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**FORGING OUR IDENTITY: TRANSFORMATIVE RESISTANCE IN THE AREAS OF WORK, CLASS, AND THE LAW: INTRODUCTION:** Forging Our Identity: Transformative Resistance in the Areas of Work, Class, and the Law

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**BIO:**

\* Professor, Golden Gate University School of Law. This Introduction has benefited greatly from the suggestions of the students in my Advanced Labor & Employment Law Seminar at Golden Gate: Kristina Hillman, Beth Mora, Ian Selden, Carol Galan, Emile Davis, Juan Araneda, and Shari Vollimas. My research assistant at Santa Clara University School of Law, Samantha Blevins, provided expert assistance throughout. I appreciate the folks in the San Mateo County Health Department, who talked with me about the condition of Latina/o immigrant workers in the coast-side community. Finally, thanks are due, as always, to Kevin Johnson for his support and encouragement.

**SUMMARY:** ... The two examples of transformative resistance I discuss are farm worker unions and transnational citizenship. ... I. Farm Worker Unions and California's Agricultural Labor Relations Act ... Although there are still some farm labor camps in the hills, construction was recently completed on a second complex of beautiful, affordable farm worker housing. ... When asked to explain why the coast-side built such excellent farm worker housing or provides any of the other services for the Latina/o community, interviewees responded with answers such as, "We have a social consciousness" or, "We have a sensitivity to the lack of adequate housing because we recognize the value of these workers to the community and the political will to bring it about. ...

[\*1057]

Forge ('forj) vt:

1. To fake or falsify.
2. To move forward.
3. To form or bring into being.
4. To create, especially with the use of fire. n1

LatCrit Theory was born, at least in part, out of our desire to understand Latina/o identity. Although there are externally constructed stereotypes for Latinas/os that view the group monolithically and, in many ways, negatively, there are other constructs that we ourselves can claim and that are more positive. n2 This insight [\*1058] reflects experiences of Latina workers that I have found in my research -- experiences in which Latina workers use their ethnic and gender identity, as well as their class identity, as forms of strength and empowerment, bases for collective action and community with which to fight oppression. n3 Although being a working woman of color may expose us to the worst type of treatment (being oppressed

as a woman, as a person of color, and as a woman of color), it also is a basis for empowerment and resistance. n4

On a parallel level, there are many situations whereby United States law does not adequately provide for the identity which Latinas/os wish to claim. This could result in a form of oppression where Latinas/os are either prohibited from doing something or are only allowed to do it if they are willing to alter their identity to fit the legal norms. This Introduction and the articles in this cluster examine another possible result. They examine instances in which, in response and resistance, Latinas/os are forging solutions that go around and between existing legal structures. Often these solutions draw on our strengths and reflect our claimed identities. In this way, Latinas/os empower themselves by forging their own identity. In several instances, the resistance goes further and actually transforms the existing legal order and legal theory.

As an introduction to this cluster of articles, this Essay examines two areas related to farm workers, in which Latinas/os have forged their own identity. Latinas/os forged these identities, which were not directly contemplated by United States law, as a form of resistance because the identities offered by United States law were not identities desired by the farm workers. More importantly, these identities are transforming the United States legal system and our understanding of labor unions and citizenship. The two examples of transformative resistance I discuss are farm worker unions and transnational citizenship. [\*1059]

#### I. Farm Worker Unions and California's Agricultural Labor Relations Act

Under federal law, the National Labor Relations Act n5 authorizes workers to form unions and to bargain collectively with their employers. Workers join together to form a labor union when they suffer harsh working conditions or want to have an influence on the terms and conditions of their employment. Unfortunately for farm workers, they are specifically excluded from the act and, therefore, have no federal right to join unions. At the same time, farm workers need unions because they suffer from low pay, deplorable working conditions, racialized and gendered exploitation, intentional pitting of workers against each other, depending upon their ethnicity, and oversupply of labor spurred by statute. n6 In California and other states, Latina/o farm workers that wanted to band together to improve their conditions sought an identity that was not allowed by law, although it was available to most other workers.

Beginning in the 1960s, Latina/o farm workers in California forged their own collective identity by uniting to form the United Farm Workers union. n7 They ignored the law because it would deny them the identity that they desired. Significantly, these workers formed a new type of union, one that was responsive to and reflective of their identities not just as workers but also as Latina/o immigrant workers. In the United States, unions have developed an agenda that focuses almost exclusively on the wages, hours, and narrowly defined terms and conditions of employment. n8 As a result, unions do not focus on issues outside of the workplace, and [\*1060] membership is defined narrowly as the payment of the portion of union dues that directly goes toward bargaining for improved economic conditions at work. n9 The United Farm Workers was completely different. It did not focus solely on issues limited to the workplace. Instead, it set up credit unions, schools, automobile parts co-ops, and burial insurance funds. Further, its message went beyond simply asking for more money. It was a demand for dignity, respect, and the right to participate in the workplace. It included a demand that its members be treated as human beings.

Its tactics and strategies were also different. In addition to working to improve workplace conditions, it stressed nonviolence, community building, education about the rights and responsibilities of citizenship, and community service. n10 Membership in the union meant membership in a community committed to these same goals.

By forging a collective identity as the United Farm Workers, Latina/o workers affected more than their own terms and conditions of employment. Their demand for the right to unionize was so strong that it forced a change in California law. In order to give farm workers the right to organize and in direct response to the United Farm Workers, the California legislature passed the Agricultural Labor Relations Act

(ALRA) in 1975. n11 The ALRA is the most extensive and most favorable of any state law regulating farm workers. n12 Its passage represents the recognition of the importance of unionization/collective action for farm workers. Because it is tailored specifically to the needs of agricultural workers, n13 it can serve as a model for federal regulation of farm workers or for other sector-specific labor law reform. n14 The struggle for representation in the fields continues today, including contested ballots for strawberry pickers in Watsonville, California, Washington apple growers, [\*1061] and migrant workers in Florida. Labor organization can and is leading to substantive improvements in these workers' lives.

The United Farm Workers could also fuel a reevaluation and possibly a transformation in our understanding of unions and collective action. Instead of viewing the United Farm Workers as labor history, it may actually be the blueprint for labor's future. n15 The labor movement is finally beginning to understand the importance of organizing immigrant workers and of identity issues in organizing. n16 More importantly, there are changes emerging in the understanding of what a union is and what it means to be in a union. Paul Johnston, a sociologist affiliated with the Citizenship Project, n17 described the transformation as follows:

Significantly, in contrast to past history, this resurgent unionism is opening the doors of labor to immigrant workers, and also taps into the energies of civil rights and other social justice movements. Particularly evident is a new commitment to organizing, . . . a revitalized and growing labor movement in building maintenance, agricultural and hotel and restaurant industries, and surges of organizing among Latina/o immigrants in other low wage industries as well; [successful strikes] . . . , a wave of "living wage " initiatives, . . . a steady pattern of militance among graduate student employees; among other temporary employees and other occupational groups, a variety of new worker associations . . . [increased number of elections]. . . sharply intensified grassroots mobilization . . . the beginning of global solidarity . . . and now in community after community across the United States, the emergence of a great variety of creative new labor/community organizing projects and coalitions addressing social and economic justice issues in arenas including but also extending far beyond the old scope of bargaining over wages, benefits and working conditions. n18

In this way, the United Farm Workers can move us to a new vision of unionism. This new vision of unionism, at its boldest, helps us to understand a new definition of "citizenship." As workers become involved in unions, they become involved as citizens in the broadest sense. Paul Johnston brought these ideas together when he wrote:

The variety of labor movements emerging in each of these circumstances all seek to defend, exercise, and extend the boundaries of citizenship, and that all these labor movements converge with other citizenship movements in efforts to defend and rebuild local communities in an increasingly globalized public order . . . . The labor movement only achieves its full potential when it enables its participants to express themselves not only as workers but as members of a community with multiple interests and identities. n19

The forging of the United Farm Workers, at a time when such a union was not recognized by law, serves as a bold example of transformative resistance, changing the law and our ideas of unions and citizenship.

#### "Documentation," Dual-Resident Workers and Transnational Identity

Since the passage of the Immigration Reform and Control Act of 1986, United States law has required that in order for people to work in the United States they must be able to provide "documentation" that they have the right to work here. n20 These requirements [\*1063] reflect a circumscribed set of legal rules for who is allowed to legally work here. In general, they require people to become citizens or to follow very specific guidelines to qualify within one of the limited categories or statuses available. With respect to Latina/o farm workers, in particular, the United States has set up regimes at the intersection of immigration and labor law that allow immigrants to work in agriculture under very strict requirements. These requirements oppress workers because they guarantee an oversupply of labor, n21 while providing little or

no legal recourse for the workers to have their grievances addressed. n22 Most importantly, they are designed to deter settlement or empowerment because they provide for only temporary legal residence.

In response to the requirement of documentation, Latina/o workers have set up their own systems to meet the requirement for legal documentation, while not actually changing their legal status. The systems rely primarily on the use of false documents: the documents may be fakes or forgeries purchased from "paper mills." n23 Alternately, the documents may be real, legitimate documents borrowed from a family member or friend. n24 These practices are so prevalent that one community worker I interviewed said that she routinely asks clients whether their documents are *chueco* (Spanish for "crooked"). n25 In these ways, Latina/o workers forge (or falsify) their identities to circumvent restrictive laws.

On its face, the law facilitates these types of arrangements because the statute does not actually prohibit the employment of [\*1064] someone who does not have the right to work here. It only requires employers to make a good faith effort to check documents. The employer has no liability for accepting reasonably genuine documents. In fact, the law forbids an employer from engaging in selective acceptance of documents. n26 By crafting the statute in this way, employers are able to continue to have access to an immigrant workforce, while the country is able to state it has strengthened its immigration laws. n27 The law results from the contradiction of a nation that wants to be border free in economic areas, while border tough on immigration issues. n28

The development of "paper mills" and a network for borrowing documents exemplifies transformative resistance because it has allowed Latina/o workers to forge a dual-resident or transnational identity not contemplated under United States law. These workers have rejected the notion that they must choose to become a United States resident or citizen in order to work here. They have also rejected the notion that their connection to the United States must be temporary and transitory. Instead, they have embraced an identity that allows them to maintain strong ties both in the United States and in Mexico. As a result of this identity, they are creating communities in the United States that are more stable and that, in turn, provide for more participation and better treatment in the United States. On a grander scale, they are forging a new notion of citizenship that is broader in at least two respects: in terms of who is included as a citizen, and of citizenship as something more than naturalization.

Scholars in the field of citizenship theory have been noting these trends on a national scale. Maria de los Angeles Torres wrote that citizenship identities are shifting from a border identity, with two identities coexisting side-by-side in the same person, to a transnational or hybrid identity in which the host and home countries are transformed, as well as the person and his community. She wrote:

The expansion of the political space to include multiple states suggests that the concept of a citizen bound to a single nationstate [\*1065] must also change. A transnational political identity, or citizenship, would better accommodate the rights of individuals who for a myriad of reasons cross the frontiers of multiple nation-states and whose lives are affected by decisions made by more than one state. n29

Mexico is recognizing this reality and moving towards a system of dual nationality. n30 The struggle for migrants to attain the rights of citizens in both countries is a struggle for civil rights parallel to the 1960s Civil Rights Movement, which can also be viewed as a citizenship movement for Black Americans struggling for their citizenship rights. n31 The rights for which immigrant workers struggle are the "right to travel freely; right to quit without being deported; right to union representation; right to health and social services; right to education; right to political voice in community; right to cultural recognition and self-expression; and right to eventually become a permanent resident." n32 These rights are essential to a transnational citizenship identity, and immigrant workers seek them in both the United States and Mexico.

This newly forged citizenship identity expands the notion of citizenship to something beyond naturalization. The transformed notion of citizenship focuses on participation in public institutions, including civil-legal, social welfare, political, economic, and educational domains. n33 The Latino

Cultural Studies Working Group, including Renato Rosaldo and others, has been working since 1987 to construct a theory of "cultural citizenship." In this theory, cultural expression is used to claim public or political rights and recognition, thereby allowing Latinas/os to maintain cultural identity [\*1066] and claim citizenship rights at the same time. n34 This transforms the notion of "culture" and "citizenship," because "culture" is usually viewed as something different from the norm, and "citizenship" as something assimilated into the norm. Cultural citizenship is a form of resistance that brings ethnic or cultural practices into the mainstream, to be validated as the activities of "citizens" or full members of our society. These struggles to expand the notion of citizenship are working, leading empirical sociologists Peter Schuck and Rogers Smith to conclude that:

New "social contracts" are being negotiated in the United States every day between undocumented aliens and United States society contracts that cannot be nullified through claims about nationality and sovereignty. Courts have had to accept the fact of undocumented aliens and extend to these aliens some form of legal recognition and guarantees of basic rights. Various decision have conferred important benefits of citizenship on undocumented aliens, clearly undermining older notions of sovereignty. n35

Latina/o immigration in the community where I live exemplifies this type of transnational identity. I live on the semirural San Mateo County Coast around the town of Half Moon Bay, California. n36 My community has a very close connection to a small village in Jalisco, known as Camichines. The Half Moon Bay area has a population of about 28,000, and approximately one out of every five people is Latina/o, mainly from Mexico. Approximately seventy percent of the coast-side's Mexican population comes from Camichines. n37 Of the 1500 people who live in Camichines, almost all are of working age leave to work in the United States. Most [\*1067] emigrants go to Half Moon Bay, although a few do venture to Salinas, California or Chicago, Illinois. n38

Some of the immigrants choose to make Half Moon Bay their permanent home because they believe that they and their children will have better lives, with more opportunities for employment. Others return to Mexico because of the slower paced, less materialistic lifestyle, or to avoid crime and gangs. Many of these imm/emigrants, however, fit into a third category. They maintain close ties to both Camichines and Half Moon Bay. They live in Half Moon Bay most of the year, but maintain a home and crops in Camichines, which they visit for holidays and family celebrations. They may plan to retire in Mexico (or not), and, in the meantime, can experience the best of both worlds. Like many Mexican immigrants, they are unwilling to abandon their nationality, even as they create lives in the United States. They are creating transnational identities. n39

This close connection has had a transformative impact on both Camichines and Half Moon Bay. Approximately seventy to seventy-five percent of the Camichines economy is dependent upon the [\*1068] United States. Although there is still poverty, no market and only three telephones in Camichines, there are modest homes (all with electricity), cars, and satellite dishes. At Christmas time, there is a huge influx of cars with California license plates, Half Moon Bay High School letterman's jackets, and children speaking English. n40

The immigration pattern has also had a profound effect on Half Moon Bay. Latina/o immigrants form a strong, close-knit community, in which everyone knows each other; they are either related or good friends. The community is also extremely stable --families are here -- not just single men or single mothers raising children. n41 Even when residents get jobs far outside the area, requiring three or four hour commutes by bus, they choose not to move away from the coast. The Latina/o community has struggled to become integrated into the larger community, so that it affects the daily cultural life of the city. n42 The influence is seen in the inclusion of Spanish language pages in the local weekly paper, seasonal festivals, soccer leagues, the first Spanish language immersion program in the County, Mexican restaurants and grocery products, and Quincienra programs at the Catholic church.

Latinas/os and issues that concern them also fare better on the coast-side, when compared to similar immigrant groups in other parts of the county. The public health indicators are quite good. n43 Although there are still some farm labor camps in the hills, construction was recently completed on a second complex of beautiful, affordable farm worker housing. Newspaper coverage of possible [\*1069] street harassment by day workers gathered at the town's central plaza displayed sensitivity to the gender and culture issues, including the importance of a gathering place in Mexican culture, the real threat posed to women by street harassment, and the possibility that female tourists may react differently to groups of Mexican men than they would to other men. On the whole, Half Moon Bay has become a welcoming home for Latina/o immigrants.

I believe that part of the reason coast-side residents fare so well is because of the close-knit Mexican community that has resulted directly from the immigration pattern described above. Although the immigration pattern has resulted in a large number of immigrants, the truly significant aspect of the pattern goes beyond the numbers. Because the immigrants have a transnational identity, with a community both here and in Mexico, they have more confidence to be themselves and certain advantages flow from that confidence. The specific social mechanisms that lead to better conditions are "capacity" and "connectedness." n44 Capacity, which is internal to the immigrant community, refers to a client's ability to find, understand, and effectively use services. Although capacity can be determined by intelligence or financial resources, it also has a social aspect which results from a support system that helps a client effectively utilize services. "Connectedness" is an external dynamic that results when a confident Latina/o community is integrated into the larger community. Such a Latina/o community participates in community activities in a manner that causes the larger community to view farm workers as fully realized human beings who contribute to the community and who deserve decent treatment.

Interviews with San Mateo County public health care providers, social workers, and administrators reveal that coast side Latina/o immigrants do a better job of using and following through with [\*1070] health care services than similar immigrants in other parts of the county because of what these professionals call "client capacity." Dr. Virginia Blashke, for instance, credited the fact that her patients have often seen others in their community helped through use of a treatment that she might prescribe. n45 These same people can help the patient answer questions or dispel fears about the treatment. She explained that this type of support only exists in stable communities where people settle and know each other. She also credits the presence of family units, rather than single mothers, as a major source of the stability. Public health nurse Julia Wilson says that over ninety percent of her patients follow through in some way, because they have the support and confidence to do what is necessary. n46 The "capacity" to utilize health services is the same type of "capacity" necessary to take full advantage of the educational system, the labor market, and other social services, and is certainly a factor that contributes to the community's success.

Immigration patterns have also led to success because of the way people external to the community react to them. They are treated well because they have a special "connectedness" to the rest of the community. When asked to explain why the coast-side built such excellent farm worker housing or provides any of the other services for the Latina/o community, interviewees responded with answers such as, "We have a social consciousness" or, "We have a sensitivity to the lack of adequate housing because we recognize the value of these workers to the community and the political will to bring it about." n47 Alternately, it was explained that "people recognize the need and recognize the importance of the Hispanic community." n48 When pushed as to why our community has made this connection when others have failed to, Wilson suggested that it was because more of our community has a "connection to the population." The connection to the population comes from the fact that the soccer clubs, churches, preschools, and public schools are so well [\*1071] integrated. The Latina/o community participates in these activities, I think, because they feel "at home" and part of the community. Further, their participation seems qualitatively different because they express themselves, in all their humanness, in these activities, and the larger population comes to know and value them as people and as people who are important to the community. Such participation would not

occur if the immigrants felt isolated or less confident, and they would not fare as well if they were not so well connected to the rest of the community. n49

What do we have on the San Mateo county coast then? Latina/o immigrants have forged a new identity, one that allows them to live in both Mexico and the United States and allows them to be both Mexican and American. They are part of a Mexican community and part of an American community. This new identity gives the immigrant community confidence, capacity, and connectedness, so that they are treated well and contribute to the economic, cultural, and social aspects of our community. They exemplify transnational citizenship, an identity created through transformative resistance.

The situation of most farm workers, however, falls far below that described here. Most live in poverty and substandard housing, exposed to pesticides, and denied access to basic social services like health care, education, and food stamps. More important for this analysis, mainstream society treats them as outsiders and does not recognize or value their humanity and culture. The coast-side represents an exception from this pattern and an ideal to which other communities may aspire. n50

## II. Transformative Resistance in the Areas of Work, Class, and the Law

The articles in this cluster provide other examples of what can be categorized as attempts at transformative resistance, although their [\*1072] success varies. In the area of work, William Tamayo highlights ways in which Latina/o and Filipino farm workers have been pushing the Equal Employment Opportunity Commission to transform Title VII into a law that goes beyond the "black v. white" framework that does not fit their experience. Blanca Alfara, California Rural Legal Assistance, and a Tamayotrained EEOC staff are also transforming the law of workplace harassment in a way that better fits the reality of immigrant women who are harassed sexually and racially at the workplace. n51 The Association of Latin American Gardeners of Los Angeles, described by Christopher David Ruiz Cameron, used in his words "a UFW-style campaign to set a high moral tone." He also argues that the fight of the urban agricultural workers may help to transform theories of assimilation, healthconsciousness, and environmentalism. Finally, turning to the relatively privileged workers who are law professors, Pamela Smith argues for resistance by untenured professors in the form of breaking silence and speaking of one's experiences with discrimination. Such action can help to transform our audience, our institutions and our willingness to reach out to help each other. In the broader field of class, Tanya Hernandez argues against those who would seek to use class-focused attacks on racism, rather than race-focused attacks on racism. Based on her analysis of the Cuban experience with class-based redistribution measures, she argues convincingly that such an approach cannot transform our understanding of racial oppression.

The final two articles in the cluster deal with the possibility of transformative resistance in the law. Larry Cata Backer discusses the attempt of "outside scholarship" to transform the legal opinions of state and federal court judges. He argues that courts shun outsider scholarship and will continue to do so until outsiders adopt theories that assimilate into the dominant norms. The key to the empowering function of transformative resistance is that the law changes in response to the resistance, not the other way around. If the resistance changes instead, we risk being successful at the cost of asserting our identity. The theory developed by Professors Kevin Johnson and George Martinez attempts to walk the line of utilizing doctrinal analysis to transform the law, while still [\*1073] centering an important aspect of self-claimed Latina/o identity: bilingual and language rights. If their theory is adopted, their work will serve as one more example of transformative resistance.

### Conclusion: LatCrit Professors as Latina/o Workers

In this Introduction, I have focused on those aspects of identity that have been forged by workers themselves, in opposition and resistance to, the identity which the law would have created. I see these actions as a form of empowerment and strength, where there could easily have been discrimination and oppression. I also see this resistance as transformative -- it can and is changing the legal order and legal

theory. I see LatCrit as another example of Latina/o workers forging their own identity. We are also workers. The dominant paradigm would seek that we, as "Law Professors," would act in a certain way. We would teach certain subjects, in a certain way. We would write on certain subjects, in a certain style. We would go to existing conferences, replete with panels of "talking heads." Instead, we have created LatCrit to support ourselves as we determine what classes we want to teach and what styles we want to use. We have LatCrit symposia that feature our writing, our topics, our styles. At our conferences, we take cultural/economic tours, host spiritual dancers, discuss problems of indigenous people and farm workers, and have talking circles. We are forging our identities as Latina/o law professors, to empower ourselves and to resist those who would deny us.

#### FOOTNOTE-1:

n1 I appreciate the aspect of LatCrit that encourages and honors investigation and recitation of family history. My paternal grandfather, Tomas Ontiveros, was a fireman and brakeman on a railroad on a Mexican hacienda. My maternal grandfather, Manuel Luna, was a blacksmith on the Mexican railroads, and he brought his family north to Texas, following the railroad. My father, Pete Campos Ontiveros also worked in the railroad yards before World War II, doing a variety of jobs in and around Houston, Texas. I knew none of this until my son, Henry Manuel Ontiveros Fassinger, developed into a train fanatic. These four are the embodiment of the fourth definition in the title of this Article, and I dedicate this work to them.

n2 Maria de los Angeles Torres, *Transnational Political and Cultural Identities: Crossing Theoretical Borders*, in *Borderless Borders* 169 (Frank Bonilla et al. eds., 1998) [hereinafter *Borderless Borders*]. "Social and political identities have at least two important dimensions: how societies construct an individual's or a group's identity, and how the individual or community constructs its own identity." *Id.* at 171.

n3 I believe that the same dynamic holds true for other groups of women of color.

n4 See, e.g., Mary S. Pardo, *Mexican American Activists: Identity and Resistance in Two Los Angeles Communities* (1998). She has described her study as "strength oriented, rather than strictly problem oriented." *Id.* at 8.

n5 [29 U.S.C. § 151](#)-162 (1994).

n6 Maralyn Edid, *Farm Labor Organizing* 1-16 (1994); Michael H. LeRoy & Wallace Hendricks, *Should "Agricultural Laborers" Continue to be Excluded from the National Labor Relations Act?*, [48 Emory L.J. 489, 496-503 \(1999\)](#); Guadalupe T. Luna, "Agricultural Underdogs" and International Agreements: The Legal Context of Agricultural Workers Within the Rural Economy, [26 N.M. L. Rev. 9, 38-40 \(1996\)](#) [hereinafter Luna, "Agricultural Underdogs"]; Guadalupe T. Luna, *An Infinite Distance?: Agricultural Exceptionalism and Agricultural Labor*, [1 U. Pa. J. Lab. & Employment L. 487, 493-94 \(1998\)](#) [hereinafter Luna, *An Infinite Distance?*].

n7 Edid, *supra* note 6, at 27-43. Although workers had tried earlier to form unions, early attempts were crushed. *Id.* at 27-32.

n8 This agenda has been set in part by the terms of the statute, by the Court, and by union leaders. See [29 U.S.C. §§ 8\(a\)5, 8\(d\)](#) (1994) (requiring bargaining over wages, hours, and terms and conditions of employment); [First Nat'l Maintenance Corp. v. NLRB, 452 U.S. 666, 679 \(1981\)](#) (reserving entrepreneurial decisions to "unencumbered" managerial discretion);



[Fibreboard Paper Prods. Corp. v. NLRB](#), 379 U.S. 203, 214 (1964) (same); Paul Weiler, *Governing the Workplace: The Future of Labor and Employment Law 197-98* (1990).

n9 [Marquez v. Screen Actors Guild](#), 525 U.S. 33, 36 (1998); [Communication Workers of Am. v. Beck](#), 487 U.S. 735 (1988); [NLRB v. General Motors Corp.](#), 373 U.S. 734, 742 (1963) (defining membership as "whittled down to its financial core").

n10 Edid, *supra* note 6, at 36.

n11 *Id.*; Herman Levy, *The Agricultural Labor Relations Act of 1975: La Esperanza de California Para El Futuro*, 15 Santa Clara L. Rev. 783 (1975).

n12 LeRoy & Hendricks, *supra* note 6, at 530-36.

n13 For a discussion of how the ALRA varies from the NLRA, with provisions geared to farm workers, see Tracy E. Sagle, *The ALRB -- Twenty Years Later*, 8 San Joaquin Agric. L. Rev. 139 (1998).

n14 Herman Levy, *Collective Bargaining for Farmworkers: Should There Be Federal Legislation?*, 21 Santa Clara L. Rev. 333 (1980).

n15 Paul Johnston, *Against the Work Stoppage: A New Strike for a New Labor Movement* (visited April 26, 1999) <<http://members.cruzio.com/johnston/workstart.htm>> (on file with author).

n16 See generally Christopher David Ruiz Cameron, *The Labyrinth of Solidarity: Why the Future of the American Labor Movement Depends on Latino Workers*, [53 U. Miami L. Rev. 1089 \(1999\)](#); Maria L. Ontiveros, *Race and Class: Understanding Connections and Charting Directions* (unpublished manuscript, on file with author).

n17 The Citizenship Project, headquartered in Salinas, California, is a project started in 1995 by Teamsters Local 890 to expand citizenship, social, economic, educational, and political participation among the Latina/o community in which union members and their families live.

n18 Paul Johnston, *Organize for What? The Resurgence of Labor as Citizenship Movement*, (visited April 20, 2000) <<http://members.cruzio.com/johnston>> (on file with author).

n19 *Id.* at 7.

n20 The documents can either show that the person is a United States citizen or that, even if he or she is not a citizen, that he or she is in a status category that gives him or her the right to work here (i.e. has a visa which allows employment or is a legal, permanent resident or has a "green card"). In order to qualify in either category, a person usually has to provide two documents: one with a photograph that identifies the worker by name, and a second that shows that the named person has the right to work here. Although a United States passport can perform both of these functions, most people have two documents (i.e. a driver's license and a social security card, birth certificate or green card).

n21 Edid, *supra* note 6, at 1-16 (1994); Luna, "Agricultural Underdogs", *supra* note 6, at 38-40; Luna, *An Infinite Distance?*, *supra* note 6, at 493-94; Paul Johnston, *Anti-Bracero: Rethinking Cross-Border Rights* (visited April 26, 1999) <<http://members.cruzio.com/johnston/antibracero.htm>> (on file with author) [hereinafter Johnston, *Anti-Bracero*] (explaining that immigration laws act as controlled system to bring in hard to organize, indentured labor); Paul Johnston, *Citizens of the Future: the Emergence of Transnational Citizenship among Mexican Immigrants in California* (visited April 26, 1999) <<http://www.newcitizen.org>> (on file with author) [hereinafter Johnston, *Citizens of the*

Future]; Scott Steever, *La Causa: The 1965-1970 Delano Grape Strike*, at 5-16 (1995) (unpublished manuscript, on file with author).

n22 Luna, "Agricultural Underdogs", *supra* note 6, at 24-30, 42-44; Luna, *An Infinite Distance?*, *supra* note 6, at 494-97.

n23 See, e.g., Bill Wallace, *INS Vigilance Hasn't Kept Phony Papers from Flooding State*, *S.F. Chron.*, May 3, 1999, at A17.

n24 As long as an employer does not question the physical resemblance of the worker to that provided in the papers, one person can easily pass as another.

n25 Interview with Rosa Carreno, community worker in Half Moon Bay, California (June 30, 1999) (notes on file with author).

n26 Maria L. Ontiveros, *To Help those Most in Need: Undocumented Workers' Rights and Remedies under Title VII*, 20 *Rev. L. & Soc. Change* 607, 608-613 (1993-94).

n27 Kitty Calavita, *Employer Sanctions Violations: Toward a Dialectical Model of White Collar Crime*, 24 *Law & Soc'y Rev.* 1041 (1990).

n28 Saskia Sassen, *The Transnationalization of Immigration Policy*, in *Borderless Borders*, *supra* note 2, at 53.

n29 Torres, *supra* note 2, at 182; see also Paul Johnston, *Citizens of the Future*, *supra* note 21, at 3. Johnston incorporated a concept from a popular 1997 song by Los Tigres del Norte, in which they sing of the need to "cabén dos patrias en el mismo corazón," or, make a place for two countries in the same heart.

n30 Jorge A. Vargas, *Dual Nationality for Mexicans*, [35 San Diego L. Rev. 823 \(1998\)](#)

n31 Paul Johnston, *The Citizenship Movement: One for the History Books* (visited Sept. 13, 1999) <<http://members.cruzio.com/johnston/history.htm>> (on file with author).

n32 Johnston, *Anti-Bracero*, *supra* note 21.

n33 Johnston, *Citizens of the Future*, *supra* note 21, at 4, 3032. Johnston argues that various social movements, including the labor movement, the environmental justice movement, and the women's movement are all working to challenge and extend the boundaries of citizenship. Paul Johnston, *A New Citizenship* (visited Apr. 26, 1999) <<http://members.cruzio.com/johnston/newcitart.htm>> (on file with author).

n34 See generally *Latino Cultural Citizenship* (William V. Flores & Rina Benmayor eds., 1997).

n35 See Sassen, *supra* note 28, at 66.

n36 The area described in these paragraphs includes the towns of (from north to south) Montara, Moss Beach, El Granada, Half Moon Bay and Pescadero. Except for Half Moon Bay, we are considered unincorporated San Mateo county.

n37 These paragraphs draw heavily from reporting in our local paper, the *Half Moon Bay Review*. See Stett Holbrook, *Half Moon Bay's Mexican Connection*, *Half Moon Bay Rev.*, Dec. 31, 1997, at A1.

n38 Half Moon Bay is not the only city with a "Mexican Connection." See Sam Quinones, *No Se Puede Volver a Casa*, *Hemispheres Mag.*, Dec. 1998, at 94. The title of the article is Spanish for "You Can't Go Home Again." See *id.*; see also Bettina Boxall, *Migrants' New Roots*

Transform Rural Life, L.A. Times, Apr. 20, 1999, at A1 (discussing lives of migrant workers in California). After studying small villages in central Mexico, Sam Quinones found that: "Half the village of Totolan, Michoacan, lives in Glendale, California. A good part of Jarip lives in Stockton, California. Ocampo, Guanajuato, is a virtual extension of Dallas, Texas. Several hundred people from Tzintzuntzan, Michoacan, work in Tacoma, Washington, or on fishing boats in Alaska." Quinones, *supra*, at 98. Juan-Vicente Palerm, director of the U.C. Institute for Mexico and the United States, who has studied demographic changes in 200 small farm towns in California, made note of Poplar, California, which is full of people from the Mexican state of Colima. He concluded that "many little farm communities have become basically Mexican towns where anywhere from 70% to 90% of the population are Mexican immigrants or children of Mexican immigrants." Boxall, *supra*, at A1.

n39 These same feelings are found in other paired towns, which include people like Bonifacio Caballero, who said:

We are going to return, my wife and I, to enjoy what we have left of life. . . I want to be buried in Mexico. I want them to take me to the graveyard with a mariachi band. That's not too much to ask. I want to be buried in my land.

Quinones, *supra* note 38, at 103. They also have residents like Caballero's daughter, Maria Caballero, who said "I don't think I can live [in Mexico]. I'm used to the conveniences here, big stores, supermarkets." *Id.* Others, like Francisco Aguilar, envision having dual citizenship in the United States and Mexico and living "part here, part there, like we've always done because you spend so much time in the United States that you feel part of it." *Id.*

n40 Other Mexican towns have also been affected by the "American Connection." In 1997, Mexican emigrants sent about 4.7 billion dollars to Mexico. Quinones, *supra* note 38, at 99. In one town, Nuevo Chuipcuaro, approximately 70% of the money for public works, such as the church, roads, museums, plazas, museums and cemeteries, comes from north of the border. See *id.*

n41 Interviewees noted this as a marked contrast to other parts of the county with similar demographics.

n42 This same transformation is taking place in other cities, as well. In each of these towns, immigrants are creating an identity which incorporates both their Mexican and their United States selves: developing soccer teams and creating town squares; singing Spanish choral pieces at the annual orange blossom festival; buying homes; revitalizing school lunch and community-sponsored health insurance programs; opening new high schools named the "Home of the Aztecs", and; seeing their children graduate from United States colleges and take jobs outside the fields. Boxall, *supra* note 38, at A1.

n43 See generally Francis Wiser et al., *Healthy San Mateo 2000: Health Status Indicators* (1998). The indicators surveyed included prenatal care, lead exposure, AIDS, adolescent births, low birth weight, immunization rates, nutrition, violence (assault, self-inflicted injuries, homicide), accidents, substance abuse, tobacco use, cancer incidence, tuberculosis, and sexually transmitted diseases. See *id.*

n44 In addition to the "capacity" and "connectedness" attributable to dual resident immigration patterns, other factors may help explain the relative success of coast-side Latina/o immigrants. Certainly, natives of Camichines might cite their own history of self-determination, based on their participation in the Mexican revolution and their willingness to be among the first places to fight for the right to own their own land. Even today, many residents return to Camichines to oversee the harvest of their own sugarcane fields in Mexico. Community Worker Rosa Carreno

noted that coast-side Latina/o immigrants are people who "come with a purpose" -- they come to work, to help themselves and their families. Other factors include unusually responsive and caring politicians who have roots in the community and the relatively small, isolated nature of the community, which means that we all have to live with and rely on one another.

n45 Interview with Dr. Virginia Blashke, Coastside Health Center, San Mateo County Health Services (June 30, 1999) (notes on file with author).

n46 Interview with Public Health Nurse Julia Wilson Coastside Health Center, San Mateo County Health Services (June 30, 1999) [hereinafter Wilson Interview] (notes on file with author).

n47 Interview with Brian Zamora, Director of Public Health and Environmental Health (June 16, 1999) (on file with author). The Environmental Health Department monitors agricultural employee housing.

n48 Wilson Interview, *supra* note 46.

n49 Betty Liu, Migrant Workers Reap Harvest of Resentment and Racism, *Fin. Times*, Sept. 15, 1999 (describing hostility and violence aimed at Latina/o immigrants in Tennessee); see also Boxall, *supra* note 38, at A1 (describing hostility directed towards Latina/o immigrants against other Latina/o immigrants that arrive without any tie to community).

n50 Even within my community, it must be emphasized that people constantly work and battle to forge the community which we have. Further, things here are still not perfect. Farm labor camps still exist in the hills. Young Latinas/os drop out of school at rates that are far too high, and there is a growing number of recent residents who do not have a connection to the Latina/o population (primarily commuters who work "over the hill" in Silicon Valley).

n51 For ways in which the current law of "sexual harassment" does not fit immigrant women's experience, see Maria Ontiveros, Three Perspectives on Workplace Harassment of Women of Color, [23 Golden Gate U. L. Rev. 817 \(1993\)](#).