

ANGLO VIEWS OF MEXICAN LABOR: SHAPING THE LAW OF TEMPORARY WORK THROUGH MASCULINITIES NARRATIVES

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INTRODUCTION

Masculinities, just like racialized narratives, shape how society structures and perpetuates its relationships. This Essay discusses how the relationships between Anglo employers and their Mexican laborers were explained through masculinities narratives during a period of heavy temporary labor use in the United States in the twentieth century. Ultimately, the narratives were reflected in laws and agreements that controlled the workplace relationships of thousands of Mexican temporary workers in the U.S., and ultimately in immigration law, which today regulates the parameters of temporary immigrant labor into the United States.

About a year ago, I began studying the narratives of Anglo Americans, who described Mexicans and Mexican immigrant workers in the early twentieth century.¹ At the time, I focused on the racialized nature of the Anglo narratives and did not consider whether or how the narratives also had masculinized aspects. I return to those narratives in this Essay and place the lens of masculinities theories on those same stories. It was through masculinities narratives, in part, that racial subordination was established during this period.

In this Essay, I will explore the narratives that Anglo writers and employers utilized, both to entrench a hegemonic masculinity and to establish their superiority over Mexican workers in the early twentieth century. These narratives are the ones to which Mexican workers responded in developing stories of their own masculinity.² The hegemonic masculinity—one that emphasizes the self-made man and his managerial superiority—is, in turn, reflected in laws, agreements, and treaties between the United States and Mexico and in public policy discussions governing Mexican labor in the United States. I will focus on the development of the Bracero temporary labor agreement and its predecessors to show how the Anglo-American view of Mexican labor at that time was reflected in the agreements surrounding Mexican labor.

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¹ See Leticia M. Saucedo, *Mexicans, Immigrants, Cultural Narratives, and National Origin*, 44 ARIZ. ST. L.J. 305 (2012).

² See, e.g., Leticia M. Saucedo & Maria Cristina Morales, *Masculinities Narratives and Latino Immigrant Workers: A Case Study of the Las Vegas Residential Construction Trades*, 33 HARV. J.L. & GENDER 625, 625–26 (2010).

Part I of this Essay describes the narratives Americans used to describe Mexican migrant workers during the early twentieth century and up to the development of the Bracero agreement between Mexico and the United States. Part II describes the temporary labor agreements leading up to and including the Bracero agreement, which produced a temporary Mexican workforce in unskilled labor markets in the United States until the 1960s. This section analyzes the correlation between the narratives of Mexican workers as docile, subservient, and backward and their role/treatment in the government-sponsored labor agreement. It then demonstrates how the narratives facilitated the enactment of laws and regulations that remain in place today, including employer sanctions provisions and the “able, willing, and qualified” requirement for temporary workers in immigration law.³

I. NARRATIVES DESCRIBING MEXICAN IMMIGRANT LABOR IN THE EARLY TWENTIETH CENTURY

The premise that the treatment of Mexicans has been racialized, both in society and through legal institutions, is well-established by scholars.⁴ This Essay demonstrates the intertwined nature of race and masculinity in the construction of Mexican workers. Sociologist and masculinities expert Michael Kimmel has explored American masculinities and the narratives that American males produced throughout history to perpetuate a hegemonic masculinity.⁵ Kimmel argues that Americans have also developed narratives about immigrants, including Mexican immigrants, that place them in subordinate positions in the workplace.⁶ Immigrants were described as either hypo-masculine or hyper-masculine, and sometimes both, as a way to describe the racial superiority of Anglos.⁷ Mexican workers were imbued with a certain kind of masculinity, one typically attributed to lower class, minority males. It is this set of masculinities in the American narratives that I highlight, in an effort to show how racialization and masculinity narratives operate together to form the “Mexican worker” of the twentieth century: compliant, pliable, flexible, itinerant, temporary brawn.

There were two forms of stereotype involved in narratives of Mexican laborers: one emasculating and infantilizing, and the other emphasizing dangerous and negative hyper-masculine traits. The stereotypes produced two characteristics of the Mexican laborer: docility and backwardness. The emasculating

³ See Immigration and Nationality Act of 1952 (McCarran-Walter Act), Pub. L. No. 82-414, 66 Stat. 163 (codified as amended in scattered sections of 8 U.S.C.) [hereinafter INA]; 8 U.S.C. § 1182(a)(5)(A)(i) (2006).

⁴ See, e.g., LAURA E. GÓMEZ, *Manifest Destinies: The Making of the Mexican American Race* (2007); Kevin R. Johnson, *Race, the Immigration Laws, and Domestic Race Relations: A “Magic Mirror” into the Heart of Darkness*, 73 IND. L.J. 1111, 1112 (1998); Juan F. Perea, *The Black/White Binary Paradigm of Race: The “Normal Science” of American Racial Thought*, 85 CALIF. L. REV. 1213, 1213–14 (1997); THE LATINO/A CONDITION: A CRITICAL READER 121–68 (Richard Delgado & Jean Stefancic eds., 2d ed. 2011).

⁵ See generally MICHAEL KIMMEL, *MANHOOD IN AMERICA: A CULTURAL HISTORY* 1–2 (3d ed., Oxford Univ. Press 2012) (1998).

⁶ *Id.* at 69–70.

⁷ *Id.* at 69.

stereotype of Mexicans as docile served to justify their placement in the lower rungs of the labor market ladder. The second narrative of the Mexican as physically suited for hard work, dangerous, and backward perpetuated a perception that Mexicans had to be controlled and managed.

A. *Mexicans as Docile, Childlike, Simple and Unstable*

American observers of Mexican culture attributed Mexico's slow economic development, in part, to the population's servile attitudes.⁸ They were described as docile as part of their nature, rather than because of their social condition.⁹ Employers in need of Mexican labor during the shortages created by early immigration restrictions emphasized Mexicans' servile nature as they built support for their importation. A representative of the South Texas Cotton Growers Association, arguing his case before a congressional committee in 1920, noted, "[t]here never was a more docile animal in the world than the Mexican."¹⁰ The docility narrative evoked images of a child-like population that could not take care of itself.

Historian Mark Reisler describes racialized narratives of Mexicans during the early twentieth century that are even more noteworthy for their emasculating character:

[B]oth opponents and proponents of [immigration restrictions] accepted a remarkably similar Mexican stereotype. Both camps believed that the Mexican immigrant was essentially an Indian peon whose characteristics and potentialities were racially determined. Both groups—and they were often joined by social scientists studying the subject—described Mexicans as docile, indolent, and backward. . . . Those opposing Mexican immigration viewed docility, indolence, and backwardness as antithetical and threatening to all that America valued. Those favoring Mexican immigration considered these characteristics splendid prerequisites for the type of labor they required.¹¹

This example demonstrates that, whether used for positive or negative reasons, the qualities used to describe Mexicans were inferior because they were not masculine. The stereotype did the work of helping relegate Mexican labor to equally inferior positions in the labor market.

The narrative of the Mexican as simple-minded relegated Mexican laborers to the more difficult, physically taxing jobs and, at the same time, gave added value to managerial skills of their superiors. One manager writing about Mexican labor in the early twentieth century wrote that:

[T]he peon is of a race whose habits and characteristics are those of a simple-minded people, accustomed for generations to conditions not far removed from actual servitude and who have not yet learned to act on their own initiative. . . . The successful

⁸ GILBERT G. GONZÁLEZ, *CULTURE OF EMPIRE: AMERICAN WRITERS, MEXICO, & MEXICAN IMMIGRANTS, 1880–1930*, at 81–82 (2004).

⁹ *Id.* at 84–86.

¹⁰ *Admission of Mexican Agricultural Laborers: Hearing on S.J. Res. 66 Before the S. Comm. on Immigration*, 66th Cong. 4 (1920) (statement of Fred Roberts, President, South Texas Cotton Growers' Association).

¹¹ MARK REISLER, *BY THE SWEAT OF THEIR BROW: MEXICAN IMMIGRANT LABOR IN THE UNITED STATES, 1900–1940*, at 128 (1976).

manager is the one who understands the limitations of the people and is willing to adapt his methods to their capabilities.¹²

In part because of their simple-mindedness, according to the narrative, Mexicans were incapable of caring for themselves or their families, or of settling down in one place. A Bureau of Labor investigator working with farm workers at the turn of the twentieth century wrote that Mexicans “do not occupy a position analogous to that of the Negro in the South. They are not permanent, do not acquire land or establish themselves in little cabin homesteads, but remain nomadic . . . outside of American civilization.”¹³ Their movement from one set of jobs to another—following crops during picking season, for example—was explained as an example of such limited capability.

The emasculating traits ascribed to the Mexican laborer made it difficult for him to become the self-made civic participant role model of American masculinity.¹⁴ The Mexican laborer was juxtaposed to the self-made, rugged, independent, citizen Anglo:

The peon could be directed and used to perform the lowest class of labor, but he was incapable of carrying on independent projects in pursuit of progress. Given their image of the Mexican worker, Americans could easily reject Mexican immigrants as candidates for assimilation, equality, and acceptance. From the Anglo perspective, the immigrant from south of the border was always the peon laborer and never the potential citizen.¹⁵

The “simple-minded” narrative gave labor bosses, growers, governments, and employers in general the leeway to act on behalf of workers who were perceived as unable to speak on their own behalf and thought to be inherently unable to assimilate.

B. From Mexicans as Backward and Dangerous to Mexicans as Physically Suited for Hard Labor

There were elements of the Mexican laborer stereotype that elicited images of the dangerous, uncivilized, and backward peon who needed direction, control, and management. Indeed, the predominant image of the Mexican in the late nineteenth century was that of a “brutal,” “bloodthirsty,” “barbarous” individual.¹⁶ For example, Mexican “peons were said to waste ‘their time in lust, dancing, singing, drinking, playing cards, gambling, cock-fighting, riding, thieving, stabbing in quarrels and other indulgences of their passions.’ ”¹⁷ Proof of their dangerous nature was their inability to control their passions, a characteristic that also made women dangerous at the time.¹⁸ The narrative had class and race implications because the stereotype applied mostly to poor, rural,

¹² GONZÁLEZ, *supra* note 8, at 82 (internal citation omitted).

¹³ NEIL FOLEY, *THE WHITE SCOURGE: MEXICANS, BLACKS, AND POOR WHITES IN TEXAS COTTON CULTURE* 40 (1997) (internal citation omitted).

¹⁴ *Cf.* KIMMEL, *supra* note 5, at 14–15, 87–89 (discussing qualities of the American self-made man).

¹⁵ REISLER, *supra* note 11, at 143–44.

¹⁶ *Id.* at 128.

¹⁷ GONZÁLEZ, *supra* note 8, at 81 (internal citations omitted).

¹⁸ *See* KIMMEL, *supra* note 5, at 95.

indigenous Mexicans.¹⁹ It was the Indian peon of the rural areas who was attributed with behavioral traits such as cockfighting, alcoholism, and wife beating, along with having “no custom of work.”²⁰

Even as they were emasculated as childlike and simple, Mexicans were also considered dangerous because of their backwardness. Immigration restrictionists of the early twentieth century, while acknowledging their meekness, nonetheless considered Mexicans dangerous because they “contentedly accepted wretched living and sanitary conditions and thereby bred disease that could easily spread to others.”²¹

To the extent that Mexicans were, as a group, given a set of masculine qualities, these were limited to physical strength and biologically-determined abilities.²² Most Americans perceived that “Mexican[s] could contribute little but brawn.”²³ This sentiment, leading up to the formation of the Bracero agreement, became part of the public discourse through the dissemination of articles and essays written in popular magazines such as *National Geographic* and the *Saturday Evening Post*.²⁴ For example, Charles Teague, a writer for the *Saturday Evening Post* noted that:

Mexican casual labor fills the requirements of the California farm as no other labor has done in the past. The Mexican withstands the high temperatures of the Imperial and San Joaquin valleys. He is adapted to field conditions. He moves from one locality to another as the rotation of the seasonal crops progresses. He does heavy field work—particularly in the . . . “stoop crops” and “knee crops” of vegetable and cantaloupe production—which white labor refuses to do and is constitutionally unsuited to perform.²⁵

In other words, Mexicans were suited for work because they possessed the right hands, arms, trunks, backs, or body thermometers for occupations requiring stoop labor, farm work, mining, ranching, construction, or outside work. Employers naturalized Mexicans’ abilities in the farm fields whenever they advocated for increased immigration visas for farm work. In hearings before the House Committee on Immigration in the 1920s, for example, an employer remarked that Mexicans “are lovers of farm work . . . they like to till the soil, that is their ambition.”²⁶ In a dialogue during a congressional hearing on importing seasonal workers from Mexico, Congressman Adolph Sabath

¹⁹ See DEBORAH COHEN, *BRACEROS: MIGRANT CITIZENS AND TRANSNATIONAL SUBJECTS IN THE POSTWAR UNITED STATES AND MEXICO* 44 (2011).

²⁰ *Id.*

²¹ REISLER, *supra* note 11, at 130.

²² *Id.* at 137 (“Many Americans, especially employers, in perceiving the Mexican worker as racially distinct, believed that he possessed unique biologically determined physical and psychological characteristics that made him particularly well suited for and fond of agricultural labor.”).

²³ Mark Reisler, *Always the Laborer, Never the Citizen: Anglo Perceptions of the Mexican Immigrant During the 1920s*, in *BETWEEN TWO WORLDS: MEXICAN IMMIGRANTS IN THE UNITED STATES* 23, 28 (David G. Gutiérrez ed., 1996).

²⁴ See, e.g., GONZÁLEZ, *supra* note 8, at 81; see also Charles C. Teague, *A Statement on Mexican Immigration*, *SATURDAY EVENING POST*, Mar. 10, 1928, at 200, reprinted in FRANCISCO E. BALDERRAMA & RAYMOND RODRIGUEZ, *DECADE OF BETRAYAL: MEXICAN REPARATION IN THE 1930S* 25, 26 (rev. ed. 2006).

²⁵ Teague, *supra* note 24, at 26.

²⁶ REISLER, *supra* note 11, at 138.

observed that Mexicans could “bend better” than other workers.²⁷ Congressman Adam Smith responded, “Not only can they do it better than anybody else, but there is scarcely any other work they can do as successfully.”²⁸

To the extent masculine traits played a role in descriptions of Mexican labor, these traits were limited to specific body parts. Thus, as disembodied beings, Mexicans were a positive force for employers because they were useful for certain work. As the workforce grew during the years leading up to the Bracero program, the narrative of the dangerous individual gave way to a more relevant stereotype that harnessed the strength of the now disembodied Mexican: the narrative of the worker.²⁹

C. *Racialization through Masculinities Narratives*

While Mexicans were clearly racialized in terms of the work they could do, racialization was not sufficient to make the narratives of inferiority endure. It was racialization in combination with masculine superiority that gave life to the narratives. The racialized descriptions of Mexicans revolved around a narrative of Mexican inferiority, described in terms of their lack of classic American masculine qualities.³⁰ It is this characteristic of the narrative—the diminishing of a race or ethnicity through the use of narratives that emasculate or describe an atypical sort of masculinity—that makes masculinities studies so important in the historical analysis of Mexican labor subordination. An example of the link between racial inferiority and emasculating descriptions of Mexicans can be found in the following description of the American narratives explaining the Spanish conquest of Mexico. It is clear from the description that inferiority follows from native Mexicans’ unwillingness to “man up” in response to the Spanish conquest:

To some Anglos, the Spanish conquest clearly demonstrated the inferiority of Mexican Indians. A stronger race would not have been defeated, nor would it have allowed itself to fall into a state of peonage. A few went so far as to argue that only the most unfit of Mexico’s native population, those low-grade Indians who did not fight to extinction but submitted and multiplied as serfs, had survived the Spanish conquistadores.³¹

The narrative persisted as the explanation for U.S.–Mexico relations. As sociologist Kimmel writes that newspapers of the period reflected the racialized perceptions of effeminate Mexicans: “Mexican acquiescence to U.S. domination was attributed to Mexicans’ lack of ‘all the manlier virtues,’ which made them ‘perfectly accustomed to being conquered.’”³² Such Mexican failure to “man up” resulted in the peon nature to which Americans attributed Mexican laborers who entered the U.S. to work. Those who submitted, in other words, were destined for the life of servitude to which they were relegated.

²⁷ *Seasonal Agricultural Laborers from Mexico: Hearings on H.R. 6741, H.R. 7559, and H.R. 9036 Before the H. Comm. on Immigration & Naturalization*, 69th Cong. 225 (1926) (statement of Adolph J. Sabath Rep. Illinois, H.R.).

²⁸ *Id.* at 226 (statement of Addison T. Smith, Rep. Idaho, H.R.).

²⁹ See REISLER, *supra* note 11, at 128.

³⁰ See KIMMEL, *supra* note 5, at 69.

³¹ Reisler, *supra* note 23, at 28 (internal quotation marks omitted).

³² KIMMEL, *supra* note 5, at 69.

At times, the racialized narrative of the Mexican peon was used to try to motivate Anglos to live up to their own “manhood.” Unions, for example, utilized the racialized narratives to shame Anglo tenant farmers into solidarity. The socialist unions organizing tenant farmers and farm workers in Texas in the 1930s used masculinities rhetoric to “whiten” up Mexican laborers, and emasculate white tenant farmers who refused to join the union.³³ As one organizer wrote:

[T]he American renter who boasts that he is one of the freest of the free is so afraid of his boss he cannot be induced to join a union for his emancipation while the Mexican tenants not only join the League but will starve before they will submit You men that claim you have a right to be the father of white American children, what is the matter with you? Did your wife marry a satisfied peón?³⁴

Of this encounter, historian Neil Foley notes that, Mexicans gained claims (albeit temporary) both to whiteness and manliness by joining the union and “[n]onunion Anglo tenant farmers had thus been transposed into ‘satisfied peons’ by the revolutionary fervor of ‘docile’ Mexicans.”³⁵ Even in this emasculation of white farm workers, the insult—calling a tenant farmer a peon—is racialized.

Masculinities narratives defined the inferior positions of Mexicans as a race. In other words, masculinity was the ruler by which inferiority was measured. While Mexicans had physical strength and were adaptable, these traits alone were not masculine enough to make them equals with Anglo-Americans in the labor market hierarchy. Instead, unbridled strength and flexibility made social and biological inferiors of Mexican laborers. For example, “[t]he repeated references to worker’s hands, bodies, work ethic, and biological adjustment to climate and job transformed learned skills into the outcome of biological selection, all with a paternalist twist that depicted them as children—simple, innocent, even primitive.”³⁶ The narratives combined strength, unique abilities, and simple-mindedness to create the story of the perfect worker for low-skill tasks: biologically suited, physically strong, and yet controllable because of his simple qualities.

The Anglo-American became the perfect manager in the narrative: industrious, stable, rugged, entrepreneurial. These Anglo traits correlated with classic hegemonic masculinities at the same time that Mexicans’ inferiority—attributed to racial characteristics—was depicted in terms of masculine inferiority. Historian Thomas Reisler’s depiction of Mexicans’ inferior racial position demonstrates how racial inferiority was characterized in terms of masculinities narratives about the meaning of inferiority:

The overwhelming majority [of Anglo Americans] . . . both those coveting the Mexican’s labor and those opposing his entry, shared fundamental negative assumptions about the characteristics and capabilities of the Mexican worker, which they considered racially determined. Because of his Indian origin, the Mexican was capable of being only a peon laborer. . . . *To Americans, who defined Mexicans by and identified*

³³ See FOLEY, *supra* note 13, at 108.

³⁴ *Id.* (quoting W.S. Noble, *Land League*, REBEL, Oct. 23, 1915, at 4).

³⁵ *Id.*

³⁶ COHEN, *supra* note 19, at 56.

*them with the work they did, the servile peon was antithetical to the rugged, self-reliant yeoman who had made their nation prosperous and progressive.*³⁷

Even as they lauded Mexicans for their ability to perform backbreaking work, employers justified seeking them by describing Anglos' physical and mental inability as a race to do it. Employers argued that Anglos could not cope with the monotony and physical strain required to perform stoop labor.³⁸ This narrative of the Americans' unsuitability for difficult work, in turn, supported labor structures that segregated work and occupations along racial lines. Congressman Edward Taylor, during House Committee on Immigration hearings on importation of seasonal Mexican workers, described the difference between Mexicans and Anglos in terms of traditional views of hegemonic and subordinate masculinities:

The American laboring people will not get down on their hands and knees in the dirt and pull weeds and thin these beets, and break their backs doing that kind of work. In fact there are very few people who can stand that kind of work. . . . That kind of labor is hard tedious work.³⁹

For Mexicans, on the other hand, "it does not seem to be difficult for them to perform this type of labor."⁴⁰ The narrative was repeated over and over again in public discourse, as in this Los Angeles Evening Express editorial suggesting that "only Mexicans of the available laborers can perform the work. Americans are both unable and unwilling to work in the summer heat of Imperial Valley . . . [b]ut the darker-skinned Mexicans endure the sun and heat with small discomfort."⁴¹ Such views elevated rugged individualism, managerial skills, and entrepreneurial skills to the level of hegemonic masculinity and relegated brute labor and physical strength to subordinate masculinity.

As we shall see in the next section of this Essay, the lack of hegemonic masculine qualities, as much or more than the racialized qualities of the Mexican laborer, influenced the development of legal structures that subordinated Mexicans during the years prior to and during the period of the Bracero agreement.

II. THE LABOR, EMPLOYMENT AND IMMIGRATION LAWS REINFORCING ANGLO NARRATIVES ABOUT MEXICAN WORKERS

A. *The 1917 Labor Agreement—Reinforcing Mexicans as Lacking Agency*

The Immigration Act of 1917 imposed a head tax and a literacy test on immigrants seeking to enter the United States. Both restrictions affected Mexican immigration to the U.S. of the unskilled laborers that employers in mining, railroad, and agriculture sought to recruit. The head tax and the literacy test requirements responded to a public perception that undesirable immigrants—those who could not take care of themselves and who were backward and uncivilized—were entering the United States in uncontrollable numbers. Rather

³⁷ REISLER, *supra* note 11, at 143 (emphasis added).

³⁸ *Id.* at 138.

³⁹ *Id.*

⁴⁰ *Id.* at 139.

⁴¹ *Id.*

than concede to the restrictions of the 1917 Immigration Act, growers and employers in the Southwest sought exemptions for Mexican immigrants, who employers believed were necessary to the survival of their industries during a war economy.⁴² They achieved suspension of the requirements until well into the 1920s, in part because the narrative that Mexican labor would do what no other worker would do was so powerful, especially during wartime.⁴³ The result was that, despite the restrictions in the Immigration Act, employers maintained a steady supply of Mexican labor, documented and undocumented, through an ad hoc temporary admissions program, made possible through the suspension of the 1917 Act's entry requirements.⁴⁴

How did agricultural interests achieve the suspension of the 1917 Act requirements and secure their labor needs? The masculinities narratives depicting Mexican labor as unstable and nomadic, yet physically suited to difficult work drove administrative decisions to allow temporary entry to such workers for the sake of industrial needs. The image of the Mexican as nomad or wanderer served employers well, for they could argue that Mexicans were only in the U.S. temporarily, given their nature. The narrative appeased labor unions that feared Mexican labor would depress wages in other industries.⁴⁵ The narrative also helped administrative agencies explain the temporary nature of the Immigration Act suspensions. In response to calls for ending the suspensions, for example, Department of Labor investigators found that Mexicans were leaving agricultural work for jobs mainly in the railroad industry.⁴⁶ The investigators attributed the drift to Mexican racial characteristics but also alluded to their inability to maintain a homestead in any one place: "The Mexicans of our day . . . being descendants of a race in whose veins flow in dominating measure Indian blood, evince the same migratory characteristics which have always been a feature of the Indian race."⁴⁷

Anglos, on the other hand, according to the report, would not take jobs that required migration because they were more suited to work close to their homesteads or towns.⁴⁸ The characterizations of Mexicans as unable to stay in one place thus drove policy decisions in favor of allowing for Mexican labor on a temporary basis.⁴⁹

The regulations surrounding the suspension of the head tax and literacy requirements themselves perpetuated the view of the Mexican laborer as not only unstable but also needing close supervision. In addition to an application from employers, the regulations required that employers inform the Immigration Bureau if an employee quit a job, left agricultural work, or began working for a non-approved employer.⁵⁰ They also called for withholding a portion of a

⁴² *Id.* at 41.

⁴³ *Id.* at 40–41.

⁴⁴ *Id.* at 41.

⁴⁵ *See id.* at 36.

⁴⁶ *Id.* at 36.

⁴⁷ *Id.* (quoting *Emergency Immigration Legislation: Hearing on H.R. 14461 Before S. Comm. on Immigration*, 66th Cong. 67 (1921)).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 29.

worker's pay to be turned over only upon the worker's return to Mexico.⁵¹ The perception that Mexicans were inclined to be here temporarily because of their migratory nature was thus codified into the rules for their entry and return.

B. The 1920s Immigration Informal Agreements

After the 1917 head tax and literacy requirements were reinstated for Mexicans in the 1920s, agricultural growers complained to the Immigration Bureau that their enforcement efforts were disrupting agricultural production.⁵² The Bureau offered the employers—not the employees—a compromise.⁵³ Recall that the original suspension of the 1917 Act—also a compromise between employers and the federal government—allowed growers to recruit Mexican labor without the need for a head tax or a literacy test. After the Act was reinstated, the Immigration Bureau began to impose requirements on the thousands of Mexicans still working in the agricultural fields throughout the southwest, including California. The Associated Labor Bureau, an agency representing growers in California's Imperial Valley, became the broker for the arrangement that would ultimately place employers at the center of enforcement.⁵⁴ The Association publicized the agreement to its members in order to secure their cooperation:

The law provides that all aliens in this country who have not made legal entry are subject to deportation. This law must be enforced. A large percentage (nobody knows just how large) of the Mexicans in the Imperial Valley have not complied with the formal requirements and continued efforts at enforcement on the present basis mean uncertain and disturbed labor conditions, with greater shortages than in the past; greater turnover; higher wages, poorer work and, all told, a large increase in the expense for labor.

Here is a way out. The Immigration Service suggests that the employers of labor help to enforce the law and it will, in turn, cooperate with the employers to make this enforcement cause as little trouble as possible.⁵⁵

Under these informal agreements, employers were to ensure that their Mexican workers registered with the Immigration Bureau.⁵⁶ The employers agreed to set up bank accounts—controlled solely by an employer group—into which workers would deposit a portion of their weekly earnings until they reached the \$18 head tax amount.⁵⁷ The employers would then take the workers to the Immigration Bureau to legalize their entry.⁵⁸ In return, the Immigration Bureau promised leniency in enforcement at cooperating employers' worksites.⁵⁹

⁵¹ *Id.*

⁵² *Id.* at 61.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 62 (citing Letter from C.B. Moore, Manager of the Associated Labor Bureau to "employers of Mexican labor in the Imperial Valley," reprinted in CAL. BUREAU OF LABOR STATISTICS, 1925–1926 TWENTY-SECOND BIENNIAL REPORT 117 (1926)).

⁵⁶ *Id.*

⁵⁷ *Id.* at 61.

⁵⁸ *Id.*

⁵⁹ *Id.* at 61–62.

While the agreements worked for employers, Mexicans were subject to coercive and abusive activities as a result. The bank accounts were placed in the name of the Associated Labor Bureau, which managed the accounts, rather than in the name of individual depositors.⁶⁰ Many Mexicans complained to their consulate that they were being forced to pay into the account, even when they had entered the country legally.⁶¹ Others complained that their pay was docked illegally for the payments to the Immigration Bureau if they were unwilling or unable to open accounts.⁶² Others argued that they could not withdraw the funds upon leaving the area, which meant that the Associated Labor Bureau kept the monies.⁶³ Still others complained that local law enforcement authorities threatened Mexicans with incarceration, discharge from work, and deportation if they did not comply with the immigration law's requirements.⁶⁴

The 1920s immigration "gentlemen's agreements" took agency from Mexican laborers entering the United States by creating a regime that made shadow immigration officers out of their employers. The agreements worked for employers in part because of the dominant narrative in public discourse that Mexicans, simple, docile, and backward, were unable to care for themselves. Even though they were informal, the agreements between employer groups and the Immigration Bureau set policy that would eventually become the seed for the employer sanctions provisions we see today in immigration law. After recruiting Mexican workers outside the confines of the 1917 immigration restrictions, employers, driven by the paternalistic narrative and by their self-interest in avoiding labor disruptions through deportation, leveraged their managerial role into a quasi-enforcement role. This role gave them even more power over temporary Mexican laborers than the statute at the time contemplated. Today, the statute codifies the spirit of the "gentleman's agreements" between employers and immigration enforcement agencies by making employers responsible for "knowingly hiring" undocumented workers.⁶⁵ The provisions continue the practice of making employers responsible for the immigration status of their employees, and of inserting employers into the immigration enforcement regime.⁶⁶ The employer sanctions law is, arguably, a vestige of the racialized and masculinities-based narrative of Mexican inferiority.

C. *The Bracero Agreement, 1942–1964*

Throughout the early twentieth century, as agricultural growers' political power grew, so did their narrative of a need for a migratory labor force that would be available to them during peak harvest seasons. At the same time the narrative grew in the public discourse, it came to frame public policy solutions including farm policy and immigration policy. The narrative of the Mexican

⁶⁰ *Id.* at 64.

⁶¹ *Id.* at 63–64.

⁶² *Id.* at 63.

⁶³ *Id.* at 64.

⁶⁴ *Id.*

⁶⁵ Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 274A, 100 Stat. 3359 (1986) (codified as amended in scattered sections of 8 U.S.C.).

⁶⁶ *See id.*

laborer as a nomad who could not establish roots in any one place served well in arguments for a program that would allow for temporary labor. The Bracero agreement, officially known as the Emergency Farm Labor Program, was designed primarily to regularize a steady but temporary workforce for these industries.⁶⁷ In order to accomplish the development and regularization of such a program, growers perpetuated the narrative of Mexican laborers' biological aptitude for heavy-duty farm work such as stoop labor.⁶⁸

The initial Bracero program was set up with the goal of "modernizing" Mexican labor and of introducing Mexicans to agricultural techniques that they could implement on their return to Mexico.⁶⁹ The agreement promised, implicitly at least, financial independence for individual workers, a step all parties agreed would create the self-reliant modern man. The Mexican government itself ascribed to the notion that the Mexican had to be modernized.⁷⁰ From the Mexican government's viewpoint, the Bracero program provided the opportunity to bring a backward people into the modern era.⁷¹ Such modernization efforts were aimed at "the eradication of male activities and privileges such as wife beating, cockfighting, and imbibing . . . excessive alcohol, activities widely attributed to peasants, the working class, and indigenous people."⁷²

The initial Bracero agreement provided that the governments of the United States and Mexico would cooperate to set up bank accounts into which Braceros' savings would be kept.⁷³ The savings were to be used to purchase agricultural implements upon workers' return to Mexico.⁷⁴ The contract itself was made between the worker and the U.S. government, with the Mexican government as enforcer.⁷⁵ The individual worker did not have contractual or other rights of enforcement against the actual employer.⁷⁶ Enforcement rights under the Bracero agreement belonged to the governments themselves.⁷⁷ While the workers did have limited bargaining rights, it was clear under the agreement that the Mexican government, through its consuls, retained the right and authority to protect the interests of the workers.⁷⁸ The agreement stated:

The Mexican Consuls, assisted by the Mexican Labor Inspectors, recognized as such by the employer will take all possible measures of protection in the interests of the Mexican workers in all questions affecting them, within their corresponding jurisdictions, and will have free access to the places of work of the Mexican workers. The employer will observe that the sub-employer grants all facilities to the Mexican Con-

⁶⁷ FOLEY, *supra* note 13, at 50.

⁶⁸ COHEN, *supra* note 19, at 59.

⁶⁹ *Id.* at 67–68.

⁷⁰ *Id.* at 43.

⁷¹ *See id.*

⁷² *Id.*

⁷³ Agreement Between the United States of America and Mexico Revising the Agreement of August 4, 1942 Respecting the Temporary Migration of Mexican Agricultural Workers, U.S.-Mex., art. Savings Fund, § (a), Apr. 26, 1943, 57 Stat. 1152.

⁷⁴ *Id.* at art. Savings Fund, § (b).

⁷⁵ *Id.* at art. Contracts, § (a).

⁷⁶ *See id.* at art. Contracts, §§ (a)–(b).

⁷⁷ *Id.* at art. Wages and Employment, § (j).

⁷⁸ *Id.*

suls and the Assistant Labor Inspectors of the Mexican Government for the compliance of all the clauses in this contract.⁷⁹

This provision fits the dominant narrative of the time, which characterized the backward Mexican peon as a problem to be fixed with American-style modernization. The dominant narrative of the Mexican as naturally fitted to the manual aspects of farm work provided a strong impetus for the program's implementation. The perception was reinforced through the selection process for braceros. As the agreement evolved, growers were allowed to interview, inspect, and question prospective workers before accepting them as braceros.⁸⁰ Growers expected backward, unsophisticated laborers and made their choices based on these perceptions. Workers who looked too independent or rebellious were not chosen.⁸¹ Indeed, workers learned to act the part of the docile laborer to be chosen, further reinforcing the narrative of the Mexican laborer as subservient and backward.⁸² As historian Cohen notes, "the very criteria growers used to select the braceros—not standing too erect, being dumb and dirty—together with men's need to comply—oppugned braceros' claim to manhood. Instead, migrants' clothes and demeanor bespoke subservience and a willingness to accept whatever was demanded of them."⁸³ The result, of course, was the continued emasculation of workers in the Bracero program.

The Bracero Agreement was changed several times during the program's existence. Although its original purpose was to expose Mexican laborers to modernizing techniques, in fact, braceros were relegated to the same stoop labor and difficult manual work in the agricultural fields as in the past.⁸⁴ They were restricted to these jobs under subsequent revisions of the agreement.⁸⁵ Historian Cohen succinctly describes the changes in the Bracero program that reinforced the subordinate place of Mexican labor in the agricultural hierarchy:

By 1951 the U.S. legislation covering the bracero program—Public Law 78—precluded the use of braceros in positions that "operate[d] or maintain[ed] power-driven, self-propelled harvesting, planting or cultivating machinery"; these skilled positions, with some exceptions, were reserved for U.S. domestic laborers. Keeping skilled jobs for "our own people," said Rep. E.C. Gathings (D-Ark.), would "give them the privilege of obtaining good wages." . . . However, manual laborers for the "leaning over type of work" were still in short supply, and growers could use braceros to fill that gap.⁸⁶

The agreement itself, as modified, further stratified the occupational division of work, creating even more sets of jobs suitable for Americans and Mexicans, respectively. So, for example, "while a bracero could 'drive a truck' or 'take [a] truck to town to get a load of supplies,' he could not . . . 'operate a

⁷⁹ *Id.* art. Wages and Employment, § (h).

⁸⁰ COHEN, *supra* note 19, at 107.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 57.

⁸⁵ *Id.*

⁸⁶ *Id.* (quoting *Mexican Farm Labor Program: Hearing Before the Subcomm. on Equip., Supplies, and Manpower of the H. Comm. on Agric.*, 87th Cong. 19 (1962) (Statement of Rep. E.C. Gathings)).

combine or a cottonpicker.’⁸⁷ The job stratification again reflected the narrative that Americans could only do the more forward-thinking, modern work, and the Mexican labor was suitable only for the more backbreaking manual work. Although each type of job was still described in terms of masculine traits needed to fulfill it, the occupations were clearly divided by race and class, reflecting the narratives that existed about both Mexicans and Anglos.

Grower narratives of braceros extolled their virtues as model workers who could tolerate the difficult and onerous task of farm field work. The Bracero agreement, however, was based on a perception of Mexican laborers as unmanly, backward, and simple, needing the protection and oversight of a government-to-government agreement.⁸⁸ A *Los Angeles Times* article, noting the relationships created through the agreement, described them in terms juxtaposing the self-reliance of U.S. workers (masculine) with the dependence (non-masculine) of Mexican workers: “[the American farmworker] ‘is left pretty much to his own devices. The bracero, a citizen of Mexico, has the U.S. and Mexico governments looking out for his welfare.’”⁸⁹

As Cohen explains: “In the end, growers were depicted as properly dominating agricultural production, braceros as safeguarded by the United States and Mexico, and domestic farmworkers as lacking self-reliance and initiative and therefore undeserving of protection.” Cohen continues, “This grower discourse framed . . . braceros as dependent The legacy of this narrative, then, was the denial of [bracero] farmworkers’ agency and their continued depiction as backward and thus outside the nation.”⁹⁰

The *L.A. Times* article and subsequent news stories about farm labor and growers depicted the long-standing narrative of the grower as “properly dominating agricultural production,” the bracero as dependent on two governments for protection, and the domestic farm laborer as “lacking self-reliance and initiative and therefore undeserving of protection.”⁹¹ In this narrative, both bracero and domestic migrants (Mexican-Americans, for the most part) were depicted as dependent and “unable to act as modern individual subjects—and thus with tenuous claims on the nation and its benefits.”⁹²

During the existence of the Bracero program, Mexican authorities grew increasingly frustrated with their inability to protect the wages and working conditions of Mexican workers. They threatened several times to call their workers home when they could not negotiate a fair comprehensive contract or protection from discrimination for their citizens working in the United States.⁹³ Congressmen responded to the threats by portraying workers who sought protection from their government as less than manly. One Congressman, Bourke Hickenlooper (R-Iowa), called on Mexicans to cross over without government

⁸⁷ *Id.*

⁸⁸ *See id.* at 62–63.

⁸⁹ *Id.* at 63 (quoting *Plights of Americans and Braceros Compared*, L.A. TIMES, Mar. 21, 1961).

⁹⁰ *Id.* at 64.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *See* NEIL FOLEY, QUEST FOR EQUALITY: THE FAILED PROMISE OF BLACK-BROWN SOLIDARITY 38–40 (2010) (discussing the Mexican government’s influence on passing an anti-discrimination bill protecting Braceros in Texas).

protection, saying “[t]here is work here, come in under your own power and go back under your own power.”⁹⁴ The quote demonstrates an understanding of braceros as dependent. Ironically, the congressman questions their manhood by challenging them to cross the border without documentation.

The Bracero program terminated in 1964, in the wake of calls for scrutiny about the program’s exploitative nature.⁹⁵ The program was not successful in creating the “modern man” that the two governments claimed was their goal at the beginning of the program. To the contrary, the program—through its various changes and its restriction of positions for Mexican laborers—entrenched perceptions of the Mexican servile worker relegated to unskilled positions.⁹⁶ The end of the Bracero program ultimately gave way to the current H2A program, which provides growers the same type of temporary agricultural labor that the Bracero agreement was meant to provide, but this time through immigration law.⁹⁷ Arguably, employers’ perceptions of the perfect worker have not changed much, and the narratives live on in the recruitment of today’s immigrant workers.

D. The Able, Willing, and Qualified Requirement for Temporary Work Certification in Immigration Law

The public discourse of the types of work that Mexicans could do, and for which American workers were not able, willing, and qualified, both reflected and influenced U.S. Bureau of Labor requirements on the importation of Mexican temporary labor in the early twentieth century. They continue today in immigration law’s current “able, willing, and qualified” requirement. In 1952, Congress consolidated the various immigration statutes into one law: the Immigration and Nationality Act.⁹⁸ The Act, for the first time, codified the practice that had developed over decades, requiring employers to ensure that they needed laborers because there were no Americans able, willing, or qualified to fill the jobs. The Act required that, before employers could recruit temporary immigrant labor, the Department of Labor certify to the Attorney General and the Secretary of State that there were not sufficient U.S. workers “able, willing, and qualified” to perform the work and that the employment of such temporary immigrant labor would not “adversely affect the wages and working conditions” of similarly employed U.S. workers.⁹⁹

The masculinities narratives discussed in this Essay drove the discourse about who could handle which jobs, in many respects. The narratives drove discussions about the type of worker needed to perform the difficult work in agriculture, mining, and railroad work. The narrative’s history reveals the origins of the law’s “able, willing, and qualified” requirement, which, in turn, drives decisions about importing today’s temporary workers. Today, opinions discussing the requirement start with the assumption that American workers are not interested in the jobs in question, as in the case in which a court noted that a

⁹⁴ COHEN, *supra* note 19, at 211–12.

⁹⁵ *Id.* at 1.

⁹⁶ *See id.* at 216–17.

⁹⁷ *Id.* at 220.

⁹⁸ INA, *supra* note 3.

⁹⁹ *Id.* § 212(a)(14)(A) & (B); *see also* 8 U.S.C. § 1182(a)(5) (2006).

group of temporary workers in the forestry industry were in the U.S. “to perform arduous tasks that American workers were not willing to perform.”¹⁰⁰ The argument is now a mantra that repeats the historical narrative, but also fulfills the standard set out in the law’s provisions.

The discussions of who was suited for difficult work were evident in congressional hearings about the desirability of importing seasonal or temporary immigrant workers since 1917. In order to acquire the more pliable and harder-working Mexican laborers, employers had to portray American workers as unable, unqualified, unavailable, or unwilling to work in the fields. This set of requirements gave rise to narratives that betrayed a class-based underpinning to the hegemonic masculinities narratives. Growers seeking temporary Mexican workers, after characterizing them as the only suitable workers, correspondingly described Anglo migrant workers as winos (unable), gypsies (unavailable), class troublemakers (unwilling), or unproductive loafers (unqualified).¹⁰¹ Mexicans in turn, were “ ‘willing to come in and do that job . . . actually working for their money, and . . . producing for us.’ ”¹⁰² Ultimately, the narrative portrayed temporary Mexican workers as “better adapted, biologically and culturally, to agricultural labor than domestic farmworkers, while it foregrounded the particularity of degenerate domestic workers,”¹⁰³ for a set of jobs that eventually became, and today remain, the domain of Mexican labor and temporary work programs. And the narratives persist today with respect to immigrant labor.

Congressional insistence on legislation that ensured jobs go first to Americans, and that Mexican laborers be relegated to the jobs Anglos would not take, made the Bracero agreement modifications—and the resultant occupational divide—inevitable, at least for temporary workers. By this time, the agreements that grew out of the 1917 temporary admissions program, the “Gentlemen’s Agreements” and the Bracero program, contained elements of what is now reflected in the “able, willing, and qualified” provision of immigration law. This section of immigration law essentially codified and entrenched in law the narrative that there are jobs meant for Americans and jobs for which immigrants, mostly Mexican, are particularly suited. It also made more viable and long-lasting the argument that there are certain jobs Americans will not do, especially for employers seeking temporary labor under immigration law’s temporary worker programs.

CONCLUSION

This Essay has illustrated the power of masculinities narratives to affect the direction of law and policy. I have focused on a very small piece of the intersection between employment and immigration law because I want to show

¹⁰⁰ *Recinos-Recinos v. Express Forestry, Inc.*, No. Civ. A. 05-1355, 2006 WL 197030, at *1 (E.D. La. Jan. 24, 2006).

¹⁰¹ COHEN, *supra* note 19, at 57–59.

¹⁰² *Id.* at 58 (quoting *Mexican Farm Labor Program: Hearings on H.R. 3822 Before the Subcomm. on Equip., Supplies, & Manpower of the H. Comm. on Agric.*, 84th Cong. 114 (1955) (statement of William H. Tolbert, National Farm Labor Association)).

¹⁰³ *Id.*

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the value of re-examining seemingly neutral requirements in their historical context and with the overlay of the stories told to affect the direction of laws that still exist today. Although there may be other justifications today for policies such as employer sanctions and the “able, willing, and available” requirement, there is no mistake that they arose in an era and with the help of narratives that were race-based, gendered, and wrong. To the extent today’s policies seem neutral, they should be deconstructed through these lenses. It is especially important today, as the notion that some workers—namely immigrant workers, undocumented or not—should have less standing to enforce their rights and workplace protections by virtue of their status. Such a view ignores the power of the longstanding historical narrative that Mexican laborers worked under throughout their early twentieth century—namely that they were backward, docile, itinerant, uncivilized, unable to take care of themselves, and failing to live up to the image of the self-made, rugged, entrepreneurial, managerial, and modern American man. The idea that immigrant labor today is less able to assert workplace rights by virtue of its immigration status simply accepts the narrative today as an unspoken assumption upon which is based a series of laws, regulations, and policies that embed the narrative into today’s relationships between employer and worker.