, enviromental rights, as well as their biological rights. These concerns are represented, respectively, in the Declaration on the Right to Development (1986) and the Universal Declaration on the Human Genome and Human Rights (1997). Also driving recent discussions about human rights is a concern about the preservation of distinctive human identities, along with their traditions, cultures, and languages. Global markets, imperialistic media, and Western culture invade societies, creating numbing homogeneization, displacing local knowledge and practices, and threatening religious and social mores.” (Blau 2005: 52)

¹²⁷ The preamble to ICESCR states that: “in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.” http://www.unhchr.ch/html/menu3/b/a_ceschr.htm

One of the justifications for the dichotomy between economic and social rights, and civil and political rights, is that the former are “positive” in nature, such that they “implicate affirmative state duties” to provide for particular rights, whereas the latter are “negative” rights, which simply “impose constitutional restraints on the state” yet do not require budgetary action. (Woods 2003: 764) This negative/positive dichotomy has been used to claim that economic and social rights are non-justiciable because they require that the judicial branch make budgetary decisions, which are within the realm of the executive and legislative branches.¹²⁸ International legal scholar Jeanne Woods points out that “(t)he negative rights/positive rights distinction poses a false dichotomy; all human rights potentially contain both negative and positive dimensions” in a budgetary sense (Woods 2003: 764) Civil and political rights may require, for example, building better prison facilities, or hiring more judges.¹²⁹ Scholar Barbara Stark analyzes the problems with the positive/negative rights reasoning by emphasizing the connections between economic and social rights and other rights. She compares international economic and social rights (as defined by the ICESCR) to the right to property in the domestic

¹²⁸ Legal scholars note, however, that South Africa's recent constitution enshrines both economic and social rights and international law per se into its text. Thus it has been offering the possibility for the investigation of both the applicability of international law in domestic courts, and the justiciability of economic and social rights. One recent case involved the Constitutional Court's decision in (it) *Government of the Republic of South Africa v. Grootboom* (it), where "contrary to the complaints that justiciable social rights remove policy choices from the legislative prerogative, the South African Constitutional Court demonstrated that violations of these rights can be remedied by a court without intruding unduly on legislative discretion." The case involved a constitutional requirement that the state provide "access to adequate housing (...) within its available resources" (South African Constitution, Section 26). After deciding that the government's current initiative on housing excluded the neediest portion of the population, the Court ordered that the government dedicate more of the current housing funds for those "living in intolerable conditions or crisis situations." However, it did not mandate that the legislature change its budgetary policy—thus, “while the protection of fundamental rights required the judiciary to exercise a policy choice, the Court left to the legislature the ultimate policy decision of much of the state's resources to commit to the right to housing.” (Woods 2003: 783; 786)

¹²⁹ Jeanne Woods also notes that this “assumed dichotomy” between civil and political rights and social and economic rights “blurs the true dilemma that social rights pose for the liberal paradigm: that rights implicating the redistribution of social resources are collective in character and rooted in the common needs of human beings in society. The collective nature of social rights contradicts the liberal conception of rights, which presumes that social living requires the surrender, not the creation, of rights.” (Woods 2003: 765) Woods concludes that “the philosophical premises of liberalism inhibit our conception of social rights” that require interfering with the status quo in society. (Woods 2003: 767)

United States context. Stark finds that “unpack(ing)” the notion of the “right to property reveals the lesser-subsumed economic rights it takes for granted” (Stark 2000: 965) because without the economic means, the right to property is unimaginable. Furthermore, Stark also concludes that: “the denial of economic rights by culture and social custom, as well as by law, progressively distances civil and political rights. (...) the denial of economic rights makes the legal proscription of civil and political rights unnecessary because, as a practical matter, these rights become (as) unimaginable (as owning property).”¹³⁰ (Stark 2000: 966) Human rights scholars have also argued that the “right to work” carries a moral value: “Beyond its remunerative value, work affords a means to self-worth and dignity. Various international human rights instruments recognize work as a fundamental human right. (...) Similarly, the right to unionize has been hailed as a fundamental human and civil right.” (Nessel 2001: 396-397)

Should (undocumented) immigrants have labor rights? As with economic and social rights, international migrants have also enjoyed a “lesser” status in international law; people who leave their country of origin, where they are protected as citizens of that state,¹³¹ are regarded as having relatively lower status compared to citizens in the host country. In the host country, migrants are due to enjoy lesser protections as non-citizens; for the most part they do not enjoy some civil and political rights, such as the right to

¹³⁰ Barbara Stark uses 18th century women’s rights (or lack thereof) as an example of this fundamental connection between civil-political and economic-social rights, stating as an example that women did not have the right to work, and thus could not accumulate capital, while the fight for suffrage (a civil and political right to vote) “required a critical mass of economically independent women. The requisite mass did not materialize in the United States until women had more (...) right to work and to keep and manage their own earnings.” (Stark 2000: 1028-1029)

¹³¹ See Jeanne Woods for a discussion of how international law presupposes individual will—due to the individual-focus ideology of human rights vocabulary (Woods 2003).

vote or be elected into office. In the ICESR, rights may not be restricted based on nationality or some “other status” (presumably immigration status would fall into this category)—except in the case of developing countries, where economic rights may not be guaranteed to non-nationals.¹³² But immigrants’ economic and social rights are dually problematic: the ‘justiciability’ of economic and social rights for citizens is already contentious, and migrants are individuals to whom the host state does not necessarily have the same legal obligations.

Yet even though immigrants’ non-citizen status limits their range of claimable rights at the domestic level, the globalization of markets and largely unregulated capital flows have led to debates over the citizen vs. immigrant dichotomy. This dichotomy is questioned mostly due to increasing economic and social gaps between the so-called ‘first’ and ‘third’ worlds, or the rich and poor countries: “With the end of the Cold War, market imperatives rather than political calculation will increasingly determine the flow of funds between the North and South, exacerbating social and economic inequalities and abandoning large parts of the world (most of Africa; parts of southern and central Asia; much of Central America) to continued marginality and poverty.” (Andrews 2000: 867) In other words, if global inequality is (at least in part) determined by the action or inaction of rich nations, then international migration is also a consequence of the same ‘market imperatives’ that has decreased regulation of commerce and capital flows. If

¹³² ICESR Article 2.2: “2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;” and Article 2.3: “Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”

international migration is a consequence of globalization, then shouldn't it be greeted with the same de-regulation strategies?¹³³ Others have noted that the "human costs of migration" are so high that they justify special protections from countries of immigration, especially for vulnerable, undocumented immigrants: "migrant workers typically receive lower wages for the same work performed by natives, have little protection against abuse from employers, and rarely have health benefits or job security." (Blau 2005: 55)

During the drafting of the 2003 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,¹³⁴ several countries promoted the human rights of migrant workers independent of immigration status; they espoused three core arguments to protect undocumented workers' human rights: (1) it is important to emphasize the 'universal' nature of human rights, because human rights were specifically designed to confer "special protection upon vulnerable groups;" (2) that defending the rights of workers in irregular situation buttressed national labor standards, since "extending rights to illegal migrant workers would discourage employers from hiring such workers and improve conditions for national workers;" (3) that host countries should shoulder some of the responsibility for the phenomenon of labor migration, due to (a) their need for cheap labor, (b) rich countries' "history of political and economic exploitation" of migrants' home countries of origin, and finally, (c) because migrant workers bring economic benefits to their countries of employment. (Cholewinski 1997: 187-188)

¹³³ In sharp contrast to the states' view of migrants as *aliens*, legal and social scholars have questioned the notion immigration controls and restrictions imposed on foreign nationals, criticizing the continued effort on the part of states to curb human flows. Legal scholar Penelope Andrews compares financial and human flows: "The efforts made to facilitate the movement of capital along transnational global circuits are matched only by less successful efforts to restrain the movement of labor through migration." (Andrews 2000: 864) See discussion on nationalism and citizenship in this chapter.

¹³⁴ See the section in this chapter concerning United Nations documents on international migration.

The labor rights of immigrants, history and context: the ILO conventions. International legal concern with the human rights of migrant workers began in 1930 within the auspices of the International Labour Organization's (hereafter ILO)¹³⁵, with the Forced Labour Convention (C29), which was adopted by the General Conference of the ILO on June 28, 1930, and entered into force on May 1, 1932.

The 1930 Forced Labour Convention called for the suppression of “forced or compulsory labour in all its forms within the shortest possible period.”¹³⁶ Although it didn't call for the immediate elimination of all forced labor, it did set standards for its definition¹³⁷, time limits¹³⁸ and some specific exceptions, such as military service, convictions under court of law, as well as events of war and calamity—though some of the exceptions remained rather broad, such as “normal civic obligations of the citizens of a fully self-governing country”¹³⁹ and “minor communal services (...) in the direct interest of the community.”¹⁴⁰ The significance of the 1930 Forced Labour Convention for immigrant workers was the fact that it outlawed exploitation of foreign labor. In situations of emergency or “minor communal services,” it called for the use of local forced labor, and stipulated the population that could be called upon: “Only adult able-bodied males who are of an apparent age of not less than 18 and not more than 45 years

¹³⁵ The ILO was created in 1919, and its Conventions are international treaties, subject to ratification by ILO members. The ILO also issues Recommendations, “typically dealing with the same subjects as Conventions, which set out guidelines which can orient national policy and action. Both forms are intended to have a concrete impact on working conditions and practices around the world.” (www.ilo.org/public/english/standards/norm/whatare/index.htm)

¹³⁶ Article 1.1.

¹³⁷ “All work or service which is exacted from any person under menace of any penalty and for which the said person has not offered himself voluntarily.” (Article 2.1.)

¹³⁸ “The maximum period for which any person may be taken for forced or compulsory labor of all kinds in any one period of twelve months shall not exceed sixty days.” (Article 12.1.)

¹³⁹ Article 2.1(b).

¹⁴⁰ Article 2.1(e).

may be called upon for forced or compulsory labour.”¹⁴¹ It also stipulated “that the work or service will not entail the removal of the workers from their place of residence.”¹⁴²

Forced labor was further restricted on June 25, 1957, through the Convention Concerning the Abolition of Forced Labour (C105), by calling upon the states parties to “suppress and not to make use of any form of forced or compulsory labour”¹⁴³ for the purposes of education, political or ideological coercion, economic development, discipline, punishment for strikes, or as a “means of racial, social, national or religious discrimination.”¹⁴⁴ While safeguarding the possible use of compulsory labor for some purposes (primarily criminal), the international community was defining specific limitations that protected laborers in general, and specifically non-nationals.

In 1939, the ILO drafted its first labor convention designed specifically to protect immigrant workers: the Migration for Employment Convention (C66), which was revised as C97 in 1949; entry into force only took place in 1952. The 1949 Convention was ratified by 42 countries and became the ILO treaty standard for migrant rights until the Convention concerning Migrants in Abusive Conditions (C143) was adopted in 1975, coming into force in 1978.¹⁴⁵ C143 “emphasized the damaging social consequences of irregular migration, and explicitly included undocumented migrant workers within the scope of certain protective provisions.” (Bosniak 1991: 738)

The 1949 Migration for Employment Convention (C97) and R86 Recommendation defined migrant for employment as a “person who migrates from one

¹⁴¹ Article 11.1.

¹⁴² Article 10.2(d).

¹⁴³ Article 1.

¹⁴⁴ Article 1(e).

¹⁴⁵ However, since C143 was only ratified by 18 member-states—thus both C97 and Recommendation R86, which was adopted concomitantly with the 1949 Convention, still retain great significance.

country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment.”¹⁴⁶ C97 places several requirements on member-states bound by the Convention to provide both the ILO and other members with information on national policies, laws and regulations regarding immigration and emigration, as well as the “conditions of work and livelihood of migrants for employment.”¹⁴⁷ It also regulates “against misleading propaganda relating to emigration and immigration”^{148, 149} calling states to “facilitate the departure, journey and reception of migrants for employment”¹⁵⁰, provision of medical services and “good hygienic conditions.”^{151 152}

Most significantly, the 1949 Migration for Employment Convention (C97) forbade “discrimination in respect to nationality, race, religion or sex, to immigrants lawfully within its territory;” in other words, immigrants were deemed equal to nationals with respect to remuneration, overtime arrangements, holidays with pay, trade union membership and benefits of collective bargaining, social security (with limitations based on national contributions laws) and other benefits.^{153 154}

¹⁴⁶ C97, Article 11.1; and R86, I.1(a). Both documents exclude frontier workers, seamen, and the “short-term entry of members of the liberal professions and artistes” C97, Article 11.2(b); and R86, I.3(b).

¹⁴⁷ Article 1(b).

¹⁴⁸ Article 3.1.

¹⁴⁹ The Convention also regulates the “recruitment, placing and conditions of labour of migrants for employment” both “under government-sponsored arrangements for group transfer” and non-government recruitments (C97, Annex I and II). Recruitment is generally restricted to “public employment offices or other public bodies.” [Annex I, Article 3.2(a)] Private agencies are regulated and need to be accorded prior authorization. [Annex I, Article 3.3(b)]

¹⁵⁰ Article 4.

¹⁵¹ Article 5.

¹⁵² It also establishes that migrants who have been legally admitted on a permanent basis (and their families) may not be forced to leave if unable to work due to illness or injury: workers “shall not be returned to their territory of origin or the territory from which they emigrated because the migrant is unable to follow his occupation by reason of illness contracted to or injury sustained subsequent to entry.” (Article 8.1.)

¹⁵³ The full text of benefits listed in C97, Article 6.1(a)(i) is: “remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay,

Even though the rights listed above were exclusive to legal migrants and were ultimately controlled by each nation-state that was a party to the treaty¹⁵⁵, the Convention required that each member-state submit in their annual report “the extent to which (these rights) are regulated by federal law or regulations”¹⁵⁶ and thus established formal mechanisms for monitoring of migrants’ living and working conditions in their country of employment. Judith Blau and Alberto Moncada note that ILO conventions “are continually drawn on as standards in negotiations involving governments, employers, unions, and workers, and ILO conventions are consistent with state laws, which they largely inspired. For that reason, ILO conventions have greater enforcement strength than many of the other human rights instruments.” (Blau 2005: 53)

R86, the 1949 Recommendation adopted by ILO members alongside the Migration for Employment Convention (C97), provided for state jurisdiction (and protection) over the regulation of all migrant workers. R86 also called for migrant access to general education “for migrants and members of their families”¹⁵⁷ and “preparatory courses”¹⁵⁸ and “vocational training”¹⁵⁹ in their “languages or dialects or at least in a language which they can understand”¹⁶⁰; fair access to information on migration laws¹⁶¹;

restrictions on home work, minimum age for employment, apprenticeship and training, women’s work and the work of young persons.”

¹⁵⁴ Also: Article 9 regulates migrants’ freedom to send remittances (within each country’s limit on the export and import of currency): “taking into account the limits allowed by national laws and regulations concerning export and import of currency, the transfer of such part of the earning and savings of the migrant for employment as the migrant may desire.”

¹⁵⁵ C97 specified that “the extent to which and manner in which these provisions shall be applied (...) shall be determined by each Member.” (Article 6.2)

¹⁵⁶ Article 6.2.

¹⁵⁷ Article 10(e).

¹⁵⁸ Article 5(4).

¹⁵⁹ Article 10(b).

¹⁶⁰ Article 5(2).

¹⁶¹ Article 8.

“access to recreation and welfare facilities”¹⁶²; “adequate accommodation, food and clothing”¹⁶³; remittance of funds to country of origin, and transfer of funds to the country of immigration in case of permanent migration. However, provision of medical care was restricted “in the case of migrants under Government-sponsored arrangements for group transfer.”¹⁶⁴ Many of these rights are enumerated in an Annex¹⁶⁵ providing suggested guidelines for future treaties; specific rights of migrant workers to non-discriminatory remuneration, social security, and minimum age for employment, are suggested as models for bilateral or multilateral agreements among member-states. Therefore, even though ILO Conventions and Recommendations do stipulate a considerable degree of labor rights to equal working conditions for immigrants when compared to citizens, most of these rights remain unrealized even in the richest regions of immigration, such as the North America and Western Europe; even the most significant labor rights have to be pursued through separate (bilateral or multilateral) agreements, since most governments haven’t ratified the Conventions per se, and are thus only morally and symbolically bound by the language in ILO Recommendation R86.

International law and (undocumented) immigrants: United Nations documents. Since its inception the United Nations has drafted several treaties¹⁶⁶ (Conventions and Protocols) that deal with criminal trafficking of persons, international exploitation of

¹⁶² Article 11.

¹⁶³ Article 10(a).

¹⁶⁴ Article 12.

¹⁶⁵ In the “Model Agreement on Temporary and Permanent Migration for Employment, Including Migration of Refugees and Displaced Persons.”

¹⁶⁶ The documents include: Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1950); Convention relating to the Status of Refugees (1954); Convention relating to the Status of Stateless Persons (1960); Protocol relating to the Status of Refugees (1967); Declaration on Territorial Asylum (1967); Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime (2000).

prostitution, refugees, asylum, stateless persons, and, finally, the Protocol Against Smuggling of Migrants—all of which concern the issue of international migration. In all these documents, however, the migratory movement was mostly involuntary and/or criminal, either as a result of fleeing political persecution or through illegal smuggling or trafficking of persons. None of these documents dealt with voluntary international migration, and the human rights concerns of those who left their country of origin for economic or other personal reasons. There are only three United Nations documents¹⁶⁷ which relate or even mention the rights of *all* migrant workers, including voluntarily international migrants: the 1985 Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country In Which They Live; the 2000 United Nations Millennium Declaration; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (hereafter ICMW), ratified in 2003.

The 1985 Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country In Which They Live recognizes most civil and political rights¹⁶⁸

¹⁶⁷ The 1993 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, recognizing the right of minorities to participate in “social and economic life,” should also be mentioned here. Article 2.2 states that: “Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic, and public life.” Article 4.5 directly addresses economic rights: “States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development of their country.” From a legal and political perspective the immigrant (especially those who are undocumented) is not necessarily included in the polity as a minority group; however, this Declaration indicates a growing international concern with the cultural, social and economic rights of minorities, and in this sense, the symbolism is inclusive. Even if international migrants, especially those who are unauthorized, do not have the same legal rights as, for example, indigenous groups, the movement toward minority rights seems to be correlated with an increase in the visibility of new immigrant groups in large urban centers around the globe, and parallels the human rights movement for the rights of international migrants.

¹⁶⁸ Article 5 recognizes the “right to life and security of person,” protection from “arbitrary arrest or detention,” right to equality before the courts, privacy, as well as freedom of thought and (limited) freedom of speech [see Article 5.1(e)]. Article 6 protects against “torture or cruel, inhuman or degrading treatment.” The Declaration also protects the cultural right to “retain their own language, culture and tradition.” On the other hand, Article 7, which regulates deportation procedures, applies solely to ‘lawful aliens’.

for all “aliens” (including those who are undocumented) but specifies that economic rights, including the right to “safe and healthy working conditions,” are restricted to “lawful aliens.”¹⁶⁹ The only economic right recognized for undocumented immigrants is the ability to keep his/her assets and to transfer them abroad.¹⁷⁰ The 2000 United Nations Millennium Declaration, which is an extensive document expressing the primary concerns of the United Nations, utilized vague language to refer to international migrants: it called upon nations to “take measures to ensure respect for and protection of the human rights of migrants, migrant workers, and their families (...).” Note that the two documents just mentioned are not legally binding treaties; they are United Nations declarations, not treaties. Voluntary international migration had thus been relegated to General Assembly Declarations of intention and good will—until the ICMW was ratified in July of 2003.

According to the United Nations Office of the High Commissioner for Human Rights, the ICMW “seeks to play a role in preventing and eliminating the exploitation of migrant workers throughout the entire migration process” and “to put an end to the illegal or clandestine recruitment and trafficking of migrant workers and to discourage the employment of migrant workers in an irregular or undocumented situation.”¹⁷¹ Whereas the 1985 Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country In Which They Live provided principles for respecting the rights of international

¹⁶⁹ Article 8 states that: “Aliens lawfully residing in the territory of a state shall also enjoy (...) the right to safe and healthy working conditions, to fair wages and equal remuneration for work of equal value (...), the right to join trade unions (...), the right to health protection, medical care, social security, social services, education (...).” The rights to health care and education, however, are dependent upon national funding priorities: “provided that (...) undue strain is not placed on the resources of the State.”

¹⁷⁰ Article 5.1(g): “The right to transfer abroad earnings, savings or other personal assets, subject to domestic currency regulations;” and Article 9: “No alien shall be arbitrarily deprived of his or her lawfully acquired assets.”

¹⁷¹ “Convention on Protection of Rights of Migrant Workers to Enter into Force Next July,” United Nations Press Release, 19.03.2003: www.unhchr.ch.

migrants, the ICMW is composed of standards that are binding on both sending and receiving countries of immigration to protect the human rights of migrant workers.¹⁷²

Some of these obligations include the establishment of international migration policies and assistance to immigrant workers and their families; articles 25 through 30¹⁷³ address social and economic rights for both documented and undocumented immigrants, and equality of treatment with citizens on provisions such as maximum hours of work, overtime pay, paid holidays, safety precautions, emergency health care, and workers' freedom of association.

While the 2003 Migrant Workers Convention is recognized as a significant step to include international migrants under the fold of United Nations human rights protections—it falls short of providing clear mechanisms for the inclusion of the most vulnerable migrants: those without immigration status. The ICMW was designed with the

¹⁷² The 2003 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families provides standards for the “treatment, welfare and human rights of both documented and undocumented migrants, as well as the obligations and responsibilities on the part of sending and receiving States.” (“Convention on Protection of Rights of Migrant Workers to Enter into Force Next July,” United Nations Press Release, 19.03.2003: www.unhchr.ch)

¹⁷³ Some of the most significant provisions include: Article 25: “1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect to remuneration and: (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship (...); 3. State Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights (...). In particular, employers shall not be relieved of any legal or contractual obligations (...).” Article 26 guarantees migrant workers' right to join and form trade unions. Article 27 states: “1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfill the requirements provided for by the applicable legislation of that State and bilateral and multilateral agreements (...). 2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them (...).” Article 28 protects migrant workers' and their families' right to receive any medical care that is urgently required to preserve their life or avoid irreparable harm to their health—in accordance with the treatment that is granted to nationals of the State. And it states specifically: “Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.” Article 30 guarantees the right to education for each child of a migrant worker. It states: “Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent (...).”

intent to offer protections to undocumented immigrants;¹⁷⁴ however, during the drafting of the ICMW both Germany and the United States wished to limit the definition of ‘migrant worker’ to those who could prove a regular immigration status. (Bosniak 1991: 763) Their argument was that “according substantial rights to irregular migrants” would be “problematic” because providing rights for undocumented workers “encourages and even rewards violating a country’s borders.” (Cholewinski 1997: 187) The compromise policy adopted in the ICMW constitutes an international sanction of strict entry and border controls, combined with penalties for employers who hire undocumented workers—while granting human rights protections for workers in irregular situations.

Hence the final text of the ICMW achieved the dual objective of protecting basic human rights for unauthorized immigrants while also promoting the prevention of “clandestine movements,” human trafficking and smuggling of migrant workers. (Cholewinski 1997: 188) Yet these dual functions of the ICMW carry a high cost: unrestricted sanctioning of border controls and employer sanctions may be at odds with the protection of migrants’ rights; a state’s ability to enforce immigration controls in the workplace, for example, places undocumented immigrants in situations of risk of deportation—and allows employers the continued ability to use the threat of immigration raids as a weapon against worker mobilization.¹⁷⁵ These unavoidable contradictions may entail that “efforts to exercise rights prescribed in the Convention may expose the migrants to expulsion and punishment for immigration-related violations.” (Bosniak

¹⁷⁴ ICMW includes “most illegal immigrants in the territory of a state party, with the exception of those who have overstayed their visa authorization but are not employed, and those who do not meet a state’s definition of ‘members of the family.’” (Cholewinski 1997: 187)

¹⁷⁵ In circumstances similar to those of *Hoffman Plastic*, for example, where the employer dismissed workers for union activity, and subsequently denied one of the workers back pay because he was undocumented—the ICMW contains no reinstatement rights, and no back pay rights. The worker (Castro, in the *Hoffman* case mentioned above) would not have been guaranteed a very different outcome under the ICMW provisions than what he was granted under the U.S. Supreme Court decision.

1991: 741; 759) Therefore the compromise between policing and workers' rights contained in the ICMW means that some of the protections afforded to irregular migrants "fall below generally recognized international human rights standards," e.g., the unrestricted right to form trade unions.¹⁷⁶ While these rights are guaranteed to those workers with regular immigration status, they are denied to the undocumented "mainly because these entitlements are inextricably connected with the sovereign interests of the state of employment." (Cholewinski 1997: 188)

Furthermore, while article 69(1) of the ICMW requires state parties to avoid situations of irregular migration within their territory, there is no "clear obligation" for states to regularize or provide amnesty options for workers under illegal status. There is thus no clear path for undocumented workers under ICMW, no expectation of regularization—which "further undermines" the workers' ability to exercise their ICMW rights, since there are no provisions protecting the undocumented from detention and deportation. (Cholewinski 1997: 190-191) "From a human rights standpoint, the Convention's failure to require some sort of progressive legalization or eventual amnesty effectively threatens to take away with one hand what has been offered by the other." (Bosniak 1991: 762)

¹⁷⁶ While undocumented workers do have the right to join trade unions under ICMW, these rights are limited—unauthorized immigrants have restricted rights to "family, unity, certain trade union freedoms, liberty of movement," as well as other equality entitlements in relation to nationals; in other words, Linda Bosniak reminds us: "the undocumented continue to enjoy institutionally-sanctioned second- (or third-) class status." (Bosniak 1991: 758-759)

Despite a global campaign for ratification of the ICMW¹⁷⁷, no countries of immigration have signed or ratified the Convention.¹⁷⁸ Legal scholar Linda Bosniak has pointed out that Article 88 of the ICMW, which prohibits states from ratifying with reservations that would limit the applicability of the Convention to particular “categories of migrant workers” (such as undocumented immigrants), may play a strong role in limiting numbers of ratifications. On the other hand, Article 88 also “goes a long way toward protecting the purpose and integrity” of ICMW, which was to protect irregular migrants, considered the most vulnerable category of migrant workers. (Bosniak 1991: 763) The ICMW has “the support of the International Confederation of Free Trade Unions, which represent 231 union organizations in 150 countries, as well as the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and other unions.” (Blau 2005: 55)

Yet its legal clout and political benefits to most of the world’s immigrants remains unclear. Amy Gurowitz reminds us that “international norms can matter only when they are used domestically and when they work their way into the political process,” (Gurowitz 1999: 2) becoming a tool for social change and inclusion of migrant workers. As one of the “fundamental human rights instruments that define basic, universal human rights and ensure their explicit extension to vulnerable groups worldwide,” (Taran 2001: 17) the ICMW holds the potential to engender the same direct results that the ratification

¹⁷⁷ Activists for immigrants rights campaigned globally for ratification and consider the 2003 Migrant Workers Convention a significant achievement for several reasons, including: (1) Migrant workers are viewed as social entities with families, not just laborers or economic entities; (2) The Convention recognizes the fact that migrant workers are often unprotected by national, citizen-based legal mechanisms of human rights protection; (3) It provides international standards and definitions for the treatment of migrant workers; (4) Fundamental rights are extended to both documented and undocumented workers; (5) Convention has specific purpose to prevent exploitation of migrant workers and their families; (6) It serves as a tool to encourage states lacking national standards to review their own legislation. (The Global Campaign for Ratification of the Convention on Rights of Migrants: www.migrantsrights.org)

¹⁷⁸ Ratifications can be monitored at the website: http://www.unhchr.ch/html/menu3/b/m_mwctoc.htm.

of the ICESCR represented in Japan (see above). Though the number of ICMW ratifications remains low, and the most significant countries of immigration have not even signed the document, international migration scholar Patrick Taran believes that ratification of ICMW can “be used as an authoritative standard of good practice.” (Taran 2001: 18) In effect, even prior to its ratification in 2003, ICMW had been utilized as a new “guide to elaborating national migration laws. A notable example is Italy, which based much of its comprehensive new national migration law adopted in March 1998 on the provisions and standards” (Taran 2001: 18) set forth in the ICMW, which had been drafted in 1990.

United States: the domestic application of international labor rights. The United States has been “very reluctant” to ratify international labor conventions. Sociologists Judith Blau and Alberto Moncada note in their 2005 book, “Human Rights: Beyond the Liberal Vision:” “There are 180 ILO conventions, and the United States has ratified only twelve!” In effect, the United States ratification record of the core ILO conventions compares to Myanmar and Oman.¹⁷⁹ Blau and Moncada point out that the U.S. has failed to ratify those conventions which deal with “socioeconomic rights and those it construes as conflicting with its national sovereignty and economic interests. Thus, the United States has supported some human rights instruments that deal with civil and political

¹⁷⁹ “The four areas covered by ILO conventions are forced labor, freedom of association, discrimination, and child labor, and there are two human rights instruments for each convention, for a total of eight. The United States is a party to only two of these eight: The Abolition of Forced Labor Convention (Convention 105, passed in 1957), which deals with the use of forced labor for political coercion, and the Convention to End the Worst Forms of Child Labor (Convention 182, passed in 1999). How does the record of the United States stack up against that of other states? Two states, Timor Leste and Vanuatu, have not ratified any; two states, Laos People's Democratic Republic and the Solomon Islands, have ratified one; and the United States, along with Myanmar and Oman, have ratified two out of eight. Thirty-eight states have ratified between three and seven, and ninety-nine have ratified all eight.” (Blau 2005: 53)

freedoms but has been wary of those that deal with socioeconomic rights, the rights of vulnerable populations, refugees, development rights, and labor rights.” (Blau 2005: 50) The United States has signed and ratified the ICCPR, which covers civil and political rights, while it has signed, but failed to ratify, the ICESCR.¹⁸⁰

The U.S. is also not a party to the ICMW¹⁸¹; United States representatives to the United Nations have declared that the U.S. will not seek ratification because it does not see the ICMW as a valid legal framework.¹⁸² As was mentioned above, the United States and Germany opposed the inclusion of unauthorized immigrants under the protections of ICMW—but ultimately failed to exclude the undocumented population from ICMW provisions. (Bosniak 1991; Cholewinski 1997)

The only international mechanism under which the United States is currently bound to international labor rights standards is the Organization of American States (hereafter OAS)—other than the broad human rights provisions in the UDHR. The U.S. has signed, but not ratified, the American Convention on Human Rights; but as a party to the OAS, whose charter contains economic and social rights, it could be subject to OAS jurisdiction on labor rights. International law scholar Peter Weiss argues that the Inter-

¹⁸⁰ The U.S. is not a party to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1950) (though it has started its own initiatives to combat human trafficking with the TVPA in 2000—see section on the people trade, above in this chapter). The U.S. is not a party to the Convention relating to the Status of Refugees (1954), or the Convention relating to the Status of Stateless Persons (1960). The U.S. has ratified the Protocol relating to the Status of Refugees (1967) with reservations.

¹⁸¹ The United States is also not a party to prior labor migration conventions, such as the 1949 ILO Migration for Employment Convention. It also hasn't ratified its Supplementary Provision Migrant Workers Convention of 1975, or the ILO social security provisions for international migrants. C118 Equality of Treatment (Social Security) Convention of 1962 (ratified by 38 countries); C157 Maintenance of Social Security Rights Convention of 1982 (ratified by 3 countries). This information can be retrieved at www.ilo.org.

¹⁸² See MIGRANT.NEWS, Issue 66, 30 April 2003: www.december18.net

American Commission on Human Rights (IACHR) has jurisdiction over United States' economic and social rights cases because the charter of the OAS includes "rights to an adequate standard of living, health, work, education, food, housing, and social security." (Weiss 2000)

Blau and Moncada remind us that international "multilateral agreements are the cornerstones for ensuring workers' well-being and providing them with protections in the workplace. Why does the United States not sign? Perhaps because, as the U.S. General Accounting Office reported, many children of migrants illegally work in the field, exposed to pesticides, or because the Pentagon buys cheap uniforms for the military from sweatshops with abusive labor practices, or because it has not been in the United States' global economic interests to press for the enforcement of core labor rights." (Blau 2005: 54) And when the U.S. does focus on labor rights—the spotlight is turned abroad.

The Human Rights Watch 2003 World Report stated that "when the U.S. government does try to promote human rights, its authority is undermined by its refusal to be bound by the standards it preaches to others." Although the Human Rights Watch report focused on civil and political liberties, and not on economic and social rights,¹⁸³ the same charge is true of the United States record in relation to labor rights. For example, the United States Department of State has dedicated nearly \$18 million since 2000 to an "anti-sweatshop initiative" to fund the development of and research into approaches and mechanisms to combat sweatshop labor in overseas factories that produce

¹⁸³ "From the rejections of the Geneva Conventions to its misuse of the 'enemy combatant' designation, from its threatened use of substandard military commissions to its misuse of immigration law to deny criminal suspects their rights, Washington has waged war on terrorism as if human rights were not a constraint." World Report 2003 (www.hrw.org)

for the U.S. market.¹⁸⁴ However, these initiatives relate to labor rights enforcement abroad, not within United States territory. In effect, since 1996, many immigrant categories in the U.S. (including those immigrants claiming refugee status, for example) are excluded from seeking federally-assisted legal services to enforce their labor rights. (Dale 2005)

It is important to note also that the U.S. has avoided economic and social human rights claims in general—not just labor rights. U.S. courts have also looked unfavorably on the notion that the executive and legislative branches have any ‘positive’ duty to provide services, even in the strictly domestic context of U.S. laws and regulations in terms of, for example, interfering with funding allocations for welfare services or even basic education.¹⁸⁵ The United States judiciary has thus refrained from guaranteeing economic and social rights such as education, medical services, and welfare benefits—to preserve the separation of powers by ensuring that it is a matter of U.S. Congress discretion to ensure the provision of any medical or educational services; all funding decisions remain in the hands of the legislative power.¹⁸⁶

¹⁸⁴ <http://www.state.gov/g/drl/lbr>

¹⁸⁵ A significant example comes from *Dandridge v. Williams*, where the Court opined: “The intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of the United States Supreme Court, and the Constitution does not empower the Supreme Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients.” (*Dandridge v. Williams* 1970) See also *San Antonio v. Rodriguez*: “The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of the various states; the ultimate solutions as to such matters must come from the lawmakers and from the democratic pressures of those who elect them, not from the United States Supreme Court.” (*San Antonio v. Rodriguez* 1973) In *Harris v. McRae*, the Supreme Court held “that funding restrictions of abortion do not impinge on the “liberty” protected by the Due Process Clause of the Fifth Amendment held in *Roe v. Wade*.” (*Harris v. McRae* 1980) The Supreme Court thus upholds the civil and political aspect of the right to abortion, the ‘negative’ right of the individual to have an abortion, and the freedom from state interference with private affairs; the focus is on the opportunity for abortion, not on the realization of the right, which detracts from the economic right to the realization of abortion.

¹⁸⁶ As mentioned above in footnote 40, this is in sharp contrast to the South African Constitutional Court because social and economic rights are enshrined in the Constitution—thus while the judiciary may not interfere with the specific allocation of resources to ensure social and economic rights, it can call on

The U.S. focus in international labor rights standards has been both limited and unbalanced—when labor rights are tackled, it is done overseas. By not signing on to important legal documents, and by avoiding international jurisdiction over American affairs¹⁸⁷, the United States has kept the labor rights of its immigrants primarily within the realm of domestic law. While labor mobility modeled after the European Union seems yet unfeasible in North America, the legal recognition of international migrants' rights with the ratification of international instruments such as ICMW by the United States would be a step in the right direction—toward *managing* labor migration, as opposed to focusing on immigration *control*.¹⁸⁸ Not only as a treaty with legal implications for U.S. monitoring of labor standards in immigrant industries, but also as a symbolic instrument, ICMW could function as a centerpiece to galvanize both legal and political spheres toward understanding undocumented labor migration as a by-product of globalization. Blau and Moncada thus note that even though human rights goals are sometimes mere expectations, rather than “realistic and practical steps for reaching the goals,” it is worthwhile to reach for better standards: “defining goals is important because the process engages countries, NGOS, and now multinationals, clarifying how they all can be stakeholders in advancing human rights. As goals are established in the crafting of instruments, sideline agreements are put into place, new guidelines are discussed and implemented, and grassroots activists become energized to mobilize support on the ground. In short, advancing and securing human rights does not involve a rigid legal

Congress to ensure funding that fulfills the realization of social and economic rights, such as affordable housing.

¹⁸⁷ The 2003 Human Rights Watch report also states: “Washington has intensely opposed the broader enforcement of international human rights law, from the International Criminal Court to more modest efforts to affirm or reinforce human rights norms.” World Report 2003 (www.hrw.org)

¹⁸⁸ See Chapter II, especially the section discussing international migration management.

framework with an all-or-nothing approach but is rather a process that entails the commitment of all parties on a pathway of mutual understanding and agreement. To fault the United States for not signing or ratifying international agreements is to fault the United States for not even participating in the process.” (Blau 2005: 50)

As will be discussed further in the chapters analyzing the case studies of immigrant activism against exploitation in the workplace, U.S.-based grassroots NGOs have utilized human rights language to denote inclusion in campaigns for the labor rights of undocumented workers. There is a growing interest among U.S. lawyers and activists to utilize human rights language to address inequality, discrimination and poverty among disadvantaged populations—including immigrants. (Albisa 2006; Smith 2007) However, while the U.S. remains tentative about its international commitment to international migrants’ labor rights—and “illegal immigrants” are perceived as foreign “invaders” breaking the law, it will be difficult to rally the political will that ensures public resources are dedicated to monitoring working conditions for undocumented workers. Even though higher labor standards in immigrant industries would not only ensure dignity in the American workplace, but would also benefit the U.S. citizens and legal residents who work alongside those with irregular immigration status. (Massey 2002)

Section IV: Citizenship, nationalism, immigration control and the inclusion/exclusion of undocumented workers from human rights protections

Nationalism and citizenship: the rights of immigrants in the polity. Nations construct their social identities through asserting the unique collectivity of its members: “us”

against “them,” the individuals who do not belong to our polity. (Anderson 1991; Doty 1996; Jasinski 2000; Doty 2003; Huntington 2004)

Political philosopher Seyla Benhabib defines membership within the “boundaries of political community” as a practice of demarcating limits of inclusion; membership is constantly constructed through interactions with those outside the polity. Political community is thus a reflection of the “principles and practices for incorporating aliens and strangers, immigrants and newcomers, refugees and asylum seekers, into existing polities;” the currently established “political boundaries” of nations define citizens as members, and all others as “aliens.” (Benhabib 2004: 1) Immigration law scholar Catherine Dauvergne also notes that the concept of “nation” is central to “migration law jurisprudence,” such that immigration laws prioritize state sovereignty and national boundaries. Dauvergne argues that immigration law thus “operates as a site for the construction and reconstructions of the national myth.” (Dauvergne, 212) This is most expressly conveyed in the “gradations in procedural rights entitlements” accorded to different individuals within the polity: different levels of rights and entitlements are accorded based on “express gradations of attachment to the nation, of belonging, of identity, at the centre of which identity of the nation and the individual overlap in the category of citizen.” (Dauvergne, 213)

On the other hand, despite the fact that national membership still defines the boundaries of the polity (such as the right to vote and be elected into office, generally expressly reserved for citizens), the concept of universal human rights contradicts the notion that states do not have obligations to those outside its polity. Seyla Benhabib argues that “universal human rights have a context-transcending appeal,” while the

“democratic sovereignty” of the modern nation-state constitutes what Benhabib calls a “circumscribed *demos* which acts to govern itself.” This self-governance, of course, “implies self-constitution. There is thus an irresolvable contradiction (...) between the expansive and inclusionary principles of moral and political universalism, as anchored in universal human rights, and the particularistic and exclusionary conceptions of democratic closure.” (Benhabib 2004: 18-19)

Sociologists Judith Blau and Alberto Moncada further remind us that the “human rights concept makes assumptions about individual human dignity and human connectedness that are more universal than liberal assumptions about individual rights. The reference point for human rights is not exclusively the political, sovereign state, nor exclusively the individual’s political, civil, and material rights, which are the purview of liberalism; instead, it is basic human aspirations and needs. Human rights start from the premise of universal equality with respect to social worthiness, economic needs, and creative drives, and they do not rest solely on national citizenship, as do liberal *political* rights.”¹⁸⁹ (Blau 2005: 25) Therefore the ideology of universal human rights contained in international law challenges the liberal tradition of rights and obligations that are circumscribed at the domestic level by each national state—rights and obligations which excludes those outside the boundaries of the national polity, as opposed to the inclusive nature of human rights.

¹⁸⁹ Blau and Moncada also point out, though, that the ideology of human rights, derived from the liberal tradition of individual rights, also tolerates distinctions based on identity and status, which at times blatantly contradicts its inclusive nature; both the liberal tradition of nation-states and the notion of universal human rights entail “the belief in abstract equality, and while the human rights perspective also emphasizes equality, it additionally stresses distinctive human identity as emanating from different human conditions, from being, say, a Turk or a Peruvian, a child or an elderly person, a migrant or a citizen.” (Blau 2005: 2) This “split” in human rights into specific rights of different populations was also discussed briefly above in the section on the status of social and economic rights in international law.

Today's high level of international migration is also contributing to a transformation of the meaning of membership and citizenship. (Schuck 1985; Soysal 1994; Schuck 1998; Eder 2001; Aleinikoff 2002; Beiner 2003) Seyla Benhabib states that "we have entered an era when state sovereignty has been frayed and the institution of national citizenship has been disaggregated or unbundled into diverse elements. New modalities of membership have emerged, with the result that the boundaries of the political community, as defined by the nation-state system, are no longer adequate to regulate membership."¹⁹⁰ (Benhabib 2004: 1) Hence as a result of increased international interactions through migration, travel and communication—new, flexible concepts of citizenship have emerged, which have questioned the boundaries of rights and obligations of the state to its polity.

One example of this transition has happened in the context of labor rights. Julie Watts notes in her study of European and U.S. labor unions' response to immigration that union leaders have forged an "unlikely alliance" with immigrant labor—working to protect immigrants' labor rights, rather than attempting to battle competition from immigrant labor, as had been the case during most of the 20th century. (Watts 2002) Writing specifically about the U.S. context, Linda Bosniak agrees that "unionists and labor rights advocates have begun to believe not merely that it serves "our" interests to protect immigrants, but that divisions between us and them are becoming less relevant. Instead, in this view, the concern is protecting working people in general. So for some

¹⁹⁰ Benhabib further states that "the nationality and citizenship rules of all peoples are an admixture of historical contingencies, territorial struggles, cultural clashes, and bureaucratic fiat. At certain historical junctures, these rules and the struggles surrounding them become more transparent and visible than at other times. We are at such a historical juncture when the problem of political boundaries has once more become visible." (Benhabib 2004: 18-19)

advocates, at least, the understanding of the community of people entitled to “equal citizenship” is expanding to include (somewhat paradoxically) people who lack the formal legal status of citizenship.” (Bosniak 2002: 504-505)

Nationalism and immigrants’ social rights: England and Japan. The U.S. is the largest importer of foreign labor in the world today.¹⁹¹ It is also a country that has defined its national identity by immigration and the opportunities offered to those who arrive at its shores. “In Europe and Canada, nationality is related to community; one cannot become un-English, or un-Swedish. Being an American, however, is an ideological commitment. It is not a matter of birth. Those who reject American values are un-American.” (Lipset 1990: 19) Conversely, those who embrace national values are invited to become American. This myth of the ideological national identity, however, is still predicated upon official membership in U.S. society, or naturalization—which is not readily accessible to most of today’s international migrants, because regardless of the U.S. mythology constructed around the role of the immigrant in American history, the country has not returned to its open-border policies of the 19th century. Rather, exclusion of unwanted foreign workers or limits to immigration is the norm both in the United States and around the world.¹⁹²

¹⁹¹ According to 2005 estimates by the United Nations, the United States has almost 40 million international migrants; the Russian Federation has the second largest immigrant population, with a little over 12 million. This information can be retrieved through the Migration Policy Institute’s Data Hub: <http://www.migrationinformation.org/datahub/charts/6.1.shtml>. The U.S. is not, however, among the top ten countries with largest *share* of immigrants in the total population: the United Arab Emirates, where 71.4 percent of the total population is foreign born, tops that list. Kuwait comes in second with 62.1 percent, and Singapore in third with 42.6 percent of residents who are immigrants. These are also United Nations estimates for 2005, which can be retrieved from the Migration Policy Institute at <http://www.migrationinformation.org/datahub/charts/6.2.shtml>. (MPI 2007a, 2007b)

¹⁹² Though many countries do recruit particular categories of workers, especially professionals but sometimes those in the trades (e.g., plumbers, bakers). (MPI 2006b, 2006a)

Both England and Japan, briefly examined below, present interesting contrasts to the American context because both are unapologetically exclusionary in their immigration policies, illustrating the point made above by Catherine Dauvergne and Seyla Benhabib, that immigration law has a prominent role not only in defining national boundaries, but also national identity. Yet England and Japan also include foreign-born workers in certain social rights provisions, while keeping tight control over those mechanisms of inclusion.

Britain: inclusion and discrimination. The British legal framework for human rights is inclusive:¹⁹³ the general provisions refer to ‘everyone’, not exclusively citizens.¹⁹⁴ The principle of equality is recognized in the entitlement to rights and freedoms without distinctions of any kind, including national origin. These provisions include equal pay for equal work, as well as dignity before courts (rights to recognition as a person before the law). Social, cultural and economic rights are also *not* exclusive to citizens;¹⁹⁵ e.g., Britain’s laws recognize everyone’s rights to social security, in accordance with its organization and resources of each state. Although international law is considered a part of the British legal framework, ratification of a treaty or international convention does not

¹⁹³ The United Kingdom does not have a written constitutional text per se. Thus the “constitutional” analysis in this case will be based upon official compilations of British common law.¹⁹³ Britain’s laws are found partly in conventions and customs and partly in statutes, and courts adopt a relatively strict and literal approach to the interpretation of statutes.

¹⁹⁴ British nationality is both inclusive and exclusive: Citizenship is acquired at birth by a child born in Britain, but only *if* the father or mother is a British citizen or is settled in Britain. Children of temporary labor migrants would not be eligible, but children of foreigners permanently residing in Britain (albeit non-citizens) are included. Foreign nationals can acquire British citizenship by naturalization.

¹⁹⁵ The rights to just and favorable conditions of work are also acknowledged, as well as protection against unemployment, and the right to form and join trade unions. The right to rest and leisure and reasonable limitation of working hours and periodic holidays with pay, as well as overtime work rates, are also considered part of the British legal framework; again, the language is inclusive to ‘everyone’ regardless of nationality and birthplace. British law also names the right to ‘home’, or to an adequate standard of living and health, including food, clothing, housing and medical care and social services.

indicate its precedence over domestic law; the British Parliament must amend domestic statutes to render them compatible with international law. European Union law, however, takes precedence in the event of a conflict between domestic and EU statutes. In regards to human rights, Britain ratified both the ICESCR and the ICCPR in 1976, yet since ratification of international instruments does not necessarily indicate use of international standards in domestic British courts, these UN Covenants are not as significant in the British context as European Union statutes. Britain is bound by the Council of Europe's 1953 European Convention for the Protection of Human Rights and Fundamental Freedoms. Since 1966 Britain has allowed for individual petitions under the European Convention and the jurisdiction of the European Court of Human Rights.

Despite its rather inclusive language, "Great Britain is not a nation of immigrants, and it is emphatically not a "country of immigration"."(Cornelius 1994: 21) It has, however, experienced significant international migratory flows. In 1993 the United Kingdom admitted 55,000 legal residents (half of them migrated from former British colonies) and it received over 22,000 new applications for asylum. Yet, in contrast to most other countries of immigration, British immigration policies have been comparatively effective in curbing immigration flows, perhaps because of its political willingness to "discriminate in their immigration and naturalization policies, even against former British subjects in the Commonwealth countries."(Cornelius 1994: 21) In fact, even though British nationality is purportedly inclusive and open to foreign nationals, scholars have pointed out that the adoption of the British Nationality Act in 1981 "created a kind of gradational citizenship, severely limiting the rights of Commonwealth "citizens" to settle in the United Kingdom;" this Act is considered "the culmination of a

series of policies pursued over a twenty-year period to shut down “coloured” or “black” immigration.” (Cornelius 1994: 22) Britain’s “willingness to discriminate” in its immigration policy has been attributed to two phenomena: “the stringency of the parliamentary government, which makes British governments more responsive to xenophobic public opinion;” and the elitism of British political culture, with sharp social class distinctions in that society function to legitimize other distinctions as well, such as the exclusion of immigrants from social rights such as freedom from discrimination. (Cornelius 1994: 22)

Japan: from outright exclusion to welfare for “everyone.” The Japanese Constitution seeks to “banish oppression and intolerance,”¹⁹⁶ yet it maintains a traditional distinction between citizens and non-citizens. “We, the Japanese people” in the Preamble becomes just “the people” in the constitutional articles, establishing a direct connection between personhood and citizenship throughout the text. The distinct level of constitutional rights between Japanese and foreigners is further instituted in the article on No Discrimination and Privileges,¹⁹⁷ where there is no reference to national origin, denoting the exclusive nature of constitutional rights to Japanese citizens.

As a result, even though the Japanese Constitution guarantees the right to welfare¹⁹⁸, education¹⁹⁹, work²⁰⁰, unions²⁰¹, and property,²⁰² these economic and social

¹⁹⁶ The Japanese Constitution was adopted on November 3, 1946. Drafted in the post World War II context, the Preamble states: “We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression, and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.”

¹⁹⁷ Article 14 states: “All of the people are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status, or family origin.”

¹⁹⁸ Article 25, in fact, places ‘positive’ responsibility on the State to “use its endeavors for the promotion and extension of social welfare and security, and of public health.”

rights were generally interpreted to apply almost exclusively to nationals. Koreans, for example, as the largest immigrant group in Japan, have been systematically discriminated against; “companies have been loath to hire Korean permanent residents, social benefits have been restricted to Japanese citizens, and the naturalization process has been onerous.”(Gurowitz 1999: 2)

Japan’s strong national identity²⁰³ has developed into an anxious relationship between Japan and the international community. “In comparison with most other industrialized states, Japan identifies weakly with international society” (Gurowitz 1999: 4) and international norms are observed with caution. “When those norms clash with domestic norms, (...) or when external pressure is not sufficiently strong, the government is reluctant to adopt them.” (Gurowitz 1999: 5) External pressure was not sufficiently strong on demanding foreign workers’ rights (especially for the significantly numerous Korean population) in the post-WWII era; the Supreme Commander for the Allied Powers (SCAP) “did not rule on the legal status of Koreans in Japan (and) for the most part the decision on how to classify Koreans was left to the Japanese authorities.”

¹⁹⁹ Article 26 establishes free, compulsory “equal education correspondent to [individual] ability.”

²⁰⁰ Article 27 institutes both the right and obligation to work, as well as “(s)tandards for wages, hours, rest, and other working conditions.”

²⁰¹ Article 28 on the right “to organize and to bargain and act collectively” is not as clearly exclusive to Japanese citizens, since there is a language shift from “people” to “workers.”

²⁰² Article 29 is also less exclusive to nationals, focusing on the right itself rather than the right-holder. It establishes that “the right to own or hold property is inviolable,” thereby not directly articulating and limiting the “right” to “the people” of Japan.

²⁰³ Amy Gurowitz explains in her analysis of international norms applied to the Japanese context that cultural attributes of this society have shaped the country’s relationship to migrant workers: (1) “lineage and race are seen as primary determinants of Japanese” identity; (2) the Japanese state and its government are “considered the extension of the family and local community, the expression of a grouping based on common blood, language, and culture.” These conditions have helped to solidify a national myth of homogeneity, such that the government has virtually denied the existence of minorities, even though there are “indigenous minorities like the Ainu and racialized groups like the Burakumin” as well as “recent immigrants like Koreans and a variety of Asian migrant workers.” Japan was also “a colonial power (both in Taiwan and Korea) with experience in both diversity and, to some degree, intermarriage.” (Gurowitz 1999: 4)

(Gurowitz 1999: 5) The United States at first demanded human rights protections for minorities in the draft of the Japanese constitution, but agreed to remove them from the final constitutional text.

On the other hand, Article 98 of the Japanese Constitution both reaffirms its text as “the supreme law of the nation” and determines that “treaties concluded by Japan and established laws of nations shall be faithfully observed.” This constitutional observance of international law, coupled with the fact that particularly in the past decade “the Japanese government has been increasingly sensitive to the perceptions of other states” (Gurowitz 1999: 5) in the international community. As Japan’s role in the international economy has increased, “questions about the integration and treatment of non-Japanese have been brought up in the same context as questions about internationalization.” (Gurowitz 1999: 5) And while Japan still has a low percentage of foreign workers compared to other labor-receiving countries (less than 0.5 percent in 1994), the situation is changing. Wayne A. Cornelius identifies several reasons for this transformation: low fertility rates, aging population, and reduced numbers of local labor, coupled with Japanese nationals’ growing unwillingness to engage in manual work, and a long economic boom, combined with the yen’s monetary strength in the region. (Cornelius 1994: 26)

Hence recent increases in the foreign born population, coupled with Japan’s concern about its international image, have led to shifts in the rights and entitlements afforded to immigrants. Despite being “relatively weak actors, with access to few material incentives,” Japan’s pro-immigrant movements have been able to make a powerful argument using international law “from a moral standpoint or from the

standpoint of a government concerned with (its international reputation.” (Gurowitz 1999: 4) The result is that “the government now recognizes that the term “everyone” in article 25 refers to aliens as well as nationals.” (Gurowitz 1999: 8) Thus the right to welfare has been extended from exclusive to citizens to now include Koreans and other foreign workers (legally) residing in Japanese territory.

International law is not, of course, the only motivating factor behind Japan’s changing policy toward foreign workers. Scholars and business leaders in Japan have indicated they expect sustained strong demand for foreign labor in the country. “Since 1989, Japan has been making it easy for nonimmigrant “temporary” foreign workers to legally gain employment through a variety of “backdoor” or “side door” mechanisms.”²⁰⁴ (Cornelius 1994: 26) Analysts even expect that Japan may lead the way in original solutions to the legalization of foreign-born workers “through a newly opened front door (and the) formulation of explicit national policies and programs to facilitate the social integration of settled immigrants.” (Cornelius 1994: 27)

Focus on immigration control versus immigrant’s labor rights. As was discussed in chapter II, most of the European Union, United States, Canada, and Japan have comparable (1) policy instruments to control immigration, especially unauthorized immigration and refugee flows from less developed countries; (2) lack of efficacy of immigration control measures; (3) low social integration policies; and (4) negative “general-public reactions to current immigrant flows and evaluations of government efforts to control immigration.” (Cornelius 1994: 3) Some of the difficulty in controlling

²⁰⁴ For example, internships and apprenticeships in Japanese companies for foreign-born workers, which do not provide a path to permanent residency but regularize workers’ immigration status.

undocumented immigration derives from “administrative, political, and economic difficulties that hinder enforcement of laws and regulations against unauthorized labor migration in relatively open and pluralistic societies.” (Cornelius 1994: 4)

Universal human rights provisions and high levels of international migration render the issue of immigrant exclusion from labor standards and other social rights both highly significant and contradictory. In the age of human rights, limitations on foreign workers’ access to equal pay, health care, and education is paradoxical, yet national governments still respond to international flows of people from a sovereign and exclusionary perspective. Countries of immigration cannot exert much control over both local immigrant hiring networks, and the incentive they represent for continued migration, and the “push” factors of immigration: developing countries that cannot generate enough jobs for their growing populations. The result is that contradictory: constitutional social rights for immigrants co-exist with a general sense of “policy paralysis” in the industrialized world which “sends mixed signals to prospective migrants in the labor-exporting countries, encouraging them to overcome whatever new obstacles may be placed in their path. Cornelius notes that this helps explain, for example, the cross-national failure of laws penalizing employers who hire unauthorized foreign workers to reduce illegal immigration over the long term.” (Cornelius 1994: 5) The social tension about immigration and the current inefficiency of immigration control policies generate “strong incentives for public officials in importing industrial democracies to redouble their efforts at immigration control, by fine-tuning existing control measures like employer sanctions, investing more heavily in border enforcement, and pursuing new experiments to restore at least the appearance of control,” (Cornelius 1994: 5) however

inefficient they may prove when implemented—such as the U.S. efforts to police its border with Mexico.

In the end, even though national legal frameworks (such as the British case) may be very inclusive in nature, in actuality governmental policies seek to “curtail the access of illegal immigrants to tax-supported public services, including education and nonemergency health care; (2) block any policies and programs that would accelerate the socioeconomic and cultural integration of settled immigrants and their offspring; and (3) take symbolically important steps to discourage permanent settlement, such as tightening citizenship requirements for legal immigrants, or denying citizenship to the native-born children of illegal immigrants.” (Cornelius 1994: 5)

Despite a certain degree of progress in international law through the ratification of the Migrants’ Convention in 2003, and promising constitutional guarantees in both the United States and British context, as well as new “backdoor” policies in Japan—the labor rights (and other social rights) of international migrants are far from being realized. Distinctions among different legal and policy cultures only confirm the similarities in their approaches to the international migration dilemma, hindering the implementation of adequate immigration policies and protective mechanisms for migrant workers and their families.

Undocumented workers’ human rights and the nation-state. The redefinition of citizenship includes a process of demarcating immigrants’ rights weighed against citizenship status—which is highly contentious in the case of uninvited immigrants (those with irregular immigration status). (Jacobson 1996; Benhabib 2004; Blau 2005)

Legal scholar Linda Bosniak defines unauthorized immigrants as informal members of the polity—who also infringed upon the polity’s ability to exclude: “On the one hand, undocumented immigrants live among the nation’s formal members, often perform their menial labor, and are subject to local law, but ordinarily have no prospects for acquiring legal status or citizenship ... On the other hand, these immigrants bypassed or violated formal admissions mechanisms and are present in the United States without formal community consent, thereby violating the community’s right to define its own membership.” (Bosniak 2006: 63)

Undocumented workers have violated the rules of national sovereignty and this sense of violation permeates the discourse surrounding “illegal” members of the polity. Thus news reports about the undocumented population repeatedly quote politicians emphasizing the need to ‘play by the rules’ and ‘get to the back of the line’ for legal entry into the U.S. The meaning of this ‘rules’ discourse while the need for comprehensive immigration reform is also proclaimed underscores that, however flawed, these are ‘our rules’—and outsiders need to respect them. Since the granting of procedural rights to foreigners is tantamount to inclusion in the polity, social rights (such as labor rights) may be construed as the right to ‘stay’ and live within the boundaries of a community that did not welcome the undocumented population in the first place. After all, a nation must have the ability to “exclude the other” to legitimize itself and its jurisdiction. (Dauvergne 2005: 50) Why should we grant protections to those who have ignored our boundaries?

Through bypassing the process of selection, ‘illegals’ are taking into their own hands a procedure that is by law and by cultural necessity a national prerogative. The ‘insiders’, citizens, formal members of the polity are supposed to choose the ‘outsiders’

who will be welcomed and invited to ultimately become one of ‘us’. Undocumented workers, rather than wait for approval, self-select.

In that sense, the border is a stronger metaphor for this sense of loss of control; border crossers from Mexico are twice as problematic as those who overstay their visas, since border crossers take control of their own immigration process from the very start, from the first action of crossing the border without authorization—while visa overstayers were at least granted some sort of entry (as tourists, students, workers) into the polity. Unauthorized border crossings thus cause enormous discomfort to the national sense of self and boundaries—in a nation which has been recently forced to confront its infallibility. The United States is confronting its vulnerability since the imaginary ‘fences’ of personal safety and territorial integrity were unimaginably crossed on September 11th, 2001. Economic insecurities and growing inequality have added to this sense of national vulnerability. Finally, Mexican immigration comes with the specter of racial shift and the demise of white majority. Migratory regulations help ensure a sense of control over national identity, however ephemeral. Unauthorized border crossing render these mechanisms of control virtually useless. As Catherine Dauvergne points out, “the boundary line acts as a reflecting mirror,” (Dauvergne, 54) and those crossing the border from Mexico into the southern USA without an invitation are jumping two fences: the real, concrete border of wire, and the border of will. This border of will carries the desire to exclude, which is being ignored by unauthorized crossers. Yet it also carries another level of meaning: that of the American rule of law. American identity is connected to respect for the law (Lipset 1990) and illegal border crossers are proving themselves essentially ‘un-American’ before they even reach this side of the fence.

Yet what are the costs of excluding unauthorized immigrants? The alternative to inclusion of undocumented immigrants is to live with blatant social inequality between citizens and the unauthorized underclass—which carries enormous costs: at the micro level, it affects the citizens involved, such as co-workers of undocumented workers in migrant industries where labor standards are violated. It also affects the children of immigrants, who not only face the burden of their parents’ undocumented status, but also suffer discrimination in access to basic social services due to the family’s fear of contact with U.S. authorities; this exclusion of undocumented immigrants’ children is likely to have intergenerational effects and translate into poverty for U.S.-born children in immigrant families whose parents are paid unlawfully low wages and denied access to preventive health care and basic welfare aid (such as food stamps). (Valdez 1993; Clark 2001; Waldinger 2001a; Waldinger 2006)

In his recent book “A Nation by Design,” Aristide Zolberg argues that it is in our own interest to ensure equal rights and protections for immigrants. Rather than focus exclusively on border control and home territory terrorism prevention, “the more urgent internal security task is to provide adequate protection to minorities victimized by the diffuse anger of the uninformed and to insure that in their encounters with American law, they are accorded the full benefit of procedural rights that constitute one of the major foundations of democracy. Immigrants who feel welcome rarely set out to destroy their new home.” (Zolberg 2006: 459)

Seyla Benhabib also reminds us that despite the fact that in a democracy “popular sovereignty means that all full members of the *demos* are entitled to have a voice in the articulation of the laws by which the *demos* is to govern itself”—in reality “there has

never been a perfect overlap between the circle of those who stand under the law's authority and the full members of the *demos*. Every democratic *demos* has disenfranchised some, while recognizing only certain individuals as full members. Territorial sovereignty and democratic voice have never matched completely." (Benhabib 2004: 20)

Of course, inclusion also has moral and political consequences. Would it be feasible to grant equal rights until the day undocumented immigrants are deported—and hence their state of inclusion is taken away in one sweep? (Baubock 1994; Bosniak 2002; Gordon 2007) Today, for most of the unskilled foreign workers seeking employment in the United States, there are few chances of immigration under current family-reunification and skill-based immigration policies—thus immigration translates into undocumented status. Many of these workers have already received job offers through social networks, and all they need is the will to cross the border. And without a long-term path to citizenship, these undocumented immigrants will face a life of fewer entitlements; because of the “plenary power doctrine,” which privileges citizenship status over personhood, “the law denies noncitizens many of the basic personal rights that are allocated based on membership in the United States polity.” (Romero 2000: 58-59) From a legal perspective, despite the “plenary power doctrine,” undocumented immigrants still enjoy the protections of the Fifth, Sixth, and Fourteenth Amendments; “in these cases, the (U.S. Supreme) Court carved out for all aliens a zone of protected personhood, where the nation's membership interests are of no consequence at all.” (Bosniak 2006: 64)

Fourteenth Amendment and due process. The Fourteenth Amendment is especially significant to the American immigrant experience. It begins by defining the notion of

citizenship as including U.S.-born and naturalized persons and restricting the states' ability to circumvent the federal nature and rights of citizenship. However, in the iteration of individual rights, the language shifts to a broader reference to 'persons', as opposed to citizens, so that the last section of the Fourteenth Amendment (the equal protection clause) reads: "nor deny to any person within its jurisdiction the equal protection of the laws."

The 1971 Supreme Court case *Graham v. Richardson* presented the question of whether this equal protection clause of the Fourteenth Amendment prevents states from imposing restrictions on welfare benefits based upon citizenship status or, in the case of legal (documented) aliens, upon minimum residency time requirements. (*Graham v. Richardson* 1971) The case involved two different instances (one in Arizona and one in Pennsylvania) where non-citizen state residents had applied for welfare benefits. In Arizona, a state statute required U.S. citizenship or, in the case of legal aliens, residency in the country for a total of 15 years. The Pennsylvania statute limited state-level welfare benefits to eligibility under federal programs (a requirement the non-citizens in the case didn't fulfill), or U.S. citizenship. In both class action suits the legal aliens had become disabled and/or forced by illness to give up employment. In an almost unanimous decision, the U.S. Supreme Court affirmed the judgments in the lower courts that held the state statutes unconstitutional under the equal protection clause. Justice Blackmun wrote the opinion of the court, which held that: (1) The equal protection clause of the Fourteenth Amendment encompasses aliens as well as citizens residing in U.S. states; (2) the statutes limiting provision of welfare assistance to legal aliens were unconstitutional because they interfered with federal policies in the areas of immigration and

naturalization; and (3) the Arizona statute conflicted with the Social Security Act of 1935, which did not allow for states' imposition of citizen requirements on welfare benefits' provision.

Although *Graham v. Richardson* has been generally construed as an extension of the equal protections of life, liberty and property and due process of law to non-citizens, the Supreme Court has allowed for differentiations between citizens and aliens. Some of these decisions are based on legislation other than the Constitution and the Fourteenth Amendment. An example of this is the 1973 case *Espinoza v. Farah Manufacturing* where a Mexican citizen (and a lawful U.S. resident) was denied employment in Texas based on a long-standing policy at the Farah manufacturing plant against employing any aliens. (*Espinoza v. Farah* 1973) The plaintiff alleged that the defendant had violated the Civil Rights Act of 1964 by discriminating against the applicant based on 'national origin', but the U.S. Supreme Court held that the denial of employment based on alien status did not constitute discrimination as long as there were no policies or practices specifically restricting the hiring of particular races, nationalities, or ethnicities.

In other cases the Supreme Court has interpreted restrictions on non-citizens' rights as not violative of the equal protection clause. In the 1978 case *Foley v. Connelie* the Court held that a New York statute prohibiting the appointment of non-citizens to the state police force did not violate the Fourteenth Amendment since police officers participated in the execution and enforcement of broad public policy—and thus the position bore a rational relationship to citizenship. (*Foley v. Connelie* 1978) The *Foley* decision was reaffirmed in 1982 in the *Cabell v. Chavez-Salido* case where a California statute requiring peace officers to be United States citizens was considered valid because

probation officers “sufficiently partake of the sovereign’s power to exercise coercive force over the individual that they may be required to be citizens.” (Cabell v. Chavez-Salido 1982)

A similar decision was reached in 1979 when a divided 5-4 Court held in *Ambach v. Norwick* that a New York statute restricting certification of aliens as public school teachers did not violate the equal protection clause. (Ambach v. Norwick 1979) The statute allowed for exceptions in cases where the person had manifested an intention to apply for citizenship, a requirement that had not been met by the plaintiffs in this case. The Court’s majority decision stated “public school teachers perform one of those governmental functions which are so bound up with the operation of the state as a governmental entity as to permit the exclusion from those functions of all persons who have not become part of the process of self-government.” The Court also set a rather low legal standard for the citizenship requirement in the case of public school teaching: it need only bear a rational relationship to a legitimate state interest.

On the other hand, *Graham v. Richardson* has also been followed by decisions such as *Bernal v. Fainter*, where a Texas statute requiring that notaries public be United States citizens was held unconstitutional under the Fourteenth Amendment. In this case, the statute was held under the stringent requirements of strict scrutiny, and the Court held that the state’s “asserted interest in insuring that notaries are familiar with state law and the state’s purported interest in insuring the later availability of notaries’ testimony” failed to meet those standards. (Bernal v. Fainter 1984)

The U.S. also has an inclusive policy in relation to the education of foreign-born children, irrespective of immigration status. A 1982 Supreme Court decision established

that education cannot be denied based on immigration status, as established by the Supreme Court decision in *Plyler v. Doe*. (*Plyler v. Doe* 1982) In this case, several distinct class actions were consolidated into one large single action challenging the constitutionality of a Texas statute withholding state funds for the education of undocumented alien children, thereby authorizing local school districts to deny enrollment to those who could not show documentation of legal residency status in the United States. The District Court held that illegal aliens were entitled to Fourteenth Amendment equal protection. Both the Court of Appeals and the Supreme Court affirmed, holding that the Texas statute violated the equal protection clause of the Fourteenth Amendment, and that “neither the undocumented status of the children vel non, nor the state’s interest in the preservation of its limited resources for the education of its lawful residents furthering some substantial goal of the state in order to establish a sufficient rational basis for the discrimination contained in the statute.”

However, the Court in *Plyler* focused on two arguments which limit its applicability to cases involving undocumented immigrants’ denial of rights: (1) *Plyler* focused on the fact that the federal government in 1982, the year the case was decided, practiced lax enforcement of border controls, and thus was judged by the Justice to be at least partially responsible for the incoming flows of unauthorized immigrants; and (2) the case concerned the children of undocumented immigrants, and the Justices focused on their ‘innocence’ as compared to their parents. Legal scholar Linda Bosniak notes that the Justices “structured” their majority opinion “around an opposition between the “innocent children” and their culpable parents, attributing sharp contrasting degrees of deservingness to each” because the parents elected to enter American territory “in

violation of our law.” Hence, adult unauthorized immigrants “should be prepared to bear the consequences, including, but not limited, to deportation.” (Bosniak 2006: 66; 67-68)

National membership and shifting rules of inclusion: the consequences of misplaced expectations. Are restrictions on immigrants’ social rights justified? Policies which may be perceived as discriminating against immigrants may have deplorable long-term consequences: the loss of dignity in the American workplace. Lori Nessel argues that “the view of work” and the restrictions “embodied in current immigration policy is premised on a narrow focus on economics that ignores the role that work plays in creating community membership. Immigration scholars largely agree that the existence of a large undocumented population undermines any sense of national community. ... In response to the traditional notion that equates citizenship with membership, various scholars have deconstructed membership and defined it as a matter of degree, with citizens being considered full members, but aliens being entitled only to some membership rights. Recognizing those who live and work within the nation as members of the community is essential if dignity is to accompany work. Until the reconceptualization of the immigrant labor permeates immigration law, the ... dignity of work will remain illusory.” (Nessel 2001: 402-404)

Immigrant workers, legal or unauthorized are present within the U.S. “circumscribed territory,” and many have established homes and “continuing residence” within the country—living under “the authority of” this nation and its laws; Seyla Benhabib reminds us that, in these circumstances, “the new politics of membership is about negotiating this complex relationship between the rights of full membership,

democratic voice, and territorial residence.” (Benhabib 2004: 20) Benhabib further notes that: “Citizenship and practices of political membership are the rituals through which the nation is reproduced spatially. The control of territorial boundaries, which is coeval with the sovereignty of the modern nation-state, seeks to ensure the purity of the nation *in time* through the policing of its contacts and interactions *in space*. The history of citizenship reveals that these nationalist aspirations are ideologies; they attempt to mold a complex, unruly, and unwieldy reality according to some governing principle of reduction, such as national membership.”²⁰⁵ (Benhabib 2004: 18)

Samuel Huntington’s premise in “Who Are We? The Challenges to America’s National Identity” is a testament to what Benhabib considers misplaced expectations of “molding” today’s global complexities into static rules of citizenship and national membership. Huntington emphasizes the need to avoid transient and circular immigration patterns—and denounces the ability of immigrants to acquire dual citizenship. “Dual citizenship legitimizes dual identities and dual loyalties. For a person with two or more citizenships, no one citizenship can be as important as his one citizenship is to a person who only has one. The vitality of a democracy depends on the extent to which its citizens participate in civic associations, public life, and politics.” (Huntington 2004: 212) Thus Huntington claims that immigrants to America should not maintain ties to their country of birth. He expects formal membership and full commitment to United States culture; if immigrants do not acquire American citizenship, they’re lacking in their goal to assimilate and participate in civic life within their adopted country of residence.

It is thus clear that Huntington perceives naturalization as “the single most important political dimension of assimilation.” (Huntington 2004: 238) He then

²⁰⁵ Italics in the original.

admonishes that in 1990, Mexican naturalization rates stood at 32.6 percent, compared to 76.2 percent for Filipinos—which to Huntington is a sign of peril: close proximity with Mexico allows recent immigrants to maintain ties to their country of origin. Mexicans don't Americanize, don't acquire citizenship, don't let go of their origins to embrace the American dream.²⁰⁶ In his reliance on dated conceptions of citizenship, Samuel Huntington rejects the role that the international mobility of labor plays in reshaping national membership.

Hence Huntington refuses to adapt conventional citizenship rules to new modalities and flexible identities that are a result of this labor mobility—and he arrives at inconsistent expectations of Mexican immigrants: in Huntington's view, Mexicans in the U.S. must naturalize and renounce their emotional attachment to a land, language and culture that are but a short car ride away. Yet other immigration analysts have demonstrated that the U.S. labor market has historically absorbed a constant flow of transient Hispanic labor (primarily from Mexico)—and that this circular movement of labor has potential benefits to both Mexico and the United States. (Massey 2002) And the majority of Latino adults in the U.S. are either bilingual or English dominant (English is their language of preference); since language is the most significant predictor of economic, cultural and educational incorporation into U.S. society, it appears that the Hispanic population is on its way to full social membership, despite the large numbers of

²⁰⁶ Of course, Huntington is obliged to acknowledge that differences in naturalization rates between Filipinos and Mexicans are largely the result of undocumented Mexican immigration, which accounts for 35 to 45 percent of all foreign-born Hispanics in the U.S. (and is especially significant among Mexicans). But he still makes his point that lower naturalization rates among Mexicans, despite their utter inability to control eligibility for citizenship, is problematic and indicative of their cultural failings and lack of commitment to the U.S. national membership. (Huntington 2004: 239)

transient, circular migrants (many of them currently undocumented) among them.²⁰⁷ (Pew 2005a: 14; 17)

Furthermore, those Hispanic immigrants (including Mexicans) who are eligible for naturalization are acquiring U.S. citizenship at swift rates. A report by the Pew Hispanic Center on the Hispanic electorate in the U.S. found that between the 2004 and 2006 elections, the number of naturalized Hispanics who were eligible to vote increased by 317,000, which represented a 28 percent growth (in only 2 years!). (Pew 2006a: 2-3)

The 'benign' U.S. immigration mythology versus the reality of exploitation. The rules of integration for foreign-born residents are transitory; definitions of political membership²⁰⁸ are shifting, and with them the boundaries of political community: “We have entered an era when state sovereignty has been frayed and the institution of national citizenship has been disaggregated or unbundled into diverse elements. New modalities of membership have emerged, with the result that the boundaries of the political community, as defined by the nation-state system, are no longer adequate to regulate membership.” (Benhabib 2004: 1)

Immigration policy today is designed in the midst of shifting definitions of nation and membership, which are essentially identity questions—divisive and dogmatic, as is illustrated in the often polarized and contradictory public opinion polls on U.S.

²⁰⁷ Although many Hispanics, including the U.S.-born population, have different cultural views (e.g., on abortion) than the majority of the U.S. population, these gaps are narrowed for the English-speaking population, even if they still identify themselves as Hispanic or Latino; 20 percent of the third generation U.S.-born, English-dominant population still identify themselves as “Hispanic” or “Latino.” (Pew 2005a: 19)

²⁰⁸ Political membership for new residents is understood here as defining the “principles and practices for incorporating aliens and strangers, immigrants and newcomers, refugees and asylum seekers, into existing polities.” (Benhabib 2004: 1)

immigration.²⁰⁹ (Pew 2006b) Rejection of uncontrolled immigration is expressed with concerns over unauthorized immigration and calls for border policing. The majority of Americans believes “illegal immigration is a serious problem,” despite also believing that undocumented immigrants take jobs Americans do not want. (Pew 2006c) Since the birth of federal immigration restrictions with the 1882 Chinese Exclusion Act, historian Roger Daniels contends that immigration control has been utilized as a mechanism to “keep out first Chinese and then others who were deemed to be inferior.” (Daniels 2004: 3) Race, ethnicity and religion were used as justifications to mask the socioeconomic pressures of admitting new immigrants; proud of their identity as a “nation of immigrants,” Americans have developed a “dualistic attitude toward immigration and immigrants, on the one hand reveling in the nation's immigrant past and on the other rejecting much of its immigrant present.” (Daniels 2004: 6)

Professor of Law Peter Schuck states that America offers two equally powerful paradigms “competing for the public's attention and allegiance;” one is “boundlessly optimistic” about the ability of the United States to continue the traditions of our “brave ancestors” who “built the country literally from the ground up.” The other, arguably espoused by Samuel Huntington, is based upon “anxiety” and “fear that America’s assimilative capacity has finally been exhausted.” (Schuck 2001: 11) Opposing interests and disparate national narratives set against current national security and economic fears result in an ambiguous discourse regarding the adversities of welcoming poor Hispanic immigrants. Economic interests have to be balanced against moral concerns. Not surprisingly, IRCA contributed to a 1990s “anti-immigrant backlash” after its failure to control undocumented immigration. (Romero 2000) Yet Catherine Dauvergne points out

²⁰⁹ See several references to American public opinion on immigration in Chapter IV.

that the liberal immigration mythology maintains its appeal: “The humanitarianism that is enmeshed in liberal migration nourishes images of the nation as powerful and good.”

(Dauvergne, 53)

Because immigration policy plays a crucial role in designing the nation (Zolberg 2006), opposing narratives of immigration need to be harmonized to re-define to goals of immigration policy; who to *include*, and under which conditions this inclusion should be framed, will define *who* the nation is to become. (Schuck 2001: 2) In the meantime, however, an estimated 7 million undocumented workers (out of a total 12 million estimated undocumented residents) live and labor within U.S. boundaries. The frames of their inclusion will also determine the future of the nation, most specifically the prospects for America’s most vulnerable workers and their families, for the exploitation of ‘illegals’ will reverberate for generations to come, not only in establishing low labor standards in myriad American industries and occupations—but also as a result of childhood of poverty for these undocumented workers’ U.S.-born offspring.

While the ‘country of immigrants’ mythology still embraces open membership to the American polity, the reality today is that: (1) contrary to the policy of open borders in effect during most of the 19th century, naturalization today is inaccessible to most foreigners wishing to come to America; (2) citizenship remains a dividing line between those *included* and *excluded* in constitutional protections due to the plenary power doctrine; (3) the equal protection clause has been found to apply in most cases to non-citizens, yet there are quite a few exceptions; and, finally, (4) labor rights, as fundamental rights denoting social *inclusion*, are generally applicable to all workers in the U.S., yet

labor abuses in industries employing large proportions of undocumented workers still occur at alarming levels. (HRW 2001; Compa 2004; Smith 2007)

Adapting to new terrains with appropriate maps. U.S.-Mexico immigration scholar Jorge Durand argues that American policy responses to immigration are “increasingly misplaced and inadequate.” “The attempt to make the border impervious with respect to movements of goods, capital, information, commodities, and services has proved worse than a failure; it has achieved counterproductive outcomes in virtually every instance. It has transformed Mexican immigration from a circular movement of workers affecting three states into a national population of settled dependents scattered throughout the country. It has lowered the rate of apprehension on the border but driven up the rate of death and injury during border crossing.” (Durand 2004: 12) Since the focus on the border derives from a perception that Mexican migrants are fleeing desperate poverty, Durand also notes that “more enlightened policies could follow from a more accurate understanding of the causes of international migration and a better appreciation of the motivations of migrants.” (Durand 2004: 13)

There is little evidence that U.S. immigration policy so far has had strong effects in undocumented migration, except for unforeseen (and undesirable) consequences: since IRCA, rates of return migration to Mexico have decreased, turning temporary immigrants into permanent residents; and border crossing has shifted from California to the more dangerous desert region in Texas and Arizona. (Cerrutti 2004: 41)

As the U.S.-Mexico border has become a metaphor for ‘invasion’ and ‘lack of control’ so the workplace rights of undocumented workers are a metaphor for our social

borders. Denying de facto inclusion and protections under our labor regulations represents the exclusion of the poor from social protections which guarantee a decent standard of living for all residing in America. The “benign neglect” of U.S. immigration policy may have allowed more unauthorized workers to join the American labor force (Martin 1994), but it has not served the purpose of maintaining labor standards. The slow political response and the incongruous legal solutions to the reality of millions of undocumented workers in the U.S. labor force are a testament to our inability to accommodate social transformations; when capital and goods are flowing more freely than ever before, labor will follow. (Fiss 1999; Massey 2002)

I argue here that as much as the currently inadequate and poorly designed border enforcement strategies, which drive migrant crossers into the dangers of the Sonora desert, labor rights are also a misplaced and perilous locus through which to express national sovereignty, independence from the pressures of globalization, and control over membership in the American polity. Failing to protect the labor rights of foreigners, even those who are unauthorized, endangers the human rights of all workers employed in the United States. While the denial of certain social rights to undocumented foreign born may seem justifiable as a means to deter unauthorized border crossings and demarcate the exclusion of unauthorized immigrants²¹⁰—it carries enormous social costs. Recent riots in the poor ‘banlieues’ of France, when viewed as a response to discriminatory and exclusionary policies, remind us of the costs of exclusion. (Hargreaves 2001; Smith 2005) At the time of the French riots, observers in North America questioned whether

²¹⁰ In Germany, for example, the children of “illegal aliens” are denied access to education (Faist 1996)—while in the U.S. the children of undocumented residents are guaranteed access to education. (Plyler v. Doe 1982)

this continent has the right answer to immigrant integration and the development of equal societies. (Kotkin 2005; Smith 2005)

Bilateral or multilateral legal mechanisms to protect the well-being of all immigrants and their families, regardless of immigration status, would fulfill universally endorsed notions of human dignity and protection of the person, in line with international human rights standards. It would also guarantee the maintenance of national human rights standards within host countries of employment. If host societies sought to provide education, health, and basic fair employment practices (e.g., minimum wage, overtime pay, leisure time, and the right to unionize) to *all* residents and workers, then continuous assurance of basic rights and standards for all, including vulnerable citizens and legal residents, would also be protected.

Shifting the rules of inclusion for unauthorized immigrants, where not only courts ensure their rights in the workplace, but where resources are shifted from immigration raids to ensuring labor standards in workplaces employing immigrants—we need new maps. Once more, Benhabib provides a powerful metaphor: “We are like travelers navigating an unknown terrain with the help of old maps, drawn at a different time and in response to different needs. While the terrain we are traveling on, the world society of states, has changed, our normative map has not. I do not pretend to have a new map to replace the old one, but I do hope to contribute to a better understanding of the salient fault-lines of the unknown territory which we are traversing. The growing normative incongruities between international human rights norms, particularly as they pertain to the “rights of others”—immigrants, refugees, and asylum seekers—and assertions of territorial sovereignty are the novel features of this new landscape.” (Benhabib 2004: 6)

The role of the press in public discourse about undocumented immigration. The figure of the immigrant as ‘other’ is a constant and complex process of recognition and creation of difference. The social construction of national identity, which construes rights and entitlements, inclusion and exclusion, occurs on a daily basis—through the public discourse on immigrants and their place in the American polity. The level of inclusion afforded to undocumented immigrants in the U.S. is in constant flux: “Migration law is highly flexible to accommodate unceasing reshaping of the national interest. It is a text in which both nation and identity are in flux.” (Dauvergne, 55)

The news media play an essential role as a public forum where societies debate, re-create and reinforce the definition of who ‘we’ are, who is foreign, and how to create and re-imagine these polar entities: ‘us’ and ‘them’. (Flores 2003) A powerful example of this flexibility both in immigration law and news discourse is the renegotiation of the identity of “illegal aliens” who were granted amnesty with the implementation of IRCA in 1986. Susan Coutin’s analysis of newspaper coverage post-IRCA shows that press narratives mirrored politicians’ dichotomy in placing the identity of unauthorized immigrants before and after IRCA’s amnesty. (Coutin 1997)

The press, however, does more than mirror immigration policy—the press also helps to shape and define undocumented immigrants’ identity within the polity; this is the topic of chapter IV, which discusses the role of the press in public policy. Chapter V introduces the methodological approach utilized in this doctoral dissertation to analyze the press coverage of two case studies involving allegations of labor standards violations in U.S. immigrant industries (agriculture and garment manufacturing)—these case studies are expounded in chapters VI and VII.

Grassroots immigration activists are marketing their own views for the 21st century. At the 2006 Sixth World Social Forum in Caracas, Venezuela, Latin-American activists proposed the “radical vision” of a “hemispheric citizenship along the lines of the European model.” The leader of the U.S. Latino immigrant delegation, Oscar Chacon, has three “pragmatic” proposals for a more “enlightened U.S. debate” on immigration: (1) tackle “racism and xenophobia,” also within the immigrant-rights movement, so that “those most impacted by the policies” are not excluded from the discussion; (2) shift the United States’ “obsolete policy-making system,” where immigration policies are developed in the House or Senate Judiciary Committee without connections to the Committee on International Relations or the Western Hemisphere Subcommittee.; and (3) redefine immigration beyond the “nation-state paradigm.” “Immigration is a global issue with global causes and requires a global solution.” (Lovato 2006)

Part II

Chapter IV: America's Undocumented Workers and the Role of the Fourth Estate

“The pictures in our heads have many origins. Among the various sources of our knowledge about the world around us, the mass media are especially prominent.”

(McCombs 2004: 34)

“The threat of deportation is a powerful rhetorical force. This threat, captured in the idea of the illegal alien, creates a vulnerability and exploitability. Suspect bodies carry the border on them. These bodies, even when present at physical locations quite distant from the geopolitical border, are susceptible targets.” (Flores 2003: 381)

News discourse and unauthorized immigrants. In the sections below, I will discuss the relevance of news discourse connecting unauthorized immigration to labor standards violations in the U.S.—how public debate in the press can help to shape public opinion and influence immigration policy options.

Current media studies, sociology and political science literature recognizes that ‘media effects’ are subtle—that the influence of the press in public life and political processes is not what was once feared: a one-way street of strong ‘hypodermic needle’ effects—and press content influences behaviour without dictating beliefs. (Kress 1983; Gamson 1992; Gerbner 2002; Gamson 2004; McCombs 2004) Yet recent studies of press content have also made progress in tracing specific connections between press coverage and policy developments, as

well as public opinion, on social issues of political impact, e.g., urban crime or the environment. (Gamson 1989; Shaw 1989; Chyi 2004)

Public access to information and debate in contemporary society is largely mediated through the press. Therefore the press, with its own agenda of issues (the ‘news of the day’), contributes to form public opinion of what is significant at any particular moment; the press is thus the central locus of public debate in a democracy. (Fairclough 1989; Fraser 1992; Cottle 2003) Because of its central role in promoting public debate about social issues, news coverage plays a significant role in the social and political processes that shape public opinion and policy agendas (McCombs 1993; Kingdon 2003: 57-58; McCombs 2004)—such as immigration policy, labor standards, and the rights of undocumented immigrants living in America.

The press is also one of the “primary formulating places for ethnic beliefs and attitudes” and the “mechanisms of the reproduction of ethnocentrism, xenophobia, or racism in society.” (Dijk 1988: 138) Highly stereotyped news portrayal of immigrants, emphasizing conflict rather than commonalities between different ethnic and racial groups, has been shown to affect native-born perceptions of newcomers. (Boomgaarden 2006) Therefore it is largely in the press that public opinion about the rights and obligations of new immigrants, including undocumented immigrants, is shaped.

Section I of this chapter will focus on the press representation of immigration in the United States, discussing how immigration policy and press discourse have historical connections, i.e., how the press has both reflected and guided the course of immigration policy in the United States. A brief analysis of the press representation of immigration in Europe will also be presented as a contrast to the American context. Section II of this chapter will turn to media theory and concepts that help explain the role of news media in society. First, I will

discuss some of the reasoning behind the social impact of media representation—presenting the literature that links media content, public opinion and policy agendas. Finally, I will discuss the concepts and models that guide this research project on the significance of media discourse in the legal, social and policy realms: the notion of a *public sphere of debate* and its central role in a *deliberative democracy*, as well as the related concept of a *marketplace of ideas* in the press.

Section I: Press Coverage of Immigration

Immigrants in the American printed press: “ambivalent welcome.” U.S. history of immigration news coverage reflects social tension and misgivings about the foreign born.²¹¹

The most comprehensive analysis of U.S. press coverage about immigration, which examined 110 years of periodicals published from 1880 until 1990, concluded that newcomers have received an “ambivalent welcome” which echoed the restrictionist and anti-immigrant sentiments expressed by U.S. Congress and the American public throughout the 20th century.²¹²

(Simon 1993: 244-245)

²¹¹ Media other than news are also prominent in telling stories and suggesting prevalent connotations about American immigration. Film is one of the most powerful storytellers in contemporary society. (McLuhan 1964) Yet American cinema has only approached the issue of Mexican immigration as a “secondary theme for action films in the class Hollywood formula.” In a comprehensive study of the representation of Mexican immigration in film from 1912 until 1998, Maciel and Garcia-Acevedo found that the narrative in these films displays “clear and constant preoccupation with the control of the southern border with Mexico. Hollywood films clearly exemplify a deep-seated public attitude and official policy designed to better control and regulate undocumented Mexican labor in the United States, particularly in times of economic downturn in America.” With very few exceptions, the authors find that these films have “not revealed much of the human dimension of Mexican immigrants”, their communities or their contributions to American society—in fact, they are generally “portrayed as defenseless people who are in dire need of a white champion to come to their aid.” (Maciel 1998: 195)

²¹² Israel provides another good example, as a country of immigration—a young nation which by definition welcomes newcomers (Jews). An analysis of the Israeli press in the 1990s focused on female immigrants from the Soviet Union, and found countless examples stereotyping these immigrants as massage parlor workers, or suppliers of sexual services; while the media broached the problematic nature of these stereotypes, and was generally critical of the burden this represents to new immigrants, the Israeli press still treated the issue in a light-hearted, ambivalent, even humorous manner. For example, the headline of a news story published in *Ma’ariv* in 1996 is: *A phenomenon: Immigrants from Russia dye their hair so as*

Coverage of immigration has mirrored particular moments of targeted ethnic restriction in U.S. immigration history. Articles published in the *North American Review* during the late 1800s, for example, debated the “Chinese question” and called on halting all immigration from Asia; coverage in the 1920s represented the peak of anti-immigrant sentiments directed at Southern and Eastern Europeans. (Simon 1993: 52-60) In the past few decades ambivalence and anti-immigrant feelings have taken particular shape to reflect our historic moment: in the most recent press coverage of immigration, the target is the Mexican border-crosser (Chavez 2001: 215-262) and specific metaphors have emerged to describe the Mexican immigration flow.

The Latino immigrant in U.S. news coverage. Today, Mexican immigration has been all but labeled an outright “invasion” of U.S. territory, a terminology which was also used to characterize Chinese, Italians, Poles, and other foreign nationals in the past—but due to the particular circumstance of sharing a long border with the U.S., the Mexican “invasion” and “crisis” has become a full-fledged “immigration war.” The current alarm regarding Mexican immigrants is at times ominously similar to the descriptions of Chinese workers in the late 1880s, and Southern and Eastern European arrivals in the 1920s: Mexicans are deemed “poor, unskilled and uncultured” and thus not capable of assimilating into U.S. society, terms which were used to describe Catholics and Jews in the 1920s. (Simon 1993: 233, 245)

not to be considered whores. The subtitle explains the issue further: *One of the immigrants, Ela Patchevski: 'For Israelis – every [blonde] Russian is a whore, so I dyed my hair red'* (Lemish 2000: 340). Some headlines are even more light-hearted about this “phenomenon;” *Ha'ir* published a news account of the discrimination against Russian female immigrants in 1994 under this headline: *Vodka, caviar and strip-tease* (Lemish 2000: 339). Other headlines focused on irregularities perpetrated by Soviet prostitutes, such as falsifying identification cards, and also the act of “seducing” police officers.

Specific metaphors have also emerged to describe the Mexican immigration flow.²¹³ In the 1920s and 30s, the American press had its first incursion into building a narrative about the Mexican immigrant. Then, as now, the attempt to restrict access and close borders was a central aspect of anti-immigrant discourse. Stereotypes of the Mexican worker then referred primarily to agricultural workers, who were labeled as un-American in their “docile and respectful” manner. While “docile” and “respectful” are not *prima facie* negative attributes, Lisa Flores notes that “lack of ambition and docility run counter to American values” such that the “construction of the Mexican peon draws on racial assumptions about differences between primitive and civilized peoples and, in so doing, it precludes Mexican access to American-ness.” (Flores: 381)

A comprehensive analysis of post-1965 reporting on immigration in American news magazines provides some insight into the significance of this narrative; media researcher Leo Chavez found that between 1976 and 1985, *U.S. News & World Report* published a total of eight covers about Mexican immigration. Each magazine cover and its related news story described unauthorized border crossing from Mexico as a “crisis,” “out of control,” a “time bomb,” or an “invasion.” The 19 August 1985 issue, for example, referred to “The

²¹³ To be sure, Latinos are not the only ethnicity or immigrant groups depicted in a limited manner in the U.S. press; they are being emphasized here because of the connections between Latinos and the stereotyping of an “undocumented identity”—which is the focus of this study. To give an example of a different ethnic group, a fairly recent study (1993-96) of Arabs combed through transcripts of approximately 35,000 hours of TV and radio content. Researchers found that negative stereotypes abound. Their results confirmed previous findings that Arabs are not frequent in the news and that when the identity “Arab” is mentioned, it is regularly associated with violence and terrorism. The most frequent news coverage of Arabs in this study was the conflict with Israel (33.5 percent of the news reports). In these accounts, Arabs were depicted as aggressive, with several references to “massacres.” Perhaps most significant is the fact that the information presented to American viewers and listeners about the Arab world was extremely limited in scope. Less than 1 percent of the news reports referred to Arab culture. (Lind 1998) These constant depictions of Arabs as “violent terrorists” may be factual, but they construct a sort of “cultural amnesia” about all other aspects of Arab life, and curb alternative interpretations of the conflicts between the Arab world and the West. The limited and biased scope of Arab coverage in American news reports has led media scholars to conclude that the press has facilitated the “inventing of the Arab enemy,” with grave consequences for American foreign policy. (Hasian 1998) While media coverage is not the only element to affect public opinion, it is influential in shaping attitudes toward issues and social groups. (Gamson 1989; Bobo 1997)

Disappearing Border” between Mexico and the United States—asking, in the headline: “Will the Mexican Migration Create a New Nation?” The image of this “disappearing border” in the *U.S. News & World Report* cover depicts Mexicans immigrants as stereotypes of the rural, peasant population: the men in sombreros, loose shirts and pants, and the women in full skirts and braided hair. Chavez concludes that this characterization of border-crossers is not simply folkloric; it “connotes a premodern Mexico, a backwardness, and Third Worldness that corresponds to the “traditional” dress of the figures” depicted in the cover illustration. (Chavez 2001: 3, 217-237)

For a few years after the passage of IRCA in 1986, immigration and the border were not prominently covered in U.S. news magazines—but by May 1992, when it was clear that IRCA-mandated border control was unable to contain the Mexican migratory movement, the theme reappeared on the cover of *The Atlantic* with the headline: “The Border: In the tense, hybrid world of the U.S.-Mexican border, Mexico’s problems are becoming America’s problems.” The image of “THE BORDER” is split in half horizontally—the letters are mismatched and tattered; the colors on the upper and lower half are correspondingly representative of the American and Mexican flag in an awkward picture that creates a sense of “mismatch,” suggesting the “uneasy pairing of the two realities” where Mexico is a “source of problems” and “positive social relations between the two nations” are virtually impossible to envision (Chavez 2001: 241-242; 245). As sociologist Douglas Massey has remarked: at the same time that the North American Free Trade Agreement was being formalized, resulting in U.S.-Mexico trade integration, the liberalization of labor movements remained an insurmountable challenge which called for increased surveillance of the border (Massey 2002).

California's Proposition 187²¹⁴ in 1994 generated another national cycle of immigration news and debate—where supporters of the Proposition reiterated the same narratives of the 1970s and 1980s of “invasion,” “war,” and “reconquest”²¹⁵ (Chavez 2001: 246-247). “Assimilation” also emerged as a theme in the 1990s immigration coverage—making the cover of the *National Review* in 31 December 1997 and the *Atlantic Monthly* in July 1998. However, different from the one-dimensional focus on the border which prevailed until the early 1990s, magazine coverage in the later 1990s appeared slightly more nuanced. In effect, while the *National Review* story focused on the “re-Mexicanation” of Los Angeles and called for the revival of “traditional assimilation,” the *Atlantic Monthly* offered a less alarmist view of Mexican assimilation in the U.S.; the author observes new patterns in a “multidirectional” assimilation process which reflects the “borderless” nature of the economic migration movement in the Southwest (Chavez 2001: 256-260). The most unusual news report of Chavez's study into over 30 years of U.S. news magazine coverage on immigration was the *U.S. News & World Report* 23 September 1996 cover: “Illegal in Iowa: American firms recruit thousands of Mexicans to do the nation's dirtiest, most dangerous work.” The story details the hiring practices of undocumented workers in the meatpacking industry; it is the only news magazine cover report in Chavez's study to depict unauthorized Hispanic immigrants as “productive workers” (as well as victims of exploitative labor practices). This report is also unique in that it “portrays immigration as a problem that welfare²¹⁶ and immigration reforms

²¹⁴ Proposition 187 was passed by California voters and called for the denial of a variety of social services to undocumented residents in the state—but it was challenged in federal court, deemed unconstitutional and never enacted.

²¹⁵ Many proponents of Proposition 187, such as Glenn Spencer of “Voice of the Citizens Together,” claimed that unauthorized immigration from Mexico was part of a “reconquest of the American Southwest by foreign Hispanics. Someone is going to be leaving the state. It will be either us or them.”

²¹⁶ Federal Welfare Reform in 1996 cut the federal benefits budget provided to states—including provisions to reduce assistance to both legal and undocumented immigrants and ending eligibility for federal means-tested programs for all immigrants (Morse; Yoo 2001).

will not solve” as long as U.S. businesses’ reliance on low-wage foreign labor is left undisturbed (Chavez 2001: 253-255).

A recent study of the immigration debate in the press analyzed the different frames utilized in four newspapers’ reports about immigration during elections years (1996, 2000, 2004, and 2006); the study concluded that the ‘conflict frame’ predominated in all of the four newspapers’ coverage, and that only human interest stories seemed to present a more positive view of immigration—yet these stories were less frequent than stories quoting government officials, which focused on the political conflict around immigration reform. Moreover, ‘illegal’ was the most frequent attribute used to describe immigrants in the U.S press coverage. (Kim 2007)

European racism, European identity. In Europe, the study of immigration discourse in the press²¹⁷ has focused on asylum seekers, who represent the most significant challenge posed by immigrants to European borders—and are the European equivalent to “illegal” immigrants in the United States. Although Britain is an involuntary host to many unauthorized immigrants (primarily rejected asylum seekers who stayed after having their application was denied), and also experiences heavy (legal) immigration from Eastern Europe and attempts by foreigners to enter the country illegally—most of the movement of immigrants from poor countries into Europe takes place through asylum claims.

European press coverage of immigration is generally less ambivalent than in countries of immigration; in a literature review about the topic, Nancy Wood and Russell King found that European news have developed a language of “European racism”

²¹⁷ This section on European portrayals of immigration has been included to provide comparisons and contrasts to the American context—but also because the literature about press coverage of immigration in Europe is more abundant than in North America.

deriving from the need to “construct a “European identity,” which “inevitably involves an explicit or implicit pattern of exclusion of “the other””—those migrating from outside Western Europe, or the European Union. (King 2001: 4-9)

Studies in the Netherlands indicate that immigrants in the Dutch mainstream press generally lack visibility or suffer from a widespread negative portrayal of minorities.²¹⁸ (d'Haenan's 2001) The political repercussions of this “negative news climate” about immigration in Europe were documented in a study about ethnic relations in France, where two decades of economic anxieties had led to the rise of the *Front National* (FN)—a powerful anti-immigrant voice. Meanwhile, despite increasing immigration, minorities were still invisible in the news. There were virtually no minority reporters and broadcasters on French television. Eventually, an economic shift in the late 1990s coincided with a “moderate turn” in politics and the immigration discourse also changed—with even some conservative politicians supporting amnesty for the *sans-papiers* (undocumented immigrants). However, the study concludes that minority inclusion in news production is one of the only avenues to greatly increase the likelihood of correcting imbalances in discourse: “more balanced media coverage can help to create less negative images of minorities” and “this may also reduce the reservoir of racism and xenophobia on which extremist parties are able to draw.” (Hargreaves 2001: 32-35)

²¹⁸ Demonstrating how it is necessary to keep in mind that press coverage is diverse, has limited effects, and is only one aspect influencing public opinion, researchers in this study found no correlation between press portrayals of immigrants and local reactions to immigration: the authors hypothesized a correlation between public attitude about asylum seekers and local press coverage by focusing on one particular “event,” the institution of asylum seekers’ centers in two regions of the country. Each area had a very different public response to the centers; one embraced it, the other rejected the public project. After completing their research, the authors were surprised to find that there was no clear-cut correlation; surprisingly, the reporting on asylum seekers had been positive (focusing on the human interest in providing asylum) in both areas (d'Haenan's 2001).

In the British context, the primary immigration “events” covered in the press during the late 1990s focused on negative portrayals of immigration²¹⁹, such as: (a) asylum seekers’ hijacking of a plane at Stansted airport in order to claim mass asylum; (b) the “invasion” of the Roma from the Czech and Slovak Republics, with a focus on the “gypsy begging” issue; (c) a fascination with the “Elian Gonzalez affair” (a 6-year-old Cuban boy whose mother had perished attempting the journey from Cuba to Miami, and whose father decided to have him back on the island, against the wishes of his Cuban-American relatives in Miami); and (d) the death of 58 Chinese migrants found in the back of a truck at the port in Dover, England. For example, a national policy dispersing asylum claimants to the British countryside was criticized widely in the press, and this negativism contributed to a press coverage portraying immigrants as a “threat” to traditional British communities; media scholars argue that racial and ethnic diversity “offers a challenge to newspapers”—where local newspapers are sometimes tempted to defend their traditional readers, even when they exhibit clearly racist behavior. (Coole 2002: 839; 850-851)

Nonetheless, despite the use of more blatantly racist language to describe immigrants and their arrival in Britain, especially in the tabloid press, coverage also “offered new and important angles” on international migration: (a) many articles were rich in information, with investigative journalism about refugee claimants’ situation in

²¹⁹ In another example, an examination of the representation of refugees and asylum-seekers in the British press and news broadcasts during from 1990-1998 found that the term “asylum-seeker” had been “demoted”—by the late 1990s it was being used as a “term of abuse in the media, and those who are seeking asylum are seen as in effect asking for something to which they are not entitled.” In contrast, the term “refugee” still connoted “legitimate status” associated with fleeing conflict—for example, Kosovans were referred to as “asylum-seekers” before the war, but when the Balkan conflicts were under way, the same population became “refugees.” The study concluded that though the British press has focused much more extensively on refugees than in the past, “a decade of reporting and coverage has not significantly improved either the knowledge about or the level of analysis of the plight of refugees and asylum-seekers.” (Kaye 2001: 53; 67-68)

the country of origin, especially in relation to human trafficking or “snakehead gangs” operating from China to transport migrants to Britain; (b) the press reports incorporated positive aspects of immigration (benefits to the economy and British society), rather than being centered exclusively on negative news; (c) some specific journalists (for example, a Home Affairs correspondent for the *Guardian*) developed sophisticated arguments about international migration, pointing to some aspects well-known to sociologists of immigration: that migrants are generally motivated, entrepreneurial individuals—and that working overseas is one of the most effective ways of helping developing economies, through remittances sent back home by the exiled workers (King 2001: 4-9). Examples of different angles in the British press, even in the context of immigration coverage which is generally negative and racist, show how diversity in the press *can* work to counter stereotypes and present new perspectives on the integration of immigrants into their host society.²²⁰

Section II: News Media, Public Opinion and Public Policy

Public opinion and the creation of “reality” in the news “pseudo-environment.” Media studies research about a variety of social concerns shows that while often times “media agendas” bear “little resemblance to the historical agenda of events,” the news media “pseudo-environment” (i.e., the reality created by the ‘news of the day’ presented by major press outlets) had great influence in setting the public agenda. In American ‘social crises’ as varied as the issue of petroleum availability (in the 1970s), drug usage (in the 1980s), the environment (the

²²⁰ For a theoretical discussion of diversity in the press, see Chapter V, sections on *Deliberative Democracy* and *Marketplace of Ideas*.

1970s until the 1990s), and urban crime (during the 1990s), researchers have compared news media coverage, historical events, and public opinion—and concluded that very often “it is the media and its portrayals of the world that set the public agenda.”²²¹ (McCombs 2004: 34)

Because the public does not always experience direct interaction with the social issues of the day, they do not always form a ‘direct’ experience of their own—and rely on the news media to provide the information that will shape their opinion.²²² In his 1922 classic book on *Public Opinion*, Walter Lippman argued that in providing “windows to the vast world beyond direct experience,” the news media “determine our cognitive maps of that world.” In that sense, public opinion “responds not to the environment, but to the pseudo-environment constructed by the news media.” (McCombs 2004: 3)

The news media not only create a “pseudo-environment” that shapes readers’ views of social issues—news media coverage can also produce ‘crises’ about particular social issues. This is not to imply that the news media create social issues; rather, media coverage tends to increase awareness and public concerns over issues that are “ongoing at a relatively constant level or actually improving.” (McCombs 2004: 23) In one example, researchers describe the impact of *tabloid justice* (the high-profile and sensationalistic depiction of crime in the media) on the public perception of the American justice system—resulting in a negative perception of the criminal system that is largely based on “highly anomalous cases, presented as though they illustrate the everyday workings of the system,” presenting a “highly inaccurate picture of law and justice in the United States.” (Fox 2007: 13) Indeed, although familiarity with high-profile

²²¹ This holds true even if the news perception of reality is inaccurate, as was the case with intense news coverage of urban crime during the 1990s, when crime levels were in effect at a historic low. (McCombs 2004: 34)

²²² In effect, public opinion polls show that direct experience changes Americans’ perceptions of immigration—those Americans who interact with immigrants more closely tend to have a different outlook on immigration, focused more on personal experience (Pew 2006c, 2006b) and less on the news media “pseudo-environment.”

trial proceedings (e.g., O.J. Simpson, Scott Peterson, Martha Stewart, or Michael Jackson) has increased among Americans, “knowledge about the legal system has not clearly increased, and faith in the system has actually decreased. Although causation is extremely difficult to establish, the data from our national surveys repeatedly point toward negative effects caused by the current mode of mass media coverage of the justice system.” (Fox 2007: 201-202)

Similarly, William Gamson and Andre Modigliani studied the issue of nuclear power in both public opinion and media coverage—to gauge where the two intersected; the authors argue that “public opinion about nuclear power can be understood only by rooting it in an issue culture that is reflected and shaped by general audience media.” (Gamson 1989: 35) The press has also created ‘crises’ concerning immigration; this is discussed below in *Agenda Setting and Undocumented Immigration*.

The news media, the public and policy decisions. The news media play a significant role in the social and political processes that shape public opinion and policy agendas. Public opinion research shows that citizens’ “attention to governmental issues tracks rather closely on media coverage of these issues;” but news media coverage doesn’t just influence public opinion—it also affects the policy sphere because “media attention to an issue affects legislators’ attention, partly because members (of Congress) follow mass media like other people, and partly because media affect their constituents.” (Kingdon 2003: 57-58)

In addition, media coverage can shape public views of politics; research of media influence on public opinion points to a correlation between news coverage and voter responses (engagement or disengagement with political campaigns). News coverage of “candidates’ motivations and the electoral game” rather than on *issues* (e.g., education, health, etc.) seems to

increase voter cynicism and “fuels a disengaged and disinterested public.” These findings are particularly strong in the United States (Vreese 2002: 616, 632). Yet where the public is disengaged from policy debates (and political participation), public opinion is not always relevant in the policy sphere—in effect, “important areas of the public sphere lie beyond the grasp or interest of many citizens” partly due to “strategic communication that targets selected audiences and excludes others.” This occurs in part because of the “commercialization of media in general and news organizations in particular,” which means that news content is targeted to specific segments of the population, where its presentation and “packaging” excludes those believed to be outside of its target demographic—but also because certain policy areas lend themselves to public participation more than others due to their “emotional symbolism,” e.g., welfare, abortion, and civil rights issues. (Bennett 2001: 3-5)

In other instances, politicians and bureaucrats do not view the news media as a source of information about public opinion—rather they perceive the media as an “adversary” watchdog, rather than a source of information about public matters. In those cases those in the policy sphere may be less likely to seek news media content as a significant source of information for policy decision making (Riffe 1990). In fact, in most policy studies where politicians and bureaucrats are interviewed about their sources of information and what influences their decisions—they seldom acknowledge the media as significant. (Gimpel 1999; Kingdon 2003) Yet even in those circumstances, the news media has been found to have an indirect “guiding” effect on public opinion and policy choices. W. Philips Davison’s model of “Third-Person Effect” has demonstrated how, even in circumstances where people do not believe themselves influenced by media, they still tend to believe that others (the “third person”) are swayed by media content (Davison 1983; Matera 1999; Grossberg 2006: 370-371). For example, a study

of the 2001 Australian elections found that, even when voters did not “embrace” the media’s election campaign agenda of prominent issues (defense and immigration), voters still perceived them as important issues in the election—because they believed others would be or had been swayed in their voting intentions by the media focus on those issues. (Duck 2003: 19) Thus the “third-person effect hypothesis” explains why most people believe that others are influenced by press content, even though they believe themselves immune to influence by the media: the ubiquitous nature of the media leads most people to trust its influence, even if they do not consider themselves at risk of being persuaded by news coverage.

Another media studies model which clarifies the relationship between media, public opinion and the policy sphere is the “Spiral of Silence.” In this model, social scientist Elisabeth Noelle-Neuman argues that due to a “fear of isolation,” humans are prone to “silence” thoughts and ideas that they believe unpopular—because one of the basic mechanisms for guessing others’ opinions in contemporary society is through media messages, the media will influence people’s expression (Noelle-Neuman 1984; Grossberg 2006: 371-373). In this sense, media content establishes *boundaries* for public discourse.

Thus, although media effects are indirect, and most times imprecise and diffuse, it is well established that “media’s indirect impacts (on public policy) include affecting public opinion, which affects politicians, and magnifying events” in society through news media coverage. (Kingdon 2003: 68) The media may downplay significant events (such as famines and war in faraway nations) through lack of coverage (Rosenblatt 1996), or they may influence public perception through frames of coverage—how social and political issues are covered. Yet even those who are not exposed to the news media may be influenced by media content—in this case, entirely through indirect means. The “opinion-leader concept” model of media

studies maps this indirect influence of the media: in opinion-leader studies, many people who did not consider themselves directly influenced by the media, instead acknowledged being influenced by those they considered “opinion leaders” (both in public and private life).

However, those identified as “opinion leaders” by their peers claimed that they were influenced by media content—and thus the cycle of media influence (through peers or “opinion leaders”) reaches even those who do not perceive themselves as susceptible (Grossberg 2006: 360-362).

To conclude, while the “media report what is going on in government, by and large, rather than having an effect *on* governmental agendas,”²²³ political scientist John W. Kingdon notes that press coverage also helps to define public policy agendas; the press “affects the agenda by magnifying movements” and particular policy issues by “shaping” an issue and helping to “structure it.” Additionally, interest groups and other outsiders to government use the media to “gain attention of government officials,” and press coverage also functions as a “communicator within a policy community”—in other words, when a particular policy concern appears in the news media, it is more likely to be discussed by decision makers in Washington, D.C. (Kingdon 2003: 59-61)

Agenda setting and the policy cycle. The term “agenda setting” was first utilized in 1968 by Maxwell McCombs and Donald Shaw. (McCombs 1972) The central premise in agenda setting is that if the press covers an issue with prominence and frequency, this media coverage is likely to influence both voters and policymakers—and the agenda of solutions for policy problems. (Kingdon 2003: 58-59)

The effects of media coverage on public opinion are not instantaneous, but “relatively short-term;” research on several public issues from civil rights to pollution, drug abuse and

²²³ Emphasis in the original.

energy in the 1960s-70s indicates that “the span of time involved in the transfer of issue salience from the media agenda to the public agenda is generally in the range of four to eight weeks.” (McCombs 2004: 43-44) McCombs argues that the “mass media are teachers whose principal strategy of communication is redundancy.” The public “accumulates lessons” through periods of one to eight weeks—and those “lessons” are reflected in responses to public opinion polls concerning the “most important issues facing the nation.” (McCombs 2004: 47)

McCombs and Shaw also caution to the inherent “limits” of agenda setting: “press attention does not always lead to action by readers, viewers, or leaders. Usually more is needed, the force of some kind of group or organization to push the agenda.” Two of the most important conditions for press coverage to set the public agenda are “if the press emphasizes [the issue] long enough” and whether the public is exposed to the press coverage and interested (if the issue is concrete enough to affect readers and be perceived as a significant social issue). (Shaw 1989: 118) In effect, there is “intense competition” among social issues for a limited public agenda: “at any moment there are dozens of issues contending for public attention”, and the capability of the public agenda of most important issues is limited; at any given time, there seem to be at most two to six issues which are named as significant in public opinion surveys.²²⁴ (McCombs 2004: 38)

Moreover, when the news contributes to set the agenda for public debate, journalistic coverage doesn’t simply place particular issues in the spotlight—it also emphasizes (or provides ‘salience’ to) specific ‘attributes’ of a news story. In other words, the press ‘frames’ public issues (or news) in distinct ways, which in turn sets the agenda not only for the newsworthiness of particular issues, but on how they are

²²⁴ These numbers (two to six) were derived from the ten Gallup polls from 1997 to 2000 asking respondents what they considered the “most important problem” facing the country.

presented to the public—such that when the press frames an issue as newsworthy, it also provides a particular ‘picture’ of the issue. One of the fathers of media agenda setting research, Maxwell McCombs, notes that this ‘picture of reality’ provided by the press supplies readers with a compelling argument that the social problem is significant to them, and the salience of the issue in public opinion increases with public interest. (McCombs 2004)

Agenda setting and (undocumented) immigration. Examples in media studies literature show that news coverage about immigration is regularly framed as a ‘crisis’, which tends to alert public opinion into viewing immigration as a ‘problem’; in Germany, for example, the incorporation of Eastern Europeans into Western Germany prompted a discursive ‘picture of reality’ in the press as a national ‘crisis’, generating pessimism about Eastern integration.²²⁵ (McCombs 2004)

Concerning undocumented immigration, media studies have also concluded, unsurprisingly, that negative, ‘crisis’ portrayals of “illegal” arrivals abound; in one example, the 1999 arrival in Canada of 600 undocumented Chinese ‘boat migrants’ prompted a press ‘picture of reality’ which portrayed the issue as a national ‘crisis’; media analysts Greenberg and Hier have noted that this particular choice of coverage by the news media reflect “broader ideological resonances” of Canadians’ “collective insecurities” derived from “social change, racial integration, and contested Euro-Canadian hegemony.” The authors found that the

²²⁵ This particular example in Germany also highlights the important role of the ‘pictures’ of reality provided in particular news outlets; a study of German election news coverage during the integration of East Germany shows that readers of the *Bild* were less pessimistic than readers of other news outlets about East German integration, though they still considered it a ‘significant issue’ during that election—but their outlook was much more optimistic because that magazine, compared to other news outlets, minimized the ‘dangers’ of integration. (McCombs 2004)

construction of this ‘crisis’ about 600 undocumented immigrants in the Canadian press had consequences to policy debates in diverse areas from health to public safety—since the ‘boat crisis’ prompted a national debate about health (primarily HIV), urban crime, and other ‘risks’ posed by these ‘boat migrants’—and ultimately caused “call for tightening” Canadian immigration policy. (Hier 2002: 490, 503; see also Chow-White 2007) In Australia, news coverage of undocumented immigration has also focused on turning “boat refugees” arriving on Australian shores into a crisis which helps reaffirm national identity against the “foreign others.” (Slattery 2003; Dauvergne 2004)

It is unsurprising that studies of the press have found strong agenda-setting effects for news coverage of immigration, and undocumented immigration in particular, because some agenda-setting attributes of social issues have been found to affect the scope of press influence on public opinion—and undocumented immigration has many of these attributes. Some of these attributes include: (a) whether readers have had *direct experience* with the issue (which may either increase or decrease agenda-setting effect); (b) its *duration* (research has determined that long-term issues tend to experience less significant agenda-setting effects by the media); (c) if the issue is *concrete* or *abstract* (concrete issues have stronger agenda-setting effects on public opinion); (d) and whether it involves *dramatic events* (news stories with drama or conflict increase agenda-setting effects). (Soroka 2002: 16-19) When undocumented immigration is analyzed using the attributes listed above, the agenda-setting effect of its media coverage on public opinion (and policy) appears to be quite strong, mainly because of its *concrete* and *dramatic* nature. Most Americans can relate to concerns about costs of schooling and housing immigrants, as well as fears about losing jobs to illegal workers from Mexico. In addition, despite its long duration (the problem of undocumented immigration has received

somewhat constant media attention since the 1970s), the issue experiences continued drama through varied nuances of media coverage (e.g., border insecurity; “illegals” taking jobs from Americans; costs of providing medical care for unauthorized immigrants; costs of education for undocumented children). Since September 11th, 2001, a new degree of crisis has been added to the unauthorized immigration news narrative through links between unauthorized border-crossing and terrorism—and more recently economic woes have added further concern to the prospect of losing jobs to undocumented immigrants. And when the press doesn’t provide competing frames to this ‘crisis’ perspective about undocumented immigration, (1) the issue is likely to be perceived as important and part of the country’s political agenda and (2) readers are likely to feel threatened by undocumented immigrants, their competition for jobs and resources.

The news and minorities: social significance of news media coverage. News making is a process through which specific viewpoints are presented; historical events are articulated into particular concepts which become predominant in social discourse—and become the “reality” or official history of particular eras or events. (Grossberg 2006: 211-212) The *New York Times*’ scope of influence, for example, is such that its news reports are considered historical accounts of particular eras. (McCombs 2004; Leff 2005)

However, the U.S. press is frequently accused of bias motivated by economic gain and the aspiration to entertain rather than inform. (Herman 1988; Brimelow 1995: 6; McChesney 1999; Zelizer 2002; Hamilton 2004) Perception of bias in the press is partly linked to what media scholars describe as “misrepresentation” issues: that what is displayed in the media is *not* a trustworthy representation of reality. U.S. media production has been criticized for failing to offer readers a broad sense of their social reality and context. Instead “the media operate in

ways that promote apathy, cynicism and quiescence rather than active citizenship and participation.” (Gamson 1992: 391)

One example of misrepresentation is the lack of visibility of Hispanics in the U.S. press; Latinos constitute almost 15 percent of the U.S. population (Pew 2005a), yet a recent nationwide study showed that as recently as 2004 less than 1 percent of the national television news coverage focused on Latinos. The coverage was incomplete and biased: more than a third of this scant news coverage emphasized the same issue: immigration. In contrast, there were very few news stories on Latino business, culture, or Latino citizens' concerns. Moreover, about half of these immigration stories did not include interviews *with* Latinos, despite reporting about them. In fact, most of them did not include any interview at all—the news stories were composed of declarations and announcements, and virtually no debate about immigration. (Lehrman 2005)

In 1998 a meta-analysis of news media content analyses (including local and cable television, newspapers and radio, as well as national television networks) concluded that while the press has generally increased their representation of both African- and Hispanic Americans since the 1970s, these depictions are largely limited and inaccurate. Hispanics were typecast as athletes and entertainers. Both groups (Hispanics and blacks) appeared very infrequently in hard news (politics, business, health, education) (Greenberg 1998: 17).

There are numerous recent examples of xenophobic depictions in the American press (Dijk 1988: 137; Simon 1993: 244-246; Greenberg 1998; Hasian 1998; Lind 1998; Chavez 2001: 32-33; Lehrman 2005); yet racist stereotypes represent “historical contexts” and mirror social structures of the time. (Bobo 1997: 7-8; Lind 1998: 157) Discourse scholar Teun van Dijk has described current racist discourse in the news media as “new racism” that is “indirect

and subtle,” constituted through a nuanced “symbolism” that limits representations of racial groups to particular stereotypes of dependency and inferiority. (Dijk 2000: 33-34) In other words, xenophobic discourse today is generally more ambivalent about the legitimacy of minority groups than openly racist.

Highly stereotyped news media portrayal of immigrants, which emphasizes conflict rather than commonalities between different ethnic and racial groups, has been shown to affect social perceptions of newcomers. (Boomgaarden 2006) As a result, immigrants are more likely to feel excluded and ostracized, rather than welcomed: “Host-country media constructions of migrants will be critical in influencing the type of reception they are accorded, and hence will condition migrants’ eventual experience of inclusion or exclusion.” (King 2001: 2)

Common sense and communication. One of the primary reasons that press discourse has powerful agenda-setting effects on social life is that it is repetitive; recurring discourse has the power to form narratives that become ‘common sense.’ For example, an analysis of “naturally occurring talk” (in other words, everyday conversation) among residents of Vienna finds that everyday narratives about immigrants reinforce views of foreigners as “poor” and having a tendency to “deviate” from socially expected behavior. The Viennese reaffirm through daily conversations with neighbors and co-workers their perception that immigrants threaten prosperity (due to their “poor” and “deviant” status), and are therefore less entitled to equal rights. The researcher, Emo Gostbachner, claims that this public gossip about “foreigners” illustrates how racism is disseminated in “natural” language; in fact, “xenophobic discourse” that is “normalized” into daily discourse has more discriminatory consequences than openly prejudiced slander—since it can “sneak under the threshold of awareness” and acquire the

powerful status of “common sense.” (Gotsbachner 2001: 750-753) Common sense beliefs, in turn, often find their way into news production—completing the cycle of prejudice when “cultural and political assumptions are translated into the routine production” of news. (Wolfsfeld 2000: 129)

Press discourse about immigration is fundamental because it creates, confirms and reifies latent prejudices. Media and discourse scholar Norman Fairclough reminds us that “all forms of fellowship, community and solidarity depend upon meanings which are shared and can be taken as given, and no form of social communication or interaction is conceivable without some such ‘common ground’. On the other hand, the capacity to exercise social power, domination and hegemony includes the capacity to shape to some significant degree the nature and content of this ‘common ground’, which makes implicitness and assumptions an important issue with respect to ideology.” (Fairclough 2003: 55)

News coverage of immigrants is significant to the immigration policy agenda because press coverage delineates the boundaries of possible solutions—since it places particular problems on the agenda; if the problem is the border, then the ‘border crisis’ needs to be fixed. If the problem is the cost of immigration to American taxpayers and immigrants taking away jobs from American workers, then the implication is that public resources should be dedicated to devising solutions for that issue. The principal focus of immigration policy steers the debate toward a priority of sovereignty and national identity and the rights of American citizens—which obviates the need for a human rights narrative concerning the undocumented population. Unless violations of labor standards are on the public and policy agenda, the case for ensuring equal labor rights and standards for undocumented workers in the United States becomes

improbable—there is no policy solution without a policy problem. In the situation of the unauthorized foreigner, the issue is further complicated by the fact that these “illegal” residents are at fault when they work. Lack of documentation precludes the foreign born from residing, studying or working in the host country. Yet the primary reason most undocumented immigrants confront their fear of deportation is to get a job—and secure higher wages than in their country of origin. If the immigrant is the embodiment of the “other,” of that which does not belong—then the undocumented, the unauthorized foreigner is the pinnacle of this status.

Part II

Chapter V: Methods: Seamstresses and Tomato Pickers Speak Out: Case Studies on Undocumented Immigrants' Labor Rights and the Press

Research Design. This dissertation explores how the national debate about violations of labor standards in immigrant industries is reflected and constructed in the daily press. It is specifically concerned with discourse analysis (i.e., the newspaper text).²²⁶

The empirical research in this project explores the role of news reports in creating and maintaining boundaries to the discourse about unauthorized immigration, specifically in what relates to a particular social issue: the corrosion of labor standards in *migrant industries* (i.e., those employing large numbers of undocumented immigrants). The research on unauthorized workers' labor rights examines the national and regional mainstream press coverage of two labor mobilization campaigns:

- (1) The *Coalition of Immokalee Workers' Taco Bell campaign* (seeking higher wages and better working conditions for tomato pickers in Immokalee, Florida);
- (2) The *National Mobilization Against Sweatshops and the Chinese Workers and Staff Association Donna Karan New York campaign* (seeking overtime pay and better working conditions for garment workers in Manhattan, New York).

Framework of theoretical assumptions and empirical grounding in research design. The empirical analysis in this project focuses on undocumented immigrants' economic and

²²⁶ Institutional analysis of newspapers' ownership and advertising revenue, as well as reporters and news writers' intentions, albeit a valid form of analysis, are not the focus of concern here. Reporters and newspapers were not interviewed or contacted for this research project. See Barbie Zelizer's description of the different types of journalism analyses, below.

social rights in the workplace by looking at *events*²²⁷ involving the violations of labor standards in American workplaces. The objective is to examine the news media discourse of the labor rights and workplace standards enjoyed by foreign migrants—as an example of their *inclusion* or *exclusion* from American society and its entitlements. (Minow 1990; Benhabib 2004; Blau 2005; Dauvergne 2005) In this study, the social entitlements being examined are labor standards such as minimum wage, overtime pay, leisure time, etc.

The choice to examine newspaper coverage²²⁸ derives from an interest in the specific role of the news media as a public sphere of political debate in contemporary societies. (Habermas 1989) This analysis of news media texts will be based on the normative assumption that mediated communication is the central public sphere and discursive arena of debate in contemporary post-industrial societies—and as such media industries perform a vital role in democratic societies. (Fraser 1992) The concepts of *deliberative democracy* and *marketplace of ideas* form the theoretical basis for the press analysis, and are explained below.

This study assumes that these public debates are ridden with institutional, racial, and class interests and thus are a public, if covert, struggle for control of economic, social and cultural resources. (Fraser 1992; Garnham 1992)

The reasons for focusing on this specific population (unauthorized immigrants) are: **(1)** unauthorized immigrants correspond to about 30 percent of immigrants currently in the U.S., but since 1995 the unauthorized population has amounted to more than half of the yearly increase in the immigrant population—700,000 new unauthorized residents every

²²⁷ I define “events” as situations that merit press coverage according to traditional media models of newsworthiness, where “conflict” or “deviance” from the norm or the law should merit press coverage (Shoemaker 2006). See the section on *Case studies*, below, for more information on the choice of events.

²²⁸ For an explanation of why newspapers were the chosen type of media to be analyzed in this research, see the section below on *Newspapers in the public sphere of debate*.

year between 2000 and 2004, compared to a yearly average of 610,000 new legal foreign born in the country (Bean 1990; Fix 1994; CBO 2005; Passel 2005b: 3-6, 2006); **(2)** unauthorized immigration has been perceived as the most significant “problem” in U.S. immigration policy since the 1970s (Calavita 1994; Martin 1994; Gimpel 1999; Chavez 2001; Durand 2001; Massey 2002; Johnson 2004; Cornelius 2005); **(3)** labor standards (e.g., minimum wage, overtime pay) are allegedly being violated in various “migrant industries” (those which employ large numbers of unauthorized immigrants) (Passel 2005b) such as meatpacking, garment sewing, agriculture, janitorial and restaurant services (Lewis 1979; Kwong 1997b; CESR 1999; Kwong 2001; Nessel 2001; Massey 2002; Schlosser 2003; Bacon 2003; Compa 2004; Cranford 2005; Mailman 2005; Ness 2005; Barenberg 2007; Gonnerman 2007; Smith 2007); and, finally, **(4)** high international migration levels have prompted human rights scholars and organizations to study and monitor immigrants’ rights—and unauthorized workers, given their irregular immigration status, are of significant concern within the immigrant population. (Minow 1990; Baubock 1994; Jacobson 1996; Cholewinski 1997; HRW 1998b, 1998a; Ghosh 2000a; Benhabib 2004; Dauvergne 2004; Calavita 2005; HRW 2006) Because unauthorized immigrants are deemed to be infringing on national boundaries and breaking the law, the notion of “granting rights” to undocumented immigrants is more divisive than in the case of legal immigrants—as this comment by Chicano studies and legal scholar Kevin Johnson illustrates: “Illegal alien is a pejorative term that implies criminality and suggests that punishment, not legal protection, under the law is due.” (Johnson 2004: 156)

However, as was discussed in previous chapters of this dissertation, unauthorized migration is a worldwide phenomenon which is arguably an effect of lax and ineffective

immigration policies. In that sense, undocumented immigrants are not only perpetrators of immigration transgressions, but are also part of an international social network of labor which “pushes” them to work abroad in countries which offer the “pull” of lucrative work opportunities. As was also discussed in the introduction, this phenomenon is not unique to the United States but is also significant in many regions of the world—in effect, various analysts believe that international migration (both regular and irregular) is a growing trend which may oblige governments to design new regulations at the national, bilateral and/or international levels. (Cornelius 1994; Jacobson 1996; Bhagwati 1998; Castles 2000; Ghosh 2000a; Durand 2001; Reyneri 2001; Jordan 2002; Massey 2002; Papademetriou 2005) Hence the labor rights of unauthorized immigrant workers are examined here based on the assumption that, as outlined above, irregular international migration is a consequence of various structural economic, political and social factors—and *not* simply as an act of “illegal” agency by the undocumented immigrant. Hence this study does not focus on the workers’ immigration status; instead unauthorized immigrants’ attainment of equal labor standards is understood here as a measurement of their social inclusion into the host country, as well as considering the consequences of unauthorized workers’ exclusion from labor protections to the basic social rights of all workers in the United States. (Faist 1996; Benhabib 2004; Johnson 2004; Massey 2004; Blau 2005; Calavita 2005; Dauvergne 2005; Smith 2007)

Deliberative democracy: Habermas’ public sphere of debate. The concept of a *public sphere* was developed by Jurgen Habermas and is utilized by scholars in various fields as central to the model of deliberative democracy. (Habermas 1984; Fairclough 1989;

Habermas 1989; Calhoun 1992; Benhabib 2002; Cottle 2003) The primary function of the public sphere is the “people’s public use of their reason” for “political confrontation” to question the rules of public governance. The public sphere of debate, in Habermas’ model, was a private endeavor by citizens engaging with other citizens in debate—and this culture of political debate by private citizens originated the concept of “public opinion” and the “specific idea of a public sphere as an element in the political realm.” (Habermas 1989: 15, 27, 29, 36-17, 96)

However, due to the commercial nature of press and advertising, public debate that occurs through the media is no longer “rational” according to Habermas’ model; it is merely a struggle between diverse private interests. Today’s *mediated* sphere of debate became “directly subject to the cycle of production and consumption” and the “pseudo-public or sham-private world of culture consumption.” To Habermas, a private public sphere “possessed instead a “political” character in the Greek sense of being emancipated from the restraints of survival requirements.” (Habermas 1989: 133-137, 159-160) Because of its capitalist nature, where the production and consumption of information takes place within the “market of objects,” the ability for rational debate was lost to the economics of private interests. For Habermas, the “journalism of private men” engaging in rational debate has been transformed into a “platform for advertising.” (Habermas 1989: 181)

Despite Habermas’ visceral discomfort with the imperfect nature of a capitalist public sphere (Habermas 1984)—press and democracy scholars still view the model of deliberative democracy for its “emancipatory potential” despite its contradictions. (Calhoun 1992: 2; Cottle 2003) Political science and ethics scholar Seyla Benhabib has pointed to the inherent merit of deliberation, to the point where public debate is the basis of democratic legitimacy. (Benhabib

2002: 105) Thus Habermas' concept of the *public sphere*, even if idealized and critical of the mediated public sphere, is still widely considered a suitable model for studies of media and democracy. (Calhoun 1992; Fraser 1992) Ultimately, "access to information and opportunity for voice are instrumental to democratic deliberation" among conflicting "factions" in society (economic interests, citizens associations, and government (Lloyd 2006: 281)—even if that debate is not *rational* (as Habermas' defined it: detached from public interests).

Marketplace of ideas. An effective model to examine the significance of deliberation in contemporary public discourse is the *marketplace of ideas*. Although related to Habermas' *public sphere*, the marketplace metaphor derives specifically from the context of a capitalist, commercially-produced media. A synthesis of the marketplace allegory and Habermas' public sphere could be stated as: the means to achieve a public sphere that enriches democratic debate (and better approximates the "rational, ideal public sphere") is to *give voice to a wide diversity of viewpoints in an open "marketplace" of deliberation.*²²⁹

The concept of the marketplace originated in both economics and democratic theory. It is first seen in the work of John Milton in the 17th century, although he did not use the specific "marketplace" terminology. In fact, his primary focus was individual expression. Milton believed that "the central principles were those of truth being achieved via the free exchange of ideas, and the importance of individual rights of self-expression and freedom of thought."

(Napoli 1999: 153) Milton's focus was transformed in the 19th century; John Stuart Mill is

²²⁹ It is worth noting that a bolder *marketplace of ideas* would not only promote deliberative democracy, but it would also counter perceptions that the press is biased. There is considerable lack of faith in the mainstream press; only 54 percent of readers believe what they read in the daily newspapers. This lack of faith appears to be linked to a dull marketplace of opinions in the U.S. news media: 60 percent of Americans perceive news organizations as politically biased, and 72 percent believe that news media tend to favor one side, instead of giving similar and balanced treatment to all viewpoints of an argument. (Online Newspaper Readership Countering Print Losses: 7).

credited with conceptualizing the “marketplace of ideas” as a social good and an expression of citizens’ rights. In the 20th century, Meiklejohn linked the concept to First Amendment Theory and to deliberation in a democratic society; he claimed that the flow of information from diverse sources translated into effective policy making. (Voakes 1996; Napoli 1999)

The “marketplace” metaphor has been widely employed in the context of media regulation by the Federal Communication Commission (FCC). (Napoli 1999; Taylor Jackson 2004) It is also predominantly applied in the context of content diversity. The assumption is that diverse sources of information or opinion (a variety of “voices” in the news) will lead to a range of viewpoints representing most social groups and their countless political interests. (Page 1996; Voakes 1996; Hamilton 2004: 30-31) Maxwell McCombs has argued that “at the societal level, even more important that the relative impact of newspapers and television is the sheer diversity of news sources available to the public. Diversity in the public agenda—measured by the numbers of different problems mentioned by people when asked to name the most important problem facing the local community or the nation—is significantly related to the number of newspaper, radio and television voices in the community.” (McCombs 2004: 51)

While an ideal “marketplace of ideas” may pave the way for deliberative democracy, this outcome is not ensured by the market; there are “market failures.” According to political scientist Benjamin Page, there are five principal failures of the market of ideas. First, that commercial, mainstream news is produced exclusively by a fraction of the population, *professional communicators* who tend to emphasize the authoritative “voices” of public officials as sources of news, as well as frequently printing and airing politicians' editorials and commentary. The second and third failures are the *slanting of editorials* and the *slanting of news* by media organizations, who have their own views and interests, e.g., the Wall Street

Journal is published by the financial and business communities, and tends to reflect those interests both in news reports and editorials. The fourth market failure is also related to the nature of media organizations as independent, purposeful actors in society – sometimes editors and publishers actively seek certain outcomes, and *place and select news* stories and editorials to highlight their own opinions. Finally, *professional communicators* are sometimes “out of touch” with audiences and readers, and may “take public deliberation in directions that are uncongenial and unhelpful to the citizenry as a whole.” (Page 1996: 118) To set the conditions for a deliberative democracy, there must be “sufficient public-oriented *competition* and *diversity* among the ideas and information that specialists produce and distribute to the public.”²³⁰ (Page 1996: 123)

Most of the suggested remedies for these market failures lie with the news consumer: media education and awareness, and actively seeking out diversity in news. Yet some suggestions also include the production of (alternative sources of) information by nonprofits, as well as direct distribution of data to readers and viewers. (Hamilton 2004: 263) This occurs frequently on the internet; most interest groups have sophisticated websites and electronic mailing lists to reach audiences directly; without the mediation of the mainstream press. While alternative communication channels such as the internet expands the avenues for distribution of ideas and enhances debate in the public sphere, they do not absolve the professional, commercial press from providing diverse perspectives to audiences.

A note on the capitalist press: does the bottom line restrict media content? Criticism about the capitalist nature of news media in the U.S. has become a significant concern in recent American media scholarship. In this country, most of the media industry is privately owned and

²³⁰ Emphasis in the original.

operated—and funded by advertising. American media outlets are “driven primarily by private and commercial interests, operating under relatively limited federal government regulation.” Moreover, increased competition from *new media* (primarily cable television and the internet) has translated into greater efforts by the newspaper and television network industries to maximize profits through consolidation of ownership. This drive toward media consolidation has “caused great debate over whether public access and viewpoints will be too limited.” (Skewes 2006: 309-310) Hence any analysis of media content in the U.S. press should discuss the media literature concerning ownership—and whether ownership restricts diversity in press content.

Many scholars claim that the influence of business imperatives (such as the focus on profits and constraints on content imposed by advertising) suppresses free debate and compromises the ability of the press to provide unbiased information and opinion, while excessive concentration of ownership in media industries lessens competition and further restrains the flow of debate. (Herman 1988; McChesney 1999; Newman 2005; Carroll 2006; Lloyd 2006)

It is interesting to note that public opinion research indicates that the population is also reasonably concerned about the influence of capitalism in media production: the majority of Americans agree that “news organizations, when deciding what stories to report, care more about attracting the biggest audience rather than about keeping the public informed.” These opinions are widespread and not simply an expression of partisanship, as they cross party lines: 90 percent of those who identify themselves as “conservative Republicans” believe that the press is commercially motivated, as well as 67 percent of “liberal Democrats.” A recent report by the Pew Research Center for The People and The Press comments that “the public has long

been two-minded in its views of the news media—faulting the press in a variety of ways, while still valuing the news and appreciating the product of news outlets.” (Pew 2005b: 1)

Media scholars call for placing the “responsibility for citizen deliberation in the hands of the federal government” (Lloyd 2006: 282) through designated “media spaces for public activity” in non-commercial media, e.g. public cable television. (Aufderheide 1992) Of course, most scholars, while calling for some public ownership in media, acknowledge the difficulty of accomplishing such a task in the American market—which has been traditionally opposed to government-owned media. The argument is that any society looking to build a true *marketplace of ideas* should encourage the production of divergent viewpoints through public and private institutions (Benson 2004: 286)—even if there are doubts as to whether concentration of ownership in media industries does explain all the troublesome trends in media content, opening up and facilitating competition through public institutions is a likely (even if not unequivocally effective) antidote to the highly concentrated pattern of ownership. The exclusive focus on concentration of ownership falls short of explaining all the biases and shortcomings of today’s commercial media. The view that capitalism precludes the existence of rational debate is overly restrictive vis-à-vis the ethics-based model of deliberative democracy, i.e., the view that despite inefficiencies, however imperfect, deliberation is *always* necessary in democratic societies. (Benhabib 2002: 105, 2004: 12-16)

Capitalism and news media content. Media scholars have also strived to map out the connections between the structure of media industries and media content—and proposed models to track the effects of capitalism on news production. Economist Edward S. Herman (with Noam Chomsky) has devised a “propaganda model” to describe the five “filters” through

which corporate ownership shape media content. First is the *size, ownership and profit orientation* of media organizations, which in essence determine all the other filters in news production. Second, media organizations' dependence on *advertising revenues* requires them to perceive the advertisers as their main client—rather than readers or viewers—affecting the sort of content and news storytelling that is deemed adequate (i.e., news stories have to not only sell newspapers, but sell them to the demographic populations targeted by the advertisers). Third, “the mass media are drawn into a symbiotic relationship with powerful *sources of information* by economic necessity and reciprocity of interest;” because journalists need a “steady, reliable flow of the raw material of news,” they tend to return to the same sources for information: city hall, police department, government officials, business corporations, trade groups, bureaucracies, and universities. These sources are considered “credible by virtue of their status and prestige,” and thus can be “portrayed as presumptively accurate”—less official sources (e.g., smaller organizations) require reporters to do “careful checking and costly research”—which is less desirable given the profit orientation of media organizations. Fourth, the negative responses or *flak* from critics of news coverage contribute to shape the content that is deemed suitable by media corporations—“if flak is produced on a large scale, or by individuals or groups with substantial resources, it can be both uncomfortable and costly.” These consequences of “flak” from powerful organizations may include political or legal actions, withdrawal of previously available (and influential) sources of information, and/or withdrawal of advertisers. Finally, Herman argues that “anticommunism” functions as a “control mechanism” in American society by “helping to mobilize the populace against an enemy”—a system of ideology opposed to capitalism. This “anticommunism” further legitimizes the profit

orientation of large media corporations, and reifies the corporate nature of U.S. media.

(Herman 1999: 23-28)

Harvard University Government and Press scholar Thomas E. Patterson also argues that competition among news providers in the U.S. has led to a news production model which prioritizes *conflict* as entertainment, rather than *information* about social issues. With the advent of television, specifically cable networks, newspapers lost readership to TV viewers, but also—in order to compete—they have been compelled to adapt to a new mode of telling news stories. “Although cable has fostered a core of “news junkies” who immerse themselves in CNN and C-SPAN, its more significant effect has been to contribute to a steep decline in the overall size of the news audience” because of the diversity and appeal of entertainment content available to viewers. The result is increased competition among news providers, and the need to conform to entertainment standards in telling news: “Television newscasts now include more human-interest stories, shorter sound bites, and more dramatic visuals, while both television and newspaper stories have become shorter, more conflict-ridden, and more storylike.” This tendency has also increased homogeneity, despite the vast number of news providers in the United States: “each day, newspapers and broadcast stations from coast to coast are likely to highlight the same national news stories and to interpret them in similar ways.” U.S. news developed into a predictable pattern that focuses on *conflict* to add drama to the storytelling—which “profoundly affect political coverage, mainly in ways that reduce the media’s capacity as instruments of public information and debate.” The most significant consequence of this storytelling mode is that political (and policy) coverage—not only on TV, but also in newspapers—has become a “game” focused on clashes among politicians and their views,

rather than an attempt to report, explain to readers and elaborate on pressing social issues.
(Patterson 2000: 247-248, 250, 253)

Hence the “need to portray politics as a series of exciting episodes is clearly related to the increasingly thin line between entertainment and news” (Wolfsfeld 2001: 248; Skewes 2006) and this trend has fueled a drive toward *info-tainment* which has affected news production beyond politics and encompassing several social problems (including immigration) which are either ignored due to a lack of entertainment value or are framed to conform to Patterson’s *storytelling* model while obscuring structural issues at play. Two examples highlight the significance of this personality-driven *storytelling* trend in news reporting: (1) an extensive content analysis of television news coverage of homelessness from 1980-1993 discovered that “the suffering of the homeless was sanitized out” of media content—the homeless issue received sporadic coverage (on a seasonal basis during the holidays or extremely cold weather) and the storytelling focused on celebrating “individual acts of volunteer efforts” rather than the “systemic, institutional, or historic causes” or solutions for homelessness. The author concluded that “the focus on the personalities” of the volunteers eclipses the structural social problems behind homelessness—hence, in this case, the news coverage helps very little with bringing the issue to the public agenda as a social issue, but rather masks it under an uplifting news account about the volunteers’ personality (Shields 2001); (2) during electoral campaigns when news coverage focuses on political “games” and politicians’ personalities and strategies rather than social issues, this news reporting style appears to affect public engagement in politics, increasing cynicism among voters—and perhaps contributing to a reduction in voter turnout, according to studies done in America (Vreese 2002) and in Germany (Semetko 2003).

Of course, while the examples above demonstrate the possible effects of concentration of ownership on news media storytelling, blaming ownership for alarming trends in content may be overly simplistic and mask other developments in the media industries. Journalism professor and author Todd Gitlin proposes that researchers ask “under what circumstances are commercial systems conducive to more, and less, vigorous debate? Under what circumstances does competition lead to a race toward sameness?” Moreover, it is not clear whether the segmented cable TV market identified by Patterson *always* contributes to a focus on entertainment culture; in Gitlin’s words: “When do proliferating niche markets undermine the least-common-denominator principle, and when do they harden into merely supplementary niches?” (Gitlin 2004: 309) For the scope of this research project, however, what’s significant is the fact that the entertainment model has become central to news media production—not only on television, but also affecting newspapers’ styles of storytelling.

Research question and hypotheses. The question in this study concerns the *narrative* or *discourse* of the American mainstream press about this particular social problem: the violation of labor rights in migrant industries. The aim of this research question (“what is the press discourse about undocumented workers’ labor rights in their news coverage of the Taco Bell and DKNY campaigns?”) is to explore the *state* of press discourse concerning the social problem (Flick 2002: 50) of undocumented immigrants’ labor rights in American workplaces and its consequences to the general discourse about immigration in the United States. Table 1, below, describes the primary hypotheses and the reasoning

utilized in this analysis of press discourse about the undocumented problem in U.S. immigration.

Table 1: Hypotheses and reasoning

Hypothesis	Reasoning
<p>(1) Press coverage of these two instances of alleged violation of domestic labor standards in “migrant industries” (Taco Bell and DKNY) will be minimal²³¹—and insignificant compared to the social magnitude of the problem of deterioration of labor standards in the United States.²³²</p>	<p>(a) Evidence of scant news coverage of disadvantaged populations²³³ (Shields 2001; Yoo 2001); and (b) the press relies on government and business as sources of information (Herman 1999: 25-26), thus press coverage is unlikely to focus on campaigns by organizations representing low-wage immigrant workers.²³⁴</p>

²³¹ This first hypothesis was confirmed by the selection of the samples for analysis, at least in relation to the national press—see below in the section on *Sampling within selected case studies*. During the public campaigns in the two case studies, national newspapers all but ignored the issue.

²³² Though the two case studies are not necessarily *representative* of general press coverage, and there is thus no attempt to generalize from these instances, nonetheless they are an indication of the response of the national and regional press to the issue of unauthorized workers’ labor rights, given the newsworthiness of the two case studies selected (see description of case studies below).

²³³ Note: this is not to say that disadvantaged populations such as low-wage unauthorized immigrants do not receive any press coverage—but that the press coverage focusing on undocumented immigrants or asylum claimants does not generally concern the problems this population may experience in the host society (e.g., the violations of labor standards in immigrant-employing industries) but rather the problems they may pose to the native-born (d’Haenan’s 2001; Kaye 2001; Coole 2002; Hier 2002; Flores 2003; Dauvergne 2004; Calavita 2005; Van Gorp 2005).

²³⁴ Disadvantaged minorities are infrequent sources of information for the news media (Herman 1999; Lehrman 2005) and their perspectives of social problems are often disregarded. Even where news coverage does occur, I expect that the fact that this population of unauthorized workers is breaking immigration regulations will offer a

(2) Press coverage of DKNY and Taco Bell will present the social problem (of the deterioration of labor standards for low-wage workers) as *storytelling* that focuses on conflict and deviance as political entertainment. The *storytelling* model (Patterson 2000), which claims that journalists do not cover social issues but rather “frame” social news (Pan 2003) as “political spectacle” (Bennett 2001) to entertain readers by focusing on conflict and “deviance.” (Lemish 2000; Skewes 2006)

(3) News coverage will *not* approach the labor rights of unauthorized workers as rights *per se*, but rather will avoid placing “illegal” workers in a position of entitlement to American labor protections. The literature which documents the hesitation in the U.S. and Europe to welcome the rights of foreign aliens working in domestic labor markets, particularly those who are unauthorized. (Baubock 1994; Beiner 2003; Benhabib 2004; Calavita 2005; Dauvergne 2005)

strong competing frame—and obfuscate their legal claims concerning labor standards violations. A study of the Hebrew press coverage of annual Land Day protests (begun after the killing of Arab citizens over the Israeli government’s confiscation of land) is a good example of this dynamic. The study uncovered that the Arab minority voices are utterly silenced in the news storytelling of Land Day in the Hebrew press—and the event is almost exclusively framed from the perspective of Israeli safety, such that stories of “law and order, threat and reassurance” abound and “claims about injustice and inequality are irrelevant.” Despite the fact that Land Day protests have been mostly peaceful across the 21 years of news coverage researched in the study, the authors conclude that “law and order frames make it difficult for challengers to use the news media as a genuine means of communication” to present the claims of “disadvantaged challengers” (Wolfsfeld 2000: 129).

Discourse analysis: qualitative methodology. Research concerning the role of news in society has been developed in various areas of academic inquiry: sociology, history, language studies, political science and cultural analysis. Journalism analyses typically focus on particular issues within news production, which Barbie Zelizer has categorized into five general topics: the journalism profession; media institutions; the news text; the news people; and journalism as a set of practices. This research project focuses on the news text through discourse analysis and incorporate concepts of journalism research from sociology²³⁵ and political science²³⁶. The effort to include a social science narrative into the analysis of news is an attempt to “establish the broader environment” in which news production takes place—such that news can be understood as an institution within its social context (Zelizer 2004: 32-43; 60-62; 72-78; 145; 173 212-215).

Textual analyses of news generally utilize one of the following methods: (a) content analysis, where researchers establish categories for news content and count the number of instances in the sampled texts that fall into the category; (b) narrative analysis, which examines the literary structure, functions, and genres of the text; and (c) discourse analysis, which examines how the language in news texts creates specific meanings about the events being depicted. (Dijk 1989; Fairclough 2001; Wodak 2005; Silverman 2006) Discourse analysis entails detailed examination of small samples of texts; the attention to the wording and structure of texts derives from the principle that language is akin to action, and that texts are an influential social act in determining a society’s beliefs. (Austin

²³⁵ The notion that press coverage is socially significant because the news agenda influences the public agenda (McCombs 1972, 1993; McCombs 2004).

²³⁶ The public sphere model, which considers the news media central to contemporary political debate (Habermas 1989; Calhoun 1992; Eder 2001).

1962: 12) The idea is that news texts, which several readers are exposed to, are an important “social act” and should be explored in detail.

This project utilizes *Critical Discourse Analysis* (hereafter CDA), a variety of discourse analysis commonly employed in news studies (Downing 1985; Hartley 1985; Dijk 1988, 2000; Wodak 2001). “Largely grounded in a European tradition of scholarship, CDA has become a popular and firmly established programmatic approach to language in society.” (Blommaert 2005: 5-6)

CDA explores the “hidden power” of language to establish meanings and boundaries on social discourse, as well as the relationship between the news narrative and the social context. (Fairclough 1989: 49-76) It is a useful tool for this research because it analyzes how the use of language helps to create and/or maintain social beliefs and structures (e.g., the inclusion/exclusion of unauthorized immigrants in U.S. society). CDA draws from a recent tendency in qualitative research to “shift towards theories and narratives that fit specific, delimited, local, historical situations and problems.” (Flick 2002: 10) It is deemed “groundbreaking” in “establishing the legitimacy of a linguistically oriented discourse analysis firmly anchored in social reality” and a “deep interest in actual problems and forms of inequalities in societies.” (Blommaert 2005: 6) As a critical approach to study of texts, CDA “often invoke(s) a call to social responsibility” and the role of research in uncovering social exclusion. CDA is thus “upfront” about its “political commitment” and conception of language as a reflection of discrimination, power and control. (Bednarek 2006: 11)

CDA scholar Ruth Wodak describes it as a method that views “language as social practice” where “the context of language” is crucial to social and political developments.

(Wodak 2001: 1-2) CDA's focus on the social context in which news texts are created allows for the incorporation of the normative concerns in this study about the role of media in the democratic public sphere. CDA has been successfully employed to analyze discourse on various social and political issues: the concepts of "globalization" (Fairclough 2003) and "global economy" (Fairclough 2001); the "new sociology of capitalism" (Fairclough 2005); racism in the press (Dijk 1989, 2000); and political narratives about the European Convention and European identity (Wodak 2005).

Fairclough's concept of the "social problem." Among the various types of CDA frequently utilized to analyze media discourse, Norman Fairclough's CDA (henceforth FCDA) is unique in its focus on a *social problem*. FCDA focuses directly on the language in press coverage as it relates to specific social issues. FCDA is well suited for this project because:

1. FCDA's model of the *social problem* "integrates social theory in the analysis of discourse." (Blommaert 2005: 6) It lends itself to interdisciplinary research where the issue being examined was identified in the course of the academic literature review and prior to the empirical analysis of the press discourse. FCDA methodology allows the social problem (violations of unauthorized workers' labor rights) to remain as the central focus in the exploration of press discourse. Thus FCDA provides unique tools for the incorporation of discourse studies into social and policy analyses (Fairclough 2005).

2. FCDA provides another significant advantage to other types of CDA: the focus on a *social problem* builds more “dialogue” or “prisms”²³⁷ (Saukko 2003: 25) into the research design because it is less focused on textual language and richer in social analysis. Press scholar Barbie Zelizer has emphasized the importance of enriching discourse analyses of news through interdisciplinary connections with social science literature. (Zelizer 2004: 77-78; 142-144; 158-164; 214)²³⁸
3. FCDA is also suitable for this project because it is compatible with the concept of the *public sphere*, which provides normative guidance to this project. FCDA’s notion of *obstacles* to the resolution of social problems,²³⁹ (Fairclough 2001: 125) for example, is consistent with the public sphere paradigm, which claims that the press is central to resolve barriers to social and political outcomes in deliberative democracies (Calhoun 1992) and achieve consensus (Benhabib 2002).
4. Another benefit of Fairclough’s model is that it offers clearly defined categories and steps for discourse analysis—thus providing more detailed guidance than other methods of discourse analysis, which are often limited by lack of precision (Flick 2002: 201). Linguist Jan Blommaert calls FCDA the “most elaborate and ambitious attempt toward theorizing the CDA programme.” (Blommaert 2005: 29)

²³⁷ “Dialogues” or “prisms” are similar concepts to triangulation (i.e., combining “different kinds of material or methods to see whether they corroborate one another” and improve validity of findings) utilized in critical studies. Whereas the positivist understanding of research is to “reflect reality” and find “truth,” critical studies view research as “constructing reality” and thus seek to diversify research perspectives and literature to “convey multiple realities”—hence the goal of increasing “dialogue” or expanding “prisms” is the equivalent of triangulation (Saukko 2003: 23-25).

²³⁸ The idea here is to heed Barbie Zelizer’s call for an interdisciplinary “conversation” between the different approaches to the study of journalism in the social sciences and humanities (Zelizer 2004: 214). Though Zelizer recognizes the “centrality” of language studies to news analysis, she claims that “other domains of inquiry would take these notions beyond language and apply them to a broader repertoire” of journalism studies in the social sciences (Zelizer 2004: 142; 144).

²³⁹ This concept is explained in the section on *Research Design*.

5. Another reason that this research project utilizes FCDA is that its *critical* orientation welcomes the exploration of the social dimensions of discourse, such as the effects of prominent media coverage on the ability of social issues to become part of the policy agenda. News coverage can not only affect public perception of the importance of social problems in the public agenda (which is the central premise in agenda setting), but can also exert a *priming* effect on issues—whereby media emphases on particular “attributes, descriptions, and “frames” of issues” can influence public sentiment and communicate to readers not only *what to think about*, but also *how to perceive* particular social issues (McCombs 2004; Grossberg 2006: 367). Fairclough’s analysis situates the examination of the texts within the broader concepts of framing and agenda setting, asking which aspects of the issue are addressed in the text samples, and how the language choices in the text frames the issue. Hence FCDA provides a suitable blueprint for the exploration of the possible agenda-setting and framing effects of newspaper texts.

Newspapers in the public sphere of debate. This research project analyzes a traditional media outlet: the press—including local (and/or regional) and national newspapers. Newspapers are not a necessary and obvious choice in media analyses. In fact, the daily press has experienced critical setbacks in readership. Thus it is essential to explain the choice of focusing on the daily press.

In 2000, there were more than 1,500 daily newspapers in the U.S. However, newspaper readership has been declining progressively and has “fallen off dramatically in the past thirty years.” In 1970, 78 percent of American adults read a newspaper once a

week; that number had fallen to 57 percent in 1999 (Skewes 2006: 309-310). Polls identify a disquieting trend: major national dailies are in disfavor with the public—not only do many Americans *not* read newspapers, but they also dislike them. In 2005 most media outlets (local dailies, cable news, and network news) were viewed favorably by a vast majority of Americans (75-80 percent), yet major national newspapers such as the *Washington Post* and *New York Times* experienced a decline in approval: only 61 percent of the public viewed them favorably in 2005, compared to 74 percent in 2001. In effect, respondents were considerably less trusting of major dailies than their local or regional papers. These trends (declining readership and approval rates) may seem to indicate the major newspapers' diminishing influence. Yet Americans' suspicion of the major dailies seems to be offset by positive feelings of the press; overall criticism of the press is fairly mild, and 80 percent of Americans have a favorable opinion of daily newspapers (including national, regional and local newspapers). If one compares the fourth estate with government, the news media, even the major national dailies, are not that unpopular—only 66 percent of Americans have favorable views of the Supreme Court, and 54 percent of Congress. (Pew 2005b) That is to say: if newspapers are losing prestige as institutions, so are the Supreme Court and Congress—and this may reflect general cynicism toward politics and power (Vreese 2002), rather than negative feelings targeted specifically at news institutions. In fact, the decline in newspaper readership hasn't affected much of the prestige enjoyed by newspapers within both media and policy circles (see below). Another factor may contribute to newspapers' enduring social significance: while newspaper readership has declined, *newspaper readership online* has grown. Major dailies have strived in recent years to join the web competition for both readers and advertisers. The

internet now represents an enormous market for electronic print news production and consumption. The trend is highest among the younger population: the internet is the main source of news for 36 percent of 18-29 year-olds. And this translates into readership for mainstream newspapers; while Americans under age 50 are far less likely to read a print newspaper, they turn to newspapers online. In effect, 62 percent of internet news consumers read websites of local or national newspapers. The result is that “while younger people tend to consume far less news overall than their seniors, newspapers—in one form or another—remain a key part of the media mix for majorities in all age groups.” (Pew 2005b: 2; 5-6)

In addition, newspapers are often *the most influential* media outlet (more so than television) in setting the agenda for public opinion. Issues deemed most significant by citizens in opinion polls tend to reflect prominent newspaper coverage more closely and frequently than television or any other media outlet. Various studies have shown, more specifically, that the agenda-setting influence of the *New York Times* is “greater than that of the local newspaper, which, in turn, was greater than that of the national television news.” (McCombs 2004: 50-51) Indeed, newspapers also set an *inter-media* agenda: in one example, an examination of the portrayal of refugees and asylum-seekers in the British press and news broadcasts confirms that morning newspapers influence the agenda of television coverage (Kaye 2001: 67).

Research design: introduction to the terminology and process in FCDA. There are three dimensions in FCDA: *text*, *context*, and *reception*. The focus of this project is the relationship between the *context* of undocumented workers in the U.S. (defined here as

their inclusion or exclusion from labor rights provisions) and the *text* (newspaper coverage). The third dimension in FCDA (the *reception* of the texts and process of meaning-making by readers) is not explored in this study²⁴⁰.

FCDA involves two essential steps before the textual analysis per se: the research of a social problem and the identification of expected obstacles to resolution of the social problem. Social problems in FCDA are often issues afflicting disadvantaged populations in society, similar to Marc Galanter's concept of the "have-nots," or those without the means to social and legal recourse for their grievances (Galanter 1974). The social problem and obstacles in this project concern the *labor rights of unauthorized workers*. These two initial steps were already accomplished through the academic literature on the law, sociology and economics of unauthorized workers in the U.S.

In the third FCDA step (the textual analysis), the social problem and obstacles are examined through the newspaper coverage while bearing in mind the social context to guide the analysis (Fairclough 2001: 125); the social context emphasized in this study will be the duality of inclusion/exclusion of the foreign labor force into the American system of labor protections and entitlements.

The obstacles are those structural circumstances which render the social problem (violations of labor rights of unauthorized workers) "resistant to easy resolution." (Fairclough 2001: 125) One of these obstacles may consist of obstructions to open debate about alternative resolutions to the social problem in the news media. In FCDA, the analysis of the obstacle to an open debate is achieved through the textual analysis—where the researcher explores the interconnections between the language in the sampled newspaper reports and the social context of unauthorized immigration.

²⁴⁰ See below the section on the *Limitations* of this study.

The textual analysis focuses on interactions²⁴¹ (1) within each text (in this case, each newspaper article), (2) between similar texts, and (3) between discourse and social practices involving undocumented workers.

The essential steps in the examination of sampled texts in FCDA are: (1) analysis of the discourse in each sampled text; (2) analysis of the intertextuality, i.e., the order of discourse between case studies and context of social discourse on undocumented immigration; (3) analysis of the interdiscursivity²⁴² between the two case studies; (4) analysis of the interdiscursivity with the academic literature on the issue of unauthorized immigration—to compare the press coverage with a variety of paradigms about immigration in law, policy studies, economics, and sociology. (Fairclough 2001: 125) This examination of the interactions within the news stories occurs through a description of the text, which examines its formal properties with the primary objective of identifying patterns and labels in the language and structure of discourse; the interpretation, where the researcher examines the text as both the product of a particular process of (social) production and as a resource in the process of interpretation; and, finally, the explanation of the “relationship between interactions (in the text) and social context” with a focus on

²⁴¹ *Textual interactions* are those which take place within the news stories per se. Thematic and linguistic relationships confer particular meanings to public discourse about the social problem at hand, limiting and defining the issue within boundaries of an acquired “common-sense” about unauthorized immigration (Fairclough 1989: 78).

²⁴² *Discursive interactions* (or *interdiscursivity*) focus on the relationship between different texts. These may be clearly related (such as comparisons and contrasts between the texts in the case studies) or less directly connected, such as assessments of the links between the news coverage concerning unauthorized workers’ labor rights and the discourse about immigrants’ social and economic integration into U.S. society in chapters II and III of this dissertation. The purpose of analyzing discursive interactions is to suggest how even seemingly disconnected discourse may function ideologically since discourse constrains debate by “naturalizing” beliefs, social relationships and social identities—thereby building “implicit assumptions” about limits to social interactions and construing existing power relations as “common sense.” (Fairclough 1989: 74-75, 78, 85)

“the social determination of the processes of production and interpretation, and their social effects.” (Fairclough 1989: 26)

FCDA research design: the language and interactions in the text. The textual analysis for each of the sampled news reports consists of two phases: the preliminary linguistic screening and the analysis of categories. Some of these categories are merely descriptive of the content in the text, such as the sources utilized in the news accounts. Other categories are more complex. They relate to themes articulated in the text, such as the perspective(s) utilized, or the relations between the text and the social problem (unauthorized workers) and its context (inclusion/exclusion), such as the category of constraints.

The linguistic screening provides tools for the analyses of categories; in this project the screening will examine the vocabulary in the text, as well as grammar and meaning.(Fairclough 1989: 110-139)

The vocabulary section of the linguistic analysis provides tools for the examination of the following categories: sources, perspectives, standardization, and constraints.

- A. Identifying sources of information²⁴³ is a simple but fundamental aspect of news analysis; news sources are given *access* to discourse through their participation in the mediated public sphere (Fairclough 1989: 63; Cottle 2003). Press critics have noted that particular kinds of sources comprise most of the *voices* in media

²⁴³ News sources are the individuals and organizations quoted and cited in news reports, which constitute the origin for most of the information contained in the news.

coverage: government²⁴⁴, business, and/or experts—while other potential sources of information from civil society are less sought after to comment or provide information in media discourse (Herman 1999: 25-26). Yet the analysis of sources in FCDA must exceed a “superficial measure of “balance”” between different sources in the text (i.e., a list of sources and their provenance, e.g., government, non-governmental organizations, or business). Discourse is rendered more “problematic” and the analysis more in-depth if it takes into account the “recontextualization” of issues through ideological language and “how the different voices are textured together in the text” (Fairclough 2003: 52-53)—hence other categories in FCDA build on the analysis of sources to provide a qualitative examination of how the different sources interact in the text to weave together coherent meaning.

- B. The perspectives category in FCDA relies on the identification of frames in the news discourse. Frames of narrative affect the “salience” (i.e., prominence) of a news event through emphasizing particular “aspects” or perspectives (Chyi 2004). Framing in discourse is accomplished through the sources and how their *voices* in the narrative are “contextualized” and placed. It is misleading to assume that diversity of sources translates into diversity of content—the two are not necessarily correlated. When perspectives and ideas in news accounts are weighed against variety in sources, heterogeneous sources of information do not necessarily yield diverse viewpoints in content. (Voakes 1996: 586-588) For example, particular modes of framing may qualify or condition perspectives in ways that are

²⁴⁴ In effect, a study on U.S. immigration debate in the press during four recent election years (1996, 2000, 2004, and 2006) found that the dominant sources in the news coverage were government officials (Kim 2007).

“conducive to rather negative interpretation” of the source’s opinions, even when the quoting itself is verbatim. The use of adjectives associated with actions or attitudes are one common instance of framing in news reports (Fairclough 1989: 51; 158-161).

C. Standardization of terms (Fairclough 1989: 56, 89) in FCDA refers to *labeling* of events and social actors. In the case of undocumented workers, a clear example of standardization is their description as “illegals.”²⁴⁵ This project will examine whether, how often and in which context the news discourse in the case studies utilizes standard terms to describe undocumented workers and/or their labor rights’ campaigns.²⁴⁶

D. The next vocabulary category assesses the use of constraints on viewpoints in the news discourse. Constraints represent *boundaries* imposing limits to the debate of ideological struggles (Fairclough 1989: 101). Constraints work to build a consensus of “common sense” in discourse about the social problem of unauthorized immigration. This “common sense” is articulated through implicit assumptions²⁴⁷ or presuppositions, which build “coherence” into the text through inferencing and connections (Fairclough 1989: 85; Fairclough 2003: 40). Not all discourse is necessarily restricted by constraints, but these are generally built into

²⁴⁵ In an analysis of the Australian press coverage, legal scholar Catherine Dauvergne notes the tendency to use the label “illegal” as a noun, which fully standardizes the perception of irregular international migration (Dauvergne 2004).

²⁴⁶ A recent study of the news coverage of immigration during election years found that the most common “attribute” used to identify immigrants (a concept similar to standardization in FCDA) was “illegal.” (Kim 2007)

²⁴⁷ Assumptions are implicit and do not constitute explicit evaluations in the text. For example, Fairclough analyzes the use of value assumptions in pro-globalization discourse. The text analyzed refers to “unease, inequality and polarization” as consequences of anti-globalization, which are not explicitly derogatory vocabulary, such as “risk” or “threat.” Yet the assumption underlying the text is that the “efficiency and adaptability” of globalization are preferable to the “polarization” of the anti-globalization movement. Hence the discourse in the sampled text implicitly rewards conformity, and condemns challenges to globalization (Fairclough 2003: 57).

the nature of storytelling through the emphasis of particular features of the text. Constraints work within the structure of the text to create the “naturalization” (or common sense) about social relations (Fairclough 1989: 74-75). For example, constraints in language and storytelling may work to place undocumented workers as (il)legitimate claimants of labor rights. Below is a list of the primary types of constraints as defined in FCDA: (a) content or existential assumptions: assumptions about “what exists;” restrict knowledge and beliefs associated with the *context* (inclusion/exclusion) of the *social problem* (undocumented workers); (b) propositional assumptions: restrict associations of certain viewpoints with the social problem. These can be of two sorts: propositional assumptions of *relation* suppose restricted social relationships and propositional assumptions of *subject* presume restricted social identities; (c) value assumptions: assumptions of a more subjective nature; implicit language suggesting what is “good” or “desirable” in relation to the social problem (Fairclough 1989: 112; Fairclough 2003: 55).

The second step in the linguistic screening is the analysis of grammar and meaning. This will identify the elements of discourse which *connect* or *differentiate* the processes and participants described in the text. The elements of discourse include: definition of agency in the text; the use of active or passive voice; the use of positive or negative wording; the use of we (inclusive) or you (exclusive) pronouns; and the references to participants and processes inside and outside the text. The grammar and meaning categories analyzed in this project are: dominant and dominated and orientation to difference.

- E. The dominant and dominated category examines the hierarchy of perspectives and social actors utilized in the news narrative. In FCDA, discourse is perceived through “a Gramscian view” where “politics is seen as a struggle for hegemony.” In this sense, the dominant perspective in the text achieves hierarchy in discourse when “their particular visions and representations of the world” are portrayed as “universal” (Fairclough 2003: 45). Hence this hierarchy in discourse is conducive to the “naturalization” of a particular viewpoint (the dominant perspective) through the text (Fairclough 1989: 90-91). A hierarchy of perspectives may be achieved when two different “‘voices’ can be juxtaposed so that one is framed by the other—and the conditions imposed on the sources’ perspectives or viewpoints through its placement in the text render it heavily conducive to an interpretation unfavourable” to one of the sources (Fairclough 2003: 53). For example, unauthorized immigrants’ perspectives and concerns (presumably voiced by their community organizations) may be frequently depicted in the case studies being examined. However, if their perspective is often *dominated* by others’ viewpoints (e.g., government, U.S. citizens, business interests) in the news reports— then it will follow that despite being given the *access* to news discourse, undocumented workers are disadvantaged speakers in the news accounts of their labor mobilization struggles.
- F. Finally, the category orientation to difference; FCDA emphasizes the importance of *how* the news media present different voices and opinions. Fairclough and other news media analysts consider contemporary ‘debates’ in news discourse limited by not going “beyond confrontation and polemic.” Fairclough notes that: “One

might see effective public sphere debate or dialogue as reasonably including an element of polemic, but also incorporating ... exploration of differences, and a move towards resolving them so as to reach agreement and form alliances. Without that element it is difficult to see how ‘debates’ can influence the formation of policy. This is ... how analysis of the treatment of difference in texts can contribute to issues in social research.” (Patterson 2000; Cottle 2003; Fairclough 2003: 44-45) The orientation to difference category envisions five different possible outcomes: (a) recognition, acceptance and exploration of difference; (b) accentuation of difference for conflict’s sake, as a mechanism to increase “drama” in the text; (c) resolution or attempt to overcome difference; (d) downplaying of difference; attempt to focus on commonality or solidarity of viewpoints; (e) consensus as a form of “normalization and acceptance of differences of power” which, rather than focusing on commonalities or solidarity, “suppresses differences of meaning and norms.” The idea is that “recognition, acceptance and exploration of difference” contributes to “dialogue in the richest sense of the term,” while a focus on “resolution” or “downplaying of difference” may also help construct a dialogue which enriches the public sphere (Fairclough 2003: 41-42). Accentuation of conflict, on the other hand, is a common news storytelling model which provides no guidance for readers to envision the resolution of differences, hence promoting apathy as a suitable response to the dramatization of political, legal and social processes—rather than engaged debate and consensus building (Patterson 2000).

Complementary category to FCDA: the agenda-setting model. In order to examine the *frequency* and *prominence* of the DKNY and Taco Bell campaigns in the sampled press coverage, two categories have been appended to the FCDA analysis.

Agenda-setting research has shown that the most “dominant predictor of public salience for an object is the cumulative volume of coverage that it has received in the news during the preceding month” (Chyi 2004: 30). While the *currency* (incidence of recent news coverage) aspect of agenda setting is irrelevant in this analysis given the timeframe (1997-2005) of the two case studies, it is important to determine the *frequency* of coverage for the case studies. Hence the (a) total number of news reports and the (b) interval gaps without coverage (during the timeline of analysis) has been examined for each case study.

Another way the news media help set the public agenda is by cueing news readers to the *salience* of particular social issues. In newspapers, this salience is conveyed to the readers by the *prominence* given to news stories, i.e., if the report is placed on the front page or section of the newspaper, or whether it is “buried” in the middle of the newspaper, or in a smaller section of the newspaper with less distribution, e.g., a city section. Prominence of particular news stories is also suggested by the size of the story, whether it is well developed and accompanied by graphics and pictures to help explain the issue being reported. Conversely, if a news report is short and less elaborate than other news stories, this communicates its lesser status (Grossberg 2006: 367)—and “frames” the news story as less socially significant. (Pan 2003) These two aspects of *prominence*²⁴⁸, the (a) placement and (b) length of news have been examined for each news sample in the DKNY and Taco Bell case studies.

²⁴⁸ Another aspect of prominence (whether the news story is accompanied by graphics and pictures) will not be examined since the samples were collected online using Lexis-Nexis, which does not provide photos and graphics.

Sampling of case studies: migrant industries and corporate responsibility for labor rights. The choice of selecting two case studies (DKNY and Taco Bell) as opposed to quantitative or qualitative analysis of large data samples was guided by my interest in pursuing in-depth text analysis for this project. In choosing a methodological approach, I was interested in how unauthorized immigrants' identities and social claims in American society are "articulate(ed) with wider ideological discourses and meanings" in the news media—because the review of academic literature on undocumented immigration provides evidence that the U.S. is experiencing a "struggle over (the) meaning" of immigration (Hall 1980: 133) in which the debate over "illegal" immigration has been the dominant theme. While content analysis offers the significant advantages of working with large samples (thus highly improving generalizability), as well as simplifying and reducing a large amount of data into organized segments, these advantages "are gained at a cost." Content analysis requires "pre-designed categories prior to data analysis" where the researcher cannot choose the "deployment of categories within their interactions" in each sample (Silverman 2006: 163). Qualitative data analysis, which examines language patterns in large samples of text, also requires extensive pre-designed data coding (Altheide 1996). Thus I have opted for in-depth examination of the language in smaller samples of text, which provides pertinent tools to uncover the articulation of the meaning of citizenship and immigration status in the U.S. media portrayals of undocumented workers' labor claims.

The Taco Bell and DKNY labor rights campaigns were selected utilizing progressive theoretical samplings. Theoretical samplings are chosen based on "their (expected) level of

new insights” into the concepts and knowledge in specific fields of study. (Flick 2002: 64) The sampling process was “progressive” since it occurred as the researcher developed an “emerging understanding of the topic under investigation.” (Altheide 1996: 33) The DKNY and Taco Bell case studies are suitable theoretical samples for the following reasons:

1. Both campaigns occurred in industries with high concentration of unauthorized immigrant workers, according to the concept developed by demographer Jeffrey Passel of the Pew Hispanic Center²⁴⁹: *migrant occupations and industries* (those which employ large numbers or proportions of unauthorized workers) (Passel 2005b: 26-29). Based on Passel’s recent estimates, the tomato pickers in the Taco Bell case study (“crop production”) and the garment workers in the DKNY case study (“apparel manufacturing”) are in industries which “have more than twice the representation of unauthorized workers than the whole labor force.” In both industries, undocumented workers represent 16 percent of the total labor force.
2. Both case studies allow for an exploration of the press discourse on corporate responsibility for human rights (the labor rights of workers), a theme which has been prominent in human rights research. The notion that corporations can also be responsible for human rights represents a significant expansion in the scope of human rights’ original focus on governments’ duty to protect the basic entitlements of persons within their territories. (Kuper 2005; Clapham 2006; Barenberg 2007).

Thus the Taco Bell and DKNY campaigns illustrate a strategic development in the

²⁴⁹ Jeffrey Passel’s reports for the Pew Hispanic Center are widely referenced in the immigration literature; his work has been central in interpreting recent Census and CPS data to derive estimates about a host of characteristics concerning the undocumented population.

human rights paradigm: the move away from an exclusive focus on human rights violations by national governments to a targeting of private corporations.

3. Both case studies exemplify a specific aspect of the human rights paradigm focused on non-state actors: campaigns that target the corporations which *indirectly* hires the workers through sub-contractors—and are thus *not* the direct employers of undocumented workers (Barenberg 2007). The Taco Bell and DKNY campaigns will provide an opportunity to explore the press depiction of this development in human rights activism.
4. The two case studies also illustrate two different political strategies for social mobilization: in the DKNY case, the organizations pursued a public campaign strategy, with protests in the streets of New York and an attempt to galvanize public attention and negative marketing for the DKNY brand. But they also pursued a legal route, with a class-action suit against DKNY. In the Taco Bell case, on the other hand, there was no legal avenue. Instead, the organization (CIW) has focused exclusively on public campaigning and protests, with the help of a myriad faith and student organizations. It is thus possible for the researcher to compare and contrast the press coverage of these two case studies based on their strategy differences—and the language used in the newspapers to depict both public protests and law suits.
5. Finally, DKNY and Taco Bell were selected because (1) since both campaigns have ended, this study can work with a complete collection of samples within the case studies. This allows for the analysis of the press coverage to compare and contrast the entirety of the selected newspapers' discourse on these campaigns; and

(2) both involved strategic public communications campaigns which targeted the news media—justifying the expectation of press coverage.²⁵⁰

Sampling within selected case studies. The case studies' timeline was the most significant criterion in determining the timeline for the press sampling: from the beginning of the public communication and activism campaign until the resolution of the case (in Taco Bell, the agreement signed with Yum Brands; in DKNY, the confidential settlement). Below, I will explain first the general sampling strategy followed by the definition of press coverage 'events' and timelines for each specific case study.

In terms of the selection of newspapers, the procedure was decided based on the following criteria: (1) examination of mainstream press of a national scope, i.e., the newspapers which are more likely to reach a national audience: *The New York Times*, *USA Today*, *Wall Street Journal* and *The Washington Post*. These newspapers were selected due to (1-a) their intermedia influence, i.e., the ability to influence news media coverage in other news outlets (especially the *New York Times*) which has been discussed and demonstrated in various news media studies (Winter 1981; Roberts 2002; Leff 2005; Walgrave 2006), and (1-b) the role of the mainstream press in setting the agenda of policy debate (Shaw 1989; McCombs 2004), as well as their influence on both public opinion (Gamson 1989; Bobo 1997; Vreese 2002) and policy makers, given that national news media coverage is often times perceived in policy circles as representative of "public

²⁵⁰ For example, there are two recent lawsuits in New York against employers in the construction industry for violations of labor standards, which contains an even higher proportion of undocumented workers than garment manufacturing and agriculture. However, in these cases (*Sanango v. 200 East 16th Street Housing Corp.* 2004; *Balbuena v. IDR Realty* 2004) there was no public campaign associated with the lawsuits, and thus it would be unreasonable to expect press coverage; although these lawsuits could be considered news in the sense that it would be in the public interest to know about them, the fact that there was no initiative on the part of the lawyers or workers to make these cases public renders them unsuitable for this study.

opinion” (Davison 1983; Riffe 1990); (2) the national press coverage was compared to local newspapers in the region where the events took place²⁵¹, in order to determine whether there was any significant difference in (2-a) prominence and frequency of coverage of the cases studies, and (2-b) in the discourse about unauthorized immigrants’ labor rights in the regional press; finally, (3) the regional newspapers were selected based on convenience, specifically whether the news stories were available in the Lexis-Nexis electronic database²⁵². Convenience was not an issue concerning the selection of the national newspapers, since all of the larger U.S. newspapers are available through Lexis-Nexis.

Note that discourse analysis pays special attention to the *New York Times* coverage for its well-established agenda-setting influence. In fact, “many investigations use a single medium as a surrogate for the news agenda, relying upon the well-established assumption of a high degree of redundancy across the news agenda of individual media. In the United States, the *New York Times* has frequently been assigned this surrogate role.” (McCombs 2004: 48) The *New York Times* is also considered, alongside *USA Today*, “the closest approximation to a national newspaper in the United States.” (McCombs 2004: 49)

Since the objective of this study is to analyze all the texts available to readers, samples consist of both news articles and *opinion* or editorial pieces.

²⁵¹ For the Taco Bell case study, the local newspapers featured are those from the region around Immokalee which were available on Lexis-Nexis: *Palm Beach Post*, *Sarasota Herald-Tribune*, *St. Petersburg Times* and *Tampa Tribune*. For the DKNY case study, the samples came from the following New York City local newspapers that were available on Lexis-Nexis: the *Daily News*, the *New York Post*, and the *Village Voice*. While there may be other local newspapers in New York that are available on the Lexis-Nexis database, the ones sampled here are the ones who reported news on the DKNY ‘event’ during the timeline searched.

²⁵² The sampling for this study was determined based on the studies of media content cited above, while also using Uwe Flick’s guidelines on sampling for qualitative research (Flick 2002: 61-72).

Taco Bell timeline: 1997-2005. For the analysis of the national press, there are 6 samples²⁵³. For the local news in the region around Immokalee, Florida, 40 news pieces are utilized as samples for analysis.

The Taco Bell campaign had a grassroots basis, with several boycotts and sit-outs denouncing Taco Bell staged around the country. The campaign was organized by the Coalition of Immokalee Workers with the cooperation of church and student organizations. CIW began protesting work conditions in southwestern Florida a few years before the birth of the Taco Bell ‘event’ being analyzed here. CIW had organized protests and hunger strikes in the late 1990s and attempted to negotiate with Taco Bell and Yum Brands, its corporate parent—prior to making the decision to boycott Taco Bell restaurants and focus on Yum Brands’ corporate responsibility as the primary CIW strategy for public action. The press analysis for this study begins with this ‘pre-campaign stage’ to evaluate how much press coverage the issue received from the beginning. The primary reason for including this pre-campaign period is to compare whether the CIW strategy was successful—whether focusing on Taco Bell garnered more press attention than before and whether the boycott strategy shifted the news discourse on exploitation and slavery in Florida’s agricultural fields.

Due to the magnitude and geographic scope of the Taco Bell campaign (consisting of protests around the nation and a yearly caravan which traveled from Florida to Yum Brands headquarters in California) it attracted press coverage from various news media outlets in the U.S.—not only in Florida, but also in several cities around the country where

²⁵³ The Taco Bell national news sampling issued 1 editorial piece published in the *New York Times*; 4 reports in the *Washington Post*; and 1 editorial piece in the *Wall Street Journal*. The other national newspaper being sampled (*USA Today*) did not report or comment on the Taco Bell campaign.

protests were organized. News accounts published in regional newspapers outside of Florida are not analyzed for this case study.

DKNY timeline: 1999-2003. For the analysis of national press coverage of this campaign, there are 4 samples²⁵⁴. In terms of local news coverage in New York, there are 7 samples²⁵⁵ to be analyzed.

The DKNY ‘event’ was defined as four separate parts, all included in the analysis: (1) the publication of the CESR report in 1999, which in itself did not generate any press coverage, but was cited in subsequent news accounts, which presumably added legitimacy to the issue; (2) the lawsuit filed by the Chinese Staff and Workers Association and the Asian American Legal Defense and Education Fund on behalf of the workers at DKNY contractors against Donna Karan in June of 2000, and the defendant’s request for disclosure of immigration status (the other lawsuit, concerning only one worker, had been settled already, and did not receive any specific news coverage); (3) workers’ protests outside DKNY stores in Manhattan; (4) lawsuit settlement in 2003.

Limitations of this study. The limitations of this particular project can be divided into two groups: those that are specific to this project and those that pertain to CDA analyses and qualitative research in general.

Research results in qualitative methodologies utilizing case studies are specific to the cases or examples analyzed—diminishing their ability to be generalized. Therefore the

²⁵⁴ The DKNY national news sampling issued 3 news stories published in the *New York Times*; and 1 report in the *Wall Street Journal*. The other national newspapers being sampled (*Washington Post* and *USA Today*) did not report or comment on the DKNY campaign.

²⁵⁵ The DKNY local news sampling supplied 4 news stories in the *Daily News*, 2 in the *New York Post*, and 1 in the *Village Voice*.

findings in this research will be mostly limited to the specific case studies—and its applicability to the overall press coverage of unauthorized immigration will be inferred but cannot be directly deduced from the findings. Additionally, I have found few studies concerning unauthorized immigrants in the U.S. press (Coutin 1997; Chavez 2001; Kim 2007); much of the literature on the representation of irregular international migration in the press centers on asylum claimants and immigrant integration in Europe²⁵⁶ (d'Haenan's 2001; Hargreaves 2001; Kaye 2001; Coole 2002; Bailey 2005; Van Gorp 2005; Boomgaarden 2006). Being able to compare the results of my studies to more definitive evidence of the U.S. context would have counteracted the specificity of my case studies and improved the generalizability of my findings. However, since the objective of this analysis of press discourse in selected case studies is *not* to determine how much and what sort of coverage the American press devotes to the issue of the violation of labor rights of undocumented workers, this limitation does not compromise the value of this research endeavor.

A criticism of CDA in general is that its “evaluative stance” pre-determines the analysis of the texts: that critical studies scholarship “projects their own political biases and prejudices onto their data” (Blommaert 2005: 33) and therefore compromises its reliability (Silverman 2006). Yet the purpose of the critical study of language, focused on the analysis of public discourse as “subject to power and inequality,” is *not* to determine the “one meaning and one function” of particular texts (Blommaert 2005: 33-34)—it is to explore the meaning of discourse in particular contexts. Therefore FCDA should be

²⁵⁶ I have also found some examinations of irregular immigration in the Australian and Canadian press discourse (Hier 2002; Slattery 2003; Dauvergne 2004; Chow-White 2007).

evaluated on “contextual validity:” “the capability of research to locate the phenomenon it is studying within the wider social, political” context (Saukko 2003).

In the case of this study, the idea is to examine examples of the language about unauthorized immigrants’ labor rights to illustrate the dichotomies in human rights inclusion/exclusion of this population; there is no intention to proclaim that this is *the meaning* of the texts examined (see below concerning reception of media texts). A quantitative study of language would serve a different function from FCDA, providing “an explication of empirical relationships” yet not concerning “the relevance of those relationships to political and social systems,” while a critical study provides “direction” to its empirical analyses. (Allen 1999: 374) Critical studies methods thus acknowledge the subjective nature of analysis and interpretation (Fairclough 1989: 27); researchers in CDA must accept subjectivity through self-reflection on the “social commitments and roots of our interpretations.” (Saukko 2003: 114)

Regarding limitations specific to this research project²⁵⁷: a weakness of this study is that it does not differentiate between news coverage of labor issues in general and the news coverage in the case studies (concerning undocumented immigrant workers). The press coverage of labor relations is very scant and this will be mentioned in the analysis of findings. According to a recent study, labor relations and trade unions are estimated to comprise only 0.4 percent of American news coverage in television, radio and newspapers. (Skewes 2006) However, the objective of this project is *not* to identify specifically why the press covers particular social issues, or why it uses certain language in discourse. Answers

²⁵⁷ Note that the fact that this researcher is not a linguist does not constitute a limitation—most CDAs (and FCDA in particular) are designed such that the analytical tasks can be performed by non-linguists. (Fairclough 2001: 126)

to these questions may shed light on those issues, but they are not crucial topics in this project—since the objective of this study is to explore and illustrate the role of the press in policy debates and its role in the ideological process of constructing the “human rights of others” (Benhabib 2004) while illustrating the inconsistencies between human rights language and the nation’s sovereign right to exclude foreigners (Doty 1996, 2003) from its social entitlements (characterized in this study as undocumented workers’ labor rights).

Last of all, as is the case with any individual study, this research is restricted by time and resources, which dictated the choice to exclude (a) media other than newspapers and (b) audience reception analysis. The reasoning for choosing newspapers was explained above. The rationale for excluding other media (television, radio talk shows and internet content) was primarily designed to allow for the in-depth discourse analysis of a limited sampling of texts. Likewise, this project is limited by *not* focusing on audience reception of the news texts (how readers interpret the sampled news stories). However, this dissertation is concerned primarily with news texts and the nature of the public sphere debate on unauthorized immigrants and their inclusion into American society. The study of audience reception, although a central purpose in media studies, lies beyond the scope of this project—though the incorporation of audience research would increase the validity of its findings. However, it is well documented that news media coverage can do more than shape cultural tendencies; audience reception studies suggest that diverse readers find distinct meanings in media content (Livingstone 1991; Gunter 2000)—and news coverage *cannot* overcome individual predispositions and beliefs. Rather, it is by and large a “match between agenda issues” in the media and individuals’ “expectations about the platform of issues” that results in the media’s power to set public opinion (Duck 2003: 21).

Triangulation or “dialogue” in methodology. In an attempt to address some of the limitations of discourse analysis, two other research methods are to be employed alongside FCDA: *literature analysis* of undocumented immigration and *expert interviews* (Flick 2002: 89).

The FCDA method utilized here will connect with the law, economics, sociology and media literature on the *social problem* in question (the deterioration of labor standards in migrant industries) to bridge the gap between discourse analysis and social sciences. The objective here is to provide useful concepts for analysis, as well as anchoring the discourse analysis in some degree of institutional analysis concerning the role of the press in deliberative democracies. Media and sociology scholars have noted that “any attempt to systematically link media system characteristics and news content would be a significant improvement on the all-too-frequent framing study with methodological sophistication to spare but which only obliquely links discursive production to structural characteristics of media systems.” (Benson 2004: 284) The idea here is to link the analysis of framing and other elements in the discourse to the social role of media systems as the public sphere in contemporary democracies (Habermas 1989).

Also, wherever possible²⁵⁸, interviews have been conducted with the staff of non-governmental organizations (the “experts”) in their capacities as representatives of the organizations involved in the DKNY and Taco Bell labor mobilization campaigns.²⁵⁹ The

²⁵⁸ Since the DKNY case was settled confidentially, the possibility of conducting interviews with the organizations involved (National Mobilization Against Sweatshops, Chinese Staff and Workers Association and Asian-American Legal Defense and Education Fund--AALDEF) is severely restricted; a very brief telephone interview with an AALDEF lawyer has been conducted. The researcher has also conducted four in-person interviews with Coalition of Immokalee Workers activists for the Taco Bell case study.

²⁵⁹ Permission for the interviews has been secured with the Internal Review Board (IRB) at Northeastern University.

objective was to gain knowledge about the organizations' perspectives concerning the role of press coverage in their legal and activism efforts. The interviews also help us understand the strategies and outcomes of the campaigns.

Contributions of this research. Policy analyses of government responses to unauthorized international migration have been available since 1980s—but it grew extensively in the 1990s, when the significance of “illegal” immigration was becoming apparent not only in North American, but also in Europe, Australia, and other parts of the world. Scholars have engaged with the issue as a policy problem (*whether* and *how* to control immigration) and a socioeconomic issue (competition with native-born Americans over jobs and resources). Yet social studies of the unauthorized population per se are not abundant, conceivably because of the obvious legal and social difficulties of reaching this population. Law scholars have focused on the issue of inclusion/exclusion of unauthorized workers, but not necessarily discussed labor rights as *human rights* in the unauthorized context—though legal aid organizations have participated in (and published about) initiatives with community and human rights organizations to help these workers. Finally, European media scholars seem to examine the press portrayal of immigrants more frequently than their U.S. counterparts; however, a combination of Canadian and American studies yields better results. Examinations of how the *unauthorized* immigrant population is represented in the U.S. press are still few and far between²⁶⁰. Yet even where the literature is vast, there are few connections between fields of study—e.g., migration studies literature,

²⁶⁰ Leo Chavez dedicates a full chapter in his book “Covering Immigration” to the portrayal of Mexican immigrants—where the focus is their irregular status (Chavez 2001). Lisa Flores includes media imagery and text in her rhetorical analysis of the history of Mexican identity in the U.S.: from *peons* to illegal aliens (Flores 2003).

though extensive, is “curiously silent on the role of the media.” (King 2001: 2) Media analyses of the representation of immigrants in press, on the other hand, mostly fail to capture the institutional and political issues surrounding unauthorized immigration (Benson 2004; Gitlin 2004). Therefore I decided to approach the issue of press representation from a social science perspective (examining law, policy, social and economic issues)—rather than focusing exclusively on discourse.

The primary contribution of this research project thus lies in its interdisciplinary approach of discussing a category of immigrants’ rights (labor standards) from a communication studies perspective of discourse as a significant factor in resolving social problems. This is also a timely research topic, dealing with various controversial issues in academic and public debate: the rise in unauthorized international migration; the status of social (labor) rights as human rights²⁶¹ (Stark 2000; Woods 2003); the role of a ubiquitous fourth estate in democratic societies; and whether to include or exclude (examined here through the prism of equal labor standards) the new American immigrants: unauthorized (and mostly Hispanic) workers with low educational levels.

This research project contributes to the literature in various fields of research: (1) media and policy research on the relationship between news media and policy agendas (Howlett 1995; Gimpel 1999; Roberts 2002; Stone 2002; Kingdon 2003; McCombs 2004); (2) media and politics research on the role of media as a central forum for public debate in contemporary post-industrial societies (Herman 1988; Habermas 1989; Calhoun 1992;

²⁶¹ According to the classic approach to international human rights, civil and political rights are first-generation rights and economic, social and cultural rights are less essential human rights. “The official position (...) is that the two covenants and sets of rights are (...) ‘universal, indivisible, and interdependent and interrelated.’ But this formal consensus masks a deep and enduring disagreement over the proper status of economic, social and cultural rights.” (Steiner 2000: 237)

McChesney 1999; Bennett 2001; Newman 2005); (3) media studies on the representation of minorities (Simon 1993; Lind 1998; Dijk 2000; Lemish 2000; Sreberny 2000; Chavez 2001; d'Haenan's 2001; Kaye 2001; Hier 2002; Flores 2003; Harrison 2005; Silva 2005); and (4) legal and social research on the rights and the inclusion/exclusion of minorities, particularly immigrants (Minow 1990; Cholewinski 1997; Kwong 1997b; Johnson 2003; Benhabib 2004; Dauvergne 2004; Johnson 2004; Blau 2005; Calavita 2005; Dauvergne 2005).

Part II

Chapter VI: Donna Karan ‘Sweatshop Queen’: New York City’s Immigrants and the Fragmented Apparel Industry

“Widespread racism, combined with the manipulation of immigration law to create an “illegal” workforce, allows for the comfortable acceptance of an especially low-wage, sometimes abused garment-industry workforce. The undocumented immigrants are seen as either willingly accepting these conditions or deserving no better. That they are generally dark-skinned people from Latin America, the Caribbean, and Asia only adds to beliefs about their unworthiness to earn a decent wage and maintain a decent standard of living.” (Bonacich 2002: 124-125)

The DKNY case study: background and data analysis. Section I of this chapter examines the labor conditions in the New York City garment industry, since a highly competitive, globalized and fragmented apparel production system has resulted in the deterioration of labor standards for garment workers; this section provides the background to the events in the DKNY case study.

After explaining the context of the workers’ circumstances, Section II of this chapter introduces the context of the DKNY lawsuit and protests against Donna Karan, International. Finally, Section II summarizes the press coverage of the DKNY protests and lawsuit, and analyzes the significance of the press discourse, especially the issues or ‘attributes’ that local and national newspapers *emphasize* when confronted with alleged

violations of labor standards in the New York apparel industry—as well as what the press *silences* in their coverage.

Section I: The New York City garment industry

Subsisting on recent immigrants flows. Since the onset of globalization in the 1970s, U.S. manufacturing centers have lost jobs to the “new geographies of production”: cheaper and non-unionized labor outside of American urban centers, international transportation systems, and the role of technology in facilitating offshore production of goods. (Sassen 1991: 202; Wright 2001: 87) Apparel imports grew from 50 percent of the United States market in 1980 to 67 percent in 1993—and employment in the apparel industry declined from 1.4 million jobs nationwide in 1973 to 864,000 in 1996, which corresponds to a precipitous 40-percent drop in less than 25 years. (Bao 2005: 76) However, garment districts in New York City and Los Angeles have survived “pronounced declines” in most other U.S. apparel production centers “on the backs of waves of immigrant workers.” (Kessler 2002: 74)

In New York City, where in the past few decades there has been a marked employment decline in the manufacturing sector, immigrants have continued to arrive in significant numbers²⁶² and secured employment not only in the service industry—but also in manufacturing. This has been described as “the paradox of immigrants successfully finding jobs even in a reconfigured manufacturing sector.”²⁶³ (Wright 2001: 83) It is

²⁶² During the 1980s, for example, the New York City region received 25 percent of all the immigrants to the United States. (Sassen 1991: 319)

²⁶³ In a process referred to as “ethnic-controlled niches of employment,” immigrants in New York City have “filled niches” in particular sectors of the local economy, particularly services and manufacturing,

estimated that there are about 300,000 manufacturing jobs in New York City today, mostly in garment districts and in printing and publishing; in these two industries, New York's status as a center of fashion and culture is a significant incentive to keep production close—and these industries have managed to “remain competitive using local supplies of cheap labor.” (Sassen-Koob 1987; Wright 2001: 87) In effect, Saskia Sassen notes that “most of the growth in New York City's labor force since 1977 ... was accounted for by minority workers and women.” (Sassen 1991: 301)

If globalization has not killed New York garment districts, it has transformed their mode of production and labor relations. Edna Bonacich, a social and ethnic studies professor focusing on immigrant labor, describes the impact of “global and flexible production” on U.S. garment workers and garment industry unions as “devastating:” “wages have stagnated or fallen, and sweatshops have returned to U.S. cities.” (Bonacich 2002: 123) Garment manufacturing is one of the industries with a large proportion of undocumented workers (Martin 2003b; Passel 2005b, 2005a, 2006); it is also one of the industries where labor standards have precipitously worsened in the past few decades. (CESR 1999)

developing tight social networks—which in turn “secured employment for later arrivals.” Richard Wright and Mark Ellis note that these social networks of employment help to “clarify how immigration continues at a rapid pace in the face of the metropolitan area's changing labor market, where many new jobs pay very poorly.” (Wright 2001: 84) They also note that immigrants continue to arrive in New York despite the restructuring of its job market and losses in overall employment exactly because this restructuring has produced two growing job markets: at the top, where positions are filled by highly-educated native-born and foreign-born workers, and at the bottom—where low-skilled immigrants fill these low-wage niches of employment: “some of the same forces that decentralized much manufacturing and warehousing employment have contributed to the growth of new jobs in the city. The globalization of production that helped gut New York's traditional employment base reinforced its primacy as the world's financial center, generating many “high-end” jobs in business services, law, investment banking, advertising, and consulting. The flip side of this transformation has been growth in “low-end” jobs (those that are poor paying and frequently unstable and without benefits)—in domestic service, hotels and restaurants, and personal services.” (Wright 2001: 87)

Globalization has transformed New York City garment manufacturing through (1) the establishment of international subcontracting networks and (2) the availability of Asian and Hispanic immigrants in the work force.²⁶⁴ According to Florence Palpacuer, whereas traditionally the New York garment districts were composed of small firms, since the 1970s these small businesses have become “integrated into global production networks;” while employment in apparel manufacturing has declined, New York remains the second largest garment production center in the country, with about 60,000 jobs. New York has a central role in the garment industry due to its characteristics as a global trade center, fashion center, and immigration center, attracting newcomers providing “both the labor force and the entrepreneurial base of the local garment industry.” (Palpacuer 2002: 53-54) New York City’s status as an international center of fashion and design has played a significant role in retaining apparel production. (Sassen 1991: 293; Green 2005: 30-31)

NAFTA and apparel manufacturing in the United States. If the globalization of production networks has greatly affected the apparel industry and its garment workers, the North American Free Trade Agreement (NAFTA) has had an even more extraordinary role in consolidating the influence of international outsourcing of production on the U.S. apparel industry.

NAFTA has impacted both garment imports and domestic apparel manufacturing in the United States; NAFTA has (1) reshaped developing-country apparel exports, with

²⁶⁴ This introduction to the New York’s garment industry borrows primarily from Florence Palpacuer’s recent study of the New York apparel industry, a 2002 book chapter entitled “Subcontracting Networks in the New York City Garment Industry: Changing Characteristics in a Global Era.” Palpacuer is a business management researcher focusing on the apparel industry. Where other works are mentioned or quoted, the appropriate citations are added. Otherwise a Palpacuer citation with the appropriate page numbers for reference will be added at the end of each paragraph, and it should be understood that all the other information and quotes in the paragraph are also from Palpacuer’s 2002 book chapter.

imports from Mexico and the Caribbean increasing significantly,²⁶⁵ whereas Northeast Asian imports, which dominated the American apparel market in the early 1990s, by 2000 amounted to less than 30 percent of the total U.S. garment imports; (2) NAFTA's impact on domestic apparel manufacturing has also been pronounced, contributing to further decline in apparel employment in many traditional garment manufacturing centers such as Tennessee and the Carolinas.²⁶⁶ (Spener 2002: 4, 6)

The urban garment districts in Los Angeles and New York are an exception in that both have managed to retain jobs in apparel manufacturing; though these garment districts have been deeply affected by Northeast Asian imports, and more recently garment production shifts to Mexico, the industry continues to thrive. (Kessler 2002; Palpacuer 2002) Outsourcing of manufacturing production has increased employment in design, marketing and management in the U.S. apparel industry, but Los Angeles and New York have also maintained jobs in direct production—utilizing predominantly low-cost immigrant labor that specializes in “small-batch, high-fashion garments.” (Kessler 2002; Palpacuer 2002; Spener 2002: 7)

Both in Los Angeles and in New York, “while NAFTA bodes well for the (garment) industry from a macroeconomic perspective, those least likely to benefit are the hundreds of small manufacturers, thousands of contractors, and many thousands of blue-collar workers who watch without recourse as their orders and their jobs move south” of the border to Mexico or to other cheap labor markets. (Kessler 2002: 94) In

²⁶⁵ Spener et al. note that “particularly dramatic was Mexico’s rise to become the top-ranked garment exporter to the United States at the end of the century, as its exports grew from just \$709 million in 1990 to over \$8.7 billion in 2000.” (Spener 2002: 4)

²⁶⁶ U.S. domestic manufacturing had dwindled before NAFTA due to increased developing-country imports, yet the agreement appears to have accentuated this pattern, eliminating mostly direct production jobs for apparel manufacturers in mass production of standardized, low-cost garments. (Palpacuer 2002; Spener 2002)

effect, Kessler believes that “stepped-up monitoring for compliance and liability has undoubtedly figured in decisions to relocate production offshore. Increased efforts on the part of state and local governments [in the Los Angeles area] to compel retailer and manufacturer responsibility for wage and safety violations roughly coincided with both the implementation of NAFTA and increases in federal and state minimum wages.”²⁶⁷

(Kessler 2002: 94) An example of the apparel industry fleeing U.S. labor standards occurred in the early 1990s when the apparel manufacturer *Guess?* was fined by the Department of Labor for violating minimum wage and overtime regulations, as well as workers’ efforts to form unions; *Guess?* had produced 97 percent of its garments in the United States, yet after the incident the company moved most of its production to Mexico, leaving only 35 percent of its apparel-making business in Los Angeles. (Rosen 2002: 230)

Immigrant workers: Chinese, Hispanics, Koreans. Foreign-born workers in 1970 represented 50 percent of all operatives in the New York garment industry; by 1990, a total of 90 percent of all garment workers in New York City had been born overseas. (Palpacuer 2005: 60) Therefore production workers in New York’s garment districts for

²⁶⁷ Kessler’s research of local garment producers in Los Angeles points to “escalating pressure by the government to hold [manufacturers] responsible for their contractors’ work environments as contributing to their decision to relocate production offshore.” The result, according to Kessler, is that the southern California garment production center has seen an increased segmentation pattern: “NAFTA is drawing the top end of production (in terms of firm size and resources) to Mexico. Left behind are fashion-sensitive firms that must keep production at hand (and can afford to do so, based on their price point) and a growing number of small manufacturers that have no recourse but to rely on local, often sweatshop, production.” (Kessler 2002: 94)

the past few decades have been predominantly Hispanic and Asian immigrants.²⁶⁸ (Green 2005: 43)

In 1980, Asian and Hispanic immigrants represented 17 and 27 percent, respectively, of operatives in the New York City garment industry labor force; by 1990, 38 percent of garment industry operatives were foreign-born Asians, and 29 percent were foreign-born Hispanics;²⁶⁹ according to Florence Palpacuer, Asian immigrants differ from their Hispanic counterparts, however, in that they “have reached a significantly higher penetration among managers.” In 1990, 15 percent of managers and administrators in the New York City apparel industry were foreign-born Asians, compared to 8 percent for Hispanic immigrants.^{270 271} Among Hispanic newcomers, Dominicans have predominated and opened their own garment factories, but studies have shown that the “Chinese-owned enterprises tend to be larger and longer-lived, exhibit higher performance levels, and are managed with a longer-term perspective than their Dominican counterparts.” Korean

²⁶⁸ Jewish and Italian contractors, traditionally dominant in New York’s garment industry, have “found themselves increasingly marginalized,” and today “specialize in shrinking markets such as “evening couture” or occupy marginal positions in the contracting networks of large sportswear designers.” This workforce is generally highly skilled and this translates into “above-average weekly wages” and a “more formal employment system,” which indicates better working conditions, yet also means that “these contractors may not be able to compete with flexible Asian producers.” (Palpacuer 2002: 65)

²⁶⁹ Foreign-born Hispanics and Asians experienced considerable employment growth in New York City in the 1970s, 1980s, and 1990s; their gains were “largest and strongest” in retailing and manufacturing, such that during the 1980s, when manufacturing was contracting significantly, “Hispanics’ share of the city’s manufacturing jobs increased from 14 to 18.6 percent”—and immigrant Asians gained jobs in manufacturing in every decade between the 1970s and the 1990s, even as the total numbers of available jobs declined. However, foreign-born Asians differ from Hispanics because they have also gained employment in professional services and other high-end jobs. (Wright 2001: 103) Minority workers in general are still underrepresented in high-paying, professional jobs. (Sassen 1991: 301)

²⁷⁰ However, it is noteworthy that the majority of managers and administrators (50 percent), as well as professionals and technicians (53 percent) and sales positions (65 percent) in the New York City garment industry, were still occupied by native-born Whites, according to Florence Palpacuer’s 1990 study of the ethnic distribution in the resident labor force (Table 6.2, based on data from the U.S. Census of Population, Public Use Microdata Sample, U.S. Bureau of the Census, and the Department of Commerce). (Palpacuer 2002: 63)

²⁷¹ Because Hispanic immigrants working in garment manufacturing are mostly concentrated in low-end jobs, Richard Wright and Mark Ellis note that they are “more likely to suffer the consequences of ongoing job losses” in traditional industries such as manufacturing, (Wright 2001: 108) and thus increasing their vulnerability in the U.S. job market—already tenuous due to many of the workers’ undocumented status.

immigrants have also developed their own niche in the New York garment districts; these businesses are “characterized by Korean ownership and a Hispanic workforce,” and are increasingly significant in the city’s apparel industry. The Chinatown production pole has gained prominence due to the availability of a large immigrant labor pool; while the Midtown Garment District lost jobs (from 40,000 workers in 1969 to 25,000 workers in 1980), “employment in Chinatown nearly doubled over the same period,” such that by 1980 Chinatown employed 16,000 garment workers, mostly producing low-price sportswear in small firms. (Palpacuer 2002: 61-63) Chinatown has therefore become a center for garment manufacturing jobs, even as other garment districts lost jobs. (Sassen-Koob 1987: 143) It is especially significant that the Chinatown apparel production center was able to succeed and expand since it emerged at a difficult time for garment manufacturing in the United States: at the same time as “big garment and retailing firms increased their search for inexpensive labor in other parts of the world;” Chinatown researcher Xiaolan Bao reminds us that this “highly competitive structure” of production in Chinatown has increased “sweated labor on the floor” and the “dehumanization of working conditions.” (Bao 2005: 68-69)

Workers with undocumented status, in particular, became “even more vulnerable” following the Immigration Reform and Control Act (IRCA) of 1986; one of IRCA’s primary measures was the enactment of employer sanctions, which albeit designed to protect the job market from employers seeking to exploit undocumented workers, in reality “ended up driving undocumented workers underground and amplifying the unlawful employer’s power to exploit them.”²⁷² (Bao 2005: 84)

²⁷² See analysis of IRCA in Chapter II.

Ethnic enclave economies and the garment industry. From the early days of the Chinese-owned garment factories in 1950s' New York, workers and employers have shared the same ethnicity. (Bao 2005: 73) While the contracting system has placed most of the risks in the apparel industry on the shoulders of small contractors—which in turn translates into lower pay and poor working conditions in the shops—this system of decentralized business ownership has also provided the opportunity for Chinese small business owners to “climb up the ladder of proprietors—an opportunity most of them otherwise would not have had.” (Bao 2005: 74)

Ethnic economies and ethnic entrepreneurs sometimes have a controversial role in the U.S. labor market; ethnic economies give immigrants without language skills and U.S. work experience the opportunity to find employment, while also providing ethnic entrepreneurs the chance to use ethnicity to their advantage, counting on co-ethnics' loyalty in their own pursuit of the American dream. In the process of building their own American dream, some argue, ethnic entrepreneurs also provide invaluable skills and opportunities for the co-ethnics they employ. Ivan Light argues that for some workers in the ethnic economy, “their rotten job stands between them and destitution”²⁷³ and that firms in the ethnic economy “are not very profitable, and there can be no exploitation without profits.” (Light 2000: 77) In other words, both groups of immigrants, employers and employees, are just doing their best to survive in the brave new world. In the apparel industry, “vulnerable immigrants, sometimes grateful for any foothold in the economy

²⁷³ Light argues that this is especially true in the informal sector, such as under-the-table workers in the New York City garment industry: the “ethnic economy’s informal sector definitely pays workers and self-employed less than they would earn in the general labor market. However, in this sector, more than in the formal sector, the ethnic economy’s workers are aware that their informal sector work is their only realistic alternative to underemployment and unemployment.” (Light 2000: 77)

and usually desperate for jobs, provide the hands that sew and cut.” (Ross 2002: 117)

Their Chinese employers, on the other hand, gained a foothold in the women’s wear industry because of the “abundant workforce” of co-ethnic workers, allowing Chinese garment factories to produce low-skilled, low-price sportswear at a small enough cost to compete with offshore production centers. Without their cheap labor force, many of these New York City garment factories would not exist. (Palpacuer 2002: 63)

Light and Gold in their 2000 book *Ethnic Economies* describe how ethnic groups who achieve success in the ethnic economy make the most of their own disadvantage in the mainstream American labor market—yet they also transform their soft and hard skills into indispensable assets. Strong ethnic networks can therefore contribute to workers’ strong position in the ethnic economy.²⁷⁴ Yet, Light and Gold also point out, that many immigrant women who find work “in domestic service or the garment industry have been unable to develop significant control over their niches. For these groups, disadvantage remains just that.” (Light 2000: 212)

²⁷⁴ Alejandro Portes explains how the ethnic enclave can work to the advantage of both employer and employee, where employers provide skills and experience for the next generation of ethnic entrepreneurs within the community: ““Ethnicity modifies the character of the class relationship—capital and labor—within the enclave (...) immigrant capitalism faces an objective dilemma. The viability of its modest firms often depends upon the extraction of long hours of labor for low pay. When labor requirements exceed the level that the owner himself and his immediate family can provide, others must be hired. In the absence of state protection, the requirement of above-average hours for lower wages cannot be simply imposed. Enforcement agencies can readily side with immigrants who defect from such conditions against their politically powerless employers. The objective difficulty then consists in how to extract maximum effort from immigrant workers without encouraging them to leave and join the open labor market; in other words, how to persuade them to accept their own exploitation. A common national origin is the obvious answer. Ethnic ties suffuse an otherwise “bare” class relationship with a sense of collective purpose in contrast to the outside. But the utilization of ethnic solidarity in lieu of enforced discipline in the workplace also entails reciprocal obligations. If employers can profit from the willing self-exploitation of fellow immigrants, they are also obliged to reserve for them those supervisory positions that open in their firms, to train them in trade skills, and to support their eventual move into self-employment. It is the fact that enclave firms are compelled to rely on ethnic solidarity and that the latter “cuts both ways,” which creates opportunities for mobility unavailable in the outside.” (Portes 1985: 342-343)

The dilemma is that jobs in the ethnic economy, while providing new immigrants with some income and giving them the opportunity to gain entry into the American labor market, also keeps them “at arms’ length from the mainstream society.” (Zhou 2001a: 167) If their jobs within the ethnic economy are bad and provide no opportunity for growth, then they are offered no escape from poverty and exploitation—neither within the ethnic enclave, nor in the mainstream U.S. labor market. As Light and Gold mentioned above, ethnic Chinese female garment workers are a good example of this dynamic; immigration researcher Min Zhou describes their incorporation into the ethnic economy: “In New York, immigrant Chinese women comprise over half of the workforce in the enclave garment industry. Most of the garment workers lack proficiency, have few job skills, and are married to other immigrants similarly handicapped. Since their husbands alone cannot provide for the family, these women must work to support their families. They often find working in Chinatown a better option than working on low-wage jobs in the larger secondary economy, because enclave employment enables them to fulfill their multiple roles more effectively as wage earners, wives, and mothers. In Chinatown, jobs are not hard to find, working hours are flexible, employers are tolerant of children’s presence, and private child care within walking distance from work is accessible and affordable. Chinatown also offers convenient grocery shopping and various takeout foods. These amenities enable women to juggle work outside the home and household responsibilities. Moreover, women socialize at work with other coethnic women ... [But] working in the enclave economy does not help immigrants gain English proficiency or learn American ways. And many will be stuck with low-wage jobs there ... and those arriving as undocumented may find themselves “trapped” in Chinatown,

toiling dead-end jobs under poor working conditions and seeing little hope of ever making it in America.” (Zhou 2001a: 166-167)

Labor unions and the rise in sweatshops. In the very early days of Chinatown garment factories, unionization was commonplace. Xiaolan Bao notes that in the 1950s, the International Ladies’ Garment Workers’ Union (hereafter ILGWU) organized workers without “significant resistance” from the contractors, primarily because the manufacturers worked almost exclusively with union shops. Therefore it was in the interest of the contractors to unionize their employees—some contractors even subsidized their employees’ first union membership dues. “With Chinese workers joining the union in increasingly large numbers, in the early 1970s Local 23-25 became the largest local of the ILGWU and the local that had the largest Chinese membership of any American trade union.” (Bao 2005: 72-73)

There were early problems with unionization in Chinatown: ILGWU was not culturally equipped to deal with specific interests of Chinese women; and the union failed to enforce labor regulations for all Chinatown garment factories—such that in some shops conditions differed greatly from the unionized factories. (Bao 2005: 73) Many shops were part of the “informal sector,” despite producing garments for the “formal sector;” Saskia Sassen observed in the 1980s that this system of subcontracting utilizing the informal sector had “emerged as a basic vehicle for lowering prices” and constituted an “expansion of a downgraded manufacturing sector.” (Sassen-Koob 1987: 143) Sassen also noted later that “there is a strong tendency for informal work to be located in densely populated areas with very high shares of immigrants.” (Sassen 1991: 289) Immigrant

workers are utilized to “lower the costs of production and raise the organizational flexibility of formal sector industries.” (Sassen 1991: 290)

Even during the times when most Chinatown shops were unionized, contractors’ focus on producing low-cost sportswear placed them under “severe pressure to suppress labor costs;” garment factory owners were “eager to reap immediate profits by fending off any attempt to regulate labor conditions on the floor.” (Bao 2005: 75) However, before the 1960s and 1970s, ILGWU had been able to enforce collective bargaining contracts, therefore stabilizing labor relations in the New York apparel industry (Bonacich 2002: 124)—even if the informal sector prospered with the exploitation of immigrant workers.

Tensions between workers and management in Chinese-owned garment factories escalated in 1982, when the ILGWU negotiated a new contract for the industry—and Chinese contractors decided to opt out, as Bao notes, “counting on the acquiescence of their workers, who shared their ethnic identity.” The Chinese contractors’ strategy failed: more than 20,000 Chinese garment operatives organized street protests, with the help of other ILGWU locals, effectively forcing their employers to sign the new apparel industry contract, which included higher wages. However, because international competition offered lower costs for garment retailers and manufacturers, the 1982 new contract did not fulfill its goal—on the contrary, with plenty of better options for cheaper production overseas, the post-1982 period was marked by the beginning of the decline in unionized, regulated New York garment shops. Xiaolan Bao describes how Chinatown apparel contractors and workers began to experience the now commonplace routine: “smaller and smaller bundles of work at lower prices, subject to frequently changing styles and

arbitrary demands for quick delivery. Instead of a regular eight-hour workday, workers in many Chinatown shops began working ten to eleven hours a day in busy seasons, but only for eight months a year.” (Bao 2005: 75-76)

Aside from outsourcing to cheaper production poles abroad, union agreements had their own design problems—which eventually helped their demise. They encouraged “top-down organizing” and eventually alienated garment workers, who perceived the union positively but bureaucratically; in New York’s Chinatown, Edna Bonacich notes that immigrant workers regarded unions as health insurance providers, rather than a forum for their labor grievances.²⁷⁵ (Bonacich 2002: 128) After World War II, ILGWU garment workers were highly paid workers. Yet the union “adopted a policy of cooperation with management, even assisting the industry’s efforts to streamline production and increase efficiency.” Peter Kwong argues that the ILGWU strategy of “organizing from the top” functioned well “for as long as the manufacturing process was concentrated and labor supply was stable”—after management decentralized into segmented production networks, “the ILGWU had tied its own survival to an industry whose structure it could no longer control. When the sweatshops reappeared in different decentralized immigrant communities such as Chinatown, the union was powerless to stop the process.” (Kwong 1997a: 186)

It is also worth pointing out that in the early days of strong unions, labor had been able to guarantee some transparency and manufacturers’ responsibility for garment workers despite the subcontracting system through the Garment Industry Proviso, which

²⁷⁵ Though Bao notes that labor unions served a unique and significant cultural function in Chinatown because unionization “exposed Chinese women workers to conditions outside their own ethnic community, which allowed them to envision a better life in their new land.” (Bao 2005: 73)

provided that manufacturers' contractors be considered a part of their "integrated system of production." (Bonacich 2002: 128) Yet today it is common practice among apparel manufacturers to keep their contractor lists secret— manufacturers argue that divulging contractor lists would "hurt their competitive situation, as other manufacturers would try to steal their better contractors." However, Edna Bonacich claims this practice "harms labor organizing" because "workers do not know where their fellow workers (working for the same manufacturer) are employed, so joining together becomes immensely difficult." (Bonacich 2002: 125)

Peter Kwong is very critical of current labor organizing tactics, claiming the garment worker's union focus is to avoid losing more ground, and their "sole interest is to fight for its own survival by holding on to its due-paying membership. It is unwilling to assert the rights of workers too forcefully in fear of causing the contractors to shut down or move away. No wonder it closes one eye to the violations of the employers." (Kwong 1997a: 187) Bonacich argues that the garment union today, the Union of Needletrades, Industrial and Textile Employees (hereafter UNITE)²⁷⁶ has shifted organizing efforts away from women's wear garment factories because they are seen as "too fragile to organize. They would simply go out of business or move offshore, leaving impoverished immigrant workers worse off than they had been." (Bonacich 2002: 130)

Another central strategy for UNITE today is the international anti-sweatshop movement. While Kwong also criticizes UNITE's "Buy American" rallies, claiming these are self-serving efforts to protect U.S.-based production, Edna Bonacich argues that the focus abroad with "UNITE's anti-sweatshop work," joined with many anti-sweatshop

²⁷⁶ UNITE is the result of a 1995 merger between ILGWU and the Amalgamated Clothing and Textile Workers Union (hereafter ACTWU).

NGOs, “is a principled form of opposition to declining labor and living standards for workers in other countries.” (Bonacich 2002: 130-131)

Segmented production networks and intense competition: manufacturers set prices and contractors cut costs—garment workers’ shrinking wages and poor working

conditions. Without the strong hand of labor unions to monitor the apparel industry’s subcontracting systems, and with globalization’s opportunities to lower production costs, small New York garment manufacturing firms have been gradually replaced and absorbed by large manufacturers of lower-price designer brands, such as Liz Claiborne, who focused on “strong brand-building and marketing strategies;” higher-price segments also prospered with designer firms (e.g., Calvin Klein, Donna Karan, Ralph Lauren, Anne Klein)—and all of these large manufacturers expanded the geographical scope of New York garment production with international subcontracting networks.²⁷⁷

Garment production systems for these large manufacturers have developed into what Florence Palpacuer describes as “three-tiered production networks,” where some “core contractors” constitute the first tier, developing close relationships with the large designer firms, engaging in “joint planning of activities,” such that the manufacturers “reserve in advance” the contractors’ garment factories’ capacities. These large clothing firms, however, also hire “in-training contractors” and “peripheral contractors.” The motivation for hiring various contractors often times derives from increased production needs; however, since these core contractors might “reach a core position in a manufacturer’s production network, diversify their clientele, and raise contract prices,”

²⁷⁷ Palpacuer estimates that New York’s large women’s wear clothing firms outsource the manufacturing of 60 to 85 percent of their garments at different stages of production (pattern making, cutting, warehousing, and sewing), mostly to apparel producers in the Far East. (Palpacuer 2002: 58)

clothing firms have a monetary incentive to “continuously seek out and train new factories in order to lower average costs.” Large clothing firms also utilize peripheral contractors on a “short-term basis” for unforeseen production needs—and these relationships, which sometimes account for the bulk of a manufacturers’ production, are even more driven by price. These “market relationships” with peripheral contractors “allow manufacturers to exert significant pressures on price,”²⁷⁸ as well as “quickly adjust production volumes to unexpected changes in product demand.” (Palpacuer 2002: 56, 58, 60)

Most of the specialized and highly-skilled garment manufacturers are located in the United States, Hong Kong, and South Korea, while the peripheral contractors are located in “lower-cost countries that have entered more recently into export-oriented production.” Yet these segmented production networks do not occur only in foreign outsourcing, but also within New York City garment districts, where “such strategies are made possible by the persistence of local production capabilities built by new immigrants.” (Palpacuer 2002: 60, 61) Through the 1980s and 1990s, Chinese-owned

²⁷⁸ Palpacuer also discusses the reasons that in the 1930s through to the 1970s clothing manufacturers exerted less influence in the New York apparel industry. Aside from the fact that clothing firms were smaller and did not compare to the large brand-name retailers (e.g., Calvin Klein) of today, strong labor unions and a dwindling immigrant workforce kept manufacturers from exerting as much “price pressure” on contractors and their workers: “Cooperative competition among local firms was historically promoted through the constitution of the International Ladies’ Garment Workers’ Union (ILGWU) at the beginning of the twentieth century and the National Industrial Recovery Act (NRA) in 1933. These institutions provided the backbone of an industrial-relations system aimed at preventing excess competition in interfirm and intrafirm relations. Collective agreements stipulate that manufacturers are to select a stable pool of contractors and distribute work equitably among them; that they should pay contract prices allowing for the payment of union wages within contracting firms; and that these firms should, in turn, distribute work equitably among garment workers.” (Palpacuer 2002: 54) Palpacuer notes that “an important precondition” to these collective agreements which govern not only employment contracts but also “industrial organization” was the nature of the labor force: the “bounded nature of the local immigrant communities, which were both closely knit from a social perspective and restricted in size due to changes in immigration flows.” (Palpacuer 2002: 54) Immigration was increasingly restricted through federal legislation from the 1920s until 1965, thus limiting the flows of labor into the New York garment industry during that period.

enterprise in New York City's garment industry developed into "a dominant group of large contractors" who became increasingly able to compete with "technologically advanced producers in the Far East," thus increasing high-quality garment manufacturing in New York City. Though these large contractors generally own several businesses, some of them very small, their main factories employ 50 to 100 workers, with annual sales of up to \$2 million.²⁷⁹ Palpacuer notes that "these firms are able to attract skilled workers by offering higher-than-average wages, relative work stability over the year, and good working conditions in terms of health and safety standards." However, to "absorb demand fluctuations," these contractors reach outside their core of stable employees, and arrange for "work sharing, temporary work, and subcontracting." These temporary workers are "typically less skilled than the core workforce and are assigned less sophisticated production activities." Employment with large Chinese contractors in the New York City garment industry "tends to be stratified according to skill levels, wage levels, and work stability," where those at the bottom of this segmented labor market experience "highly unstable work" and "employment conditions in terms of wages, stability and health and safety standards can be extremely poor." (Palpacuer 2002: 63-64) Saskia Sassen describes these immigrant communities as "collections of resources [which] consist of cheap, willing, and flexible labor supplies." (Sassen 1991: 290)

Therefore it is the contractors, not the manufacturers, who absorb and manage demand fluctuations by subcontracting the work to the second and third tiers of

²⁷⁹ Individual factories specialize in different steps of garment production, such that these contractors are able to offer clothing manufacturers various services for a "broad range of sportswear products." In effect, "group leaders have over ten years of experience in the local industry and have acquired in-depth knowledge of contracting activities as well as a favourable reputation among New York manufacturers. They have progressively penetrated higher-price segments by building stable contracting relations with quality-conscious manufacturers, such as Liz Claiborne, Ralph Lauren, and Anne Klein." (Palpacuer 2002: 64)

production; Xiaolan Bao notes that this contracting system has effectively “freed manufacturers from the potential risks associated with the volatile nature of garment production by shifting those risks to contractors.” (Bao 2005: 73-74)

Korean-owned businesses, following on the footsteps of their Chinese counterparts, still specialize in low-price sportswear—yet Korean businesses do not have the option of employing co-ethnics, since Korean women are generally more educated and less plentiful than their Chinese counterparts. Therefore Korean entrepreneurs employ chiefly Hispanic women, “many of whom entered the country illegally,” providing “a cheap and flexible workforce” which allows Korean contractors to meet manufacturers’ low-price demands.²⁸⁰ Because Korean contractors are less established than large Chinese contractors, they are subjected to even greater “price pressures” and “more volatile seasonal fluctuations,” all of which affects the garment workers—because it is translated into “lower wages as well as a greater use of temporary workers.” (Palpacuer 2002: 65)

Florence Palpacuer concludes that “competitive pressures are disproportionately exercised on production activities, which constitute the most vulnerable segment of the local industry.” And since both unions and labor law enforcement are weak, “the local system of industrial relations is no longer able to stabilize contracting and employment relations.” What’s more, international competition in apparel production is so strong that “neither collective agreements nor labor laws provide a consensual framework for the operation of local garment firms.” (Palpacuer 2002: 67) These “race to the bottom” dynamics result in job losses, lower wages and deteriorating working conditions for

²⁸⁰ Ivan Light and collaborators found similar dynamics in the Los Angeles garment industry: about 50 percent of garment operatives were Latino workers employed by Asian entrepreneurs. (Light 1999)

garment workers. (Rosen 2002: 229; Palpacuer 2005) The sweatshops that operate informally are at the very bottom of the apparel production system to “meet massive competition from low-wage Third World countries [and] informal work in this instance represents an acute example of exploitation.” (Sassen 1991: 292)

New York City garment manufacturing sweatshops. By 1997, manufacturing overhead corresponded to 16 percent of retail prices—and retail mark-up profits accounted for a whopping 54 percent of what consumers paid for clothing at stores; labor amounted to a mere 12 percent of retail prices. (Bao 2005: 77) While the apparel industry has benefited from the flexible, segmented, cheaper and globalized production networks which dominate garment manufacturing today, the workers, predominantly immigrant women, “have suffered most of the losses;” those workers who have not lost their jobs to overseas apparel producers have seen a “severe deterioration in their wages and working conditions”—in effect, women’s studies researcher Ellen Israel Rosen points out that “production workers in the apparel industry have suffered deeper wage losses than workers in any other U.S. manufacturing industry.” (Rosen 2002: 223, 225)

Between 1968 and 1996, “wages for the nation’s garment workers declined by 18.2 percent.” (Bao 2005: 76) The “garment industry landscape” today has reverted back to early 20th-century patterns: “high turnover, poor working conditions in immigrant neighborhoods, low margins for contractors and low pay for employees.” (Green 2005: 43)

The current deterioration of wages and working conditions for New York garment workers has also derived from contemporary dynamics that are particular to large

metropolises and exacerbate the apparel industry “race to the bottom” dynamics; Saskia Sassen has noted that “global cities” (e.g., New York, London, Tokyo) are characterized by inequality and economic polarization due to “the vast supply of low-wage jobs required by high-income gentrification” in both residences and commercial sectors. This expansion in low-wage service jobs was accompanied by the “downgrading of the manufacturing sector,” where “the share of unionized shops declines and wages deteriorate while sweatshops and industrial homework proliferate.” (Sassen 1991: 9)

Professor Robert J. S. Ross describes the re-emergence of sweatshops in U.S. garment industries by adopting a narrow (what he terms “restrictive but objective”) definition of a “sweatshop,” which is the approach utilized in this analysis: a sweatshop is “a business that regularly violates” provisions in U.S. laws regulating wages, as well as health and safety standards.²⁸¹ Therefore a sweatshop is a chronic violator²⁸² of the Fair Labor Standards Act (establishing minimum wage and overtime pay, and prohibiting child labor), and/or the health and safety provisions enforced by the Occupational Safety and Health Administration (OSHA). (Ross 2002: 101) Ellen Rosen concurs that “sweatshops in the United States are not simply firms that offer undesirable jobs for long hours and poor pay. They are firms paying wages that violate federally mandated

²⁸¹ Professor Ross argues, and I agree, that even though a restrictive and “legalistic” use of the term sweatshop “confers moral dignity to bad pay,” the benefits of this approach outweigh the problems—“by reserving the term sweatshop for those workplaces that do not even meet the low standards of public law, the definition denotes “superexploitation,” that is, something even more extreme than “low pay.”” (Ross 2002: 101)

²⁸² Ross notes that “by emphasizing persistent violations, the definition includes nontrivial behavior and excludes occasional lapses.” It is what the U.S. Department of Labor and the garment workers’ union, UNITE (Union of Needletrades, Industrial, and Textile Employees), describe as “multiple-law violator” or “chronic labor-law violator.” (Ross 2002: 101)

minimum wage standards as well as other employment standards set forth in the Fair Labor Standards Act.”²⁸³ (Rosen 2002: 226)

While 80 percent of garment factories in New York City appear to comply with minimum wage laws, only 3 percent can claim to abide by all labor and safety regulations; UNITE estimates that about 75 percent of New York apparel firms could be considered sweatshops. (Rosen 2002: 227) Peter Kwong’s analysis of low-wage jobs in garment factories, particularly in Chinatown, found that withholding wages is a “common problem throughout New York City.” (Kwong 1997a: 185)²⁸⁴ In effect, a survey of Chinatown’s female garment workers in the early 1990s concluded that their average wage was below the minimum wage; Department of Labor statistics in 1997 showed that about 90 percent of Chinatown shops violated labor laws.²⁸⁵ (Ross 2002: 103) Based on data from the two largest apparel production centers in the country, Los Angeles and New York, “more than 60 percent of contractor shops in the visible industry are found to harbour sweatshop conditions;” according to Robert J. S. Ross’s estimation, this amounts to “more than four hundred thousand workers labouring in sweatshop conditions in the United States in 1998.” (Ross 2002: 105) The U.S. Government Accountability Office (GAO) produced a report on sweatshops in NYC’s garment industry in 1989. GAO found that according to local officials sweatshops were a widespread problem in New York

²⁸³ Furthermore, these sweatshops may operate in the “informal economy”: Employers in unofficial contracting shops may pay workers in cash “under the table,” and may falsify these payments on their official records or fail to report them. Even when such employers do keep records, few report the subminimum wages they may actually pay.” (Rosen 2002: 227)

²⁸⁴ “According to the state’s Department of Labor, in 1989 there were 2,342 complaints of withheld wages it was acting on against 1,723 establishments. And that figure is just the tip of the iceberg—many others victims have not reported violations for fear of retaliation.” (Kwong 1997a: 185)

²⁸⁵ The problem is not exclusive to New York—in the Los Angeles region, 1996 government data shows that 72 percent of the apparel firms had “serious OSHA violations; 43 percent had minimum-wage violations; and 55 percent had overtime violations.” (Ross 2002: 103)

City's garment factories, and that enforcement efforts were limited by staff resources, inadequate penalties for violations of labor regulations, as well as poor coordination between federal, state and city enforcement agencies. (GAO 1989)

For sure, the apparel industry is not the only one operating under sweatshop conditions. In fact, the GAO report mentioned above concluded that the New York City restaurant industry also showed signs of sweatshop conditions. In 2005, GAO turned to safety standards in the meatpacking industry, which has a large proportion of young, male, Hispanic immigrant workers—many of them undocumented, according to demographer Jeffrey Passel's calculations for the Pew Hispanic Center studies on the undocumented population residing in the U.S. (Passel 2005b) Meatpacking workers operate under hazardous conditions, and in 2001 injury and illness rates stood at 14.7 per 100 full-time workers. The GAO report notes that "injury and illness rates can be affected by many factors, such as the amount and quality of training, employee turnover rates, increased mechanization, and the speed of the production line." While Occupational Safety and Health Administration (OSHA) efforts have seemed to improve injury rates, greater oversight of industry practices could greatly improve workers' conditions in the plants. (GAO 2005) Finally, GAO has also reported on poor working conditions for day laborers,²⁸⁶ who despite having an informal relationship with the labor market, may be eligible for wage and safety protections—especially because coverage under the Fair Labor Standards Act and the Occupational Safety and Health Act do not depend on a

²⁸⁶ Defined here as informal workers, often paid in cash and lacking health benefits or unemployment insurance, who work and get paid on a daily or short-term basis, finding work through employment agencies or on their own—congregating in street corners, e.g., construction workers who wait for employment at Home Depot parking lots.

worker's immigration status.²⁸⁷ While GAO concludes that these workers may be exposed to workplace abuses, the unique characteristics of day laborers' informal and random employment patterns affect the ability of enforcement agencies to protect their labor rights. (GAO 2002)

Robert J. S. Ross argues that the reappearance of sweatshops in the United States, at least within the context of the garment industry, can be attributed to four primary factors: (1) de facto deregulation of the Fair Labor Standards Act of 1938; (2) concentration of ownership in the apparel industry, especially at the top, where big retail chains dominate the market and are able to dictate prices to garment manufacturing contractors;²⁸⁸ (3) growth in imports since globalization allowed big retailers to tap into a "global pool of cheap labor," which has had a "powerful effect by weakening workers' bargaining power everywhere and subverting the higher standards of compensation and benefits in the older industrial regions;" (4) increased immigration flows, which since 1965 have swelled the "industrial reserves" at the bottom of the labor market, most specifically in global metropolises such as New York City and Los Angeles.²⁸⁹ (Ross 2002: 114)

Immigration is just one piece of this puzzle; large-scale, low-skilled (and in many cases undocumented) immigration may have taken place at the same time as the re-emergence of sweatshops in New York City, yet analysts caution against placing undue

²⁸⁷ The GAO report points out that day laborers are frequently young Hispanic men, often undocumented, with poor language skills and little formal education.

²⁸⁸ The top twelve retail chains in the U.S. "controlled 68 percent of apparel sales in 1996." Ross reminds us that "in addition to their sheer market power as buyers and sellers of goods, the chains act as manufacturers themselves when they contract for the production of private-label goods" and "this concentration makes the retail chains the price makers of the industry." (Ross 2002: 113)

²⁸⁹ Ross's arguments (3) and (4) are similar to Florece Palpacuer's reasoning, above, about the recent shifts to the New York City garment industry: globalization contributed to increased imports and immigration, which transformed both the production and labor networks in the region's apparel manufacturing. (Palpacuer 2002)

emphasis on immigration. Ellen Rosen and Robert Ross note that even when similar immigrant workers were available to garment manufacturers—yet other factors of production were different from today—sweatshop production did not take hold of New York City’s garment districts. Ross points out that “in the 1950s, when import pressure was low to nonexistent, when unions were strong, and when state regulation was more robust, poor Puerto Rican migrants to New York were not subject to the kinds of abuses that today’s Mexicans and Dominicans face in New York and Los Angeles;” he also rejects undocumented workers’ status and vulnerability as the only explanation for the sweatshop phenomenon in the apparel industry, claiming that “lest the simple explanation of undocumented status substitute for the broader immigrant explanation, it should be noted that among today’s sweatshop workers many are legal immigrants including Korean workers in Dallas and Chinese workers in various locations.” (Ross 2002: 116)

Ellen Rosen emphasizes that it was only “at a point when immigrant labor was accompanied by higher volumes of low-wage imports than ever before—that sweatshops begin to reappear” in New York City. (Rosen 2002: 227) Nevertheless, Florence Palpacuer emphasizes the strong role played by immigration: “continuous immigration creates strong competitive pressures that undermine the stabilization and rationalization of the [New York] garment industry; on the other hand, local producers rely on an immigrant workforce and might suffer from a labor shortage if immigration flows were to slow down significantly.” (Palpacuer 2002: 68)

Section II: The DKNY campaign and Press Coverage

*The Chinese Staff and Workers' Association: model organizing for the 21st century?*²⁹⁰

Researcher Peter Kwong describes a protest in New York City's Chinatown: six Chinese seamstresses and one Latina seamstress chanted, "We want justice! We are no slaves!" in an effort to engage the community. The workers had been denied pay by their employers at Wai Chang Fashions, Inc.; they were owed between \$3,000 and \$6,000 for work they had performed without pay for the garment contractor. First, the owners stopped the weekly payments claiming a cash flow problem; "later, they alleged that the manufacturers had not paid them, although everyone knew the finished goods had been delivered and the factory was working on new orders for the same manufacturers ... As the workers' demands for wage payments grew more insistent, the owners threatened to report their undocumented status to the Immigration and Naturalization Service. The bosses even invoked the names of Chinatown underworld figures to intimidate the workers." (Kwong 1997a: 183)

The Wai Chang workers were helped by the Chinese Staff and Workers' Association; they filed a complaint with the New York State Department and also filed criminal charges against the Wai Chang owners with the New York State Attorney General's office. (Kwong 1997a: 184) The Wai Chang incident was not the first or the last instance of New York City's Chinese workers' protest and activism against unlawful working conditions in garment factories. As was described above, 1982 marked the first time Chinese operatives in then unionized Chinatown shops protested against their

²⁹⁰ Peter Kwong asks this question in his analysis of the Chinese Staff and Workers' Association. (Kwong 1997a)

employers' decision to opt out of a new union contract for the region's apparel industry. In Queens, Brooklyn, Midtown and other garment districts in the city, Chinese garment workers have since organized and "staged work stoppages on the floor," and spoken at public hearings across New York²⁹¹—while also filing numerous complaints with the State Department of Labor for withheld wages; in these endeavours, the workers have found help through the Workers' Center run by UNITE, as well as the Chinese Staff and Workers' Association. (Bao 2005: 84-85)

The Chinese Staff and Workers' Association is a small organization that intentionally leaves much of the organizing duties to the workers themselves—in an interview with Peter Kwong, Wing Lam, executive director of CSWA, explained that he tells the workers that the organization will help them only if they help themselves by taking on their own fights against employers. (Kwong 1997a: 187) In order to address specific concerns in garment manufacturing, the Chinese Staff and Workers' Association formed a Women's Committee, which served to mobilize women and "raise their level of self-confidence," as one of the organizers explained to Peter Kwong. "They tend not to believe that they could do things, or that they could make a difference." Kwong adds that "immigrant Chinese women, coming from a male-dominated culture, tend to be reticent, subordinating themselves to men." (Kwong 1997a: 187) Xiaolan Bao notes, however, that the Chinatown garment industry provided a steady source of employment for married Chinese women ("as early as 1970, almost half of adult Chinese women in the city were

²⁹¹ In town hall meetings organized by community leaders in Chinatown, Peter Kwong describes how dozens of workers have offered "emotional testimonies" to labor and government officials, describing a "litany of abuses" by their employers: these workers' narrative is that "work days in excess of 12 hours are increasingly common" and wages sometimes amount to only \$2.00 an hour, while garment factory owners frequently use "youth gangs" to intimidate workers—but "the most strident and consistent complaint" is that employers withhold workers' wages. (Kwong 1997a: 185)

gainfully employed”), therefore shifting the predominant “working-class family culture” into a “new type of mother-centered culture,” changing the cultural landscape of Chinese immigrants in New York—and these female workers’ perceptions of their role in society.²⁹² This may help explain the workers’ ability to raise their voices and protest poor working conditions, illegal wages and withheld wages in the garment factories; as mentioned above, garment workers’ labor activism had started in Chinatown during the early union days, when Chinese members of the ILGWU confronted both labor leaders and their bosses.²⁹³ (Bao 2005: 71-73) Finally, Peter Kwong also notes that “under the present casualized labor conditions, a community-based organization like the Chinese Staff and Workers’ Association, with bilingual skills and community ties, is better able to deal with this kind of situation than a traditional bureaucratized union²⁹⁴. Traditional unions and labor departments began at a time when they were dealing with the big industries and big business. Today, conditions are different; with industry fragmented and capital highly mobile, a different kind of organizing model is often needed.” (Kwong 1997a: 184-185)

²⁹² To highlight how significant it is for Chinese garment workers (not just women, but all ethnic Chinese) to engage in labor campaigns such as DKNY, a quote from Min Zhou’s experience in Chinatown, New York: “Living and working in the ethnic enclave reinforces common values and norms and creates new mechanisms for sanctioning nonconformity among Chinese immigrant workers from diverse class backgrounds. As one immigrant worker replied to the question of why Chinatown workers were seemingly reluctant to stand up for their rights, “I don’t think you people get it. In Chinatown, if you fight, you lose your job. Nobody will ever hire you. When factories close down, other workers blame you, and your family will blame you.” In a sense, the survival and success of many ethnic businesses depend on cheap immigrant labor as well as unpaid family labor ... Ethnic entrepreneurs depend on a motivated, reliable, and exploitable coethnic labor force.” (Zhou 2001a: 167)

²⁹³ Bao notes that “learning to pressure leaders of their labor organization and other institutions in order to improve their lives thus became an important component, as well as an index, of Chinese women’s acculturation in the United States.” (Bao 2005: 73)

²⁹⁴ Peter Kwong believes that “labor officials and unions have lost touch with rank-and-file workers” since becoming “institutionalized.” (Kwong 1997a: 186) For a discussion of the role of labor unions in the apparel industry today, see above the section on *Labor unions and the rise in sweatshops*.

DKNY campaign: boycott, lawsuit—followed by silence. One of the instances of garment workers’ political mobilization against the fragmented apparel industry²⁹⁵ occurred between 1999 and 2003: 20-some workers employed at Midtown Manhattan garment factories contractors who sewed predominantly or exclusively for Donna Karan International, of the designer brand DKNY, organized to target the manufacturer by protesting outside her flagship store in New York City.²⁹⁶ The demonstrations and boycott campaign, in which the workers were helped by both the Chinese Staff and Workers’ Association (hereafter CSWA) and the National Mobilization Against Sweatshops (hereafter NMAS), also became a legal battle when the Asian American Legal Defense and Education Fund (hereafter AALDEF) turned their claims of overtime violations and unlawful working conditions into a lawsuit against Donna Karan International and the garment contractors involved in the allegations. The case was settled confidentially in 2003, a turn of events which is discussed below in the news analysis and in the section concerning confidential settlements.

However, it is worth noting at this juncture that the confidential settlement did not simply affect further press coverage and public debate concerning the issue of labor violations against immigrant workers in the apparel industry; the silencing of the DKNY campaign by the confidential settlement with Donna Karan International presented problems for this researcher. I had intended to discuss the organizations’ strategies and

²⁹⁵ On the issue of fragmentation in the apparel industry, labor researchers have noted that “campaigns to pressure retailers to “disclose” their contractor chain of supply are another advocacy strategy aimed at piercing the veil of secrecy and impunity that allows jobbers and retailers to pretend to be separate from the labor abuses of their agents.” (Ross 2002: 112) In the case study analyzed here, the workers themselves organized against the contractors and the manufacturers, and they had the knowledge that the garments in their factories were being produced for DKNY.

²⁹⁶ For a brief introduction to the DKNY case study, refer to chapter I.

concerns about the press coverage of labor abuses against the undocumented population—and I was able to accomplish that goal in the Taco Bell case study, which is discussed in chapter VII. However, due to the confidential nature of the 2003 settlement between the parties involved in the DKNY campaign, I was unable to communicate with the three organizations involved: CSWA, NMAS and AALDEF. I contacted NMAS and CSWA several times in 2007 to attempt to schedule interviews in New York City. On several occasions, I was told that someone would call me back—which invariably did not occur. An unidentified worker at CSWA told me that “none of the workers involved in the DKNY campaign were undocumented,” and that CSWA did not wish to speak to me. At NMAS, I spoke with friendlier staff, but their kindness never led to an answer as to whether they would actually talk to me about the DKNY campaign. Finally, on September 26, 2007, I was connected to Mabel Tso, Community Organizer at AALDEF. After explaining the issue, I was connected directly to Margaret Fung, AALDEF executive director. She was kind and forthcoming, explaining that because the litigation was settled with no disclosure of terms, she could not talk about it—and “that’s all I am going to say.”²⁹⁷ When I explained to her that I was focusing on the press coverage about the DKNY campaign, and not exactly the legal case, and as such I was puzzled that CSWA would not talk to me, she replied: “I think the DKNY case is not a good example because of how the litigation got resolved.” She suggested cases with the Urban Justice Center, and Make the Road by Walking.

²⁹⁷ The only information I was able to get from the organization was posted on the AALDEF website: “AALDEF filed a lawsuit against Donna Karan International, Inc. (DKI) and its factories in New York in June 2000, for non-payment of minimum wage and overtime. The matter was settled with DKI in July 2003. AALDEF pursued the workers’ claims against the factory and its owners, and both of the owners defaulted. We expect a court judgment of \$556,000 against the owners and their factories.” (AALDEF 2003: 7)

The DKNY lawsuit is significant not only because it pitted garment workers against one of the most successful manufacturers in the New York City fashion industry, illustrating the problems with labor abuses against vulnerable, often times undocumented, immigrant workers; it is also significant from a legal perspective because it was one of the earliest cases barring discovery of workers' immigration status. As is discussed below in the news analysis, a federal court in New York denied the request by Donna Karan International, Inc., "requesting discovery into the immigration status of plaintiffs" but the judge ruled that "the risk that it would result in intimidation and possibly destroy the underlying claims outweighed the defendants' need for the disclosure of such information." (NILC 2002) For these reasons, and because of the opportunity it provided to discuss the effects of confidential settlements to public discourse, I have maintained the DKNY campaign as a case study—despite Margaret Fung's advice.

While the Chinese-operated garment industry in New York City has received "increasing attention from the media and the press," (Bao 2005: 247) it is still true that "few outsiders know the extent of deprivation in Chinese-owned garment factories." (Kwong 1997a: 185) Furthermore, as was mentioned in previous chapters, labor violations in industries employing large numbers of undocumented immigrants receive very little attention in the national debate about U.S. immigration—yet public discourse about the issue is important because "access to information and opportunity for voice are instrumental to democratic deliberation." (Lloyd 2006: 281). The following sections will focus on the press coverage that was dedicated to the DKNY campaign.

Local news coverage: “DKNY, you ain’t got no alibi!”²⁹⁸ In the timeline examined (1999-2003), the *New York Daily News* published four news accounts of the DKNY protests and lawsuit, none of them very prominently—all short stories and notes, and never in the front page, but rather “buried” in pages 13, 22, 30, and 37. The *NY Post* published two stories, also not figured prominently in the newspaper; and the local weekly *Village Voice* published only one (considerably longer, though on page 31) account of the sweatshop allegations and lawsuit against Donna Karan International.²⁹⁹

Daily News Sample 1: The first *Daily News* sample was published in August 1999, focusing on a demonstration about the working conditions at DKNY contractors in Manhattan. The protesters’ perspective clearly dominated this news story and was used to accentuate conflict between workers and the manufacturers/designer; the sample implies it is undesirable to “exploit workers,” and that it is desirable for workers to protest against poor working conditions. The text displayed a positive treatment of the protesters³⁰⁰, utilizing the demonstrators’ “sweatshop” label in the story headline while implying Donna Karan’s lofty detachment from the issue of workers’ conditions in the factories³⁰¹ by contrasting the affluence of the “glossy new” DKNY store against the allegedly “inhumane” working conditions in the garment factories. The text also contrasted the superficial and cheerful nature of high-end fashion with the plight of garment workers,

²⁹⁸ Quote from protesters’ chants published in lead paragraph of the *Daily News* story published August 29, 1999. For the list of news texts utilized in this chapter’s analysis and in Chapter VII, see Appendix 2.

²⁹⁹ For an explanation of the research design utilized in this analysis, refer to chapter V. The list of texts can be found in Appendix 2. Samples of the itemized individual analyses can be found in Appendix 1.

³⁰⁰ The language utilized (e.g., “chanting,” “banging”) provides a very positive description of workers’ demonstration, as opposed to emphasizing disturbance to DKNY business.

³⁰¹ The Donna Karan statement “refusing to comment” was framed by a description of expensive items at the designer’s new, “glossy” store, connoting both the inequality between the parties (Donna Karan and garment workers) and adding to the drama and conflict in the story.

mentioning the bright colors and expensive price tags of DKNY garments (\$8,995 and \$1,200 for jackets) against the backdrop of workers' accusations of poor working conditions in the factories producing those garments—working conditions that were described in some detail, e.g., “supervisors padlock toilets until lunchtime” and they “refuse to let the ... seamstresses make or receive phone calls”.

The text in the first sample assumes there is a labor relationship between the garment workers and Donna Karan International—despite knowledge that seamstresses are directly employed by contractors, not by the manufacturer. This sample mentioned workers' ethnicity, identifying them as “Hispanic and Asian seamstresses,” but restricted their social identity in failing to mention that workers are mostly immigrants³⁰², as well as possible links between the abuse of vulnerable workers and undocumented immigration status—thus restricting public discourse about the connections between labor violations and undocumented immigration status.

Daily News Sample 2: The second *Daily News* sample was published on June 8, 2000—and it concerns the workers' lawsuit against Donna Karan International and the subcontractors who employed the garment workers. The workers' alleged sweatshop conditions dominates this news account, while Donna Karan International's perspective is not even expressed in this short note which focuses exclusively on the lawsuit and the workers' allegations. The sweatshop label is prominent again with a reference to “sweatshop conditions” in the lead paragraph and the use of a suggestive verb (“workers toiled”), which works to reify the sweatshop label. While this sample also assumes a labor

³⁰² Although the fact that most garment workers are immigrants is somewhat implied by the one worker who is quoted in the story—and is described as a “Hong Kong native.”

relationship between Donna Karan and the garment workers, this story qualifies the relationship between the workers and the manufacturer, noting that workers were allegedly mistreated “in making her garments” and explaining that “workers were all employed by two Karan subcontractors.” Although this text also fails to mention possible links between the undocumented immigration status and workers’ vulnerability to poor working conditions, it characterizes workers as immigrants and by ethnicity, noting they are mostly “Chinese immigrant workers.”

Daily News Sample 3: In the third *Daily News* sample, published on November 30, 2000, again the protesters’ perspectives dominated the news story; the headline was about the fact that the designer had been “hit with sweatshop label” during demonstrations in New York City, and the lead paragraph confirmed that “Donna Karan was branded a Sweatshop Queen.” Some instances in the text (a worker’s reference to their “sweat and tears” and the charge that “working conditions [were] dismal”) helped to reify the sweatshop label. The only Donna Karan statement in the news account claims that the “allegations [of the workers were] untrue and misdirected,” yet the text in general tends to assume a labor relationship between Donna Karan and the garment workers.

This news story returns to the fancy-designer-versus-poor-workers theme found in the first sample; several instances in the text contrast the situation of garment workers (e.g., “we need to work to survive”) with the manufacturer and Donna Karan’s clientele (e.g., the writer referred to DKNY’s “chic apparel” and “formal wear worth hundreds, if not thousands, of dollars;” he also quoted a garment worker’s claim that “the huge profits of Donna Karan are produced out of sweat and tears”). The story portrays as undesirable

that expensive garments for a designer manufacturer should have been produced under poor working conditions; it accentuates the protesters' battle against the "chic" brand Donna Karan, using that duality as a counterpoint to enhance conflict in the storytelling.

The workers' status as immigrants and their ethnicity are first alluded to ("Liu" said through an interpreter"), then insinuated through the description of the garment worker used a source in the news account as a "Chinese immigrant" ("Liu, 47, a Chinese immigrant"). Though the text does not mention workers' possible undocumented immigration status, which restricts connections between labor violations and undocumented immigration status—it highlights the extent of workers' vulnerability (and possible danger) by describing their use of masks to protect their identity ("Like many of the protesters, Liu wore a mask to protect his identity"). Finally, sample three restricted knowledge about the extent of social relations between workers and Donna Karan International because there is no reference to the lawsuit—which had been previously reported in *Daily News and New York Post* stories published on June 8, 2000.

Daily News Sample 4: The fourth *Daily News* sample was published on June 20, 2002. The focus is on Manhattan Federal Court Judge Whitman Knapp's decision that the plaintiffs (garment workers) do not have to reveal their immigration status to Donna Karan lawyers; while the text does offer Donna Karan lawyers' perspective ("Karan lawyers argued ... entitled to information"), the judge's perspective dominates the lead and the following three paragraphs. The text also quotes Kenneth Kimerling, the plaintiffs' lawyer ("It's basically intimidation").

The headline (“Workers’ status sewn up for now”) connotes silencing of information—and it is noteworthy that is a slightly unfavorable tone compared to the very sympathetic language used to depict demonstrations and the lawsuit (in previous news stories, which did not make any reference to immigration status). The lead paragraph, conversely, reverts back to prior allusions in *Daily News* coverage to the “have” status of the manufacturer versus “have-not” status of workers (referring to Donna Karan as “trendy designer”). The story reiterates garment workers’ charges that they were “cheated out of overtime and forced to endure sweatshop conditions;” while there is no description of sweatshop conditions in detail, it utilizes strong language (“cheated out of”) and the “sweatshop” label. Again, the story clearly denotes that “sweatshop conditions” are undesirable.

This last sample from the *Daily News* offers more recognition, acceptance and exploration of the different parties’ arguments (though there is a clear focus on the judge’s perspective) than previous news accounts, which focused almost exclusively on accentuating conflict; naturally, conflict is inherent in any narrative about lawsuits and discovery proceedings, but this particular sample seems to emphasize it less than the earlier *Daily News* stories. As a final and crucial point, the text does not explore (and thus restricts) the connections between workers’ immigration status and exploitation in the workplace—*despite the fact that the news story is about the workers’ immigration status* and alleged violations of labor regulations by their employers.

NY Post Sample 1: The first *NY Post* sample was published on June 8, 2000 with the headline “Karan Fights Sweatshop Charges.” The garment workers’ lawsuit dominates

this news account; several paragraphs explain the workers' perspectives, while also describing their claims of labor violations. Despite the initial focus on the manufacturers' perspective in the headline and lead paragraph, the story goes on to prioritize the workers' perspective before returning to Donna Karan's position in the 7th paragraph. The labor union, UNITE, is portrayed as out of touch with the workers' conditions in the garment factories—and their perspective (““we weren't aware of the conditions” in the factory”) is overshadowed by the active stance of the National Mobilization Against Sweatshops and the Asian American Legal Defense and Education Fund, who helped the workers with the demonstration and lawsuit. The lawsuit dominates the story, accentuating conflict between the parties, especially in the choice of Donna Karan statements: claims are “without merit,” and manufacturer will “vigorously defend herself.”

The sweatshop label is referred to or alluded to several times: “sweatshop charges” in the headline; “sweat suit” in the photo caption; and “New York workers who sew her designs labor under sweatshop conditions” in the lead paragraph. As with the *Daily News* stories, this *NY Post* account assumes it is desirable to have better working conditions at New York City garment shops, and it emphasizes that it is especially undesirable for a designer brand such as DKNY to be involved in or accused of labor violations, using contrasts in the text between accusations of poor working conditions for workers and Donna Karan's status as a high-end designer (e.g., “the designer of this slinky number overworked and underpaid its workers”) to make that point.

The text generally accepts the workers' perspective by giving their views voice and space in the story; it accepts the existence of a labor relationship between Donna Karan and workers (“workers ... say the fashion house should be responsible”), as well

as the existence of poor working conditions (“five workers ... claim they were forced to work 70-to-80-hour weeks without overtime”). However, the text links the social identity of workers as victims of exploitation without exploring the active stance and empowerment inherent in workers’ decision to sue and protest—this sense of the workers’ empowerment and voice was more present in *Daily News* stories. The story also restricts the social identities of workers by not mentioning they are mostly Hispanic and Chinese immigrants; as with the *Daily News* stories, the text does not mention links between abuse of vulnerable workers and the possibility of their undocumented immigration status, therefore restricting connections in the public discourse between labor violations and undocumented immigration.

NY Post Sample 2: The second *NY Post* sample was published on September 9, 2003 with the headline “Karan pays \$500K+ in Sweatshop Settlement,”³⁰³ which is the only instance in the text where the sweatshop label is mentioned. Although this is a short piece, it is significant as the only news published about the confidential agreement between Donna Karan and the garment workers in the sampled newspapers.³⁰⁴ The story utilizes only three sources of information, one of them an unnamed source (“person familiar” with the agreement), which provides the (very scant) information about the settlement; the text also cites a Donna Karan spokeswoman and Kenneth Kimerling, the AALDEF lawyer for

³⁰³ It is interesting to note that both *NY Post* stories’ headlines focus on Donna Karan as the active subject—“Karan Fights Sweatshop Charges” and “Karan pays \$500K+ in Sweatshop Settlement,” even though the first sample is favorable to the workers and focuses on their lawsuit. This newspaper did not publish any stories about the workers’ protests and lawsuit exploring workers’ role as active subjects in demonstrations and legal battle, as the *Daily News* did (e.g., the lead paragraph in the *Daily News* first sample: “Banging cowbells, cymbals and plastic buckets, approximately 50 protesters chanted outside the glossy new Donna Karan New York store on Madison Ave. yesterday: “DKNY, you ain’t got no alibi!”).

³⁰⁴ It is also worth noting that the *Daily News* did four stories on the DKNY protests and lawsuit, but did not report the news on the settlement—which was only reported in the *NY Post*.

the plaintiffs, who “declined to discuss” the matter. The confidentiality of the settlement dominates the text, as well as Donna Karan’s claims of “mutual satisfaction” of the parties involved; the plaintiff’s perspective is of course silenced by the confidential nature of the agreement.

The text seems to imply that confidential settlements are undesirable—this is very subtle, through emphasis on the secret nature of the settlement: the lawsuit was “quietly settled” for an undisclosed amount, presumed to be “500K+” according to the “person familiar” with the case. The news account also mentioned that “the lawsuit had sought class-action status,” while the settlement benefited only the workers directly involved in lawsuit, which also appears to connote the undesirable nature of the settlement.

Despite this somewhat negative perspective of the settlement, this *NY Post* sample assumes, as did the previous stories in local news, a labor relationship between Donna Karan International and the workers, especially in its statement that it was “unclear” whether the contractor (Jen Chu Fashion Corp.) would participate in the settlement payments. Nonetheless, the confidential nature of the settlement allowed Donna Karan International to claim that “the case has been resolved to the mutual satisfaction of all parties” and assert that the manufacturer “did not admit any wrongdoing” concerning the allegations in the lawsuit (that workers were owed overtime and endured unlawful working conditions in the garment factories producing DKNY garments). And since the AALDEF attorney for plaintiffs declined to comment because of the confidential nature of the settlement, and the text also restricts workers’ social identities as active subjects in the lawsuit since their voices are also silenced, the news story naturally assumes the only perspective available: Donna Karan’s statement that the case was resolved to the “mutual

satisfaction of all parties.”³⁰⁵ Hence it is impossible to explore differences in viewpoints in the text, since plaintiffs cannot comment; the narrative about the DKNY lawsuit in the New York City local newspapers is thus *transformed from conflict to consensus without full recognition and exploration* of sweatshop production issues in the New York City apparel industry. Finally, this news accounts restricts the social identities of the workers since it does not mention they are mostly Hispanic and Chinese immigrants; as with the other local news coverage, this story also fails to mention possible links between abuse of vulnerable workers and their undocumented immigration status.

Village Voice Sample 1: The only sample was published on December 28, 1999, under the headline: “Sweat Offensive.” As a reasonably long (988 words) and well-developed piece, it uses eight sources of information, yet most of them favourable to the workers; the garment workers’ perspectives thus dominate the text. Overall, the text explores differences between Donna Karan’s views and workers’ views, while clearly allowing workers’ perspectives to dominate; however, due to its length, it allows more space in general to explain both workers’ and Donna Karan’s views of their differences.

Donna Karan International is given the chance to refute the workers’ protests and lawsuit, claiming that it is ““inappropriate” to target DKNY for abuses” because “we had no control over the workforce at the factory;” the fashion designer also claims that her company “urged [the garment contractor] to “amicably resolve the issues with its

³⁰⁵ It is worth noting that this story does allude to culpability on the part of Donna Karan International because it mentions that the settlement figure is supposedly “500K+,” which connotes the seriousness of the case—as Ralph Nader argues in his critique of confidential settlements, manufacturers do not pay large settlement sums in cases which did not make reasonably rightful claims unless their brand were being severely tarnished. And the DKNY brand was not terribly tarnished here, since the news coverage of the DKNY protests and lawsuit was quite scarce. (Nader 1998)

workers.” However, sympathetic and emotional portrayals of the protesters (e.g., in lead paragraph, “protesters weathered frigid winds and chilly stares”) abound and overpower the manufacturer’s views, as in the lengthy description of the protester and plaintiff Kwan Lai: the writer claims her “indignation is vivid,” “her anger has clearly galvanized her” and thus she is “helping to spearhead a new national campaign.” Furthermore, Donna Karan’s claim that workers’ conditions are not her responsibility was quickly contested by the plaintiff’s lawyer, who called it a “familiar dodge” because contractors “march to manufacturers’ orders.” The text clearly assumes that working conditions are poor in New York City’s garment districts, and that it is desirable to protest poor working conditions, with overwhelmingly positive and compassionate portrayals of protesters and their efforts to organize.³⁰⁶ It also provides generous space to the plaintiff’s AALDEF lawyer, Kenneth Kimerling, stating that “these manufacturers have ample opportunity—and obligation—to find out if the workers are being paid overtime and minimum wage. Everybody knows they work all weekend;” the lawyer’s perspective emphasizes the labor relationship between DKNY and the garment workers, which is not contested and thus assumed in the text.

As in previous local news coverage, this text contrasts Donna Karan’s wealth and the workers’ claims of labor violations in the factories producing her clothes; the writer refers to her flagship store in New York City as the “glass-enclosed, tri-level DKNY emporium,” and to her clothes and their prices, e.g., “knee-length sheepskin number cost \$2800.” Not surprisingly, the sweatshop label is used directly in four different

³⁰⁶ One clear example here is a reference to Kwan Lai—after being fired from Eastpoint, one of the allegedly abusive garment contractors, other employees also lost their jobs because the factory shut down. The Village Voice, describing the situation, notes that “at least [Kwan Lai] is no longer alone,” because now other aggrieved workers have joined in her fight.

instances³⁰⁷, and there are several other references which function to reify the notion that Donna Karan is a high-end sweatshop designer. What is different about this text is that it also appears to use ethnicity to emphasize and contrast the fancy clothing vis-à-vis the immigrant workers' poverty in the reference to a "Chinese-style quilted silk jacket for \$550." The text also explores ethnic relationships in the workplace, which accentuate tension and conflict; first the story refers to restrictions imposed on Latinas in the garment factories, where they are allegedly made to sew by hand lest the workers break the machinery (the text uses garment worker Maria Yunga's quote: "they said we Latinas break everything")—then the writer comments that "remarkably, seven Latina seamstresses" joined Kwan Lai's fight to organize garment workers against Donna Karan International.³⁰⁸

As a final point, as with almost all of the other local news coverage, this text restricts the workers' social identity because there is *no mention of undocumented status*.

Local news coverage themes. The following themes have emerged from the local news coverage of the DKNY campaign and lawsuit: (1) *lack of major coverage*, with mostly short pieces "buried" inside the newspaper, rather than figured prominently on the front page; (2) protesters and their views, especially their description of working condition in

³⁰⁷ The four uses of the label sweatshop in the text are: "Sweatshop Queen of the Year" (lead paragraph); "Sweat offensive" (headline); "sweatshop economy;" and a reference to the apparel industry's "subcontracting system to sweat workers" (quote from Center for Economic and Social Rights report). Other instances in the text work to reify the notion that Donna Karan is a sweatshop designer: the description of garment factories' work as operating under "wretched conditions" and a reference to "grueling 60-to-70-hour weeks sewing DKNY jackets." This news story also quotes Kwan Lai, the garment worker and protester, referring to the "multimillionaire designer" who "exploits the workers who work under her."

³⁰⁸ CUNY Professor Robert C. Smith has noted that "one obvious limitation to the political mobilization of Mexicans in New York City is that a large percentage of the population is undocumented" (Smith 2001: 284), which perhaps explains the writer's surprise that these garment workers decided to join the Chinese workers' mobilization against Donna Karan International.

New York City garment factories, *dominated* the majority of the news accounts; (3) news coverage accentuated the *conflict* between the protesters/plaintiffs and Donna Karan International, especially through contrasts between DKNY as a fancy, expensive label vis-à-vis allegedly exploited garment workers; (4) generally *favourable portrayal of workers* and their demonstrations; (5) use of “*sweatshop*” label to describe accusations against Donna Karan International; (6) condescending and/or negative portrayal of both garment *contractors* (the alleged perpetrators of the workplace abuses) and the *local UNITE*, who is depicted as out of touch with the garment workers and the conditions in the unionized factories; (7) the vast majority of the news pieces assume and accept that there is a *labor relationship* between the corporate manufacturer (Donna Karan International) and the garment workers—though some of the stories qualify that relationship by explaining that the workers had been hired by contractors who sewed exclusively (or almost) for DKNY; (8) although most of the news stories identified garment workers as immigrants and by ethnicity (Chinese and Hispanic), none of them raised the issue of *immigration status*—not even the *Daily News* account that focused specifically on the denial of the Donna Karan’s lawyers’ discovery request concerning the garment workers’ immigration status. In effect, the third *Daily News* sample highlighted the extent of workers’ vulnerability (“Like many of the protesters, Liu wore a mask to protect his identity”) without hinting at the possibility that this behavior might have derived from undocumented immigration—and fears of retaliation and deportation.

Another significant finding was that none of the local news stories restricted the relationship between Donna Karan and the garment workers, despite their degree of separation—the newspaper accounts did not cast doubt concerning the responsibility of

the corporate manufacturer for working conditions in garment shops, despite the fact that Donna Karan International did not directly employ the workers.

Contrary to expectations³⁰⁹, none of the local newspapers labelled protesting workers as “illegals;” in fact, as noted above, the immigration status of workers was not even mentioned in any of the news stories except in the June 20, 2002 *Daily News* report that was specifically about workers’ need to disclose their immigration status (“Workers’ Status Sewn Up For Now”)—and even then the judge’s denial of discovery for Donna Karan lawyers slightly dominated the story. This news story about the request for discovery of workers’ immigration status therefore missed an obvious opportunity for the local press to discuss issue of undocumented workers in New York City’s sweatshops. The press could have sought comments from the area’s many academic experts or attempted to debate the issue further with the National Economic and Social Rights Initiative (NESRI), for example, which had already released a report specifically about the issue.³¹⁰ Presumably the plaintiffs’ lawyers and the organizers involved in the protests would not have wished to discuss the issue of exploitation of undocumented workers, which could imply that their clients did not have legal authorization to work in the U.S.; however, the local press could have sought comments from academics and local non-governmental organization not involved in the litigation. None of the other news organizations covering the issue (*New York Post* or *Village Voice*) used the opportunity to

³⁰⁹ Studies of asylum seekers and unauthorized immigrants in England and Australia point to evident and negative labeling of “illegal,” low-skilled and poor immigrant populations (Kaye 2001; Dauvergne 2004), quite the opposite of what occurred in the New York City local news coverage of the DKNY campaign and lawsuit.

³¹⁰ The report was released by the Center for Economic and Social Rights (CESR), yet NESRI is the CESR spin-off organization now responsible for domestic labor issues in the United States.

build on the *Daily News* report to discuss the issue of undocumented workers in low-wage jobs in New York City.

The analysis also demonstrated that the local news coverage did *not* restrict knowledge about the social problems of garment workers—rather, local news texts provided very positive and sympathetic views of workers’ struggles; this is surprising given our knowledge that news coverage of labor relations in the American press is negligible. (Skewes 2006)

Finally, it is worth noting that the general focus on conflict in local news coverage does not necessarily derive from a taste for sensationalism³¹¹; it also reflects space constraints. Short, poorly-developed stories cannot explore the differences between all the issues and parties involved in public protests and litigations. Short pieces therefore focus on the conflict that is inherent in the lawsuit without exploring the reasoning behind the parties’ differences and the issues surrounding the DKNY protests and lawsuit, e.g., the resurgence of garment sweatshops in New York City, the restructuring of the apparel industry since the 1970s, or the consequences of apparel industry’s shift to outsourcing to domestic garment factories. For example, though the *Village Voice* story is considerably longer than all the others published in local news, and is in fact the longest of all news accounts published about the DKNY protests and lawsuit, it is still one-sided (favoring the workers’ perspectives) and does not explore issue of sweatshops in the city—yet its length (988 words) allows this story to better explore the issues, giving longer quotes to

³¹¹ Immigration researcher Xiaolan Bao notes that after a state-wide study in 1988 confirmed that about 60 percent of Chinese-owned garment factories had “in one way or another violated labor laws,” the press coverage was quite sensationalistic—giving special emphasis to the shops located outside of Chinatown, especially the new garment district in Sunset Park, Queens. (Bao 2005: 85)

the workers, their lawyer and organizers, and the Center for Social and Economic Rights report on DKNY abuses, but also citing Donna Karan's statements in more detail.

National news. In the timeline examined (1999-2003), the *New York Times* published three news accounts of the DKNY protests and lawsuit, none of them very prominently: two of them on the inside pages of the Metropolitan section, and one out of the City Weekly Desk; nonetheless, two of the stories are quite well developed (740 words and 529 words). The *Wall Street Journal* published only one short news account of the sweatshop allegations and lawsuit against Donna Karan International, while the *Washington Post* did not publish any news stories about the DKNY campaign and lawsuit.

New York Times Sample 1: The first sample was published on July 1, 1999. The workers' perspective is slightly dominant, in the lead paragraph and also detailed descriptions of the working conditions at garment (e.g., claiming that "seamstresses were mistreated," the factory "bathroom was locked" and that garment workers were "not allowed to make or receive emergency calls"). Using descriptions of specific examples of abuses in the factory, the text assumes factory conditions are bad and connotes the validity of workers' claims. On the other hand, Donna Karan's statements that manufacturers should not share responsibility for workers' welfare³¹² also predominated; yet both the manufacturer's voice and the contractors' perspectives were still dominated

³¹² Donna Karan's statements quoted in the text: the manufacturer "does not own or operate any factories" and that "this is a personal dispute between unionized contract manufacturer and some of its employees" and "we have nothing to do with their employment or working conditions."

by the garment workers' claims. The news story did not use the sweatshop label, but it did imply that better working conditions for garment workers are desirable; nonetheless, the text offered limited exploration of the different perspectives and means to achieve that goal (of better working conditions in New York City garment factories) due to its short length (only 218 words).

Contrary to most of the local news coverage, this first *New York Times* piece restricts the labor relationship between garment workers and Donna Karan by carefully qualifying that the “factory [where the alleged abuses occurred] was contracted to manufacture her dresses” and that the “factory was contracted to produce dresses with the designer’s label.” Therefore the text also restricts Donna Karan’s responsibility for the garment workers, giving more weight to the manufacturer’s statements than most local news—most noticeable is that this text does not refute manufacturer’s arguments of inability to help workers’ conditions in the garment shops with counterarguments, which most local news accounts did, using workers’ and organizers’ quotes to point out that retail manufacturers such as Donna Karan International have the ability to set prices and are thus responsible for contractors’ attempts to cut costs by violating labor laws.

Finally, this text restricted the social identities of workers by not mentioning that the garment workers are immigrants *or* their ethnicity (Chinese and/or Hispanic); the text also fails to mention the possibility that these vulnerable workers may not have work authorization papers, therefore restricting connections between workplace abuses and undocumented immigration status.

New York Times Sample 2: The second *New York Times* sample was published on December 26, 1999. It is a much longer (529 words) and more developed than the *Times*' first news story about the DKNY campaign, with seven sources of information. However, the garment workers' perspective still dominates the text, especially the voice and experiences of Ms. Kwan Lai; several paragraphs are dedicated to a detailed explanation of this plaintiff's perspective and her alleged working conditions at garment factories in New York City. The text assumes Ms. Lai was wronged, which is accomplished through long descriptions (and sympathetic treatment) of her complaints; the story clearly portrays poor working conditions for garment workers as undesirable by focusing on Ms. Lai's narrative of her experiences in the apparel industry. This piece also mentions specifically the violation of labor laws in the apparel industry, which is not directly stated in other news stories; it is Ms. Lai who brings it up ("Ms. Lai asserted she was a victim of retaliation for asserting her rights under federal labor law") when she claimed being retaliated against after suing a contractor for overtime pay.

As with other news stories, the garment contractors' views are dominated in the text, primarily because they can never be reached for comments. Donna Karan's perspective is much stronger because the manufacturer is given ample space to explain her views; the several last paragraphs of the news story are dedicated to the manufacturers' explanations about its lack of direct responsibility for conditions at contractors' garment shops. This text thus recognizes different perspectives, exploring both Ms. Lai's narrative and Donna Karan's position. The lead paragraph, though, accentuates conflict through a somewhat cynical portrayal of both the demonstration and the designer—the opening sentence describes the protesters as a “rowdy crowd” demonstrating during “one of the

busiest shopping days of the year.” It goes on to state that the protesters “weren't trying to stuff their stockings with \$1,000 jackets” (now targeting Donna Karan’s prices expensive clothing). The lead paragraph also utilized the sweatshop label (noting that protesters “waved signs with slogans like “Donna Karan: Sweatshop Queen””)—and, as with most local news stories, also contrasted the high-end prices and status of the designer vis-à-vis her involvement in sweatshop accusations.

As with the first *New York Times* piece, this story (1) restricted the social (labor) relationship between aggrieved workers and Donna Karan International, qualifying their relationship (“the parent company”) and providing ample space to Donna Karan International statements exempting the manufacturer from responsibility for contractors’ relationship with the workers; (2) restricted the social identities of the workers by not mentioning they are mostly immigrants or their ethnicity (Chinese and Hispanic); finally, (3) the text also restricts connections between labor violations and undocumented immigration status by failing to note that many garment workers are believed to be undocumented.

New York Times Sample 3: The third *New York Times* sample was published on June 8, 2000; it is a well developed news report (740 words) with eight sources of information. The DKNY campaign gained prominence due to the lawsuit’s status as the “first class-action suit accusing a New York clothing manufacturer of operating sweatshops.” The dominant perspectives in the text are AALDEF’s views and the Chinese Staff and

Workers Association's efforts to organize workers;³¹³ the perspectives of Donna Karan International, UNITE's Local 89-22-1, and the garment contractor (Jen Chu factory) are dominated by the AALDEF lawsuit in this news piece. As such, the text does not explore the manufacturer's perspective, which is given very little emphasis and treated with cynicism.³¹⁴ This news piece also utilizes the sweatshop label (e.g., quoting the lawsuit charges that Donna Karan is accused of running "sweatshops"). The discourse therefore overwhelmingly emphasizes AALDEF's position (e.g., claiming that apparel manufacturers and garment factories "systematically break the law")³¹⁵, while accentuating conflict between workers and Donna Karan International³¹⁶, as well as between different organizations representing the workers, i.e., CSWA and UNITE (e.g., CSWA accuses Local 89-22-1 of UNITE of "not representing the garment workers vigorously")³¹⁷.

Because it so clearly favor the garment workers' perspective, the text assumes there is a labor relationship between Donna Karan and the aggrieved workers; the news story uses quotes from the lawsuit and the AALDEF lawyer to explain the fragmented

³¹³ This is most clear in the text's description of the CSWA: "advocacy group that often accuses the union of not representing garment workers vigorously, worked closely with the employees in bringing the lawsuit and organized yesterday's demonstration."

³¹⁴ The only Donna Karan statement and perspective in the text is given in the following paragraph: "As many fashion houses do, Donna Karan International asserts that it should not be held responsible for wage and hour violations committed by factories with which it contracts. In a statement yesterday, the company said it expected its contractors to comply with labor laws and ethical standards."

³¹⁵ Other examples include AALDEF's statement that employees are "forced to work" overtime without pay, and Kenneth Kimerling, AALDEF's lawyer for the plaintiffs, claiming that Donna Karan "can't run away." This is also the first news story that notes that the lawsuit covers "workers at any factory that does a substantial amount of work for Donna Karan" (source: Kenneth Kimerling, AALDEF), which emphasizes the employee-employer link between garment workers and manufacturer—a connection refuted by Donna Karan International.

³¹⁶ For example, using terms such as "fashion house" to describe the lawsuit as a conflict between the "trendy," expensive designer and have-not garment workers—which continues this tendency most clearly observed in local news coverage.

³¹⁷ Richard Rumelt, manager of the UNITE Local 89-22-1 states that the situation is "absolutely outrageous," but the union seems rather incompetent for being unaware of the working conditions in its unionized factory.

nature of the apparel industry, such that the text gives more emphasis and normalizes the indirect labor relationship between the workers and the manufacturer. Breaking labor regulations (overtime pay) is portrayed as undesirable (e.g., quoting AALDEF lawsuit as claiming that the garment factories “cheated workers” out of overtime compensation). The plaintiffs’ legal action was also depicted as desirable (and necessary) through the explanation that “in other instances, once workers accused their factories of not paying the minimum wage or overtime, the fashion house abandoned those factories and moved work to others, where conditions were often little different.”

This third news piece marked the first time in the DKNY campaign *New York Times* coverage that a garment worker was portrayed as an immigrant; one of the garment workers was described as an “immigrant from China,” as opposed to simply “worker” or “seamstress.” However, the last paragraph of the news report describes the context of the workers’ employment (“they often receive off-the-books cash payments that they fear may be brought to light”) without mentioning that these may be informal workers because of their undocumented immigration status—which continued to restrict any connections in the news coverage between labor violations and undocumented immigration.

Wall Street Journal Sample 1: The only sample for this national newspaper was published on June 8, 2000; it is a short piece with only three sources of information: the lawsuit, AALDEF, and Donna Karan International. Though the lawsuit and the alleged labor violations dominate this *Wall Street Journal* news account, the manufacturer’s perspective is given favorable treatment in the last paragraph, with Donna Karan International’s statement that “it is concerned about the working conditions of its

employees.” The text implies that it is desirable for apparel manufacturers to take responsibility for garment workers’ working conditions, and that it is undesirable for garment contractors to engage in labor law violations—the narrative assumes the need for corporate responsibility by emphasizing Donna Karan’s “factory-compliance program” and the designer firm’s pledge to “expect our contract manufacturers world-wide to comply with all applicable labor laws.” Therefore although the text accentuates conflict when describing the lawsuit and the working conditions in garment factories, it also focuses on commonality and consensus between the parties when quoting Donna Karan International’s claims that it is also concerned with working conditions at its contractors.

Despite implying that it is desirable for apparel manufacturers to be responsible for working conditions at contractors’ factories, the text also qualifies the relationship between the garment workers in the lawsuit and Donna Karan International, noting that the five plaintiffs “say they made Donna Karan garments for several years.” On the other hand, the narrative also gives voice to the AALDEF characterization of apparel manufacturers (that they seek to avoid responsibility for garment workers’ conditions at the factories): AALDEF “claims manufacturers such as Donna Karan typically move work to another factory when faced with allegations of labor violations.”

Despite the generally less incriminating language used to portray Donna Karan International (especially when compared to local news coverage), this news piece also uses the sweatshop label in the headline, although the label is qualified as “alleged sweatshop conditions”.³¹⁸ Yet the narrative also labels the workers more straightforwardly

³¹⁸ The text also uses the sweatshop label when quoting the lawsuit: “labored in a sweatshop that didn’t pay minimum wage or overtime.” And another instance in the news story reifies the label by describing the workers’ conditions, e.g., “some worked 70 to 80 hours a week without earning overtime pay.”

than any other news account: the plaintiffs in the lawsuit are described as “five Chinese immigrant garment workers” in the first sentence of the lead paragraph.

Lastly, this news story—as with all the other samples—does not connect the alleged labor abuses with the large number of undocumented immigrants in the garment manufacturing industry.

National news coverage themes In the national news coverage, the major themes were: (1) garment workers’ perspectives dominated the texts, even the *Wall Street Journal* account, which gave more voice to Donna Karan International and portrayed the manufacturer in a more favourable light than the *New York Times*; (2) texts generally describe and narrate specific examples of abuses in the factory, especially in the *New York Times*, and assume factory conditions are bad, implying that workers’ claims are valid; (3) all of the news stories clearly connote that better working conditions for garment workers are desirable; (4) compared to local news coverage, Donna Karan’s statements, always through a spokesperson, were given more prominence and better explained; (5) less frequent use of the ‘sweatshop’ label, and less emphasis given to the label, compared to local newspapers; (6) most news pieces (except for the *New York Times* third sample) restrict the employment relationship between garment workers and Donna Karan by qualifying the nature of their connections in the apparel industry fragmented chains of production; (7) in general, though the texts still offered limited exploration of the means to achieve better working conditions in garment factories³¹⁹—the national news coverage provided much more of the context of apparel industry production in New York City than

³¹⁹ The *Wall Street Journal*, through its focus on Donna Karan’s alleged factory compliance programs, pointed in that direction more than the *New York Times* coverage.

the local news coverage; (8) while the early *New York Times* coverage restricted the social identities of workers by not mentioning the garment workers are largely immigrants or their ethnicity (Chinese and/or Hispanic), the third sample identified workers as Chinese immigrants—and the *Wall Street Journal* went in the opposite direction, emphasis both ethnicity and immigration in the lead paragraph; (9) as with local news coverage, all of the samples do not mention that many workers in the garment industry are especially vulnerable because they do not have work authorization papers, therefore restricting connections between workplace abuses and undocumented immigration status.

The *Washington Post* did not publish any story at all—while they published several stories on the Taco Bell campaign, which is discussed in chapter VII. It could be argued that the Taco Bell campaign attained much greater national scope than the DKNY campaign through its travelling Truth Tour, and thus commanded national news coverage; yet garment industry sweatshops are part of a larger trend in labor violations in immigrant industries, which in general have received little attention from the press.

It is interesting to note that while the portrayal of workers in national news is overwhelmingly positive, the vast majority of the news coverage does not focus on *violations of labor laws*—rather, the workers' plight is presented as unfair and against their basic human rights, but not as actual violations of the Fair Labor Standards Act. This is not at all surprising, given that press coverage of labor relations is generally very scant; according to a recent study, labor relations and trade unions are estimated to comprise only 0.4 percent of American news coverage in television, radio and newspapers. (Skewes 2006) Therefore the scant press coverage dedicated to the DKNY

campaign could be at least partly explained by the general lack of visibility of the issue (labor relations) in the news.

“Cheated workers”: *forgetting immigration status as a piece of the puzzle*. Sociologist Robert J. S. Ross claims that popular media are “obsessed” with immigration as an explanation for the re-emergence of sweatshops in contemporary America—he claims that about 45 percent of news coverage about sweatshops (in the *New York Times* and *Los Angeles Times*) “identify the immigrant status or ethnicity of the workers in either the headline or the lead paragraph, and over 50 percent mention these identifiers of the workers somewhere in the article.” (Ross 2002: 114, 119) Yet both the national and local news coverage of the DKNY campaign not only by and large did *not* emphasize ethnicity or immigration status as prominently as Professor Ross claims, but they also completely failed to mention the possibility (or even probability) that many of these workers were undocumented.

This case study, though of very limited validity in terms of representing press coverage of workplace abuses in general, does provide an opportunity to discuss this thorny issue. Representing garment workers as undocumented in press coverage may indeed function to label them as unworthy of labor rights; the journalists covering the DKNY campaign, clearly favourable to the workers’ cause and outraged about a manufacturer of expensive women’s wear (Donna Karan International) being involved in such shameful production networks, were likely well intentioned in their obliteration of immigration status in their narratives—certainly, well-informed residents of New York

City (indeed, of any American city today) would have been aware of the likelihood that some of the workers involved in the DKNY campaign were undocumented.

And journalists are not alone. Farm labor activists, for example, worry that immigration status is “a really hard thing to mention right now because of the discourse over the past two or three years [where] it’s become okay to heap mountains and mountains of bile upon someone just based on whether they crossed a border with a certain paper in their hand or not. And that obscures everything else about their experience, about who they are, about why they came here.” (Perkins 2008) Cultural studies scholar Stuart Hall emphasizes that articulations are ripe with ideological connotations, and as such are the site of the construction of social meaning; it is through discourse that societies “normalize” their dominant standards of meaning and worth. (Hall 1980: 129, 133) When Arabs are frequently connoted as violent, and Hispanics and Blacks are constantly associated in the news with sports and entertainment (as opposed to business, education and health), there is a hegemonic discourse at work—which is likely to affect social perceptions of these ethnic and racial groups. But another aspect of this discourse ideology is its counterpart: silence. In this case, silence about undocumented workers’ exploitation in American workplaces.

While on the one hand it is positive that garment workers in the DKNY case study were not too readily typecast as “immigrants” and “illegals,” the danger in silencing these connections is also not small. It is a conundrum, but if these connections are not made in public discourse, then the immigration debate will remain impoverished—focused on what immigrants receive or take from the United States, rather than what America does or fails to do for its newcomers. The debate does not take into consideration what

sociologist Douglas Massey asks in “The American Side of the Bargain” (Massey 2004): *What do we do for low-wage immigrants?* Are we safeguarding even basic human rights in the workplace, or are we allowing industries that employ large contingents of undocumented immigrants, such as garment manufacturing, agriculture, construction, and meatpacking, to become safe havens for workplace abuses—and in the process harming immigrants and native-born who work alongside these undocumented workers.

Despite the risks of negative representation, being visible in the media is necessary for participation in political life and deliberative democracy. (Benhabib 2002) The answer is *not* to be invisible. It is minority inclusion and empowerment through more diverse, less stereotyped news media coverage that can facilitate both the *integration* of minorities into the mainstream and the *transformation* of mainstream discriminatory views. The antidote to “bad press” is *diverse* press. In southern California, migrant workers’ participation in independently-produced short films about their camps enhanced the migrants’ profile in their cities and communities. (Caldwell 2003) Minorities also learn the workings of political life through access to the press; the growth of Hindi newspaper production and consumption across India increased the visibility of ethnic, rural communities—providing rural dwellers with the opportunity to understand the national power structure, place demands and have their views and concerns represented. (Friedlander 2001: 163) A vibrant “marketplace of ideas” with more egalitarian access to the press provides alternative voices and perspectives and weakens biased and discriminatory discourse. According to Julia Perkins of the Coalition of Immokalee Workers, farm worker activists “really struggle with this, we try to figure how to get beyond that. And the way we look at it is the immigrant issue is a labor issue, a trade

issue.” (Perkins 2008) And perhaps an actual dialogue in the American press about the connections between the United States and Mexico today, which push workers into better opportunities in the American labor market, could take place—but in order for that to happen public discourse about immigration would have to move beyond undocumented immigrants’ effects to the national economy and public coffers. And labor activists would have to be willing to brave this new world—and speak not only on behalf of “illegal” workers, but directly about the vulnerability to workplace exploitation that afflicts low-wage workers in general, and undocumented workers in particular.

Confidential settlements and silence in public discourse. Confidential settlements such as the one entered into by the plaintiffs in the DKNY lawsuit are disastrous for public discourse; they silence discourse about myriad abuses, including labor standards. Of course, “one way to end confidential settlements is for litigants to refuse to participate in them. This, of course, is asking a lot of individuals who may desperately need the money from an offered confidential settlement.” (Nader 1998: 89)

Ralph Nader has written a book focused about American courts favouring corporations with many legal resources over individual or smaller class-action litigants. Legal scholars have also argued that institutional factors, the manner in which courts operate—including the availability of confidential settlements—are significant in determining which cases are selected, and how they are decided; Brace and Hall point out that institutional features of court systems, and their supply of legal resources, are just as influential in determining outcomes as ideological factors. (Brace 2001)

In confidential settlements the party who sued receives damages with the intent of resolving the claim in an expeditious manner—yet “on condition that the facts of the case and the amount of the settlement be kept a secret.”(Nader 1998: 60) Nader describes how confidential settlements generally progress: a person is harmed (e.g., by a defective toy, wrongful termination from employment, or non-payment of wages) and the person seeks redress in a court. Then “after years of wrangling the defense lawyers are forced to release requested information, and if the now disclosed evidence proves the plaintiff’s case, the defendant will offer a settlement. The settlement offered will come with one catch: in order to receive the money, the litigant and his or her lawyer have to agree to secrecy. The terms of the settlement will be kept secret, thereby preventing the public from knowing if the case was valid, while allowing the company to continue to insist that it did nothing wrong.” Often, the settlement offer will also “require that all the evidence discovered in the case be sealed against disclosure to other persons similarly injured, other lawyers representing such persons, the media, and government regulators—even if the secrecy serves no beneficial public purpose, and even if it endangers the public safety.”³²⁰ Nader also notes that courts often “rubber-stamp” confidential settlement in

³²⁰ Secrecy in judicial proceedings allows “evidence relevant to public policy debates and consumer interests, to remain hidden, frequently from the public and sometimes even from victims of the wrongdoing.” (Nader 1998: 60) Other plaintiffs are unable to draw upon prior litigation in establishing their case—ensuring that each new OS player remains alone in their quest for justice. Ralph Nader illustrated the issue with some chilling examples of consumers and their families who were harmed or killed by defective products (e.g., cars, silicone breast implants), but despite the similarities in their cases, were unable to connect their own complaints to prior litigation because of confidential settlements. (Nader 1998: 70-75, 76-89) One case illustrates the problem quite dramatically: leaky silicone breast implants harmed several thousands of patients in the 1980s and early 1990s until finally so many lawsuits were filed concomitantly by different injured parties that the cases were consolidated under one federal judge’s jurisdiction—who then prohibited “breast implant manufacturers from enforcing confidentiality clauses and from seeking such clauses as part of future settlement agreements.” However, Nader and Smith note that while many silicone breast implant cases were being settled confidentially, “other women were falling ill receiving silicone implants, and few of them knew why. The crucial information remained closely held by some breast implant manufacturing company executives, their power lawyers, and victims precluded from talking by confidential settlement agreements.” (Nader 1998: 82-83)

order to be free of “large and cumbersome” cases. (Nader 1998: 75-76) In sum, confidential settlements resolve the dispute in individual cases, but the confidentiality clause avoids setting precedent for future cases because “all evidence introduced in the trial” is “swept back under the carpet.” (Nader 1998: 80)

In cases involving labor law violations in New York City garment factories, secrecy contributes to silence the issue from public debate. Other than reporting the news of the settlement, the news media effectively do not have *any more information* to publish on the case, since all their sources of information have been silenced. The sweatshop-inducing subcontracting system prevalent in New York City’s garment industry remains in place, while all the evidence amassed in court proceedings on a significant case involving a prominent player in the apparel industry (Donna Karan) is sealed.

In Marc Galanter’s seminal Law and Society piece, “Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change”, he analyzes how “the basic architecture of the legal system” can work to limit “possibilities of using the system as a means of redistributive (that is, systematically equalizing) change.” (Galanter 1974: 95) Galanter asks a specific question addressed throughout the article: “under what conditions can litigation be redistributive”? (Galanter 1974: 95) He considers litigation in the “broadest sense,” including “the whole penumbra of threats, feints, and so forth, surrounding such presentation.” (Galanter 1974: 95-96)

In his investigation into the role of law in socioeconomic redistribution, Galanter tackles not only whether legal remedies are equally accessible to both the privileged (“haves”) and unprivileged (“have-nots”), but also addresses the comparative success

between the two as the true measure of legal redistributive power. Galanter focuses on “results” in the legal process, investigating the circumstance where have-nots actually “win”? Viewing the law from a pragmatist perspective, Galanter sees legal remedies as “social games,” which can be used to achieve a more equitable society. Have-nots generally know the rules because they “play” constantly, and are thus called “repeat players” (RP); those who do not utilize the courts very frequently are termed “one-shotters” (OS); while not all OS players are have-nots and vice-versa, the relationship is constant enough that Galanter correlates the two.

Galanter finds that it is very difficult for have-nots to win in the courts—thus the title of his article: “The Haves Come Out Ahead.” Yet Galanter is not simply counting the number of times disadvantaged groups in society win cases or settlements; to the contrary, he cautions that in the legal “game” the definition of success is not limited to winning per se. Because “rules” are a crucial element to this system, being able to influence and change old regulations, as well as building new ones, is actually more significant than the outcome of individual cases. Thus to “win” the legal game is generally tantamount to “maneuvering” rules so that they become increasingly favorable to one’s interests. (Galanter 1974: 96) Through confidential settlements, individual plaintiffs “win” their case—but have-nots lose the “legal game.”

Immigrants as Have-Not in U.S. Courts. Of course, Galanter’s “repeat players” have two key advantages over “one-shotters”³²¹: (1) they know the rules and the courts; (2)

³²¹ In the end, Galanter concludes there are a few possible solutions to reverse this scenario largely unfavorable to have-nots: (1) through stimulating rule change, so that the possibility of regulatory “maneuvering” becomes clear to all legal players – not only “repeat players;” (2) increasing and improving institutional facilities, coinciding with greater possibility of rule change; (3) improvement of legal services

because they know the rules, and because their stakes are higher due to continued interest in the outcome of the “game,” they tend to play with what Galanter calls “rule mindedness.” In other words, they play for the bigger picture, they play to modify and “maneuver” the rules of the game—not to win particular cases or “rounds.” RPs can also afford to pay talented legal professionals, and to lose smaller cases to keep the rules in their favor. (Galanter 1974: 96)

Immigrants are generally one-shotters; there are several reasons for this assumption—even rich immigrants are unfamiliar with the legal system in the United States. On the other hand, low-wage immigrants and their community-based organizations such as CSWA are likely to have less financial resources and be unable to afford costly litigation, and expensive lawyers’ fees. Also, undocumented immigrants’ status is likely to affect their perception of entitlement to utilize the legal system. In the workplace context, we know that although undocumented workers are entitled to the same labor law protections as U.S. citizens, they are still pressured by employers into unlawful working conditions and salaries due to their fear of deportation. (Massey 2002; Compa 2004; Daniels 2004)

Of course, immigrant communities (e.g., Salvadorans’ campaign to obtain TPS, or temporary protected status in the U.S.) are capable of devising specific legal strategies to fit their needs, despite their OS status. (Coutin 1998) In effect, both Salvadoran and Guatemalan refugees fit outside the “box” of U.S. asylum law and their permanence in

in quantity and quality; and (4) improvement of strategic position of have-not parties. Marc Galanter is not entirely optimistic about any of the solutions above, in particular the willingness of the legal bureaucracy to improve its institutional facilities. He contends that it would take a shift in the legal culture of both institutions and professionals (lawyers) to reorganize the “game” – and render it more inclusive and accessible to the have-nots. (Galanter 1974: 96)

the United States have demanded a legal struggle on the part of these communities. (Coutin 2001) The role of legal aid organizations is crucial in helping the immigrant community capable to address their grievances in the courts (Hein 2001); in the DKNY campaign, AALDEF legal assistance was key in bringing visibility to the DKNY campaign and being able to battle Donna Karan International in the courts.³²²

Amicus curiae or “friends of the court” briefs can also help to increase OS parties’ success rate in U.S. courts. They often offset some of RPs’ advantages by providing OS parties, through their arguments, with the organization and resources generally unavailable to them. (Songer 2000) Legal researchers have argued that amicus participation increases litigation success; the U.S. Supreme Court, for example, is influenced by briefs mostly because amicus curiae briefs provide convincing arguments to support the litigants’ case (Collins Jr 2004)— and they also “are important because they reduce information problems at the Court by helping the justices anticipate the impact of their opinions.” (Spriggs 1997: 365)

The Human Rights Framework: Is the Legal Route Effective? Aside from the problems faced by one-shotters described above and evidenced in the DKNY confidential settlement, legal strategies cannot accomplish all human rights claims—simply because of the limitations in their justiciability. Maria Foscarinis recounts her experience as Executive Director of the National Law Center on Homelessness and Poverty, and the frustration of not finding legal solutions for the “large category of people who came to the clinic, explaining that they had lost their job, or could not find housing they could

³²² Coalition of Immokalee Workers activist Julia Perkins, interviewed by the author for the analysis of the Taco Bell case study in chapter VII, notes that her organization, for example, does not have the resources to pursue legal action. (Perkins 2008)

afford on their welfare checks or they wages as day laborers. From their perspective, at least, these were problems that lawyers might be able to help address. But for us, these were the cases that were the most frustrating and unsettling: existing sources of aid—such as subsidized housing and jobs program—were generally filled beyond capacity. As lawyers seeking redress within existing laws, there was not much we could do.”

(Foscarinis 2000: 327) Since courts cannot interfere with funding provisions, the legal route cannot be effective in seeking redress for economic and social issues, such as affordable housing for the unemployed and the poor.

With courts largely incapable of addressing human rights claims because of their non-binding nature, “the judicialization of politics” has been questioned by legal scholars such as Penelope Andrews; she argues that “international law is fundamentally a political and a practical enterprise. Although driven by theory and ideology, it is the consequence of hard-nosed political bargaining and compromise.” (Andrews 2000: 879) David Kennedy concurs and claims that the rights discourse masks economic and political hegemony and the everyday struggles of minorities, primarily through portrayals of inequality as almost accidental, as opposed to being the result of deep structures embedded in how society is constructed and organized—and transforms human rights into an international bureaucracy to protect these victims of abuses. (Kennedy 2002) Makau Mutua highlights the fact that human rights language doesn’t acknowledge inequality: “The issue of power is largely ignored in the human rights corpus. There is an urgent need for a human rights corpus that is multicultural, inclusive, and deeply political [to] address deeply lopsided power relations among and within cultures.” (Mutua 2001: 207)

In the United States, some non-profit organizations (e.g., the Center for Economic and Social Rights, CESR, and the National Economic and Social Rights Initiative, NESRI) reflect some of these concerns, and emphasize the use of several approaches in the fight for economic and social justice: “Multidisciplinary research can expose how deliberate policy decisions in education, health, housing, and other areas leave entire communities on the margins of survival. Advocacy can demonstrate that these decisions are not just bad policy, but human rights violations that must be challenged and changed ... And education can enable affected communities to understand the root causes of human rights violations and take the lead in demanding change.”³²³ NESRI has recently sponsored a project that “integrates a human rights perspective into public education advocacy in New York City.” (Sullivan 2003: i) African scholar and activist Mwambi Mwasaru also emphasizes community participation, and responds to David Kennedy’s concerns about the bureaucratization of rights more directly. Mwasaru reminds human rights activists that there needs to be “recognition and respect for people’s leadership in their struggles, and humble acceptance that participation of external actors in those struggles will be on the basis of invitation (and) the understanding that the people are the primary actors and stakeholders.” (Mwasaru 2003: 1)

Despite its international hierarchy and lack of legal clout to bind countries and employers, the human rights vocabulary and its “legal formalism” can still “play a powerful ideological role in channeling political aspirations and immobilizing grassroots political struggle.” (Andrews 2000: 865) An example of this ideological role of human rights language happened when the AFL-CIO decided to call for the repeal of IRCA and support legalization for undocumented workers. While their loss of membership greatly

³²³ CESR description of the organization’s methodology can be retrieved at www.cesr.org.

explains the union's change of heart, the fact that "organized labor has recognized that immigrants, whether documented or not, are a large part of the workforce" the human rights vocabulary helped the union incorporate immigrant rights into its fold. (Nessel 2001: 398-400) And in legal cases, as was discussed in chapter III, positive developments have taken place with immigrants being granted access to Fair Labor Standards remedies. Lori Nessel proposes "legislative changes in order to harmonize immigration and labor policy goals" and argues that an immigration "retreat from the workplace accompanied by stricter enforcement of labor laws for all workers would further immigration policy goals." (Nessel 2001: 349)

The Sweatshop Economy and the Perpetuation of Vulnerability and Abuse. The New York City apparel industry is alive and well; the city "retains an edge in arts and fashion," which gives New York a "distinct advantage" in women's wear production, especially for "higher-priced, more sophisticated sportswear" such as Calvin Klein and Donna Karan, who will "remain anchored in Manhattan." (Palpacuer 2002: 67) And the "economic restructuring" of the apparel industry "has generated a large supply of jobs and casual labor markets that facilitate the employment of disadvantaged foreign workers" (Sassen 1991: 32), who will continue to seek out sweatshop jobs that at least guarantee some income for their families.

Meanwhile, outsourcing is likely to continue competing with U.S.-based production and leading the 'race to the bottom' in garment production; according to U.S. Bureau of the Census data, 87 percent of men's sweaters consumed in the United States in 1999 were imported—primarily from low-wage, low-price producers; the same is true

for 92 percent of women's suits, 69 percent of skirts, and 59 percent of dresses. (Ross 2002: 114) In such a global apparel market, U.S.-based workers and their contractors have greatly diminished bargaining power. Therefore "owners are not afraid of breaking the law," especially given the "leniency of punishment for the crime;" what's more, "owners know that most violations will never be reported because of workers' fear of retaliation and, among undocumented residents, of trouble" with Homeland Security. (Kwong 1997a: 185)

Indeed, undocumented immigration worsens low-wage workers' "handicaps in the labor market. Unwilling to complain to officials for fear of discovery and deportation and afraid to join unions for the same reason, undocumented workers are the most vulnerable." (Ross 2002: 116) And despite the heavy influx of undocumented workers into the country, labor enforcement remains lax. Investigators working for the Wage and Hours Division of the Department of Labor [responsible for the enforcement of the Fair Labor Standards Act of 1938] "face increased numbers of establishments with a relatively smaller staff."³²⁴ (Ross 2002: 111) The Department of Labor (DOL) instituted in the early 1990s a voluntary program for working with manufacturers to monitor labor-law compliance of contractors; despite good results, that initiative has not sufficed: in 2000, a DOL study in California showed that "only one-third of garment contractors examined complied with labor law;" since there were approximately 150,000 garment workers in Southern California in 2000, it is safe to assume that about 90,000 of them worked under "sweatshop conditions." (Ross 2002: 104)

³²⁴ According to data from the U.S. Department of Labor, each investigator was assigned to monitor 5,700 workplaces in 1983, 8,600 in 1996, and 7,500 in 1999. (Ross 2002: 111)

Within the undocumented population, the DKNY case study also illustrates the “feminization of poverty.” It is known that “more women than men are found in the poorest sections of the population and, at the same time, greater demands are made on women in a ‘flexible’ and deregulated labour market while they are paid less;” this is taking place at the same time as public spending, including the regulation and monitoring of labor standards, has been minimized, leaving these women without effective means of state protection.³²⁵ (Clapham 2006: 16)

Human rights protections entails helping the most disadvantaged amongst us; it means acknowledging and respecting the specific circumstances that have brought the world’s poor to our shores, and protecting rather than criminalizing low-wage immigrants as “illegal.” On the other hand, we cannot turn a blind eye to their exploitation by not telling their full story: they are workers, they are Chinese and Hispanic, they are women—but many of them are also unauthorized immigrants, which amplifies their vulnerability in the American labor market. The DKNY case demonstrates how workers and the organizations helping them are sometime galvanized to tell their story. Many workers are taking time off from work to organize under the umbrella of community-based organizations³²⁶—even those workers who are undocumented. (Kwong 1997a:

³²⁵ States have also “cut back on education and health care facilities paid for out of the public purse.” This is especially worrisome in free trade zones (FTZs), which are sometimes developed and advertised by “host countries as areas with little or no social regulation or respect for the right to form trade unions or other associations.” “The idea is to achieve a comparative advantage by driving down wages and attracting transnational corporations,” e.g., through tax breaks. In Mexican FTZs, about 50 percent of workers are unmarried, young women—who are often paid less than \$1 per day. (Clapham 2006: 16)

³²⁶ Peter Kwong notes that “small, flexible organizations such as the Chinese Staff and Workers’ Association that are close to the people, culturally sensitive, and internationally connected may present one model for building a revitalized labor movement in the U.S. Other alternatives are also possible. Some—such as the Teamsters—are working to reform and democratize traditional unions, rebuilding from the bottom up. Others are forming new, independent unions more closely responsive to the new economic situations their members encounter.” (Kwong 1997a: 188)

187) They are bypassing their local ethnic economies to target the manufacturer who benefits most from the de-regulated labor market in the apparel industry.

Yet local policies and actions will not achieve long-term results until there is “global regulatory architecture” in place which stabilizes international competition and improves “employment conditions across the global apparel chain.” (Palpacuer 2005: 65) U.S.-based organizations are also pursuing the enforcement of labor rights internationally; for example, the Economic Policy Institute has proposed that U.S. trade preferences be linked to enforcement of labor rights. (EPI 1999) The Institute has also suggested a “global transaction tax,” an international tax on global financial transactions “whose proceeds would be dedicated to social investment in the developing world.” (Faux 2000) Furthermore, UNITE and a variety of advocacy groups “have campaigned for legal and ethical change, calling for manufacturers or retailers to take responsibility for the labor conditions under which the goods they sell are made” (Ross 2002: 112) and “building connections between unions in the U.S. and organization of the workers they are pitted against in developing countries.” (Kwong 1997a: 188)

UNITE is therefore devising new strategies, focusing on local Garment Workers’ Centers to address workers’ concerns, even those who are not unionized; it also seeking to implement codes of conduct and monitoring systems, and cross-border organizing, (Bonacich 2002: 131-134) in concerted efforts to counteract a fragment apparel industry where “workers’ strategic resources are challenged by new advantages for their employers.” (Ross 2002: 117) Moreover, Edna Bonacich argues that garment industry organizing strategies are the labor movement playground for devising new strategies, and could grow to have wide repercussions for other American unions: “The garment industry

is more advanced than most in terms of outsourcing and offshore production, but others are moving along a similar path. Apparel may prove to be the industry where the most forward-looking experiments in organizing are tried out.”(Bonacich 2002: 123-124)

On the legal front, immigration law scholar Kevin Johnson believes that the U.S. immigrant population, especially the large Mexican population across the country, has the potential to change not only specific labor and employment practices and legal remedies, but also the agenda on civil rights issues in this country. He believes that this increasingly powerful identity-based group will build large, successful coalitions to represent their interests—and is thus more likely to ensure RP status to the Latino population through a conglomerate of organizations. (Johnson 2002)

Candid and compassionate public discourse about labor abuses in industries employing a large proportion of undocumented workers could greatly contribute to all these efforts to promote corporate accountability in fragmented industries such as apparel production—and agriculture, which is the topic of the following chapter.

Part II

Chapter VII: David Toppled Goliath: the Coalition of Immokalee Workers' Taco

Bell Campaign

The Taco Bell case study: background and data analysis. Following the same format utilized in the DKNY chapter, Section I of this chapter provides a brief introduction to the prevailing labor conditions in the U.S. agricultural industry, providing the background to the events in the case study per se. Section II introduces the context of how 'David' (the Coalition of Immokalee Workers, CIW) was successful in their campaign to bring 'Goliath' (the fast-food chain Taco Bell) to the table in a negotiation for better wages and working conditions for tomato pickers in the Florida everglades. Section II then summarizes the press coverage of the CIW campaign both in Florida regional newspapers and in the national press, focusing on the language used to describe the tomato pickers' five-year fight against a fast-food giant.

Section I: Farm workers in America

The "super-exploited segment of the U.S. working class"³²⁷ and undocumented immigration. The average annual personal income of farm workers employed in seasonal agricultural services in the United States is about \$6500; for undocumented immigrant workers, the median annual income is estimated to be even lower: between \$2500 and \$5000. (Majka 2000: 167) Undocumented farm workers have "fewer employer-provided benefits" than their counterparts who are U.S. citizens and legal residents; only about 5

³²⁷ Quote from Linda C. and Theo J. Majka, in "Organizing U.S. Farm Workers." (Majka 2000: 163)

percent have medical insurance and 4 percent have vacation benefits, compared to 32 percent and 27 percent for U.S. citizens. (Majka 2000: 167-168) And the preponderance of the labor contractor system in American farms has solidified the “injustices” for farm workers, who are “humiliated and made to earn less by the presence of the labor contractors” (Leggett 2002: 97)—and increased the “difficulties for those attempting to improve wages and conditions for agricultural labor.” (Majka 2000: 173)

The United States Department of Labor³²⁸ estimates that about 75 percent of all agricultural workers harvesting the nation’s field are immigrants, about 70 percent from Mexico— temporary or permanent, both documented and unauthorized³²⁹. Recent estimates are that “depending on the crop and region,” the proportion of undocumented workers in American farms ranges from 30 to 50 percent. More than 40 percent of these workers still reside abroad, and come into the United States for migratory journeys in search of employment. (Majka 2000: 166-167; Kandel 2004: 240, 262)

Willian A. Kandel of the U.S. Department of Agriculture points out agricultural workers’ “disadvantaged position” in relation to other low-wage workers due to the migratory and temporary nature of agricultural labor, which contributes to their marginalization from mainstream American society. The fact that work experience in the U.S. is a “form of human capital that determines future earnings and occupational mobility” also means that immigrant farm workers have a further disadvantage in relation to their low-wage peers in the manufacturing and service sectors—who through their

³²⁸ The Department of Labor’s National Agricultural Workers Survey (NAWS) has been, since its inception in 1988, the most representative source of data on workers employed in “seasonal agricultural services” (SAS). (Majka 2000: 166; Kandel 2004: 260)

³²⁹ Less than 20 percent of farm workers are women; among immigrant agricultural workers, only about 13 percent are estimated to be women. (Majka 2000: 167)

continued employment in the U.S. have greater opportunity to improve their earnings.
(Kandel 2004: 261-262)

Agriculture, immigration and workers' labor movements. Agricultural labor in America has been historically connected to immigration; farm labor researchers have emphasized “a close connection between rising wages and/or organizing campaigns and the influx of new immigrants which, in turn, led to reversals of progress,” leading to the conclusion that each new immigrant wave “is a major contributor to continued difficulty for renewed organizing in the fields.” (Majka 2000: 163)

In California, for example, since the 19th century a “seasonal supply of low-wage labor” has been provided by several “streams” of immigrant labor, e.g., Chinese, Japanese, Asian Indians, Mexicans, and Filipinos. Sociologists Majka and Mayka, who specialize in the study of U.S.-based farm workers, claim that it is “no exaggeration to say that all these groups were economically exploited and racially oppressed.” (Majka 2000: 163-164) They identify three consequences of these “migrant streams” to the U.S. agricultural industry: (1) downward pressure on wages (and working conditions) because of the ever renewed availability of cheap and willing foreign labor sources; (2) “new immigrants undercut attempts at collective bargaining and, in fact, were often used to replace previous immigrants who were becoming organized;” and (3) the constant availability of low-wage agricultural labor has delayed the mechanization of American farms. (Majka 2000: 164) In effect, agriculture and immigration researcher Philip Martin argues that recent immigration flows from Mexico and Central America have hurt the future of American agriculture, since farmers have failed to invest in the necessary

mechanization of production—and in the long run U.S. farm workers, though still plentiful and cheap, will not be able compete with wages in poor countries.³³⁰ (Martin 2003a)

Agricultural work also has historical links to undocumented immigration, though that connection is more recent—if only because monitoring of the U.S.-Mexico border is recent and until at least the 1950s undocumented movements to and fro were all but commonplace.³³¹ Yet it is also clear that, however frequent undocumented journeys were across the U.S. southern border, the “initial impetus” for recorded movements of large undocumented labor flows from Mexico to the U.S. since the 1950s was the end of the Mexican Labor program or *Bracero* Program—the program designed to replace American workers in the nation’s farm fields during and after World War II.³³² (Majka 2000: 161) During the *Bracero* era, illegal flows of Mexican field workers still existed—but “its termination coincided with an acceleration of the illegal flow.” (Portes 1977: 31) *Braceros* worked alongside their undocumented peers mostly in Texas and California; yet they were also recruited to work in other agricultural regions of the country. (De Leon 2006: 138) Because of this connection between the end of the *Bracero* program and massive undocumented flows, Alejandro Portes wrote as early as 1977 that undocumented migration of Mexican workers “benefits sectors of the agricultural and nonagricultural employers in certain regions of the country. Reasons why these employers want to hire illegal labor are as transparent as those that propel illegals to

³³⁰ In an interview with Eric Schlosser for his analysis of farm workers’ plight in California, Philip Martin claims that “cheap labor benefits agriculture in the short run ... but it also helps to blind farmers to the technological changes they will have to make in order to compete with foreign producers, who have access to even cheaper labor.” (Schlosser 2003: 102)

³³¹ See chapters IV and V analysis of the law and policy of U.S. immigration.

³³² The Second World War “drained the enormous agricultural labor surplus and stimulated the importation of *braceros* (farm workers) from Mexico.” (Majka 2000: 161)

come in the first place. Employers benefit from the lower wages, longer hours, lesser alternative opportunities, and overall greater degree of exploitation which can be imposed on illegal workers.” (Portes 1977: 33-34) In effect, others have noted that regularization programs, such as the 1986 IRCA provisions, were “crucial to satisfying agricultural employers’ demand for low-wage unskilled labor.” (Samers 2001: 137)

Nevertheless, undocumented immigration is just one piece of the puzzle in explaining the dire working conditions in America’s farms. In the 1970s, already only one-third of the undocumented workers were employed in agriculture; thus while there is a historical link between unauthorized labor and agriculture, the role of undocumented labor in the American economy has long surpassed its advantages to agricultural employers. Portes claims unauthorized workers serve the same purpose as temporary legal immigration—the function of providing workers who cannot organize or make demands; “the more they can be kept at the political fringes of the society, the more useful they are in fulfilling significant functions for the economy.” (Portes 1977: 34) Portes claims that the undocumented labor exists exactly because it is possible to control it: “Illegal immigrant labor is allowed to come precisely because it can be made not to. It is this situation which directly guarantees the insertion of the worker in the most disadvantageous terms vis-à-vis employers and, hence, aids in maintaining profitability in threatened sectors of the economy.” (Portes 1977: 36)

On the East Coast, where the Taco Bell case study unfolds, migratory farm workers are generally African Americans, Jamaicans, Puerto Ricans, Mexicans, Laotians, Cambodians, and Vietnamese. A “residual group” of whites still works the fields in Florida, Georgia, and the Carolinas. Work tends to be divided by ethnicity, ensuring high

concentrations of co-ethnics in particular agricultural industries; “African Americans and Haitians work the vegetables, Belle Glade Florida Jamaicans serve as contract laborers for six months every year to harvest the sugar cane; Mexicans work fruits and vegetables³³³.” (Leggett 2002: 87-88)

Farm workers’ unionization: 1930s, 1960s and today. The agricultural industry in the United States has experienced two eras of worker mobilization, union activism and organizing drives, with significant success in achieving better wages and working conditions for field workers: during the Depression period of the 1930s, when the Communist Party and the Congress of Industrial Organizations (CIO) focused on farm workers’ poor conditions in the fields; and from 1965 to the early 1980s, especially through the United Farm Workers (UFW) in California. (Majka 2000; Leggett 2002)

UFW signed contracts with 80 percent of California’s table grape growers and a significant number of lettuce and vegetable growers, the Farm Labor Organizing Committee (FLOC) signed contracts in Ohio and Michigan covering approximately 7000 workers, and in general “farm labor organization and advocacy groups appeared to be building momentum” in various U.S. states. In California, where UFW was most active, “after ten years of organizing, strikes, protest marches, consumer boycotts,” and despite “inter-union rivalries” and constant struggles to renew expired contracts with specific

³³³ The Taco Bell case study concerns mainly Mexican workers who pick tomatoes in Immokalee, Florida. In the author’s interview with one of the CIW co-founding members, he estimated that “50 percent or half of all workers in Immokalee are Mexicans. Then another 30 percent are from Guatemala, and 10 percent are Haitians. Other (nationalities from) Central and South America are about 10 percent.” (Benitez 2008) Also, there are still some African-American farm workers in the Immokalee region.

growers—the California Agricultural Labor Relations Act (ALRA) was passed in 1975, giving farm workers the right to unionize. (Majka 2000: 161-162)

Since the 1980s, however, UFW has progressively lost membership due to a combination of political and social factors, including changes in the California state government which led to a “decline in enforcement of the ALRA and encouraged more intense grower resistance.” (Majka 2000: 162) According to Leggett, a “phantom alliance” of opposition to UFW (state courts, growers, Teamster Union raids, and negative mass media coverage) “simply overwhelmed” the farm workers’ union, so that it was “soundly defeated” by the early 1980s. (Leggett 2002: 100-101)

Today, while UFW struggles to maintain its membership base in California (Majka 2000), unionization is close to impossible with mostly migratory workers who travel from crop to crop, farm to farm—and who are also immigrants, and many times undocumented. And lack of federal protections for agricultural has increased their vulnerability; “unlike most occupations, agricultural labor has been further marginalized by minimal levels of unionization and continued exclusion from the protections of the National Labor Relations Act (NLRA). All of these characteristics serve to perpetuate farm workers as a “super-exploited” segment of the U.S. working class.”³³⁴ (Majka 2000: 163)

As with the garment industry, fragmentation in the agricultural industry subcontracting system has also amplified farm workers’ susceptibility to exploitation; farm workers in Immokalee, Florida, for example, “have a relationship to the fast-food industry, because all the tomatoes harvested here end up going to the big restaurants...

³³⁴ Majka and Majka notes that “in some ways, farm workers are similar to garment workers—both [have been marginalized] early in the twentieth century, and more recently as the latter occupation has once again become populated by recent immigrants.” (Majka 2000: 163)

You can see here all the trucks for McDonald's, Burger King, Subway... They're all here taking tomatoes to their restaurants." (Benitez 2008) Yet their employer is not the fast-food restaurant, and sometimes not even the growers. That is because growers also subcontract the hiring of workers to farm labor contracting systems which "sustain poor employment conditions and stimulate high turnovers. But with continued high levels of immigration, FLCs and/or labor recruiters are one way to connect potential workers with jobs." (Majka 2000: 173) Sociologist John Leggett argues that, in effect, a labor contractor "will go out of his way to destroy any bonafide union-organizing activity among his crew members" since unionization "means the elimination of the contractor role" because union hiring halls will perform the labor contractor function of linking employers with workers for hire. (Leggett 2002: 96)

*Temporary workers' programs*³³⁵: *second-class workers?* During fiscal year 1997, 21,000 foreign workers arrived in the United States under the H-2A Agricultural Guestworker Program. (GAO 1998) In theory, temporary or guest worker programs could improve conditions in American farms; a regulated, well-monitored program to channel foreign migrant workers into the U.S. agricultural industry seems far more appropriate than the current circumstances.

Yet farm worker organizations claim that the agricultural industry "plays the victim" when it comes to temporary worker programs: "Because they've been relying on people without documents for years and years, and now they're saying, well, we want visas for them, but what kind of visas do they want? They want visas that afford them

³³⁵ For more detailed discussions about guest worker programs, see chapters IV and V.

even fewer protections, that tie them to an employer, that have them living on grower land, that have them not able to look for another job.” (Perkins 2008)

In effect, a 1998 report by the U.S. General Accountability Office (GAO) recommended changes to the H-2A Agricultural Guestworker Program, including better protection of wages and working conditions.³³⁶ (GAO 1998) If guest workers themselves receive the visas, rather than their employers, it would give them the mobility to leave abusive jobs³³⁷—and the widespread exploitation which marred the 1940s-1960s *Bracero* program could be largely avoided. (Massey 2002, 2003) And since guest worker programs do not actually lower the economic incentive for employers to hire undocumented workers, it would be necessary to tighten current employer sanction provisions and upgrade enforcement of labor laws. (Reyes 2002: 82)

Section II: CIW, the Taco Bell campaign and the Press

Florida tomato pickers and Corporate Social Responsibility: the Coalition of

Immokalee Workers. The Coalition of Immokalee Workers (CIW) is an advocacy group

³³⁶ “GAO recommends changes to the program that could improve the ability of growers to obtain workers when needed and to better protect the wages and working conditions of both domestic and foreign workers. These changes include reducing both the time required to process applications and the period of time that the worker must be employed to qualify for a wage guarantee.” (GAO 1998)

³³⁷ Farm worker advocates are cautious about the prospects of a temporary worker program which actually prioritizes labor standards: “I would say that the industries, companies aren’t going to want those kinds of visas, they don’t want workers with the right to look for a better job, they don’t want workers who aren’t afraid to complain . . . So we really have a lot of work just to raise the agricultural industry out of this deep rut that it’s in, out of the way that it looks at workers, it needs to recognize them as basic human beings with basic human rights, who should be able to talk to their employer about what’s bothering them, should have access to affordable health care, should have overtime pay. . . . It’s not going to work in an industry that banks on their exploitation, so until we have that change in the industry a guest worker visa program would be a huge disaster, it would be really the first time that the U.S. has recognized or legalized a second class of people in this country. . . . So it’s Jim Crow, and we decided that Jim Crow was a bad thing in the south after the Civil Rights struggle.” (Perkins 2008)

composed almost entirely of migrant farm workers. It has succeeded in winning three public campaigns targeting fast-food corporations (Yum Brands, Taco Bell's parent company; McDonald's; and Burger King) for a wage increase of one penny per pound of tomatoes and monitoring of working conditions for tomato pickers. The fast-food corporations were being asked to unilaterally announce the wage increase—and monitor that the increase in wages was being added to the workers' pay, rather than pocketed by growers.

The region of Immokalee, a few miles off southwest Florida's alligator marshes, is home to several tomato farms. Many of these growers produce exclusively for large food corporations, such as Taco Bell's corporate parent, Yum Brands, as well as McDonalds, Burger King, and Chipotle.³³⁸ The Taco Bell boycott was the first in a series of successful campaigns to target fast-food corporations' "fair food" concerns and fear of negative marketing into complying with CIW's demands.

Since 1997 the CIW has been uncovering and helping federal prosecutors with seven high-profile slavery cases in Florida's agricultural fields. Lucas Benitez, one of the co-founders of CIW and recipient of anti-slavery and human rights awards³³⁹ notes that "it is lamentable that at this point in time in the richest country in the world, there are still groups like us, that do this kind of work."³⁴⁰ Benitez clarifies that slavery cases in Florida are "not only debt servitude. There are also these *muchachos* in a U-Haul truck that were kept against their will, locked from the outside so they couldn't leave at night.... Modern

³³⁸ The most recent Coalition of Immokalee Workers campaign targets Chipotle with the slogan "Chipocrisy: Exploitation in the Fast Food Nation." For more recent information on the CIW's work, check their excellent website at www.ciw-online.org.

³³⁹ The 2003 Robert F. Kennedy Human Rights Award and the 2007 Anti-Slavery Award by Anti-Slavery International in London, England.

³⁴⁰ The interview with Lucas Benitez was conducted by the author in Spanish at the Coalition of Immokalee Workers office in Immokalee, Florida during the afternoon of January 4th, 2008; it was later translated into English (by the researcher).

slavery doesn't use a ball and chain, but it uses threats to create examples for the other workers.” (Benitez 2008)

Yet while the CIW anti-slavery work has earned the activists accolades and publicity, growers still proved unwilling to negotiate with the workers, claiming tough competition from international produce in developing countries with even cheaper farm labor—and the Florida workers' wages still averaged about \$7,500 a year. The CIW then decided to focus specifically on “fair food” campaigns to bring attention to agricultural workers' low wages, rather than the extreme cases of slavery, by aiming at fast food corporations, the largest purchasers in the Immokalee region.

This case study will focus on the Taco Bell campaign, which began early in 2000 with several boycotts and sit-outs around the state of Florida, asking for Yum Brands to speak to the CIW about the pay increase for the workers. This activism was initially carried out by CIW members and sympathizers, but by 2001 college students had joined the campaign. By 2003 church leaders from several denominations had joined the effort and spoke in favor of the workers' demands; in the Catholic Church, Los Angeles Cardinal Roger Mahony³⁴¹ wrote a letter to Taco Bell supporting the CIW campaign.

The CIW also organized “Taco Bell Truth Tours,” where workers travelled the country from the farm fields in Florida to the Yum Brands corporate headquarters in California, staging several protests in Taco Bell restaurants around the country. According to CIW co-founder Lucas Benitez, the Truth Tours were devised as a strategy to find sympathizers around the country, form alliances “and widen the support basis with universities and churches and other organizations” because “not all of them could come to Immokalee, so if they cannot come, we'll go. Because of that we decided to organize

³⁴¹ Yum Brands headquarters is based in Los Angeles.

the Taco Bell Truth Tours, going from here to California. The first one we stopped at about 15 cities in the United States and it was tremendous. We arrived at places like Colorado, San Francisco, Utah, cities that really we had a tremendous support basis, so for that reason we decided to create the national tours and create this alliance with all the church people and the students.” (Benitez 2008)

In March of 2005, the Coalition announced that Yum Brands had agreed to increase farm workers’ wages and to help monitor the payment of wages and the working conditions in their Florida suppliers’ fields.³⁴²

Taco Bell news analysis. CIW’s campaign attracted considerable press coverage, not only in Florida, but in several cities where student and church activists organized their own protests in support of the CIW’s Taco Bell campaign.³⁴³ This case study will limit the news analysis to local newspapers around the Immokalee region in Florida, and to national newspapers. Of the national newspapers, only the *Washington Post* reported more widely on the Taco Bell campaign and boycott—the *New York Times* and the *Wall Street Journal* each published only one opinion piece (and no news stories) during the five years of the campaign.³⁴⁴ The *New York Times* has not published any news stories per se on the Taco Bell boycott; the only source of information about the campaign in the

³⁴² In April of 2008, the U.S. Senate held the first hearing in its history specifically about the working conditions of tomato pickers in Florida; Lucas Benitez of the CIW spoke as a witness. (Heuvel 2008)

³⁴³ While Perkins notes that “there have been waves in coverage” during the Truth Tours, intense press coverage hasn’t always happened; for example, “there was a lot of interest from the L.A. Times by some reporters, and then a ten-day hunger strike, it was the largest labor hunger strike in U.S. history at that point, 75 people going without food, a water-only strike in front of the Taco Bell headquarter... [But] the L.A. Times didn’t touch it. We were screaming and shouting into the wilderness, it seemed at that point.” (Perkins 2008)

³⁴⁴ *USA Today* was also considered a national newspaper for the purposes of this research; however, the newspaper never published any stories about either case study (DKNY or Taco Bell) and thus there are no samples from that publication in either case study. Lucas Benitez, of the CIW, notes that *USA Today* “had only a very small note when we won the Taco Bell campaign. It wasn’t printed in the newspaper, I don’t think, but it was on the webpage.” (Benitez 2008)

Times was published in April of 2005, soon after the CIW's Taco Bell campaign ended, by the author of *Fast Food Nation*, Eric Schlosser, who wrote an editorial celebrating the workers' win. The *Wall Street Journal* also has not published any news stories per se, and its May 2004 piece is an in-house editorial.

The local newspapers, on the other hand, published a significant amount of stories about the Taco Bell campaign and the dynamics of agricultural production and exploitation of labor in the region. Julia Perkins, a labor activist at CIW³⁴⁵ who does most of the organization's media communication, confirmed that in general, including news coverage after the end of the Taco Bell campaign, regional-level news have been much more forthcoming—and Associated Press coverage, which or may not be printed in several newspapers around the country; “mostly it's been around where the action is happening, and that's useful, because it does affect, we've seen there is that, it does affect decision makers, those people at the corporate level that can make decisions, they don't like to be outed in their local media. So that's been effective.” (Perkins 2008)³⁴⁶

Local news analysis. There were numerous samples for the local news coverage of the Taco Bell campaign in the Immokalee region; this section will provide a summary of the themes in each newspaper's coverage; while all the local newspaper were empathetic with farm workers' low wages and conditions in the fields, and presented the betterment of their lot as very desirable, the regional press still differed significantly in each newspaper's approach to the CIW's campaign.

³⁴⁵ The Coalition is a non-hierarchical organization where activists and workers do not have employment titles; even Lucas Benitez, who has been the face of the organization in the campaigns and has won awards for his work at CIW, refuses to be identified by a title other than co-founder.

³⁴⁶ The interview with Julia Perkins was conducted by the researcher at the Coalition of Immokalee Workers office in Immokalee, Florida during the afternoon of January 4th, 2008.

Palm Beach Post. This newspaper from Palm Beach published sixteen news and opinion pieces about CIW's Taco Bell campaign³⁴⁷—all of them favourable and sympathetic to the workers' plight. Yet the texts are generally engaged with and knowledgeable about larger issues surrounding agricultural production (e.g., outsourcing, farm workers' conditions in the field, growers' concerns in relation to globalization and Florida weather patterns) to an extent that is incomparable to the coverage seen in the DKNY case study in New York City. The *Palm Beach Post* coverage is thus much less focused on conflict, despite the publication's unwavering support for the CIW campaign—but rather presents the growers' perspective even when not including them as sources in the story. To be sure, agricultural areas in Florida are much more focused on that specific sector of the local economy than multifaceted New York City, whose press revealed much less knowledge of the garment sweatshop issue than their Floridian counterparts—whatever the reasons for that pattern, the news texts in Florida are much richer in context and exploration of issues, rather than simply focusing on conflict. News stories explore the growers and Taco Bell's perspectives, and the CIW proposal is portrayed as offering benefits to all the parties (growers keep jobs in the U.S., and Taco Bell gets good and

³⁴⁷ While this appears to be intense coverage, note that these stories were not always published in a sequence, and there were long periods of time without any coverage at all (2000: 1 piece published; 2001:4; 2002:1, 2003:5; 2004:3; and 2005:2). Yet the agenda setting model has demonstrated that intense and constant coverage has the greater impact on public opinion. (McCombs 1995; McCombs 2004) Therefore the only times when we can expect the *Palm Beach Post* coverage to have been influential on the public agenda in the Immokalee region are in 2001, when 4 stories were published between February and May; in 2003, when 4 stories were published in November and December; and to a limited extent in 2004, when 2 pieces were published in March and 1 in June.

relatively cheap marketing out of a commitment to fair food³⁴⁸); there is thus a focus on commonality in the narratives, on finding solidarity and achieving consensus.

The early coverage portrays farm workers as victims (e.g., “shameful conditions;” “migratory lives of poverty;” “great struggle;” one penny-per-pound CIW campaign would bring them “closer to a decent wage”) without identifying that CIW “representatives” are actually farm workers who have formed their Immokalee-based coalition. By 2002, the new coverage begins to emphasize that CIW is composed of farm workers (e.g., story about first meeting between CIW and corporate executives: “In a hotel meeting room , people who pick tomatoes for a living sat across the table from corporate vice presidents.”).

The December 9, 2003 piece (“In Their Own Words”) is unique because it is composed of individual texts by different parties in the farm worker dispute with growers, hence exploring each side’s perspectives. For example, the text by a local farm worker exposes growers’ detachment from their workers: “I’ve never met a grower. There was a guy who told me once he was an owner, but I’m not sure. He spoke Spanish, and I don’t really think he was.”” The worker’s text also implies racial division in the agricultural industry³⁴⁹, therefore providing information about another aspect of farm labor.

The December 14, 2003 *Palm Beach Post* opinion piece (“End America’s Denial of Farm Labor Reality”) is also unique; the editors in this narrative open the discourse

³⁴⁸ A good and imaginative example here is the March 22, 2002 headline: “Sell Living Wage, Not Talking Dog,” criticizing Taco Bell’s investment in a marketing campaign “featuring a talking Chihuahua”—instead, the *Palm Beach Post* editorial suggests that the corporation should hire Lucas Benitez of the CIW as their “ideal spokesman.”

³⁴⁹ Racial divisions in the agricultural industry have been documented by farm labor scholars. (Leggett 2002)

about exploitation to describe all its facets, including the fact that many of these workers are immigrants. “About 90 percent of migrants are Mexicans,” the *Palm Beach Post* describes, and then adds: “and many risked perilous border crossings only to be stigmatized on arriving.”

The newspaper thus achieves a discourse about immigrant workers that is honest while also describing the context of these workers’ circumstances, such as in this lengthy and well-developed example which emphasizes migrants’ contributions in U.S. taxes and social security: “It is a well-circulated misconception that migrant workers pay no taxes and live on handouts. While they place added burdens on schools and social services, migrants pay most of the same taxes as U.S. citizens, yet don’t collect benefits from those taxes. Many work with fake or stolen Social Security numbers and pay each week into a fund from which they never will draw returns. Taxes collected on \$375 billion in wages for workers with mismatched Social Security numbers languish in the federal Treasury. Only 6.6 percent of migrants used food stamps in 2000, compared with 18 percent in 1993. Migrant workers pay their landlords’ property taxes. They pay sales taxes and gasoline taxes. Federal earned income credits for the working poor go unclaimed. The National Immigration Forum, a Washington-based think tank, reports that the typical immigrant pays \$80,000 more in taxes over a lifetime than he receives in government benefits.”

This newspapers’ coverage generally condemns conditions in the fields (describing them as “long-standing growers’ abuses”); it also takes issue and portrays as highly undesirable that Florida politicians effectively ignore the plight of farm workers, especially Governor Bush, focusing on the state government’s lack of action on the issue

of farm worker poverty. The *Palm Beach Post* also depicts as undesirable the “greed” and ignorance which lead to the current circumstances of minorities and poverty in the U.S. (e.g., describing a Lake Worth, Florida meeting of Native Americans, criticizing “white men’s” treatment of minorities, including farm workers: “they turn human beings into a commodity”).

Early on in the *Palm Beach Post* coverage there is an intense focus on achieving consensus which is strikingly different from the press narrative of the DKNY campaign, especially compared to the local news coverage in New York City. The Taco Bell corporation is not portrayed as irresponsible, probably because the CIW campaign focus is to work *with* Taco Bell—rather than the oppositional stance in the DKNY lawsuit. Later the conflict increases, when the corporation initially refuses to commit and negotiate with farm workers’ coalition. Using quotes from the CIW activists, the news stories begin to target Taco Bell in a similar way to the DKNY local news coverage in New York (e.g., quoting activists’ claims that “the lack of action by the company is forcing many people to live in misery”). The texts also tend to use the ‘sweatshop’ label, though with much greater moderation than the New York City local news coverage of the DKNY campaign; the texts describes farm fields as sweatshops or “sweat fields.” The narratives also standardize the CIW relationship with the corporation (Taco Bell or Yum Brands) as a David and Goliath metaphor (the best example is: “Can a group of Immokalee farm workers persuade executives of the world’s largest restaurant corporation to think of a small increase in production cost as a major marketing investment?”, the lead paragraph of an opinion piece published on March 22, 2002).

The *Palm Beach Post* stories portray the movement to demand that consumers take responsibility for farm workers' conditions in a very favourable light (e.g., the call to "raise the [cost of a] chalupa"). The texts make a concerted effort to emphasize the small cost of farm workers' raise to Taco Bell consumers (e.g., "less than one-half cent per chalupa or taco;" "restaurant consumers wouldn't even notice" pay increase).

Another favourable portrayal in this newspaper's coverage is dialogue among the parties: growers, workers and fast-food corporations. It is also favourable to the workers' targeting of fast-food restaurants (e.g., "the best hope for improving life in the fields is on the campuses and at the counters of fast-food restaurants"), with positive reports of the demonstrations, including joyous descriptions of a 92-year-old activist and a felt tomato-clad protester. Student activism and their support of the CIW campaign to boycott Taco Bell are also portrayed as highly desirable (e.g., statement that CIW cannot find support in the Florida state government, but it is "finding a bit of support on the nation's campuses. College student groups that fought sweatshop merchandise are backing the farm workers' campaign for a living wage"). The *Palm Beach Post* compares their support of CIW with the students' successful Nike anti-sweatshop campaign, noting that "student activism was instrumental in forcing Nike to improve its overseas contractors' working conditions, and that same force is aiding the field workers." Depictions of church activism, and the help provided to Mexican migrant workers are also treated as desirable in the *Palm Beach Post* news accounts and editorials.

A news story published on May 2, 2001 implies that the workers are immigrants by warmly describing coalition member Gerardo Reyes as "worlds away from the Mexican chilli fields he picked" as a boy—but the narrative does not discuss the fact that

most migrant workers are immigrants. In the stories where workers are described as immigrants, the context could not be more favourable: “Mr. Benitez, 27, a Mexican who immigrated to the U.S. a decade ago, has been called the “Cesar Chavez for the new millennium” by *El Diario* in New York. Three years ago, he won Rolling Stone magazine's Brick Award as the nation's top young community leader”—the farm worker here is identified by national origin, but he is also described as a local hero.

Sarasota-Herald-Tribune. The newspaper published seven stories about the CIW campaign. The workers' perspectives dominate the news coverage, but in general the *Sarasota-Herald-Tribune* gives much more emphasis to the growers' perspectives³⁵⁰ than the *Palm Beach Post*. The stories are more nuanced³⁵¹ and at times question the representative nature of CIW (e.g., “the protest has only partial support ... [some] say the workers are asking for too much”).³⁵² Furthermore, the news accounts only mention the label “sweatshop” twice in the seven news stories published and qualify the term as a CIW description (e.g., “the coalition has likened the tomato pickers' working conditions to those of sweatshops in the garment industry).

³⁵⁰ For example: “Ray Gilmer, a spokesman for the Florida Fruit and Vegetable Association, says that there are plenty of workers and that, with a smaller than usual harvest, growers are having no trouble finding pickers. He also insists that workers are paid fairly. “They're getting paid what the market will bear,” he says ... some farmers say they'd like to pay their workers more, but can't. They partly blame the North American Free Trade Agreement. Since NAFTA was enacted in the mid-1990s, farmers have been unable to compete with Mexico's lower labor and production costs.”

³⁵¹ The story “We're asking for respect:” Protesting for higher wages too costly for some” describes the life of Juan Lopez, a worker from Guatemala, and notes that many times farm workers do not have the ability to join labor movements: “His is a common story in Immokalee, a Collier County town of about 20,000, an hour south of Venice, where migrant workers on Monday began a work stoppage to demand higher pay for their work harvesting tomatoes. Lopez sympathizes with that demand and wishes he could join the protest. But he says he can't afford to. He has a family of seven to feed in Immokalee, and he sends \$100 to \$150 a month to his parents in Guatemala.”

³⁵² Then story goes on to describe “bus driver Juan Barnhart” who says: “Some of these guys just don't want to work. If they want to work at Winn-Dixie or McDonald's, they can make \$ 5.50 an hour. These guys can make money.”

The depiction of farm workers in the *Sarasota-Herald-Tribune* is still very favorable, and working conditions are described in some detail³⁵³, if at times failing to portray workers as active in the labor movement.³⁵⁴ The CIW leadership is portrayed in a favorable light³⁵⁵, yet as activists—not always as farm workers who turned to protesters to better their conditions—and there is an assumption in some of the stories that most Immokalee farm workers are *not* engaged in the CIW campaign. Still, protests and farm workers' demonstrations are also depicted as desirable and in a positive, light-hearted way (e.g., "It's hard to march," Benitez said, as the midday sun grew intense on Monday. "But it's easier than my work."). Student activism is also shown in a positive manner.

There is no reference to farm workers' undocumented status, therefore restricting workers' social identity; references to workers as immigrants are presented within the context of the demonstrations³⁵⁶, such as in this description of a protester "yelling in Spanish for recognition, for respect and for higher pay."

St. Petersburg Times. There are 11 samples for this Florida newspaper; the coverage is spread out between 1997 and 2005, so that news and editorials about the CIW Taco Bell

³⁵³ Such as in this Lucas Benitez quote: "Twenty years of picking at sub-poverty wages, no right to overtime pay, no right to organize or join a union, no health insurance, no sick leave, no paid holidays or vacation, and no pension is a national disgrace. We as farm workers are tired of subsidizing Taco Bell's profits with our poverty."

³⁵⁴ The choice of farm workers depicted in its news account tends to show them as disengaged from the CIW: "Mateo and his father know little about the current global discussion about free trade or labor politics. While the growers, politicians and the coalition argue, the Lopezes and others continue to pile onto buses and work 10 to 12 hours picking tomatoes as they always have, sympathetic to the goals of the work stoppage but unable to participate. "They are paying 40 cents per bucket," Lopez says. "That is not enough to provide for our families.""

³⁵⁵ "With no lobbyist and little political clout, workers see protests as their only option. "We are going to keep this up until they recognize us," coalition member Greg Asbed said."

³⁵⁶ Another example: "The workers, mostly immigrants from Mexico and Guatemala, earn about 45 cents for every 32-pound bucket of tomatoes they pick. They want farm owners to pay them 75 cents a bucket. Farm workers typically make about \$10,000 annually and do not have health benefits, coalition members say. With no lobbyist and little political clout, workers see protests as their only option."

campaign was never published more than twice in any one year. The *St. Petersburg Times* coverage is marked by one of its editorial writers, Bill Maxwell, who is a former migrant worker. His empathy for the farm workers' struggles infuses his narratives with a personal element not found in any other newspaper.³⁵⁷ For example, in the opinion piece "Harsh memories of migrant work," he describes his family's routine as migrant workers: "Hard work—stooping and sweating all day—was at the center of our lives. We belonged to the crew chief and the grower. We rode from field to field on the bed of trucks and in old school buses that broke down more often than they operated properly." The farm workers' needs and views dominate the *St. Petersburg Times* coverage—though, as with the *Palm Beach Post*, it is not only the growers' perspectives that are dominated in the texts, but mostly the Florida state government, which is portrayed as inept and unwilling to serve as mediators to discuss the workers' problems with growers.³⁵⁸

In "The Feds Come to the Fields," Bill Maxwell describes a 1998 visit by then U.S. Labor Secretary Alexis Herman and Agriculture Secretary Dan Glickman.

Maxwell's piece assumes the need for more dialogue between growers and workers,

³⁵⁷ The CIW's Lucas Benitez appreciates the *St. Petersburg Times* positive coverage, although he considers it "objective": "St. Petersburg Times has been a very objective newspaper. The reporters came here and spent one or two days here in Immokalee, they spent the morning here to see when people go to look for work, seeing what the day is like for the workers. They have seen it firsthand, and they write their stories based on what they've seen. And also there is Bill Maxwell of the St. Petersburg Times; besides being now a reporter and one of their columnists, Bill was also a field worker, so he also knows firsthand all this—because it's a different thing to see it, and to live it." (Benitez 2008)

³⁵⁸ In this excerpt from another Bill Maxwell opinion piece, he criticizes Governor Bush for his inaction on the farm worker issue: "The governor simply is not telling the truth. Consider: A few days after being elected, Bush telephoned an old friend, Luis Rodriguez of Fort Lauderdale, and asked him to meet with selected tomato growers to request that they raise the piece rate for a bucket of tomatoes from 40 to 45 cents. The growers gave Bush his wish. The governor took credit for the raise. Now, however, he says that he has no right to intervene in the private sector. Bush cannot have it both ways. Either he can intervene - as he did - or he cannot. Since that historic meeting with the growers, moreover, Rodriguez has, without presenting any evidence, demonized the coalition as being a shell for the so-called Mexican lobby. He has, in effect, helped to destroy any goodwill that Bush had built with farm workers. Rodriguez has said that he will not meet with coalition members because growers do not consider the organization a legitimate farm worker representative. Growers reject all farm worker advocacy groups. Like Bush, Rodriguez is being disingenuous."

giving prominence to CIW's Lucas Benitez's voice: "Benitez and other coalition workers recognize the real problem in Florida agriculture. "Only by making the worker/grower relationship more modern and more human can we make the conditions that we as workers face in the fields more modern and more humane," he said. "That relationship is the root of our problems, and that relationship has to be the root of any possible change.""

As in the *Sarasota-Herald-Tribune* coverage, the *St. Petersburg Times* also quotes the CIW comparing between agriculture and garment workers, both to utilize the 'sweatshop' label, but also highlighting CIW activists' perspective that New York City garment sweatshops receive more attention from government officials than agricultural workers: "When reports of similar abuses began to trickle out about the sweatshops of New York last year, where, for example, workers toiled in outrageous conditions to produce a line of clothing endorsed by Kathie Lee Gifford, the response was swift and strong. With only minimum prodding, Kathie Lee joined with government officials to lend new momentum to a campaign to expose and eliminate such abuses in the garment industry. Florida agriculture, on the other hand, continues to react to reports of abuse with silence."

Church support for the Taco Bell campaign is even more celebrated in the *St. Petersburg Times* than in the *Palm Beach Post*; a story published in December 1, 2003 (headline: "Church bells ring in boycott") observes how churches are transformed by social action: "Social action is gaining steam in religious circles as believers embrace a theology that says Jesus was a peaceful activist who fought for the downtrodden. Some churches have preached "Boycott the Bell" alongside the Gospel. A church in Minnesota

took members to Immokalee for a mission trip this summer.” The text is also dominated by the views of Florida clerics whose congregation is so socially engaged that it scares off some believers: “Carey said his church has about 60 members. “In this area, that's about what you get with a social action church,” he said. Some Florida Christians are too conservative for his style of Christianity, he said. Visitors walk into the sanctuary, see the banners, the action table and coffee display, and some never come back. That’s okay, Carey and Webb said. “These are people who are picking food that you and I and every person eats every day of our lives in order to sustain us,” Webb said. “Part of the Gospel call is to take care of the widows and the marginalized.””

While the student support of the Taco Bell campaign is also commemorated in the *St. Petersburg Times*, the analysis of their significance to the farm worker movement is more political, reminding readers of the students’ crucial role in anti-sweatshops campaigns (as did the *Palm Beach Post* coverage). The newspaper notes that as Taco Bell consumers, the students’ alliance with the CIW is strategic: “Anyone who has paid attention knows that when college students take up a righteous cause and agitate in large numbers, things happen in a hurry. Besides supporting human misery, Taco Bell should worry that the 18-to-24-year-old age group (college-age students) is its target market.”

As was the case with the *Palm Beach Post* and the *Sarasota-Herald-Tribune*, the *St. Petersburg Times* identifies the farm workers as immigrants while providing ample context of their circumstances.³⁵⁹ In the Bill Maxwell editorial where he describes his

³⁵⁹ Even in this piece which tackles the issue of child labor, the portrayal of the immigrant worker’s perspective is compassionate: “Why are children working as field hands? Jorge Fuentes, a 22-year-old Mexican who earns \$165 a week, had an answer that is shared by most farm workers: “We have no choice but to bring our kids with us to the fields. My 7-year-old son has to work. We have two younger kids. We have to feed them. If we got more money for our work, our son wouldn’t have to go to the fields.”

“Harsh memories of migrant work,” he identifies the workers as immigrants: “Immokalee has not changed much since those days. Sure, American blacks have been replaced by Guatemalans, Haitians and Mexicans, but the conditions are much the same.” In this example, the workers’ national origin is presented in the celebratory context of their victory in the Taco Bell campaign: “Recently, the coalition celebrated a milestone agreement signed earlier this year by Taco Bell parent Yum Brands ... to contribute \$100,000 directly toward the wages of the mostly Guatemalan and Mexican pickers. Yum Brands also approved a code of conduct that would drop any supplier who uses forced labor or commits other abuses of workers as identified by the coalition.” Finally, this example underscores the positive depiction of immigrant farm workers in the *St. Petersburg Times*; this story describes a CIW members’ meeting on Martin Luther King Day in 2005: “They are from Mexico and Guatemala, Haiti and Honduras. Most have so little education they can’t read or write. But on this night they are sitting on cardboard boxes and folding chairs getting a lesson in American history. The subject is Dr. Martin Luther King Jr. Most of the farm workers have never heard of him.” The narrative then goes on to quote Lucas Benitez linking Dr. King’s struggles to the CIW farm workers’ fight for dignity in Florida’s tomato fields.

Tampa Tribune. There were five samples in this regional newspaper covering the CIW’s Taco Bell campaign. The newspaper, as with the other Florida press analyzed here, had a sympathetic portrayal of the farm workers’ demonstrations;³⁶⁰ however, the *Tampa*

³⁶⁰ For example: “Music blaring from a flatbed truck, the tomato pickers moved to a salsa beat, weathered veterans alongside babies in strollers. They carried signs proclaiming their cause in two languages, in a procession led by a Statue of Liberty replica holding aloft a tomato instead of a torch. Chanting and

Tribune focused on growers' perspectives and concerns more than the *St. Petersburg Times* and the *Palm Beach Post*; almost every one of the five samples quotes the Florida Fruit and Vegetable Association³⁶¹—such as in this example where the association attacks the credibility of the CIW and uses remittances as an argument that immigrant farm workers are not impoverished: the association spokesman “said he doesn’t give the Coalition of Immokalee Workers much credibility because the group only represents a vocal minority. He said most farmworkers are able to make a living. Some even send money home to Mexico, he said.”

Despite the growers' association's remarks, most of the references to farm workers as immigrants in the *Tampa Tribune* are either subtle³⁶² or provide the context of workers' dire circumstances as Florida field hands, e.g., one sample identifies a farm worker as Mexican but describes him empathetically: “I just want a salary I can live on,” said Rigoberto Almanza, 17, of Immokalee. Speaking through an interpreter, he said he came to the United States three years ago from the Mexican city of Guanajuato looking for work.”

Finally, a strong theme in the *Tampa Tribune* coverage was the presentation of coalition building as very desirable; efforts to improve conditions in the fields was celebrated with positive quotes from activists: “We’re doing more than complaining,”

singing, the Coalition of Immokalee Workers marched through south Hillsborough County on Friday, on their way to a March 4 showdown with the Florida Fruit and Vegetable Association in Orlando.”

³⁶¹ The association was also quoted claiming that today “workers are able to pick more because of higher yields, so they’re actually making more money” than in the past. In another quote, the association argues that “it’s the wrong time to ask for a raise” because growers are facing tough competition from foreign crops. Ray Gilmer, a spokesman for the growers’ association, argued that “the growers are willing to take the public-relations hit, even though they can be painted as bad guys. Their alternative is to price themselves out of business.”

³⁶² For example: “The rolling protest sought “Justicia for farm workers,” fair pay and an end to poverty in a daylong march and rally in St. Petersburg on Tuesday”—where the use of Spanish language implies workers are Spanish-speaking immigrants.

Rubin³⁶³ said. “We’re trying to create alternatives. If you complain about something, you best have alternatives.” Alliances with student groups were especially emphasized,³⁶⁴ and their demonstrations depicted as joyful: “The mix of farmworkers and college students carrying signs proclaiming “Our Sweat, Their Feast,” “Think Before Chewing” and “Better to Die on your Feet Than Spend a Lifetime on Your Knees,” created an interesting scene on South 34th Street in St. Petersburg. Several motorists honked their horns in support.” A partnership with homeless associations for a street demonstration in St. Petersburg was also portrayed favorably: ““Poverty is not a crime. Homelessness is not a crime,” chanted about 150 protesters, many of them homeless, as they marched in a circle in front of city hall. One of the protesters was quoted as saying that although “the United States is a great country” it is also “a country that exploits other people to make a buck.”

Orlando Sentinel. The only news story in the *Orlando Sentinel* was published on June 13, 2005—after the CIW victory in the Taco Bell campaign. While the story is a well-developed (1511 words) and sympathetic³⁶⁵ profile of the farm workers’ coalition (e.g., “The Immokalee activists now have launched the second phase of their campaign, with

³⁶³ Organizer Eric Rubin of the Tampa Bay Action Group.

³⁶⁴ For example: “To push its agenda, the Coalition of Immokalee Workers is trying to create a network of supporters among colleges and universities. A large chunk of Sunday’s [protest] crowd was from nearby Eckerd College. Students from the University of Florida and the University of South Florida also took part. Brian Payne, 27, said the issues of corporate responsibility and worker rights resonate with young people. Payne, who recently received his master’s degree in Latin Studies from the University of Florida, is trying to establish outposts at several universities for a newly formed group, the Student Farmworker Alliance. “I think students can really see what’s happening to these workers,” he said. “They’re tired of seeing corporations exploit workers.””

³⁶⁵ The story mentioned farm workers are immigrants in a positive context: “He held up a drawing of the Statue of Liberty and spoke of its history and symbolism to nearly 30 migrant farmworkers from Mexico, Guatemala and Haiti. “It is sad when you hear that an immigrant represents something dirty or bad or negative because when you go back and think of the Statue of Liberty, you learn that so many people came just like we did to this place,” said Chavez, a native of Zacatecas, Mexico.”

letter-writing barrages aimed at enlisting McDonald's, Burger King and Subway in the reforms"), the newspaper obviously did not play any role *during* the Taco Bell campaign, as it was silent about the campaign until it had been won.

National news analysis. National news coverage of the Taco Bell boycott was very limited, and the coalition continues to have difficulty reaching national newspaper with their more recent campaigns. Yet the CIW does believe that "in order to really grow this campaign at a deeper, wider level, those are the areas where we'd like to, more in the national news magazine, the business" publications. Julia Perkins believes that to affect their target fast-food corporations the CIW needs to get more coverage in publications such as the *Wall Street Journal* or *Business Week*. (Perkins 2008) When asked about the importance of news media coverage to an organization such as the CIW, Julia Perkins replied: "Obviously, more media, especially if it's good media, would be better, right? We'd love to have some decent coverage in some of the news magazines, for example, that people read and trust, in the business kind of papers, both weeklies and daily papers, to really kind of put the heat on the decision makers. We'd love to have decent coverage in the national news, television networks as well, just to affect a larger audience... And those are the places where [there has] been the deepest voids in terms of where we haven't been able to get media coverage." (Perkins 2008)

New York Times. While the regional news coverage of the CIW's Taco Bell campaign had already demonstrated that farm workers can be depicted as immigrants in a celebratory and positive light, this opinion piece by investigative journalist Eric Schlosser

takes the next step toward honesty-with-compassion in the narrative about immigrant workers in the United States. Schlosser calls the CIW a “group of immigrant tomato pickers” in the context of praising the coalition’s work in the Taco Bell campaign: “at a time of declining union membership, failed organizing drives and public apathy about poverty, a group of immigrant tomato pickers had persuaded an enormous fast food company ... to increase the wages of migrant workers and impose a tough code of conduct on Florida tomato suppliers.”

Furthermore, Schlosser’s editorial, which is the only press coverage received by the Taco Bell campaign in the most prominent national,³⁶⁶ is also the only one to call the workers “illegal”—confirming that the “undocumented” label can also be used in a sympathetic context which explains the circumstances of the farm workers; in effect, Schlosser places workers’ condition of “illegality” within the framework of their exploitation and poverty: “Today the majority of America’s farm workers are illegal immigrants. They often live in run-down trailers, sheds, garages and motels, where a dozen or so may share a room. Their status as black market labor makes them fearful of being deported, wary of union organizers and vulnerable to exploitation. The typical migrant farm worker is a young Mexican male who earns less than \$8,000 a year.” Eric Schlosser’s piece also provides general information about undocumented immigration in Florida’s fields, not just Immokalee’s tomato pickers, and describes these workers’

³⁶⁶ During her interview with the author, Julia Perkins noted about the *New York Times*: “we’d love more coverage there... But that’s hard, because they always want something new... Unless we do a boycott, that’s probably the next time that we get” coverage. (Perkins 2008) Perkins claims that the national press has been pressuring the coalition to call boycotts in order to enhance their news appeal: “It has been very interesting too because the Taco Bell boycott was a boycott, then the media during the McDonald’s campaign, and we’ve seen it happen to some extent during Burger King, though it’s been a little bit different recently, they’ve been really wanting, they say: “we don’t want to cover just actions, we want to cover something bigger, we want you to announce a boycott, we’ll cover it when you announce a boycott, kind of trying to force us into” calling boycotts. (Perkins 2008)

specific vulnerabilities to exploitation: “The working conditions in the fields of Florida are especially bad. According to a recent study by the Urban Institute, perhaps 80 percent of the migrants in Florida are illegal immigrants. They are usually employed by labor contractors, who charge them for food, housing, transportation—and, on occasion, smuggling fees. These charges are often deducted from workers’ paychecks, trapping migrants in debt.”

Washington Post. The newspaper’s first sample is about street demonstrations in Washington (headline: “Peaceful Protest Puts Focus Back On IMF; Extensive Street Closures Prompt Some Complaints”); the CIW is only mentioned briefly.³⁶⁷

The second news piece, published November 22, 2003, is a well-developed story (1196 words) focusing on the National Council of Churches’ support to migrant workers’ labor movements. The headline reads: “Churches Back Boycotts Over Migrant Workers; Labor Unions Decry Treatment by Taco Bell, Mt. Olive Suppliers.” The story uses several sources (corporations being boycotted³⁶⁸, growers’ associations, researchers), but the church’s perspectives dominate the text; the narrative emphasizes the context and significance of church endorsement³⁶⁹ (e.g., “council officials called the endorsements “especially significant” because of the organization’s insistence that boycotts are a

³⁶⁷ “On the roughly two-mile march route to the Foggy Bottom headquarters of the World Bank and IMF, they paused in front of a Taco Bell restaurant at 14th and U streets NW, waving banners and calling for a boycott of the fast-food chain, which they said buys tomatoes from Florida growers that exploit workers.”

³⁶⁸ The corporation’s perspectives are similar to Donna Karan International’s statements to the national press during the DKNY campaign: “Officials at Taco Bell and Mt. Olive acknowledge that wages and working conditions are not always the best among migrant workers. But they note that tomato and cucumber growers, and not Taco Bell or Mt. Olive, employ those workers. And they say it’s not their company’s role to negotiate better pay, living conditions or benefits for them.” Taco Bell also disputed the low-wage claims of the CIW, emphasizing that it “once offered restaurant jobs to any migrant workers who were dissatisfied with their pay or working conditions, company spokeswoman Laurie Schalow said. “No one took us up on our offer,” she said.”

³⁶⁹ The story also notes that the National Council of Churches “last endorsed a boycott 15 years ago against Royal Dutch/Shell Oil because of the company’s connections to the apartheid system in South Africa.”

“measure of last resort” in pressing for improved worker rights and other social justice issues”) and the size of the National Council of Churches (e.g., “the council represents 36 denominations and 50 million Christians”)—and therefore its likely impact on the boycotts.

The third *Washington Post* sample is also a well-developed piece (1297 words), which focuses exclusively on Florida tomato pickers (headline: “Fla. Tomato Pickers Still Reap ‘Harvest of Shame’; Boycott Helps Raise Awareness of Plight”). The narrative presents a very kind and sympathetic portrayal of farm workers (e.g., “The best part of the farm workers’ day may be 4 a.m., still pitch black out, when they gather in a concrete building on the corner of Third and Main for hot coffee and bread”)³⁷⁰ In effect, as the headline implies, Immokalee workers’ current circumstances are compared to the portrayal of migrant farm workers in Edward R. Murrow’s 1960 television documentary “Harvest of Shame”—which focused on Immokalee, among other migrant workers towns.

This *Washington Post* piece portrays workers’ organizing to protest poor working conditions as desirable (e.g., “the Immokalee farm workers, or tomato pickers, as they call themselves, are making the improvement of their condition a national cause”). It also depicts the Fair Food coalition as a positive development in the CIW struggle.³⁷¹ Taco Bell’s perspective is also given voice in the story³⁷², but the CIW’s

³⁷⁰ Another example of farm workers’ sympathetic depictions: “If they’re lucky, the workers get to spend 12 hours on their hands and knees, filling buckets of tomatoes for 40 to 50 cents a bucket. To make at least \$50, they scurry to fill 125 32-pound buckets—two tons of tomatoes. But if it rains, as it did Friday, work stops. The workers are returned to the parking lot in rickety school buses 12 hours after they left, having earned just a few dollars, maybe none at all.”

³⁷¹ For example: “Campus groups and dozens of faith groups, including the National Council of Churches, representing 50 million Christians, have endorsed the boycott, with students taking a strong role. “Boot the Bell” campaigns by students, part of the company’s target market of 18- to 24-year-olds, have blocked or

views dominate the narrative; for example, the narrative gives workers the last word, the opportunity to contradict Taco Bell.³⁷³ The reporter also checked the corporation's claims, and the text points out where its statements are misleading; for example, Taco Bell claimed it was not a very large purchaser of Immokalee tomatoes, but the reporter verified that the information was incorrect according to an industry newspaper.³⁷⁴

The fourth and last news story about the Taco Bell boycott in the *Washington Post* is a shorter (564 words) account of the CIW's campaign victory: "Accord With Tomato Pickers Ends Boycott Of Taco Bell." The narrative, as all other stories about the end of the boycott, focus on the commonalities between the two previously warring factions (e.g., "Jonathan Blum, senior vice president of Yum—the world's largest fast-food corporation—said that laws need to be changed to protect workers and that the industry needs to hold growers accountable"). It also reminded readers of the support from church and student groups to the CIW boycott. Interestingly, this was the only use of the 'sweatshop' label in national news: "just as major apparel retailers were forced to confront the conditions of the Southeast Asia sweatshops where their products are made

forced Taco Bell from 21 campuses, and boycott campaigns are underway at about 300 universities and 50 high schools."

³⁷² "But Taco Bell spokeswoman Laurie Schalow said that the coalition may be asking the company for too much. "We have said we absolutely understand the workers' plight," Schalow said. "We really do." But, she added, "this is a problem that goes deep." For that reason, she said, the company offered to help develop a team that would lobby legislators—"all the way to [Republican Florida Gov.] Jeb Bush"—to change labor laws."

³⁷³ For example: "After two years of the boycott, Schalow said, Taco Bell last year sent the coalition a \$110,000 check, representing an extra penny per pound for the tomatoes it bought in 2003. The coalition, she said, returned the check. "That was just a tactic," the coalition's Benitez said of the check, "not a systemic change. How were we supposed to distribute the money? And how can the company claim that that was an honest response when they won't disclose how many pounds of tomatoes Yum! Brands buys from the suppliers?"

³⁷⁴ "Contradicting an industry newspaper, the Packer, which describes Yum! Brands as a major player in the Florida tomato industry, Schalow said the company's role is not that big. "We actually are not a very large purchaser; we're really not," she said, adding that she does not know what percentage of the crop Yum! Brands buys. "Taco Bell uses tomatoes, but KFC really doesn't use tomatoes, Pizza Hut uses more tomato sauce products.""

after student-led anti-sweatshop campaigns, the coalition says, Taco Bell and Yum! Brands must confront the exploitation of farm workers.”

The *Washington Post* coverage of the CIW’s Taco Bell campaign, as most of the Florida regional newspapers, also depicts farm workers as immigrants on a few occasions—yet always within a positive context. While the *Washington Post* narratives do not examine the issue of immigration with the same honesty as the *New York Times* opinion piece by Eric Schlosser, they also do not focus on the workers *as immigrants*. Immigration is mentioned as one of many facts in the narrative of their demonstrations³⁷⁵, claims and accomplishments³⁷⁶. One of the *Washington Post* stories briefly explains the context of migrant farm work and immigration (e.g., “most migrant workers come from Mexico, Guatemala, Haiti and other foreign countries, and as many as half are undocumented, said Virginia Nesmith, executive director of the St. Louis-based National Farm Worker Ministry”)—and it is the only story in the Taco Bell sample, other than Schlosser’s *New York Times* piece, to mention workers’ immigration status (“as many as half are undocumented”). In the same paragraph, however, it mentions that “an estimated 2 million to 3 million migrant workers nationwide are living at or below poverty level,” placing their immigration status in the context of their circumstances.

³⁷⁵ For example: “On Monday, the coalition is launching its annual “Taco Bell Truth Tour,” loading buses from Immokalee with 100 farm workers, most of them immigrants from southern Mexico, Guatemala and Haiti, on a 15-city publicity campaign. The buses will stop in Atlanta, Nashville, Cincinnati, Cleveland and other cities before ending with a rally on March 12 at Yum! Brands headquarters in Louisville. The rally will feature celebrity headliners, including actor Martin Sheen and Kerry Kennedy, daughter of the late senator Robert F. Kennedy. “Yum! Brands has the power to change the way it does business and the way the workers are treated,” said Lucas Benitez, 29, a picker who helped found the coalition in 1993.”

³⁷⁶ For example: “The coalition’s work uncovering slavery garnered [Lucas] Benitez, of Guerrero, Mexico, and two other workers the Robert F. Kennedy Human Rights Award in 2003. The coalition is working with a federal task force that continues to investigate slavery rings.”

Wall Street Journal. The only sample for this newspaper was an opinion piece published on May 21, 2004 under the headline “Ringing Taco’s Bell.”³⁷⁷

The cheerful headline is misleading; the *Wall Street Journal* editorial team pokes fun at Taco Bell for trying to appeal to their young consumer market by using catchy slogans that are “left of center”—and now being targeted by the CIW boycott. The editors’ views of the boycott are predictable, considering the newspaper’s readership: it accuses the CIW of attempting to fix market prices for tomatoes. “In our view, of course, the boycotters’ aim of arbitrarily trying to fix market prices is not going to help workers in the long run. As the Rev. Robert Sirico of the Michigan-based Acton Institute puts it: “If you really wanted to help migrant workers, you’d be pushing for a guest-worker program along the lines of what President Bush proposes.”

An anti-boycott and anti-CIW perspective dominates the text; contrary to the *Washington Post*, which contradicts Yum Brands’ claim that it is not one of major buyers of tomatoes in the Immokalee region with a finding to the contrary in a Florida agricultural trade newspaper.³⁷⁸ In the *Wall Street Journal*, Taco Bell’s claim is taken at face value: “Leave aside, as the company notes, that its national competitors and supermarkets buy more Florida tomatoes than it does.”

³⁷⁷ Lucas Benitez believes that the *Wall Street Journal* “reporter in Miami understands our campaign well. Unfortunately, his editors are the ones who change [the story]; the reporter in Miami has come to Immokalee and saw the situation and the conditions [of farm workers], so he understands, but many times when the story arrives at the editorial desk, they change everything. Let’s recall that the *Wall Street Journal* is a business newspaper, so they will speak for themselves, because their interests are represented there.” (Benitez 2008)

³⁷⁸ The *Washington Post* text reads: “Contradicting an industry newspaper, the Packer, which describes Yum! Brands as a major player in the Florida tomato industry, Schalow said the company’s role is not that big.”

“Raise the Chalupa!”—news coverage of the Taco Bell campaign. “I tell you, it wasn’t easy to open this path³⁷⁹, but now with all the attention and the help of our allies...”

(Benitez 2008) On the other hand, though the CIW realizes that it has accomplished a tremendous feat for a small migrant-worker coalition, the activists know that attracting news coverage is still an arduous task; asked if getting press coverage more recent CIW campaigns (e.g., McDonald’s, Burger King) has been easier since the organization’s victory in the Taco Bell campaign, Julia Perkins notes that “it’s been very diverse, so I wouldn’t say that it’s either all been consistent or better or easier to get stories.” (Perkins 2008)

In contrast with a good amount of cheering regional news coverage in Florida³⁸⁰, with dailies urging Taco Bell to “raise the chalupa!” and “raise the taco!” to cover migrant workers’ pay raise, as well as some attention from regional newspapers around the United States during the organization’s Truth Tours, the coalition’s campaigns have

³⁷⁹ Lucas Benitez emphasizes that one of the CIW’s strategies has been to develop their own news—to fight apathy from the mainstream press: “After a few years of campaigns, we started having our own communication medium. Unfortunately, in the beginning it was difficult to create interest in the newspapers to cover this kind of work, so what we did was create our own webpage so that today the newspapers, the reporters utilize our webpage to check the latest news on the Coalition, and we also have a strong alliance with the Indy Media (the independent press), so that it is also another way to reach the more traditional newspapers.” He also calls attention to the role of the ‘alternative media’ in giving voice to the CIW campaign: “When we did large protests for Taco Bell, for example, there were always Indy Media people with us [during the Truth Tours], and they would post information on their website, and we would post information on our website” which ultimately caught the attention of the mainstream press. (Benitez 2008) Their approach seems to yield results, judging by this student’s quote to the *Sarasota-Herald-Tribune* during the Taco Bell campaign: “The campaign has spurred people from California to Washington, D.C., to avoid Taco Bell. “I stopped eating at Taco Bells,” said Brian Smith, a Californian who recently wrote to the coalition. “I am not able to accept the pay for the work your members do. I pray that you and all of the workers will get Taco Bell to pay the small amount you are asking from Taco Bell.” Smith discovered the group at www.ciw-online.org, which sports photos, flashy headlines and slogans.”

³⁸⁰ Though it has not been all positive in local news, either; Benitez notes that “in this part of south eastern Florida, the newspaper we have is the *Naples Daily News*, there has never been an [objective news story] about the campaign, and why? Because there are so many interests of the editors, and the chief editor is friends with many farmers (in the area), so all of the interests are there; one of the editor’s wife plays (something) with a rancher’s wife, so they eat from the same plate... How are they going to have an objective news story about the reality of what’s happening?” (Benitez 2008) The *Naples Daily News* has not been utilized as a local newspaper in this research because it was not available through Lexis-Nexis.

been awarded limited national news space—despite the obvious appeal of the migrant-worker-versus-corporation, David-versus-Goliath narrative, especially since David has actually won the fight against the giant fast-food industry.

The CIW believes that their limited coverage in the national press reflects a general tendency in large news organizations for “not covering the workers’ issues;” (Perkins 2008) as was mentioned in chapter VI, a recent study about news coverage in the United States confirms Perkin’s suspicions, showing that labor relations and trade unions comprise only 0.4 percent of American news coverage in television, radio and newspapers. (Skewes 2006)

It has been especially difficult, Perkins argues, to receive news coverage that explain the connections between Florida’s migrant worker slavery ring and the working conditions in the field—in other words, that the two issues are “in a continuum.” The CIW activist points out “that’s been a really hard story for the media to tell. Honestly, we’ve not really had anyone do that yet. They can talk about one extreme, the very extreme of slavery, and then they talk about sweatshops, but ... our analysis of that is that the sweatshops give rise to the slavery, slavery conditions don’t exist in other industries” where there aren’t sweatshop conditions. (Perkins 2008) Lucas Benitez believes that many of the difficulties in communicating with the press derive from reporters’ distant attitude toward the news stories—“many times, the reporters in these newspapers stay in their offices and they do not see the reality outside. They do not want to see what’s going on, they avoid talking about slavery.” (Benitez 2008) Benitez notes, however, that the allies have played a very crucial role in raising the CIW’s profile, especially renowned politicians who opened doors for more prominent coverage in the news: “For example,

when we marched in Miami, but Kerry Kennedy is coming, so the press is more interested, they came to cover the march. So this kind of allies, people who are well-known, that when they give a statement, the press covers it. For example, every time Jimmy Carter writes something in favour of the campaign, the press covers it, because it's a president speaking. This kind of ally has helped us open these channels with traditional communication media." (Benitez 2008)

While the press does not seem to grasp the connections between poor working conditions and slavery, is distant from farm workers' realities and is perhaps overly dependent on celebrities, newspapers do not seem to probe into coalition members' immigration status; Lucas Benitez and Julia Perkins are glad about that. Benitez says that newspapers do not ask whether farm workers are undocumented because "this is a human rights fight," and "human rights doesn't tell you that you [need] documents to have the right to claims. So within this scenario of human rights, and basically if we talk about the declaration of human rights, it is the right to organize, which is mentioned in the declaration, the right to work freely of oppression, basically free of slavery, and the right to a worthy salary, to sustain your family with dignity. These are three basic rights in the declaration that are violated every day for thousands of workers. On the other hand, when you go every morning to seek work here [in Immokalee], no one asks for [work authorization] documents, it is the same whether you have or do not have documents." (Benitez 2008) Benitez notes (joking that "the agricultural industry doesn't discriminate for exploitation") that even college students who work in the fields during spring break,

to learn about the agricultural industry's labor relations, receive the same salary as year-round, full-time farm workers.³⁸¹

The CIW also does not wish to see press coverage of their campaigns “in terms of immigrant workers,” identifying farm workers as immigrants. Julia Perkins claims that CIW does not “really see this as an immigrant workers’ issue. This is the most vulnerable workers in the United States. Yes, they happen to be immigrants right now, but they’ve also throughout history been poor whites, African-Americans. The last case of indentured servitude was of African-Americans, and that was in 2007. People really try to buttonhole farm workers’ issue as an immigrant workers’ issue, but it’s not. It’s a poor, vulnerable, unprotected workers’ issue, right?” (Perkins 2008)

Yet both the regional and national news coverage of the campaign that was analyzed in this case study did *not* highlight workers as immigrants—quite the opposite, every time workers’ national origin was mentioned, that information was presented in the context of farm workers’ conditions of exploitation and poverty, in an empathetic and inclusive way. Contrary to previous findings of negative press coverage in the case Mexican immigrants in the United States during the *Bracero* era (Flores 2003), refugees and asylum seekers in Belgium and the United Kingdom (Kaye 2001; Van Gorp 2005), “illegal” Chinese in Canada (Hier 2002), and unauthorized immigrants in southern Europe and Australia (Dauvergne 2004; Calavita 2005), the U.S. press coverage of both the DKNY and Taco Bell campaigns by and large welcomed and celebrated workers’

³⁸¹ Benitez jokes that “the agricultural industry is the only industry that doesn’t discriminate in exploitation. Because here, spring break is coming soon, we have groups of young students who come to Immokalee to work from Notre Dame and several universities from around the country, to see the reality of the workers, to interact with us for a week. And when they go to work, they pay them the same as they pay us. It is not because they are white, or black, or yellow... It doesn’t matter. They are going to exploit you the same way, the agricultural industry in this sense doesn’t discriminate for exploitation. It is the same for everybody.” (Benitez 2008)

decision to protest and insist on corporate responsibility for their working conditions³⁸². Of course, activists such as the CIW members are afraid of an emphasis on immigration and/or undocumented status that could lead to negative news coverage—such as these comments by a Florida Taco Bell customer witnessing a protest inside the restaurant, who asked a *Sarasota-Herald-Tribune* reporter: “A lot of them are immigrants, right? ... [farm workers’ wages are] still more than they’d make over there [in Mexico].” As he left the drive-through Thursday around dinner time, [the customer] shouted, ‘Tacos, I love tacos.’ He bought a 10-pack for \$6.” While this particular news story is actually nuanced and arguably negative about the satisfied Taco Bell customer, the possibility of negative connections between immigration and labor rights in the press is too daunting for labor activists to face that risk.

Identity-based social movements. Transforming law and regulation is an essential objective of social movements, and thus influences the methods through which they choose to organize. (Eskridge Jr. 2001) Contemporary identity-based social movements, including immigrant, ethnic, or farm workers’ groups, frame their social, cultural and economic claims primarily through a discourse based on human rights—rather than through more confrontational, political struggles. In that sense, both the DKNY and the Taco Bell campaigns attempted to position themselves as aggrieved workers fighting corporate multinationals, as opposed to union-based organizing.

³⁸² Again, the largely positive (and at significant levels in local newspapers) press coverage given to the DKNY and Taco Bell campaigns happened despite the fact that labor relations and trade unions generally receive negligible coverage in the U.S. press (Skewes 2006); perhaps the positive press coverage of these community-based campaigns reflects the news organizations’ reactions to what Peter Kwong has described as the need for labor relations to shift back to worker-centered, grassroots associations or coalitions, rather than top-down, hierarchical unions. (Kwong 1997a)

The DKNY case took a lawsuit approach to devise effective legal strategies for improving conditions for a particular group of workers, while also launching a corporate social responsibility campaign against DKNY; the CIW's Taco Bell campaign, on the other hand, claims that it is interested in a wider strategy to improve farm workers conditions—an industry-wide shift toward fair-food production, with a focus on workers' conditions in the fields and compliance programs to keep growers on track. Julia Perkins commented that “DKNY got off the hook doing it by paying a settlement, and Lucky Jeans is probably doing the same thing, or Bebe or whatever... And we really want to bring the corporations that are benefiting from people's poverty to task, to have them not only pay a settlement to remedy the situation for the workers at that point, but we want to have a change for workers in the future too.” (Perkins 2008) Asked if CIW has considered class-action suits for tomato pickers in Immokalee, she replied: “We've had attorneys looking at that to see if that is a viable kind of suit. Right now, we've made complaints, not class actions suits necessarily, to the Department of Labor about a couple of farms that were not paying legal wages. At this point, with our resources we've had a lot more success at the campaign level, at the public relations level, than we have at a litigation level.” (Perkins 2008)

Legal researchers Kuersten and Jagemann note that minority groups have been relatively successful in shaping public policy in large part because minorities have joined their efforts becoming, essentially, “support groups” for their joint interests. This was the case with the Coalition of Immokalee Workers' joining together with student activist groups and church leaders.³⁸³ CIW activist Julia Perkins emphasizes that support from

³⁸³ Since the Taco Bell campaign, the CIW has started the Alliance for Fair Food with a myriad church, student-based and human rights organizations. See www.allianceforfairfood.org.

student activists and church leadership has “been really important, because with the student and faith allies it really lends a different perspective, a moral voice, or a student activism to the campaign, that farm workers alone, wouldn’t be able to have moved it in the same direction... Then it would be this kind of dynamic where there is the corporation that is very powerful, has tons of resources and money, and the farm workers who have no power and no resources and no money, trying to face off... And we weren’t going to make it anywhere in that... So to have the voice and the resources and the morality and the research and the support and alliance of these groups has really allowed us to in some ways at least equalize the playing field. And also to consider that we’re talking about students, we’re talking about young people, who in the fast-food industries’ case are their target market and who they say that they respond to, and so when they see students pressuring them, that is their consumer base, then they take heed. When they hear religious voices calling on them that is also a different kind of weight... And also the human rights voices, [such as] President Robinson, Mary Robinson...” (Perkins 2008)

Having the assistance of larger organizations, such as a non-profit legal assistance institution (as was the case with the assistance provided by the Asian American Legal Defense and Education Fund to garment workers in the DKNY campaign) goes a long way in helping to level the playing field for smaller groups in the legal arena. (Kuersten 2000) The legal route may appear less attractive and too costly to groups such as the CIW until they can join forces with other identity-based social movement groups that provide legal assistance. In effect, immigration and Chicano law researcher Kevin Johnson argues that coalition building should be a primary objective of minority political movements,

and that strategic coalitions among minorities are central to achieving immigrant rights in the U.S.—particularly for disenfranchised groups such as undocumented workers; Johnson suggests that there are several strategies for immigrant and other minority communities to organize around common issues and provide mutual support with legal and other expertise. (Johnson 2003)

Coalition building may also be preferable to union organizing drives if minority workers have a fragile position within unions³⁸⁴; labor researcher Rubens Garcia claims that “it is too often assumed that unions should speak with only one voice,” yet “many voices within unions need to be institutionalized and legitimated through caucuses that reflect workers’ diverse and multiple identities.” (Garcia 2002: 91-92)

Corporate monitoring programs. Another route pursued by labor rights campaigns, including the CIW initiatives, has been to establish compliance programs that involve (and are largely funded by) the multinational corporations in monitoring working conditions at their subcontractors.

Corporate codes of conduct have been used as part of consumer boycotts and labor standards campaigns; the first international corporate code of conduct and independent monitoring came from the apparel industry: the global Apparel Industry Partnership, which “embodied a new approach to global labor rights.” With the globalization of the apparel industry, “policymakers, activists and scholars hoped that

³⁸⁴ Julia Perkins notes that most campaign decisions within the Fair Food Alliance (with human rights, church and student groups) are still made by the CIW, “by the membership of the coalition, in terms of strategy, including media, how we’re going to message this struggle to the media. And the strategy decisions are made and trainings are done with all of the CIW members who are on tours and who participate here in the community, and who do deeper leadership development. And then the rest of the Alliance for Fair Food, the religious allies, the student allies, the human rights allies, usually they take their lead from what the workers have decided that they want to do.” (Perkins 2008)

pressure from transnational networks and “global civil society” could create a floor under a competitive “race to the bottom”.” The hope was that the corporate code and compliance monitoring program would improve working conditions in garment factories by “focusing global pressure on points of corporate vulnerability. Threatened with consumer boycotts, brand-name companies would adopt voluntary codes of conduct and accede to monitoring by non-governmental organizations.” If the factories failed the monitoring process, NGOs would threaten to “name and shame” those corporations that mistreated employees. (Seidman 2007: 1)

On the heels of the Apparel Industry Partnership, a wide-ranging program has been established in Guatemala which, similarly to the CIW monitoring program, has brands (corporations buying products) paying for the monitoring of their subcontractors.³⁸⁵ Since 1996, the NGO COVERCO has been monitoring working conditions across Guatemala as part of a larger human rights campaign focused on labor standards in Central America—especially since the globalization of the U.S. apparel industry and the appearance of *maquila* factories in Central American countries. The Central America campaign was organized by U.S. students groups, and focused on enforcing labor rights within the context of a state (Guatemala) that was considered complicit in violations of labor standards. The focus thus was placed on consuming states (importers) to threaten closing their markets to Guatemalan products if labor standards were not improved through regulation and independent monitoring. (Seidman 2007: 8)

While Gay Seidman, a sociologist who analyzed the COVERCO program as a case study to investigate the effectiveness of independent corporate monitoring schemes, notes that

³⁸⁵ U.S. government programs and labor rights groups are also helping with the funding for the COVERCO monitoring scheme. (Seidman 2007: 9)

local relations in Guatemala have been affected by “some tensions with unions,” (Seidman 2007: 9) she also underscores that vulnerable and voiceless workers have been able to “reconfigure relations of power” by “bringing outside pressure to bear”—in this case, both on the Guatemalan state and on employers; hence Seidman points out that campaigns “however slowly and in however piecemeal a manner” can sometimes “create new possibilities and construct channels through which workers can begin to speak for themselves.” (Seidman 2007: 14)

Within the U.S. context, FLOC’s contract covering about 7000 workers in Ohio and Michigan during the 1980s, which was mentioned above as one of the glorious moments in the history of American farm workers’ activism, also involved a corporate responsibility design: the three-party contacts involved the union, the tomato and cucumber growers employing the farm workers—but also large food processors and corporations, such as Campbell and Heinz. (Majka 2000: 162)

However, implementation of monitored compliance agreements monitored by corporations can present enforcement difficulties for voluntary NGO-headed programs; since the first CIW agreement (with Taco Bell) in 2005, the Florida Tomato Growers Exchange has opposed the implementation of the agreements between CIW and Yum Brands, McDonald’s, and Burger King³⁸⁶—prompting a recent statement late August, 2008 from Anti-Slavery International and RFK Memorial Center for Human Rights urging the Growers Exchange to “stop opposing human rights agreements.” (Press Release 2008)

³⁸⁶ This researcher contacted the Florida Tomato Growers Exchange in 2008 to inquire about their views concerning the CIW agreements with fast-food corporations—and was politely dismissed with a promise of a follow-up conversation with the leadership of the Growers Exchange, which never took place.

Julia Perkins of the CIW argues that the “mentality” in the agricultural industry, “especially around labor relations, that’s set in a far gone time period from most other industries, where they’re really used to having peons, workers that they don’t even have to see as human beings and people, they aren’t required to follow laws that other industries are required to follow.” She notes that early on, before calling on the fast-food manufacturers, and also throughout the years during the Taco Bell, McDonald’s and Burger King campaigns, CIW has tried to negotiate with the growers—to no avail. Perkins notes the growers always question the legitimacy of their right to represent workers: “We had 3,000 signatures of workers who said the CIW speaks for us ... We had thousands of cards, which in other industries would bring the employers to the table... [but not] in the agricultural industry... And at least open the door to negotiations. We couldn’t even get them to the table, with these cards signed, with hunger strikes, with general strikes, and we’re fighting, they’re fighting tooth and nail not to come to the table even through these agreements with the corporations who buy from them. And we see that in their most recent activities, the fine that they want to impose on growers who would participate with Yum Brands and McDonald’s.” (Perkins 2008)

The road ahead for Immokalee farm workers. Due to high turnover among migrant farm workers, this is a very difficult sector to organize; those who have been in the United States for a longer period of time, such as Lucas Benitez and other co-founders of the CIW, are more likely to become involved in strikes and campaigns. (Majka 2000: 173)

In the circumstances, such as the CIW, where workers organize successful campaigns, these organizations are likely to have variable degrees of success reaching the mainstream

media; public relations researcher David Deacon notes that while there seems to be widespread media activities by unions, volunteers and interest groups in part due to a proliferation of “issue politics,” they are not always able to tell their stories. Besides, these organizations are generally cast as “advocates” rather than “arbiters” of debate, which limits their ability to balance more powerful government “voices” in the media. (Deacon 2003: 114-115) Farm labor activists’ media messages face several difficulties, not least the fact that agricultural labor laws are so lax. Therefore farm workers sometimes face an uphill battle trying to explain why their campaigns have merit—because reporters question whether the growers are breaking the law. If they are not, reporters are less interested in the story: “the immediate reaction of a lot of people is, OK, well, they’re following the laws. But they don’t even look at the laws to recognize that they are not the same for farm workers as they are for all workers, right? And even at that level, farm workers are excluded from overtime, they are excluded from the right to organize, they are excluded from basic protections, it’s the language that people talk about it in, they really have to break down to get to the real story.” (Perkins 2008)

Julia Perkins also notes that Americans are not always open to face domestic human rights problems: “I think in some ways too it has been hard for the media and the general public even, to recognize the fact of human rights abuses in the United States, domestic human rights issues, even to say that or to get to that is kind of a stumbling block for a lot of folks. And so it’s been helpful to have at least the support from human rights organizations that are recognized for rights first, Amnesty International, those kinds of names, and RFK Memorial Center. Even though the language human rights as something that’s been happening in the US, it has been very helpful to at least start to see that. It’s a leap for people, really, when you think of human rights talk, it’s all about the Sudan, Africa.” (Perkins 2008) Human rights scholars

have pointed out that most human rights language and concerns are still directed toward poor countries. This is an example of the phenomenon that scholar Makau Mutua calls the ‘SVS metaphor’ (savage-victim-savior), where the savage is a poor state, the victim is an individual not only *from* a poor country (which would include most of the international immigrant population), but *residing* there—and the savior is the Western human rights advocate. “The metaphor is premised on the transformation by Western cultures of non-Western cultures into a Eurocentric prototype.” (Mutua 2001: 205) The implication is that human rights violations are *not* perpetrated in Western soil; this metaphor thus illustrates some of the cultural difficulties in addressing the labor rights of immigrants in America.

Given the hazards and barriers in telling their stories, CIW’s Lucas Benitez feels that “the press has its pros and cons. The press can kill the campaign, if it wants to. But it is like a *compañero* says: in our fight, our most powerful weapon is our truth. We do not have to exaggerate, nor be sensationalistic. If we put our reality on the table to any journalist, to any person, the journalist can take it at will.”³⁸⁷ And he recognizes that since the CIW has “created a reputation,” the organization now has a “precedent,” especially telling stories from all the slavery cases it has helped to bring to justice: “there are people who are now behind bars for 15 years, and people who have been freed of these situations, and today they tell the story of what they’ve lived. For example, in the Miami march [as part of the Burger King campaign], one of the *compañeros* who was [freed

³⁸⁷ The CIW does make efforts to communicate their message to the press in powerful and creative ways: “The press has tremendous power, and I believe that also the groups, we have to be very creative in how we send our messages and how we raise interest in the press, because if we always have the same thing, it will be boring and frustrating. For example, the Truth Tours to California, it was very heavy work, but it was doing something not traditional, to go from here to California, to do a ten-day hunger strike in front of Taco Bell, to do a march in Los Angeles. Now in Miami, *compañeros* taking our own shoes in their hands, and telling Burger King that if you want to know our reality, walk in our shoes, then talk about our reality. So all these types of actions interest the press, because they never know what the main message of the action is going to be.” (Benitez 2008)

from slavery], he came, because he doesn't live in Florida because he is afraid of retribution, but he came, to be with us for the march.” (Benitez 2008)

During my interviews with Lucas Benitez and Julia Perkins at the Coalition of Immokalee Workers' old building on Main Street in Immokalee, I explained to them my argument that it is necessary to have a public debate about the working conditions of undocumented workers in the United States—in order to expand the discourse on what “illegal” workers *do for* and *take from* the country to include a moral, ethical, human rights narrative about their exploitation in the workplace. I also asked for their perspective—on whether the press should be making connections between undocumented status and exploitation. Julia Perkins believes the issue of undocumented immigration should be focused on as a labor issue and a trade issue³⁸⁸, rather than focusing on the workers' individual decision to immigrate. “It's based on both the push and pull factors that U.S. foreign and domestic policy have created. They've created this push through NAFTA, through free trade, of dumping corn, dumping other agricultural products that are greatly machine picked here, at a much lower cost than they're produced in Mexico, for example, forcing people who for years and years and generations and generations have been sustenance farmers, peasant farmers, taking care of the land that they live on, and can no longer do that, and then they're forced to look somewhere else for work, they

³⁸⁸ Benitez also focused on structural “pull” and “push” factors that explain U.S. immigration. He said: “The government is the one to blame for the free trade agreement between Mexico, Canada and United States. And the United States was the one pushing for that. And now it is pushing for ALCA (Free Trade Area for the Americas). Why? Because they have the perfect weapon: when they go there and establish the free trade agreements, the farmers in Mexico cannot compete with the farmers here. So today the small Mexican farmers of before NAFTA have been converted into workers, and today they are being obligated to leave their land in Mexico and you have to look for the bread for their families, you cannot stay like that forever. Your family needs to eat... And so you are obligated to leave your pueblo, your country to come here to this country, and when you come here, then you are to blame. So truly we need to look at the true root of this problem, and many times it is the government, the big industrialists, the big millionaires, the tycoons, they are the only ones who gain from this. They are also the ones who have the power in Washington and in Mexico.” (Benitez 2008)

can't do what their father and grandfathers did, and so they have to look somewhere else for work. And they either go to the *maquillas*, which again is another phenomenon of free trade, that the corporations have up and left working class communities in the U.S. for cheaper and more vulnerable and more exploitable labor.” (Perkins 2008)

Lucas Benitez earnestly replied that industries as a fact “take advantage of the most vulnerable people. And the agricultural industry does that: takes advantage of those who are vulnerable to be able to draw its harvest.” Then Benitez told me a story: “In the past, during World War II, the people who worked in the mines in Arizona, they were also Mexicans who were brought from Mexico to work the mines because the majority of Americans were in the war. So these workers were paid unequal salaries, to the Mexicans they paid 3 pesos, and to the Americans who worked there, they were paid US\$3 per day of work. Then what happened? The people got up, got together, they organized into a union. After 55 years of fight, and 3 generations of families, today, the mining work is a worthy job, it is not a cleaner job, it is not less dangerous, but it is today a job which gives you a good remuneration, with full benefits, which provides pension. So today who works in those mines? When we read about a disaster in a mine in Iowa, many of them are Americans. The last disaster, I don't remember where, there was only one Mexican; all the others were Americans. Why are Americans working in mines? Because they are given full benefits. So, it is exactly like that: we have to also organize this agricultural industry to be able to stop complaining about the people who come here to do this work.” (Benitez 2008)

Labor activists will always focus on the need to organize and fight poor standards in their industries; yet press coverage and public communication play a significant role in

informing the population—and galvanizing public attention. Successful campaigns, especially in farm labor, have largely “relied on considerable public support, since the structural position of agricultural labor by itself is comparatively weak. Public support was the basis for the successful UFW consumer boycotts of the 1960s and 1970s and FLOC’s boycott of Campbell products during the 1980s. Unfortunately, institutionalization of positive changes has proven elusive, and similar kinds of public attention will most likely be needed again to reverse the patterns of the past two decades.” (Majka 2000: 173) In those industries with considerable proportions of undocumented workers, until immigration policy finds new solutions to millions of U.S. residents’ unauthorized status, labor activists will face the dilemma of facing the thorny issue of immigration status—or fighting muzzled battles for workers’ labor rights, hoping that the press does not ask the dreaded question, and losing the public relations battle about “illegal” immigration—where the mainstream discourse highlights the Mexican “invasion” of American jobs, road, schools, and hospitals, rather than these workers’ exploitation in American fields and garment sweatshops.

Part III

Conclusion: Silent exploitation, dreaming in English—how the American press could reinvigorate the immigration debate

*“The continuation of high levels of Mexican and Hispanic immigration plus the low rates of assimilation of these immigrants into American society and culture could eventually change America into a country of two languages, two cultures, and two peoples. This will not only transform America. It will also have deep consequences for Hispanics, who will be in America but not of it. Lionel Sosa ends his book, *The Americano Dream*, of advice to aspiring Hispanic entrepreneurs, with the words: “The Americano dream? It exists, it is realistic, and it is there for all of us to share.” He is wrong. There is no Americano dream. There is only the American dream created by an Anglo-Protestant society. Mexican-Americans will share in that dream and in that society only if they dream in English³⁸⁹.” (Huntington 2004: 256)*

Importance of public debate about workplace abuses in immigrant industries. The national debate on immigration needs to move beyond protecting U.S. national culture from a foreign ‘invasion’ and myriad reasons for exclusion (e.g., national security, jobs, or fiscal costs) of low-wage immigrants from developing countries—and include the costs of exclusion to the host countries and its citizens, e.g., the deterioration of labor standards in low-wage, immigrant industries.

Samuel Huntington is correct to point out (as stated in the quote above) that most immigrants will experience a smoother transition into the American labor market, and

³⁸⁹ My italic emphasis; not in original text.

better fulfill their American dream, if they understand U.S. language and culture; yet Huntington fails to note that we also need to better understand immigration and the immigrant experience, their hopes, dream, and experiences in the United States—if this country is to accrue mostly benefits from immigration, rather than suffer its dire consequences—such as the lowering of labor standards in the workplace.

Analysts of American immigration have noted that “narratives about immigrants and their effects are likely to be constructed with few facts and little empirical research” because of an “absence of objective data.” (Durand 2004: 1) For example, despite such heavy immigration flows from Mexico into the United States, Americans grossly misunderstand the reasons why Mexicans cross the border: “A common perception in the United States is that Mexican immigrants are fleeing dire, impoverished circumstances at home” which has generated the “imagery of a border under siege” and a fear that a “flood of immigrants” is awaiting entry into the U.S. Yet “immigrants are generally not poor and desperate;” in reality, “households turn to migration quite rationally and use it instrumentally” to “compensate for missing and failed markets in Mexico.” Therefore Mexican “international migration is a consequence of its dynamic growth and development, not its poverty.” Because Mexican workers are generally “migrating to overcome specific market failures at home, the overwhelming majority of Mexican migrants plan to return, seeking to work in the United States for short periods” either as an “alternative source of household income” or to “accumulate savings for a specific purpose,” such as buying a house. (Durand 2004: 6) It is impossible to understand the nuances of U.S. immigration without a vigorous public debate in the press which divulges information about the circumstances of immigrants—both before deciding to

emigrate to the United States, and after their arrival in this country. Political philosopher Seyla Benhabib has developed the concept of “democratic iterations,” which helps to clarify the reasons why there is a fundamental need for a dynamic, open and inclusive public debate about controversial issues in democratic societies: “Democratic iterations are complex processes of public argument, deliberation, and learning through which universalist right claims are contested and contextualized, invoked and revoked, throughout legal and political institutions as well as in the public sphere of liberal democracies.” Benhabib notes that through public debate “the democratic people shows itself to be not only the *subject* but also the *author of its laws*. The politics of membership, precisely because it bears upon the self-definition and composition of the *demos*, becomes the site of jurisgenerative politics through which the *demos* faces the disjunction between the universalist content of its constitutional commitments and the paradoxes of democratic closure.” (Benhabib 2004: 19-20)

A limited public debate about immigration, focused almost exclusively on the consequences of immigration to Americans, misses important ‘attributes’ of the immigration news story, hence impoverishing our understanding of immigration as a phenomenon of globalization; an immigration discourse in the U.S. press which downplays the labor standards in immigrant industries, and the abuses being perpetrated against undocumented workers in America, obfuscates an important dimension of the immigration dynamics. The aspects of the immigration news story which are commonly emphasized in the U.S. press (e.g., effects of immigration on the economy, especially jobs, as well as its impact on health care and education costs; the fact that immigration is “illegal,” creating a perception that immigration is ‘out of control’) have the tendency to

produce a mood of ‘national crisis’—which *silences* coverage about exploitation, abuses, and the violations of undocumented workers’ internationally recognized human rights in the American workplace. As in Australia, Canada and Europe³⁹⁰, the United States is also coping with increasing international migration flows through a portrayal and reproduction of harmful ‘common sense’ (Zelizer 2004: 212-215) that emphasizes citizens’ entitlements versus “illegal” outsiders—and this process of focusing on the ‘border crisis’ caused by unwanted border trespassing works to conceal egregious violations of labor standards and silence human rights claims in the name of national boundaries.

This silencing of labor violations within the immigration news story limits both public opinion about immigrants—and the immigration policy agenda. Under the current situation of unstable inclusion of undocumented workers under domestic labor rights remedies, the economic and social rights of unauthorized workers to be protect from workplace abuses by employers remain at risk until more effective immigration policy solutions come to fruition. Yet public policy on immigration is likely to be a long-term effort; even a decision to provide a path to legalization for the estimated 12 million unauthorized foreigners currently in the United States will not address the continuous inflow of workers who cross the border or overstay their visas. Comprehensive policy answers are needed, which combine guest worker programs and paths to citizenship with border policing strategies and job-site enforcement initiatives (of both immigration and labor laws), as well as international cooperation and multilateral solutions. (Ghosh 2000a, 2000b; Durand 2001; Massey 2002) Yet comprehensive public debate on the consequences of unauthorized immigration, including human rights violations, is

³⁹⁰ This phenomenon of dealing with immigration as a ‘national crisis’ was also observed in Australia (Dauvergne 2004), Europe (Calavita 2005) and Canada (Hier 2002).

essential to develop well-informed and sensible policy solutions for current immigration flows into the United States.

Labor rights campaigns and legal change: the importance of telling the full story and spelling out undocumented status. The DKNY case study highlighted the use of legal strategies to achieve higher labor standards for garment workers in New York City's fragment network of apparel production; in the Taco Bell case study, the workers' organization (CIW) opted for public communication and advocacy strategies in their fight for better wages and working conditions for some of the most disenfranchised laborers in the country. In both cases, however, despite diverse strategies, the organizations involved favored *silencing* connections between abuse, exploitation, vulnerability—and immigration status. Although it is unknown how many of the workers involved in or represented by the organizations involved in the DKNY and Taco Bell campaigns were in effect undocumented, it has been documented that both industries (agricultural labor and garment manufacturing) are '(undocumented) immigrant industries', those that employ a large proportion of unauthorized workers.

It is not the objective of this author to criticize the organizations and their cautious approach to discussing immigration status in the press; it is completely understandable that within this climate of "illegal" immigration coverage which emphasizes a 'border crisis', where unauthorized immigrants are portrayed more often than not in connection to what they *take* from the United States, rather than what they *give* or *receive* from this country, that the campaign organizers would have no desire to establish links between *abuse and immigration status*. Yet, despite these campaign organizers' justifiably

cautious approach to an exposure in the press of undocumented workers' immigration status—undocumented status may prove to be a useful *platform for social action*.

Silencing immigration status in the press obliterates the fact that these workers are not just vulnerable because of their low wages and lack of formal protections (in the case of agricultural workers)—but are also increasingly powerless and voiceless due to their undocumented immigration status.

However, it is possible to shift this dynamic. British cultural studies scholar Stuart Hall argues that race is a “floating signifier”: “a socio, historical, or cultural” attribute; Hall claims that race, though it appears so obviously grounded in reality, is in fact a “signifier,” “discourse.”³⁹¹ (“Race, the Floating Signifier: Featuring Stuart Hall” 1996) “Illegal” and “alien” are also labels—exclusionary images to describe foreigners which are the result of nation-states with borders exercising their right to sovereignty, their right to exclude *others*. Immigration status is core to the reification of national power, just as racial differences are essential to the reification of white power. Immigration laws are not only shifting definitions of exclusion, they are also standards of *inclusion*; an example of the varying nature of the law, and the ability of public discourse to adapt to it, can be found in legal scholar Susan Coutin’s study of the shift in the representation of unauthorized immigrants in the U.S press after the 1986 IRCA which legalized millions of them—undocumented workers shifted from being depicted as “illegal” aliens to being *included* in the national fold through legalization. (Coutin 1997)

³⁹¹ Hall states: “Race is more like a language than it is like the way in which we are biologically constituted. Signifiers refer to the systems and concepts of the classification of a culture to its making meaning practices, and those things gain their meaning not because of what they contain in their essence but in the shifting relations of difference which they establish with other concepts and ideas in a signifying field. Their meaning, because it is relational and not essential, can never be finally fixed but is subject to the constant process of redefinition and appropriation.” (“Race, the Floating Signifier: Featuring Stuart Hall” 1996)

International strategies. Immigration scholar Catherine Dauvergne emphasizes³⁹² that the identification of undocumented immigrants *as undocumented* members of the workforce, as well as international and domestic human rights campaigns focusing on general inclusion of these workers within the fold of rights and entitlements afforded to citizens and legal resident workers in the U.S., “are necessary to predict legal outcomes” and to “strategize for legal change” (Dauvergne 2005: 214). Moreover, law professor Maria Ontiveros notes that the international community “reacted strongly to the *Hoffman* decision,” demonstrating an interest in refuting a ‘class’ system for U.S.-based workers, where employees’ rights are structured according to immigration status—providing an important voice against lax labor law enforcement in the United States. The U.S.-based AFL-CIO joined forces with the Confederation of Mexican Workers to file a complaint with the International Labor Organization (ILO)—and the ILO “asked the United States to reconsider the legal rights of undocumented workers. In addition, the government of Mexico filed a request for an advisory opinion with the Inter-American Court of Human Rights in Costa Rica. The IAC reasoned that human rights guarantees encompassed certain labor rights, acquired from the status of worker, and equal access to courts to protect those rights;” Ontiveros thus argues that “principles of international law also recognize minimum labor standards” and represent a useful platform for organizing to ensure labor standards remain in place for all workers in the United States. (Ontiveros 2004: 678-679) U.S. legal scholar Jennifer Gordon has recently proposed yet another international strategy, with increased efforts to form a “transnational labor citizenship,”

³⁹² Dauvergne also notes that the rights of undocumented immigrants in their host societies present a good opportunity for expanding theoretical analyses of “the relationship between migration law and the liberal nation” (Dauvergne 2005: 214), specifically the role of immigration regulations in reifying national borders and national identity.

where Mexican and American labor unions join in a trans-border cooperative effort (and possibly a new transnational labor organization) to defend the interests of Mexican workers working in the United States. (Gordon 2007)

Seyla Benhabib highlights the significance of international debate about social issues such as the rights of foreigners; Benhabib claims that “negotiations and democratic iterations” need to “take place in the context of a world society of states. Consequently, policies regarding access to citizenship ought not to be viewed as unilateral acts of self-determination, but rather must be seen as decisions with multilateral consequences that influence other entities in the world community. Sovereignty is a relational concept; it is not merely self-referential. Defining the identity of the democratic people is an ongoing process of constitutional self-creation. While the paradox that those who are not members of the *demos* will remain affected by its decisions of inclusion and exclusion can never be completely eliminated, its effects can be mitigated through reflexive acts of democratic iteration by the people who critically examine and alter its own practices of exclusion. We can render the distinctions between “citizens” and “aliens,” “us” and “them,” fluid and negotiable through democratic iterations. Only then do we move toward a postmetaphysical and postnational conception of cosmopolitan solidarity which increasingly brings all human beings, by virtue of their humanity alone, under the net of universal rights, while chipping away at the exclusionary privileges of membership.” (Benhabib 2004: 20-21)

The Thirteenth Amendment. Immigration law scholars have also noted that aside from labor and immigration law, the Thirteenth Amendment (establishing a prohibition of

slavery) may present another avenue for strategizing new solutions against the exploitation of vulnerable workers. U.S. courts have increasingly expanded the scope of the Thirteenth Amendment: “The last forty years have witnessed a significant shift in the types of labor arrangements challenged under the Thirteenth Amendment and a broadening of the definition of the term “involuntary servitude” to reach these arrangements. Rather than involving African-Americans, most of these labor arrangements involve immigrant workers.”³⁹³ (Ontiveros 2004: 667-668)

Ontiveros argues that the U.S. Congress could even utilize the Thirteenth Amendment to “act affirmatively to overturn *Hoffman* and specify minimum terms and conditions for undocumented workers that are equal to those of documented workers ... By grounding this legislation in the Thirteenth Amendment, [Congress] recognizes that the problem is one of racial and labor oppression” and also “provides the opportunity to begin a national debate on the meaning of race, class, citizenship and workers’ rights.” (Ontiveros 2004: 675)

Deportation threats may also constitute an inducement to involuntary servitude under the 2000 TVPA³⁹⁴; immigration scholar Michael Wishnie also points out that immigrant workers could challenge employers’ deportation threats under the Alien Tort Claims Act—for violating international law prohibitions on involuntary servitude and forced labor. (Wishnie 2004: 504)

³⁹³ Although the Supreme Court has “narrowed the definition of “involuntary servitude”” in response to this expanding scope of the Thirteenth Amendment, Ontiveros notes that “Congress responded by amending the debt peonage statute. The amendment was part of the Victims of Trafficking and Violence Protection Act of 2000 and provides an important step in the integration of workers’ rights, human rights and citizenship rights.” (Ontiveros 2004: 667-668)

³⁹⁴ See section on human smuggling and trafficking in chapter III.

None of the international and domestic legal and advocacy solutions mentioned above, however, are possible without an honest discussion about the specifically vulnerable position of undocumented workers in the American workplace. Legal scholar Lori Nessel notes that today's immigration policies which regulate labor "reflect an ambiguous morality" which prioritizes immigration status over workers' rights to fair standards; in effect, current laws do not reflect concern with labor standards, as immigration enforcement authorities retreated from strong enforcement measures while the strong U.S. economy necessitated a cheap labor force—during that period, immigration enforcement refrained from workplace raids. Lori Nessel notes that this "system clearly benefits employers." While enforcement was lax, undocumented workers benefited from the ability to remain employed in the U.S. without proper work permits. Yet Nessel notes that undocumented workers continued "to be subject to exploitation" and remained vulnerable to shifts in immigration enforcement policy during economic decline. In effect, more recently, with the threat of a global economic recession, immigration raids have been used more frequently. "The view of work embodied in current immigration policy is premised on a narrow focus on economics that ignores the role that work plays in creating community membership." (Nessel 2001: 402) Thus Nessel concludes that we urgently need to link labor standards and immigration policy in order to reflect the reality of immigrant workers today: "until immigration policy reflects the important role that work plays in establishing membership in the community, the concept of workplace protection will remain fictional. Notably missing from any debate about [immigration policy] has been a discussion of the important moral issues at stake. As a moral matter there can be no question that working within the country gives rise to a

presumption of belonging and creates an obligation on the part of the community.”

(Nessel 2001: 400-401) Yet how is immigration policy going to include a view of workers as part of the community when their reality of abuse and exploitation is silenced?

In her suggestion that the Thirteenth Amendment against slavery be used to protect immigrant workers, Maria Ontiveros reflects on the vital role of public knowledge to the development of new legal strategies for social change; Ontiveros writes that “few people seem to know the story of the Thirteenth Amendment and its periodic resurgence in judicial discourse. Most assume it is an artifact of the Civil War era with little relevance to the twenty-first century. On the contrary, the Thirteenth Amendment provides a bold vision that we can follow to deal with the immediate issues of race, class, citizenship and workplace rights in a global economy. The *Hoffman* case, by starkly envisioning a class of workers in the United States who could labor, without legal recourse, below the floor we have created for free labor, calls upon us to again resurrect the Thirteenth Amendment. The case creates the opportunity for legal action, for lobbying efforts and for collective action for social change. It is up to us to seize that opportunity.” (Ontiveros 2004: 679-680)

Function of public debate: increasing awareness of workplace abuse and possible solutions to “illegal” immigration dilemma. In 1977, then budding immigration scholar Alejandro Portes noted that “the end of illegal immigration will require a sharp increase in the number and power of organizations opposing it, including, above all, the active mobilization of the trade union movement.” (Portes 1977: 37) Today, opposition to undocumented immigration does not have to translate into a protectionist labor

movement—but a labor movement that wants a better deal for immigrant workers, which not only guarantees human rights for the most vulnerable workers in the U.S., but also does not undermine the historic attainment of better working conditions for all workers in this country. In order to achieve those goals, the American labor movement may have to openly discuss the effects of undocumented immigration to labor standards in immigrant industries—without witch-hunting immigrant workers, but with the objective of joining together with smaller community-based organizations (such as the CSWA and the CIW) to secure labor rights in America.

Immigration lawyer Michael Wishnie notes that “substantial numbers of undocumented workers and other immigrants are part of this nation’s future:”

“These workers, including persons in various citizenship and immigration statuses, live and labor in households, workplaces, and communities. And these workers, together with their families and colleagues, are likely to continue to press their claims for dignity and respect in the workplace. These efforts are evident in the passage of post-Hoffman Plastic legislation, such as the California bill preserving full state remedies for undocumented workers and the successful campaign of Domestic Workers United to persuade New York City to enact tighter measures regulating domestic worker employment agencies. They are evident in the continuing willingness of immigrant workers to press their claims in court. And they are evident in the numerous, ongoing grassroots and union-led efforts to organize low-wage workers and to support them in their demands for workplace justice. The persistence of even the lowest-wage immigrant workers in asserting their workplace rights will compel the courts and executive branch agencies to grapple with the tensions between the nation's labor and immigration laws. Sound policy and principle counsel that over-zealous immigration law enforcement threatens to undermine both statutory regimes. Only through vigorous enforcement of the labor laws as applied to all workers, and immigration enforcement that is tempered by a respect for the rules of the workplace, will the nation’s immigration and labor policies be advanced.” (Wishnie 2004: 523-524)

Which sort of future will be available to vulnerable immigrants (legal and unauthorized), as well as U.S.-born workers working in low-wage industries, is what is at stake—by silencing the debate about undocumented workers’ abuse in the workplace, the nation is also silencing the links between vulnerability and immigration status, and the possibility of devising appropriate

solutions to this policy problem. While the political discourse and press coverage has focused extensively on the ‘border crisis’, a concealed, undeclared crisis unfolds across the nation, inside its borders: the deterioration of the most basic labor rights in our farms, garment factories—and in myriad other immigrant industries, e.g., construction, restaurant and hotel services, meatpacking, domestic and commercial cleaning services. (Compa 2000; HRW 2001; Bales 2004; Compa 2004; Smith 2007)

Human rights in the liberal nation: hurdles to discourse about exploitation in the workplace.

Life is more difficult for immigrants in the U.S. today than a few decades ago; the wage structure has strongly influenced the current wage gap between foreign-born and native-born workers. Thus if 1970 immigrants “had faced the 1990 wage structure, their wage distribution would have closely resembled that of recent immigrants in 1990.” In other words, the U.S. wage structure, with safeguards against exploitation of low-skilled workers (such as a strong minimum wage), has placed a strong downward pressure on immigrant wages today. (Butcher 2002: 97) Yet some believe that immigrants today have it easy compared to previous generations. Critics of current immigration flows argue that today “the pressures for Americanization have been weak or absent,” resulting in dual national identities and divided loyalties: “They eat their cake and have it too, combining the opportunity, wealth, and liberty of America with the culture, language, family ties, traditions, and social networks of their birth country.” (Huntington 2004: 192)

Sociologist Judith Blau argues that the discrepancy between immigrants’ reality today, of low wages and workplace abuses, and the perception that current immigrants are somehow ‘not doing enough’ derives from American liberalism and the sense that poverty, and perhaps

even a certain degree of exploitation, are part of an immigrant rite of passage: “We reach the pessimistic conclusion that American liberalism, along with commercial, global media, and neoliberal capitalism are obstacles to progressive transformation, that is, the advance of democracy and human rights.” (Blau 2005: 2) That is because the notion of “autonomy” is entrenched in American identity—and it often times runs counter to a sense of responsibility for the *other*. *Why should I be concerned about immigrants who chose to trespass borders uninvited?*—goes the American discourse. Blau notes that Americans believe ““There is no free lunch,”” and “they also applaud the “self-made man and woman.” Individual achievement is often construed as being something that occurs in spite of society: “the self-made man who pulls himself up by his bootstraps. “If I could do it, the Irish can,” the Boston Yankee said, and now the American white says, “If I could do it, so can those blacks and Latinos.” Such attitudes are deeply embedded in the American consciousness and psyche.” (Blau 2005: 3)

Of course, negative or less-than-compassionate reactions to undocumented immigration do not only derive from America’s liberal notions of self-reliance; for many U.S. workers, unemployed or underemployed, immigrants represent competition. “Being now caught up in the voracious global economy and at the mercy of impersonal market forces, every country—including rich ones—has difficulties providing for its own population.” (Blau 2005: 24) Hence the focus on ‘border control’ and territorial sovereignty, because insecurity and fear lead to exclusion and the pursuit of safety, rather than happiness—or generosity; it is difficult to be generous and concerned about the human rights of foreigners when the same global circumstances that led Mexican workers to cross into the United States in search of better jobs has taken away many U.S. workers’ jobs, especially in the manufacturing sector.

These obstacles to public discourse about the labor rights of undocumented immigrants render even more significant the effort to brave new territory in the immigration debate; immigrants' advocates need to confront undocumented workers' exploitation, and discuss the issue in the press. Likewise, academics should tackle the issue and question why American news organizations have dedicated such little coverage to labor movements—engaging in journalism research on the lack of entrepreneurial reporting when workers protest shameful working conditions in 21st-century Manhattan. Wasn't the DKNY story big enough to warrant a press investigation into local garment factories? What are the structural, institutional, and organizational hurdles to more reporting of labor abuses in undocumented immigrants' workplaces? At a time when most news about immigration focused on “illegal” immigration status, why weren't press reports connecting the dots between exploitation and immigration status? It is also important to further research on and interviews with immigrant advocates and their labor organizations concerning how they target news media, their perception of mainstream press, as well as how they make use of the internet and alternative media channels to communicate their messages—as the Coalition of Immokalee Workers does so effectively. As journalism scholar Barbie Zelizer notes, it is imperative to “take journalism seriously” as a crucial component in our democratic polity, a tool to achieve a vigorous, comprehensive and diverse public debate about significant social issues. (Zelizer 2004)

Consensus and democracy: patriotism and globalization. The Chicago School was one of the first American schools of thought; it inspired Jurgen Habermas in developing the notion that public debate is vital in a *deliberative democracy*. (Katz 2003: 105) In 1947, in the wake of World War II, Chicago school sociologist Louis Wirth declared: “In mass

communication we have unlocked a new social force of as yet incalculable magnitude. In comparison with all previous social means for building or destroying the world this new force looms as a gigantic instrument of infinite possibilities for good or evil. It has the power to build loyalties and to undermine them, and thus by furthering or hindering consensus to affect all sources of power. By giving people access to alternative views mass communication does of course open the door to the disintegration of all existing social solidarities, while it creates new ones.” (Wirth 1948: 12)

The process of social deliberation and debate may be unsettling; it may bring about new ideas that are undesirable, such as confronting the fact that in the early 21st century agricultural workers in Florida are suffering conditions of slavery and abuse. Yet Wirth and his colleagues insisted that debate is the only truly democratic tool to achieve social change. Some of their conclusions are still germane to the multicultural, racially and economically diverse societies of our time; primarily, that the concept of consensus should not be understood as totalitarian or compulsory. The reality is that democratic governance is based upon accepting that consensus will need to take place, even in diverse societies. (Benhabib 2002: 142-146) Political philosopher Seyla Benhabib claims that “a deliberative model of democracy, based on discourse ethics, can offer compelling answers to the challenges posed by multiculturalist demands”—allowing societies built upon diversity to better understand all its different voices (Benhabib 2002: 106). The need for diverse voices in the media is especially relevant given the role of debate in generating consensus. “Democracy is not just the fact that majority rules, it is the process of inquiry by which consensus is formed (and) the press, idealistically, plays a role in the instrumental use of knowledge by enlightening the citizenry, helping citizens to have an

educated voice in the democratic process.” (Taylor Jackson 2004: 476) The press provides the public with the necessary information in order to discuss politics and understand policy—the language, images and narratives told in the press will influence public knowledge about policy options, and ultimately affect which solutions appear palatable and viable to the electorate. Inadequate, incomplete debate in the mass media translates into a limited debate in the public sphere. While the press has so far failed to open up the immigration debate by reflecting diverse voices and investigating labor violations in immigrant industries, Judith Blau reminds us that “it is the commercial media and neoliberal capitalism that have laid the structural foundations for the kinds of global interconnectedness that will advance these progressive transformations. Dialectics, both positive and negative, cannot be underestimated.” (Blau 2005: 2) The transformative potential of the press is enormous—nuanced, well-developed and contextual press coverage of labor violations committed against undocumented immigrants carries the potential to shift the national immigration discourse from fear and hatred to a consensus that in 21st century America, human rights must prevail.

The press plays an essential role in introducing to the public sphere of debate the nuances of our new global realities, encouraging a negotiation of news sets of “global boundaries” and pressures. The message of deliberative democracy is optimistic: “The pluralist vision underlying turning consensus from a condition into a process, also leads to conceiving culture as a communicative activity, and turns social differences from problems into resources.” (Rothenbuhler 2003: 117-118) Immigration (even that which is unauthorized) does not need to be a *problem*—and the news media focus on conflict may be partly to blame for transforming resources (immigrants) into problems. Do the social differences between citizens and non-citizens, those with or without immigration documents, justify the *de facto* exclusion from

workplace entitlements currently afflicting unauthorized immigrants—and the American citizens working alongside them?

Finally, it is also important to emphasize the “moral” role of the press in the public sphere, given the fact that “journalism continues to be governed by national demands, audiences, public opinion, advertisers, economics, law, and governments. As long as this remains true, then, journalism is likely to be patriotism’s perennial partner;” warning against constraints on freedom of expression in the American press after September 11th, Silvio Waisbord states that the “media’s choice of patriotism has terribly important consequences for democratic life. When they opt for a “love of country” that quickly transmogrifies into chauvinism, they prepare the cultural ground for violence and do a disservice to national and global democracy.” (Waisbord 2002: 216) War-time, patriotic media coverage, with a spotlight on national security and U.S. government interests (Kellner 2005) may have done a disservice to this country in a myriad ways: by highlighting fear and conflict, which are easy news to sell—and obscuring our commitment to human rights in our own backyard. It is time for an open, honest public debate about the realities of exploitation in industries employing large numbers of undocumented workers—in order to find honest solutions to preserve the labor rights of *all* workers and ensure that this remains the ‘land of opportunity’, the shining beacon for entrepreneurial workers from around the globe.

Today there is a pressing need to shift the ‘consensus’ about undocumented immigration as a ‘national crisis’—to a concern about the treatment of these workers employed in the United States, and the consequences of abuses in the American workplace to *all* workers, including American citizens working alongside undocumented

immigrants in low-wage industries. Sociologist Douglas Massey reminds us that there is an “American side of the bargain” in immigration, which includes maintaining human rights standards in our workplaces. (Massey 2004)

Samuel Huntington in his 2004 book “*Who Are We? Challenges to America’s National Identity*” expressed much concern about cultural and linguistic transformations to American identity; yet isn’t it also un-American to silence and thus condone the story of abuse and exploitation, and human rights violations being committed against the most vulnerable population, even if uninvited, within our borders? If and when a new consensus were to emerge in the national debate about immigration, a consensus which prioritized the *human rights* of workers rather than simply their costs to the host society—only then the issue of labor standards violations in industries employing undocumented workers could be openly discussed, and small organizations working in campaigns such as DKNY and Taco Bell could spell out this specific problem: the exploitation of “illegals” in America. Organizations such as the Chinese Staff and Workers’ Association and the Coalition of Immokalee Workers should not have to be afraid to call attention to the fact that the undocumented population is especially vulnerable to abuse by employers which are violating U.S. labor laws.

Appendix 1

Sample FCDA Analyses

1) DKNY case study

Village Voice, December 28, 1999

Section: City State; Pg. 31

Length: 988 words

Headline: "Sweat Offensive"

Byline: Andrew Hsiao

Is there a pretender to Kathie Lee Gifford's throne? Outside the Madison Avenue DKNY flagship store Sunday afternoon, some 50 protesters weathered frigid winds and some chilly stares to propose Donna Karan for 'Sweatshop Queen of the Year.' But while Gifford was crowned for labor abuses in overseas plants making her clothing line, organizers said Sunday's demo was designed to highlight the wretched conditions Asian and Latina garment workers have suffered for years sewing DKNY clothes in a factory in midtown Manhattan.

Karan did not respond to the protesters or to phone calls, but inside the glass-enclosed, tri-level DKNY emporium, where a Chinese-style quilted silk jacket was going for \$550 and a knee-length sheepskin number cost \$2800, employees handed out a statement calling it "inappropriate" to target DKNY for abuses allegedly committed by one of its "contract manufacturers."

In Cantonese, Spanish, and English, the protesters declared the stance a familiar dodge, in which powerful retailers and manufacturers pin the blame for the sweatshop economy on the small contractors who march to manufacturers' orders. Garment workers have filed two lawsuits against Donna Karan International and are calling for a national boycott. Meanwhile, an international human rights group issued a detailed report Tuesday on the allegations against the company, scoring it for "numerous human rights violations." Even Gifford seemed to be getting into the act, complaining to NBC's Jane Pauley recently that "I can't police the world. I can't tell Donna Karan what to do..."

At the heart of the current campaign against Karan is the saga of one woman, Kwan Lai. A slight 40-year-old immigrant from Hong Kong, Lai says she began working at Eastpoint International, a 38th Street factory owned by a woman named Chung Suk Choe, seven years ago. Conditions were miserable. Lai says she often worked grueling 60-to-70-hour weeks sewing DKNY jackets, though she never received any overtime pay (an average weekly salary was \$270). Surveillance cameras watched over her and her fellow workers, bathrooms were padlocked, there was no drinking water, no talking, no looking up. She endured, she says, because "I had to think of my two children."

A breaking point came when her daughter Winnie became sick one day a couple of years ago. Her husband tried to phone her at the factory. "They hung up on him several times," she says. Recounting the episode, her indignation is vivid, and she touches index finger to nose: "I couldn't take it anymore." She eventually filed suit for years of unpaid wages. (Last December, court papers show, Eastpoint and Donna Karan International jointly settled the suit for \$30,000.)

That was hardly the end of it. Back at the factory, says Lai, she was ostracized. The reason, recalls Maria Yunga, a 37-year-old from Ecuador, was that supervisors had forbidden others to talk to Lai. “They said she was a troublemaker. I felt bad, but we were afraid.” The Latina seamstresses, adds Yunga, all worked by hand: They weren't allowed to operate machines because, she says, “They said we Latinas break everything.”

In December, Lai was let go. She says she was told work had dried up, but just weeks later she saw her coworkers at the old plant. The ostracism and her firing have become the basis of a federal lawsuit alleging retaliation. At least she is no longer alone: In March, Donna Karan International—citing the ongoing complaints about the factory—terminated its contract with Eastpoint. “I stitched for them for 11 years,” says Yunga, “ever since I came to this country. I was used for all those years, then they left us without jobs.”

Eastpoint’s owner, Chung Suk Choe, could not be reached for comment, but in court papers she asserted that she did not “direct, condone, or encourage” retaliation against Lai.

For its part, Donna Karan International says in its statement that though “we had no control over the workforce at the factory,” the company urged Choe to “amicably resolve the issues with its workers.” When that failed, “we decided to place this work with other union contractors.”

But Jo Ann Lum, of the National Mobilization Against Sweatshops, notes that by simply dissolving its relationship with Eastpoint, Donna Karan is trying to absolve itself while abandoning the workers who brought problems to light.

As with Kathie Lee Gifford, say the protesters, the issue remains the responsibility of manufacturers. According to Ken Kimerling, an attorney with the Asian American Legal Defense Fund, “These manufacturers have ample opportunity—and obligation—to find out if the workers are being paid overtime and minimum wage. Everybody knows they work all weekend.” Recent legal decisions, he says, have set some precedents for holding manufacturers liable. A similar argument was made by the New York-based Center for Economic and Social Rights, which this week issued a report concluding that Donna Karan had used “the subcontracting system to sweat workers to produce high quality garments at low wages but refused to accept responsibility for conditions.”

Soon after the factory shut down, Lai sought out organizers with NMASS. She helped contact erstwhile coworkers, and, remarkably, seven Latina seamstresses, including Maria Yunga, decided to join her fight. Those workers have filed a separate federal lawsuit for back wages. Though Lai disclaims the moniker of activist, her anger has clearly galvanized her. She is helping to spearhead a new national campaign called *Ain’t I a Woman?!*, an effort to knit together women workers from all walks of life.

As for Karan, Lai says a friend recently showed her a picture of the multimillionaire designer. She says with a laugh that she found Karan “very pretty.” On the outside, that is. “She exploits the workers who work under her, and refuses to take responsibility. Inside? Horrible.”

A. SOURCES

1. 50 protesters and organizers

2. Donna Karan employees
3. Center for Economic and Social Rights report
4. Kathie Lee Gifford (quote from TV interview)
5. Kwan Lai (garment worker)
6. Maria Yunga (garment worker)
7. Jo Ann Lum (National Mobilization Against Sweatshops)
8. Chung Suk Choe (garment factory owner, from court papers)

B. PERSPECTIVES

1. “protesters weathered frigid winds and chilly stares” – sympathetic portrayal of protesters
2. “glass-enclosed, tri-level DKNY emporium” – contrast between Donna Karan wealth and workers’ claims of labor violations in the shops producing for designer brand
3. “Chinese-style quilted silk jacket for \$550” – ethnicity (Chinese) works to emphasize both connections and contrast (expensive clothing versus workers’ poor working conditions) clothes and workers
4. “knee-length sheepskin number cost \$2800” – contrast between price of Donna Karan clothing and workers’ claims of labor violations
5. ““inappropriate” to target DKNY for abuses” – Donna Karan perspective
6. “familiar dodge” because contractors “march to manufacturers’ orders” – Donna Karan perspective refuted by workers’ perspective

7. Kwan Lai's "indignation is vivid," "her anger has clearly galvanized her" and she is "helping to spearhead a new national campaign" – sympathetic portrayal of protesters and workers' organizing

8. "we had no control over the workforce at the factory" and "urged Choe to "amicably resolve the issues with its workers"" (quoting Donna Karan International statement) – Donna perspective

C. STANDARDIZATION

1. "Sweatshop Queen of the Year" (lead paragraph) – sweatshop label

2. "Sweat offensive" (headline) – sweatshop label

3. "wretched conditions" (lead paragraph) – reification of sweatshop label

4. "sweatshop economy" – sweatshop label

5. "grueling 60-to-70-hour weeks sewing DKNY jackets" – reification of sweatshop label

6. "multimillionaire designer" who "exploits the workers who work under her" (quoting garment worker and protester) – several references contrasting Donna Karan's wealth and alleged situation of garment workers in text function to label Donna Karan as "high-end sweatshop designer"

7. "subcontracting system to sweat workers" (quote from Center for Economic and Social Rights report) – sweatshop label

D. CONSTRAINTS

D.a. Content or existential assumptions:

1. “Conditions were miserable” (indirectly quoting garment worker) – indirect quote borrows worker’s claims into the news text; assumes poor working conditions existed
2. “These manufacturers have ample opportunity—and obligation—to find out if the workers are being paid overtime and minimum wage. Everybody knows they work all weekend,” (quoting Kenneth Kimerling, AALDEF lawyer for plaintiffs) – generous space given to quote by plaintiff’s lawyer, assumes poor working conditions AND labor relationship between DKNY and workers

D.b. Propositional assumptions:

1. Restricts workers’ social identity – no mention of undocumented status
2. “They said we Latinas break everything” (Maria Yunga’s quote) and “remarkably, seven Latina seamstresses” joined Kwan Lai’s fight – propositional assumption of relation explores social relationship in the workplace restricted by ethnicity to accentuate tension and conflict in text

D.c. Value assumptions: undesirable/desirable

1. Desirable: protests of poor working conditions – text is sympathetic to the perspectives of protesters
2. Desirable: Workers organizing and protesting – sympathetic portrayal of protesters and their efforts to organize, e.g., “At least she is no longer alone” (referring to Kwan Lai’s firing from Eastpoint, and other employers also losing their jobs after the factory shut down)

E. DOMINANT AND DOMINATED

Dominant: garment workers

Dominated: Donna Karan

F- ORIENTATION TO DIFFERENCE

a. Recognition, acceptance and exploration: explores differences between Donna Karan's views and workers' views, clearly allowing workers' perspectives to dominate, but giving more space in general (this is the longest story published in local news about the DKNY protests) to explain both workers' and Donna Karan's views of their differences

b. Accentuation for conflict: this news account not only accentuates and explores conflict between Donna Karan and workers, but also highlights ethnic tensions between Latina workers and Chinese employers in garment factories

c. Resolution or attempt to overcome: N/A

d. Downplaying, commonality or solidarity: N/A

e. Consensus: N/A

G. Agenda-setting category: PROMINENCE

Placement: page 31, City State section – NOT PROMINENT

Length: 988 words – PROMINENT

2) Taco Bell case study

Palm Beach Post, January 30, 2000

Section: Opinion, Pg. 2E

Length: 326 words

Headline: "Hope in the Fields"

Farm workers in the United States have labored under shameful conditions for most of the past century. Improvements have been only modest and have come only after great struggle.

At times, social activists have wondered whether meaningful change even was possible. How, after all, do you find solutions to satisfy the disparate parties: farmers, who are at the mercy of Florida weather and foreign imports; buyers, who always search for the lowest prices; and the farm workers, who are denied political voice and entrenched in migratory lives of poverty.

Some hopeful glimmers, however, are coming from Immokalee, in the farm country southwest of Fort Myers. Three weeks ago, U.S. Sen. Bob Graham, D-Fla., met with tomato pickers and listened to their complaints. A year ago, Gov. Bush came to Immokalee and helped mediate the pickers' first pay raise in 20 years. Such visits by politicians are rare.

Now, the Coalition of Immokalee Workers, which represents the pickers, has an innovative plan for raising their standard of living. The group is asking Taco Bell, a huge buyer of Florida tomatoes, to voluntarily pay 1 cent more per pound. The growers then would pass on the money to their pickers.

Just that penny almost would double workers' wages. Most pickers earn about 45 cents per 32-pound bucket and could make 77 cents if Taco Bell agreed. Growers are selling tomatoes for between 30 and 35 cents per pound at the farm level. A spokeswoman for Tricon Global Restaurants, Taco Bell's parent company that also owns KFC and Pizza Hut, said the corporation hasn't studied the proposal.

If the company agrees, growers would benefit by getting a stable, motivated work force and reason for consumers to reject cheaper Mexican tomatoes picked by exploited workers. Tricon would benefit by getting favorable publicity. The pickers get something closer to a decent wage. Isn't that reason enough to pay 2 cents more for a chalupa?

A. SOURCES

1. CIW
2. Tricon Global Restaurants (Yum Brands)

B. PERSPECTIVES

1. Farm workers labor under "shameful conditions"
2. Improvements come "after great struggle"
3. Farm workers are "denied political voice" and live "migratory lives of poverty"
4. "hopeful glimmers" for farm workers
5. "Such visits by politicians are rare"
6. CIW has "innovative plan"
7. "Growers would benefit" and "Tricon would benefit" and farm workers would "get something closer to a decent wage"

C. STANDARDIZATION

1. Farm workers as victims: they live in “shameful conditions,” have “migratory lives of poverty,” improvements are a “great struggle,” and the CIW proposal would bring them “closer to a decent wage”

D. CONSTRAINTS

D.a. Content or existential assumptions:

1. Farm workers live in miserable conditions and get poor pay
2. News story assumes corporate responsibility: Taco Bell’s link to farm workers and responsibility for their pay (despite not being direct employer)

D.b. Propositional assumptions:

1. Text restricts farm workers’ social identity as agents of their own social struggle as it portrays them as victims but fails to note that most CIW “representatives” are in fact farm workers themselves

D.c. Value assumptions: undesirable/desirable

1. Desirable: better conditions and pay for farm workers
2. Undesirable: for Florida politicians to ignore the plight of farm workers

E. DOMINANT AND DOMINATED

Dominant: Need for changes to farm workers' condition, and CIW initiative and proposal to Taco Bell

Dominated: Inaction on achieving change to poor situation of Florida farm workers (especially inaction of local politicians)

F- ORIENTATION TO DIFFERENCE

a. Recognition, acceptance and exploration: Text explores each party's reasoning and constraints

b. Accentuation for conflict: N/A

c. Resolution or attempt to overcome: CIW proposal portrayed as offering benefits to all parties involved

d. Downplaying, commonality or solidarity: Commonality in achieving better working conditions for workers and good public relations for Taco Bell, as well as good for growers because it helps keep tomato production in the U.S.

e. Consensus: N/A

G. Agenda-setting category: PROMINENCE

Placement: Opinion, Page 2E – PROMINENT (EDITORIAL PAGE)

Length: 326 words – PROMINENT (EDITORIAL PAGE)

Appendix 2

List of news texts utilized in FCDA analyses

1) DKNY case study

DKNY local news analysis: list of news texts

A) Newspaper: *Daily News* (New York)

Total: 4

Sample 1: *Daily News* (New York), August 29, 1999

Section: News; Pg. 13

Length: 261 words

Headline: "Sweatshop Protest at DKNY"

Byline: Laura Seigle

Sample 2: *Daily News* (New York), June 8, 2000

Section: News; Pg. 22

Length: 145 words

Headline: "Workers Sue Donna Karan"

Byline: Emily Gest

Sample 3: *Daily News* (New York), November 30, 2000

Section: News; Pg. 37

Length: 219 words

Headline: "Karan Hit with 'Sweatshop' Label"

Byline: Matthew Creamer

Sample 4: Daily News (New York), June 20, 2002

Section: News; Pg. 30

Length: 245 words

Headline: "Workers' Status Sewn Up For Now"

Byline: Robert Gearty

B) Newspaper: *New York Post*

Total: 2

Sample 1: New York Post, June 8, 2000

Section: All Editions; Pg. 037

Length: 354 words

Headline: "Karan Fights Sweatshop Charges"

Byline: Evelyn Nussenbaum

Sample 2: New York Post, September 9, 2003

Section: Sport + Late City Final; Pg. 032

Length: 210 words

Headline: "Karan Pays \$500K+ in Sweatshop Settlement"

Byline: Suzanne Kapner

C) Newspaper: *Village Voice*

Total: 1

Sample 1: *Village Voice*, December 28, 1999

Section: City State; Pg. 31

Length: 988 words

Headline: "Sweat Offensive"

Byline: Andrew Hsiao

DKNY national news analysis: list of news texts

A) Newspaper: *New York Times*

Total: 3

Sample 1: *New York Times*, July 1, 1999

Section: Section B; Page 8; Column 6; Metropolitan Desk

Length: 218 words

Headline: "Metro Business; Seamstresses Protest Factory Conditions"

Byline: AP

Sample 2: New York Times, December 26, 1999

Section: Section 14; Page 6; Column 1; The City Weekly Desk

Length: 529 words

Headline: “Neighborhood Report: Midtown; A Seamstress Sues Donna Karan, Claiming Retaliation for a Lawsuit”

Byline: Edward Wong

Sample 3: New York Times, June 8, 2000

Section: Section B; Page 10; Column 3; Metropolitan Desk

Length: 740 words

Headline: “Lawsuit Accuses Fashion House of Running Sweatshops”

Byline: Steven Greenhouse

B) Newspaper: *Wall Street Journal*

Total: 1

Sample 1: Wall Street Journal, June 8, 2000

Headline: “Law: Garment Workers Sue Donna Karan Over Alleged Sweatshop Conditions”

Byline: Wall Street Journal Staff Reporter

2) Taco Bell case study

Taco Bell local news analysis: list of news texts

A) Newspaper: *Palm Beach Post*

Total: 16 samples

Sample 1: Palm Beach Post, January 30, 2000

Section: Opinion, Pg. 2E

Length: 326 words

Headline: "Hope in the Fields"

Sample 2: Palm Beach Post, February 5, 2001

Section: Opinion, Pg. 16A

Length: 407 words

Headline: "Raise the Chalupa"

Sample 3: Palm Beach Post, April 22, 2001

Section: Local, Pg. 5B

Length: 359 words

Headline: "Indians, Migrant Workers Share Same Quest for Respect"

Byline: Scott McCabe

Sample 4: Palm Beach Post, May 2, 2001

Section: Local, Pg. 3B

Length: 426 words

Headline: "Tomato Pickers Protest at Taco Bell"

Byline: Scott McCabe

Sample 5: Palm Beach Post, May 8, 2001

Section: Opinion, Pg. 16A

Length: 307 words

Headline: "From Nike to Taco Bell"

Sample 6: Palm Beach Post, March 22, 2002

Section: Opinion, Pg. 18A

Length: 728 words

Headline: "Sell Living Wage, Not Talking Dog"

Byline: Dan Moffett

Sample 7: Palm Beach Post, February 21, 2003

Section: A Section, Pg. 2A

Length: 452 words

Headline: "Farm Workers on the Road to Seek Higher Tomato Prices"

Byline: John Lantigua

Sample 8: Palm Beach Post, November 23, 2003

Section: Opinion, Pg. 2E

Length: 782 words

Headline: "Slavery? In Florida? In 2003? Yes"

Byline: Dan Moffett

Sample 9: Palm Beach Post, December 8, 2003

Section: Special, Pg. 7

Length: 686 words

Headline: "Law is Breaking Them, Bishop Says of Stealth Migrants"

Byline: John Lantigua

Sample 10: Palm Beach Post, December 9, 2003

Section: Special, Pg. 5

Length: 965 words

Headline: "In Their Own Words"

Sample 11: Palm Beach Post, December 14, 2003

Section: Opinion, Pg. 2E

Length: 1141 words

Headline: "End America's Denial of Farm Labor Reality"

Sample 12: Palm Beach Post, March 16, 2004

Section: A; Pg. 1A

Length: 810 words

Headline: "Poverty in a Land of Plenty: Florida Pickers Get International Voice"

Byline: Christine Evans

Sample 13: Palm Beach Post, March 23, 2004

Section: Opinion, Pg. 12A

Length: 407 words

Headline: "A Human Rights Issue"

Sample 14: Palm Beach Post, June 23, 2004

Section: Opinion, Pg. 10A

Length: 273 words

Headline: "Send Reform, Not Payoff"

Sample 15: Palm Beach Post, March 9, 2005

Section: A; Pg. 1A

Length: 645 words

Headline: "Farmworkers Win Pay Hike in Fight Against Food Giant"

Byline: John Lantigua

Sample 16: Palm Beach Post, March 10, 2005

Section: Opinion; Pg. 12A

Length: 300 words

Headline: “The Pickers Finally Win”

B) Newspaper: *Sarasota-Herald-Tribune*

Total: 7 samples

Sample 1: Sarasota-Herald-Tribune, December 18, 1999

Section: A; Pg. 1A

Length: 1403 words

Headline: ““We’re asking for respect;” Protesting for higher wages too costly for some”

Byline: Carey Codd

Sample 2: Sarasota-Herald-Tribune, February 22, 2000

Section: A; Pg. 1A

Length: 712 words

Headline: “Pickers want recognition; Farm workers marching to Orlando demand talks with growers about pay”

Byline: Robert Eckhart

Sample 3: Sarasota-Herald-Tribune, February 10, 2001

Section: B; Pg. BM1

Length: 334 words

Headline: “Farm workers boycott Taco Bell; The Coalition of Immokalee Workers will protest here to garner support”

Byline: Timothy O’Hara

Sample 4: Sarasota-Herald-Tribune, September 3, 2001

Section: A; Pg. A1

Length: 849 words

Headline: “Farm Workers Drawing the Line; Dispute with growers, Taco Bell over tomato prices is heating up”

Byline: Timothy O’Hara

Sample 5: Sarasota-Herald-Tribune, February 25, 2002

Section: B; Pg. BM1

Length: 480 words

Headline: “Farm workers’ tour to begin in Tampa; The cross-country protest is designed to publicize a national boycott of Taco Bell”

Byline: Timothy O’Hara

Sample 6: Sarasota-Herald-Tribune, April 4, 2003

Section: B; Pg. BM1

Length: 493 words

Headline: “Students picket restaurant; They want higher wage for tomato pickers”

Byline: Kelly Cramer

Sample 7: Sarasota-Herald-Tribune, March 9, 2005

Section: A; Pg. A12

Length: 183 words

Headline: "Worker-backing bishop offers congratulations"

Byline: Staff Report

C) Newspaper: *St. Petersburg Times*

Total: 11 samples

Sample 1: St. Petersburg Times, December 7, 1997

Section: Perspective; Pg. 1D

Length: 992 words

Headline: "Migrants ask only for what they've earned"

Byline: Bill Maxwell

Sample 2: St. Petersburg Times, December 10, 1997

Section: Editorial; Columns; Pg. 21A

Length: 748 words

Headline: "Harsh memories of migrant work"

Byline: Bill Maxwell

Sample 3: St. Petersburg Times, January 22, 1998

Section: Metro & State; Pg. 1B

Length: 690 words

Headline: "Tomato farmers reject Carter's mediation"

Byline: Bill Duryea

Sample 4: St. Petersburg Times, April 26, 1998

Section: Perspective; Pg. 1D

Length: 950 words

Headline: "The feds come to the fields"

Byline: Bill Maxwell

Sample 5: St. Petersburg Times, October 29, 2000

Section: Perspective; Pg. 1D

Length: 1504 words

Headline: "Farm workers get short shrift over fair wages"

Byline: Bill Maxwell

Sample 6: St. Petersburg Times, February 19, 2001

Section: City & State; Pg. 1B

Length: 519 words

Headline: "Migrants protest outside Taco Bell"

Byline: Andrew Meacham

Sample 7: St. Petersburg Times, February 21, 2001

Section: Editorial; Columns; Pg. 15A

Length: 781 words

Headline: "Someone to fight for farm workers' rights"

Byline: Bill Maxwell

Sample 8: St. Petersburg Times, February 24, 2002

Section: Perspective; Pg. 1D

Length: 901 words

Headline: "Taco Bell should help tomato pickers"

Byline: Bill Maxwell

Sample 9: St. Petersburg Times, December 1, 2003

Section: Floridian; Pg. 1E

Length: 1288 words

Headline: "Church bells ring in boycott"

Byline: Sharon Tubbs

Sample 10: St. Petersburg Times, January 17, 2005

Section: National; Pg. 1A

Length: 1304 words

Headline: "Martin Luther King Jr. Day; Replanting the Dream"

Byline: Tamara Lush

Sample 11: St. Petersburg Times, June 5, 2005

Section: Perspective; Pg. 2P

Length: 453 words

Headline: "Demanding change, and getting it"

D) Newspaper: *Tampa Tribune*

Total: 5 samples

Sample 1: Tampa Tribune, February 26, 2000

Section: Business & Finance; Pg. 1

Length: 371 words

Headline: "Tomato-field workers march in attempt for higher wages"

Byline: John Reinan

Sample 2: Tampa Tribune, March 6, 2000

Section: Florida/Metro; Pg. 2

Length: 474 words

Headline: "Migrants, growers feel conflicting pressures"

Byline: Karlayne R. Parker

Sample 3: Tampa Tribune, February 19, 2001

Section: Florida/Metro; Pg. 1

Length: 594 words

Headline: "Protest seeks pay for pickers"

Byline: Andrew Meadows

Sample 4: Tampa Tribune, November 24, 2002

Section: Pinellas; Pg. 10

Length: 442 words

Headline: "National March, Rally Tour Raising Awareness of Rights"

Byline: Natasha Gregoire

Sample 5: Tampa Tribune, November 27, 2002

Section: Metro; Pg. 3

Length: 493 words

Headline: "St. Pete Rally Calls For End to Poverty: Groups Join to Press Human Rights Issues"

Byline: Natasha Gregoire

E) Newspaper: *Orlando Sentinel*

Total: 1 sample

Sample 1: Orlando Sentinel, June 13, 2005

Section: Domestic News

Length: 1511 words

Headline: “Group championing migrants takes aim at fast-food chains”

Byline: Wes Smith

Taco Bell national news analysis: list of news texts

A) Newspaper: *New York Times*

Total: 1

Sample 1: New York Times, April 6, 2005

Section: Op-Ed Contributor

Headline: “A Side Order of Human Rights”

Byline: Eric Schlosser

B) Newspaper: *The Washington Post*

Total: 4

Sample 1: The Washington Post, April 14, 2004

Section: Metro; Pg. B01

Length: 975 words

Headline: “Peaceful Protest Puts Focus Back On IMF; Extensive Street Closures Prompt Some Complaints”

Byline: Manny Fernandez

Sample 2: The Washington Post, November 22, 2003

Section: Metro; B09

Length: 1196 words

Headline: “Churches Back Boycotts Over Migrant Workers; Labor Unions Decry Treatment by Taco Bell, Mt. Olive Suppliers”

Byline: Bill Broadway

Sample 3: The Washington Post, February 28, 2005

Section: A Section; A03

Length: 1297 words

Headline: “Fla. Tomato Pickers Still Reap ‘Harvest of Shame’ Boycott Helps Raise Awareness of Plight”

Byline: Evelyn Nieves

Sample 4: The Washington Post, March 9, 2005

Section: A Section; A06

Length: 564 words

Headline: “Accord With Tomato Pickers Ends Boycott Of Taco Bell”

Byline: Evelyn Nieves

C) Newspaper: *Wall Street Journal*

Total: 1

Sample 1: Wall Street Journal, May 21, 2004

Section: Review & Outlook; Page W15

Headline: "Ringing Taco's Bell"

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