

# NEXO

The Official Newsletter of **The Julian Samora Research Institute**  
The Midwest's Premier Latino Research Center

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*JSRI's mission is to generate, disseminate, and apply knowledge to serve the needs of Latino communities in the Midwest and across the nation.*

**MICHIGAN STATE UNIVERSITY** | University Outreach and Engagement  
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# NEXO

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JSRI at Michigan State University is committed to the generation, transmission, and application of knowledge as it relates to Latinos and Latino communities throughout the Midwest and the nation.

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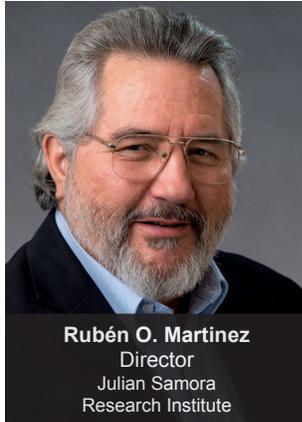
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## Intellectual Curiosities as Deficits in a Neoliberal Context



**Rubén O. Martínez**  
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On February 28, 1967 Governor Reagan held a press conference in which he argued that some courses in public higher education were an intellectual luxury which taxpayers should not have to subsidize. His example was a course he had heard about in the press offered at UC-Davis that taught students “how to hang the Governor in effigy” and how to organize demonstrations. Taxpayers, he said, should not have to bear the financial burden of intellectual curiosity, at least not for a “year or two.” He proposed cuts to higher education and argued that the difference could be made up through tuition

increases. As was his style, Reagan played to the media and the electorate with a tendency for hyperbole and oversimplification.

As an early proponent of neoliberal ideas, Governor Reagan’s approach to higher education has held sway over the past 48 years and had a detrimental impact on the role of public higher education in society. His approach, one that was clearly anti-intellectual, politicized the curriculum, increased tuition rates, and transformed a college education into a private good. Reagan politicized the curriculum by framing intellectual curiosities as luxuries, implying that some course topics were of little value relative to others. The impact of that view is evident today in the political meddling that occurs in the curricula of higher education, which can be seen on two fronts: 1) emphasis on the development of occupational skills among students, and 2) attacks on Latino Studies programs.

A college education, we are told, must have occupational value for students. Few would argue against that view, but many would argue that a college education should not be reduced to workforce skill development while devaluing a liberal arts education. The college experience should lead to an educated person not just a skilled worker. The reduction of a college education to job preparation stands in opposition to an education that has a liberal arts foundation. A liberal arts education promotes the development of critical thinking, logical, and broad intellectual skills that are part of and which complement and round out scientific thinking. Job preparation, on the other hand, with its emphasis on utility and instrumentalism, leads to a narrowing of the college experience.

The attack on Latino Studies began with the elimination of Mexican American Studies at the secondary school level in the Tucson Unified School District and continues with the attack on Latino history in public schools and universities in Texas. It is an overt attempt to limit what students learn about this nation’s history and to impose upon them neoliberal ideas (i.e., free market fundamentalism). This approach reflects the chauvinism of neoliberal ideologues and their willingness to undermine democracy and human progress through their limited and distorted view of society and human existence. To accomplish this, neoliberals mobilize cultural reactionaries using a range of

divisive social issues to elect conservative candidates who support the neoliberal agenda.

Reagan's view also impacted access to higher education, first diminishing financial aid for students in need and then for students from middle-class backgrounds. Reagan's political attacks shifted the sources of student aid to loans as cuts in state support for public higher education led to higher and higher tuition rates, resulting today in the highest levels of student debt in history. Student protests at UC-Berkeley in 2011 decried rising tuition rates only to be crushed by police violence, with peaceful student protestors pepper sprayed by police at the campus of UC – Davis. The use of force was reminiscent of Reagan's use of the National Guard at UC–Berkeley to quell student protests in 1969. The use of police and military force against student protestors stands in direct opposition to democratic principles and the right of people to assemble and express their concerns publicly. Indeed, courses on “organizing demonstrations” may be seen as consistent with democratic principles, a view that was lost on Reagan.

Finally, based on a principle of radical individualism, the view that a college education is a private rather than a public good denies the important role of public colleges and universities in providing opportunities to all members of society to become educated persons, an essential component of a democracy and of human progress. The view that all persons should pay for their own college education because they are the ones that benefit from it denies the importance of an educated citizenry in a democracy and relegates the public good to a status secondary to that of individual interest. Today, irrespective of political party affiliation, citizens are concerned about continued cuts to public education in general.

It is becoming increasingly evident that the neoliberal project has reached the point where people have had enough of its negative impacts. The Occupy Movement, the demonstrations at Ferguson, Missouri, and the broad support for President Obama's social programs are evidence that the neoliberal movement is reaching its limits. Conservative politicians are now changing their public statements on key issues such as income inequality, poverty, and access to higher education, framing them as public issues that must be addressed. They are talking about the need for higher education to be accessible and affordable. As usual, however, they do not provide a means for expanding access.

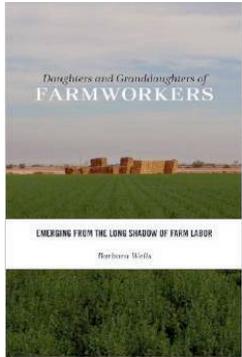
While a majority of citizens favor raising taxes on the wealthy, conservative leaders continue to promote an anti-tax policy agenda.

Much like Pope Leo XIII in 1891, neoliberals promote private giving to ameliorate the condition of the poor, a segment of the population they have portrayed negatively since Reagan attacked the social democratic programs of the 20th century. We are told that the poor are indolent, depraved welfare dependents with entitlement mentalities that cheat the government. This war on the poor is one in which people kept in poverty through policy-shaped structural barriers are blamed for their poverty. Further, private giving puts the wealthy in full control of the projects they fund and diminishes the role of the citizenry in shaping societal institutions for the public good. It puts the wealthy in charge of the trajectory of public higher education, and affirms their self-serving view that they know better than others what is good for the citizens. All the while, they continue to use the state to promote their neoliberal agenda of radical individualism, limited government, and flexible labor. Such an approach simply affirms the plutocracy that characterizes the political order in this country.

Senator Elizabeth Warren has stated that “the game is rigged...” against average Americans. It is especially rigged against Latinos and other minorities. The deck has been stacked through neoliberal policies that have, among other things, reduced public funding for public education. The stacked deck is strengthened through political attacks on Latino Studies to ensure the upcoming Latino populations have little opportunity to challenge the status quo through an understanding of their histories and experiences and their vision for a better society. It is a way of limiting critical public discourses about the structure of society while promoting a view of education that limits the democratic engagement of a growing Latino electorate.

Without broad access to higher education the nation stands at a critical policy crossroads, one where the restoration of democracy through an educated citizenry stands in direct opposition to a plutocracy that relies on manipulating a poorly educated citizenry through divisive social issues in order to support the interests of the wealthy, an economic class of people who engage in conspicuous consumption while stacking the deck in their favor through use of the state and self-interested philanthropy. 

## Daughters and Granddaughters of Farmworkers: Emerging from the Long Shadow of Farm Labor



by Barbara Wells. 2013. New Brunswick, NJ: Rutgers University Press. Reviewed by Jean Kayitsinga

In *Daughters and Granddaughters of Farmworkers: Emerging from the Long Shadow of Farm Labor*, Barbara Wells takes us into the lives and experiences of daughters and granddaughters of farmworkers who immigrated to Imperial County in California, a poor agricultural, Hispanic-majority, and mostly rural community at the United States-Mexico border. Theoretically, Wells uses a structural approach that considers families not primarily as manifestations of Mexican culture but, like other families, as kinship units shaped by macrosocial forces, including historical, economic, social, and political forces. In addition, she uses a social stratification lens and considers race/ethnicity, social class, gender, and space to examine how these factors allocate access to valued resources and shape the lives, perceptions, actions, and experiences of daughters and granddaughters of immigrant farmworkers. Finally, she uses a “human agency” approach that considers people not as passive but as actively engaged in negotiating their surrounding social settings. Wells uses a qualitative approach to gain a comprehensive overview of her research setting and to understand the perspectives of her participants, and how they made sense of their everyday work and family lives in a poor rural community.

Wells organized her research with these research questions: 1) How do

women who are mothers negotiate their work and family responsibilities?; 2) How do their families manage to sustain themselves economically in a particular social and economic context, and in this case, a disadvantaged rural place?; and 3) To what extent have the families represented by these women experienced intergenerational upward mobility? Wells offers a comprehensive analysis of narratives provided by her respondents and reviews the state of knowledge to make sense of her findings.

The history of Mexican immigration to the U.S. is closely linked to the reliance of western agriculture on Mexican labor. Wells accounts of women’s farmworker origins and migration patterns of their parents and grandparents further contextualizes the lives of women in her study. She highlights the gendered pattern of immigration with men coming first to the U.S. and then women and children following once housing and employment have been secured. She indicates that these were economic migrants, people who came to the U.S. to work and improve their lives.

Wells offers a comprehensive analysis of the work-family interface of Mexican American women in her study. She indicates that these women are committed to labor force participation. At the same time, the structure of the local labor market does not provide many “family wage” jobs for Mexican-origin men. Like in many poor and low-income households, women’s work becomes a household strategy that complements men’s low earnings to provide for their families. Wells also indicates that nearly all of them had access to workable, low-cost (or no cost) child care, subsidized child care, or relied on kin networks for child care.

Using a gender perspective, Wells shows how traditional gender relations that frequently reduce the labor force participation of mothers to focus on work at home and child care are reconfigured as couples adapt to the new social reality of their adopted home. The balance of power looks different when husbands have personal difficulties and marginal earnings.

Women are empowered as primary parents and also as primary providers.

Wells argues that “familism” remains an important cultural concept in understanding the integration of Mexican-origin families into U.S. society. She sees it increasingly as a survival strategy that help these women cope with the structural realities that require their labor force participation in this low-wage, rural setting. Wells argues that “familism” enables one of the most disadvantaged groups in U.S. society – Mexican Americans—to cope with poverty and racial-ethnic discrimination. She indicates that the disadvantaged position of Mexican Americans in this society predicts that their family arrangements will be flexible and adaptive as they respond to the fluidity that accompanies an insecure resource base.

Wells shows that a key problem for many of these families stems from low wage scales, part-time hours, and the seasonal nature of employment. As for other members of the working poor work does not bring economic self-sufficiency. Many of these families rely on public assistance. Wells indicates that education is their main chance for upward mobility. However, the paths in life that many of these women have taken will not enable them to get ahead economically. Instead, they employ a multigenerational strategy hoping for upward mobility for their children. For the women in Well’s research, deciding to stay in their community means not only living in a fairly isolated agricultural community, but also living in a large Hispanic-majority population. Some women stayed in their community mostly for family-related reasons while others exited farm work and left their community for better work opportunities in urban places.

This is an excellent and well-written book, rich theoretically and empirically, a must-read for scholars in family sociology, social stratification, and rural sociology fields. It is especially well-suited for those doing research on Latinos, immigrants, women and family studies, and farm labor. 

## Transforming Citizenship: Democracy, Membership, and Belonging in Latino Communities



by Raymond A. Rocco. 2014.  
East Lansing, MI: Michigan State University.  
Reviewed by Daniel Vélez Ortiz

In this book Raymond Rocco takes a critical look at what it means to have inclusion as a citizen in an environment that has been historically structured on discrimination and exclusion. The author takes a pioneering approach to constructing a new theory of engagement and inclusion that is based on networks which bring Latinos together to advocate for their rights. Rocco positions this solidarity approach as capable of redefining and transforming citizenship in the United States. The book uses empirical evidence collected in three different studies, ranging from 1990 to 2008. The introduction sets the tone for the theme of “exclusionary inclusion,” which proclaims a hypocritical approach to inclusion that is based on principles of exclusion through racialization and construction of Latinos as perpetual foreigners with restricted access and participation in U.S. institutions.

Following this critique of inclusion, the author introduces the theme of “associative citizenship” as a constructive model to counter historic exclusionary practices. Chapter one establishes the tensions and ramifications of Latino citizenship in the U.S. political context as well as theoretical discourses among political scientists. Central to this chapter is the idea of an inconsistent relationship between national identity, membership, and citizenship. In this chapter, the author purports that T.H. Marshall’s “full

membership in the community” can be used to define how one’s place in society affects access to political membership. The author presents various examples and discussions that demonstrate how Latinos do not enjoy full membership. Although dense, this chapter provides useful examples that contextualize the complexity of the theories and concepts within it.

In chapter two, Rocco goes more in depth in a review of prominent political theories that deal with cultural diversity in light of globalization and migratory movements. He argues that these theories have not taken into consideration the role of racialization and the exclusionary effects it has had on Latinos because they are based on different standards of justice and inclusion. The readability of this chapter is challenging due to its theoretical nature. Beyond providing examples, this chapter could have had better impact through the use of tables and figures to support the comparisons across theories and thereby better delineate their similarities, differences, and flaws.

Chapter three extends the critique from theories to the concept of citizenship itself, and the lack of attention to racialization in existing definitions and discourses. Here, Rocco introduces “associative citizenship” as a better approach to maximize incorporation of marginalized groups such as Latinos. In essence, this model addresses four questions regarding citizenship: 1) What constitutes social vs. political membership?; 2) What are the structural means of exclusion?; 3) How does differential belonging exist; and 4) how does racialization as degree of foreignness function?. This approach is very relevant for Latinos, a population that contains much cultural diversity within it, but most importantly different political realities and histories. One example of this heterogeneity is the case of Puerto Rico and its colonial relationship to the United States.

Puerto Ricans are part of the broader Latino population, yet possess U.S. citizenship by birth. However, the author presents evidence that explains how

granting citizenship to Puerto Ricans was not within the intent of full inclusion into the United States with equal rights and protections, but rather as way to claim and control a territory. Thus, granting a restricted citizenship, unequal and arguably inferior, to that of citizens in the U.S. mainland. This chapter provides several other examples on the diverse histories of Latino groups and their trajectories into the United States.

In chapter four, the author continues with the application of “associate citizenship” as a citizenship model that mediates between institutions of power, civil society, and community levels. The model states that power is established by government structures as influenced by culture and the economy, impacts civil society institutions, which in turn affect communities where households experience daily life. The model points out that at each of these levels is the potential for disempowerment and exclusion. This model highlights how social networks and cultural beliefs have the potential to empower Latino communities to transcend an exclusionary democracy to a more complete form of citizenship participation.

Chapter five provides an illustration of how the “associate citizenship” model can be applied in real-world examples. One such example is in Los Angeles, California, where there has been a transformation of neighborhoods and Latino populations. These examples come from “hub-cities,” which are former White working-class sectors that today are predominantly inhabited by Latinos. The author engages readers in an analysis of the factors contributing to this transformation. Again, with a focus on networks and their role on the formation of “associative citizenship,” Rocco makes excellent use of ethnographic interview data to illustrate the application of the model in different settings.

The last chapter brings the model into a more sustainable lens through transforming public policy. Here, the author asserts that merely claiming equal rights will not be a lasting solution. A transformation of institutions and



## Milking Them for Their Worth: An Assessment of the Dairy Industry and the Status of the Dairy Worker

by Ashley Byers<sup>1</sup>

According to a New Mexico dairy worker reflecting on workplace conditions, “They [owners and managers] treat the cows like a person and the workers like slaves” (Sorrentino, 2014:1). As reported by Dairy Farming Today (2014), there are approximately 51,000 dairy farms in the United States today producing milk and dairy products for domestic markets. This translates to an estimated \$140 billion in economic output and \$29 billion in household earnings, per year (Ibid.). A typical dairy farm has a herd of approximately 115 cows (Dairy Farming Today, 2014). This means that if all of the cows on the farm were to produce an average of six to seven gallons of milk a day, one farm alone can produce 690 to 805 gallons of milk per day. In order to produce all of this milk, one cow eats approximately 100 pounds of feed each day. This work is performed by dairy workers and is very laborious.

With such high product volume and the intensive care required, it is evident that it is necessary for the dairy industry to have a competent work force. Yet, most unemployed

Americans are not willing to perform such work, and immigrant, noncitizen individuals are drawn to this work because of its steady, year-round nature. It has been estimated that in 2009, there were roughly 138,000 people employed on dairy farms; 41% of these workers were immigrants, including a large number from Latin American countries such as Mexico and Guatemala (National Center for Farmworker Health, 2014). Even with a workforce that appears to be large, in 2009 one-fifth of farmers expected to experience a shortage of laborers (National Milk Producers Federation, 2009). With the passage of time the dairy industry has seen a rise in the number of foreign-born workers employed on dairy farms (*Ibid.*). This trend is predicted to continue into the future.

Personal accounts of the living and working conditions for dairy workers would shock most Americans. As told by dairy worker Jill McGee during the 30th Anniversary Conference of the Cornell Migrant Program in 2002, the living conditions are horrendous. She wrote that the employer-provided housing was

rat-infested, had spotty electricity, and sewage was littered throughout the house (McGee, 2002). The working hours were so long (approximately 15-hour work days) that her children rarely saw their father, who also worked at the dairy. The workers did not receive minimum wage, let alone overtime pay. In another account, a dairy worker in California detailed an incident where he was kicked in the chest by a cow and suffered a broken disk in his back (Arrieta, 2004). The injury was so severe that he blacked out and had blood in his urine. When he told the owner what had happened, he was met with the choice of either leaving work and losing his job or getting back to work. The worker chose to go back to work, working 12-hour days, and deciding between eating and sleeping.

In addition to these problems faced by dairy workers, the issues that foreign-born dairy workers face are even more varied and difficult. For example, most foreign-born workers have minimal English proficiency, migrate from job to job, which disrupts education for their children, work long hours for minimum pay, and are exposed to a wide range of occupational hazards (National Center for Farmworker Health, 2014). Moreover, they are subjected to systematic racial and economic discrimination. However, perhaps the most serious issue that all dairy workers face today is the lack of legal protections afforded to them. Presently, dairy workers are not afforded protection under federal regulations, including the National Labor Relations Act, the Fair Labor Standards Act, and the Migrant and Seasonal Agricultural Workers Protection Act. Unlike their counterparts working in other sectors of the economy, dairy workers have few employee protections and legal remedies outside of basic employment protections. Further, they are systematically kept ignorant of the law and the remedies available to them. As one dairy worker stated, “[T]he patron [boss] makes the rules. We know nothing of the law, nothing of the government” (Sorrentino, 2014:1). This article provides an analysis of past and present legal protections that are available to dairy workers, and proposes policy recommendations for reforms that will benefit these workers.

## Historical Overview

As early as the 1600s, dairy production was occurring in what is present-day United States with the introduction of various breeds of dairy cattle into the colonies (United States Department of Agriculture, 2014). In the beginning, dairy farming was engaged in small-scale, private production, requiring only the labor of the dairy farmer and family members

(*ibid.*). That model prevailed until recent decades, when dairy production has increasingly become mass, large-scale commercial production that requires a larger workforce (United States Department of Agriculture, 2014). Improvements in the industry over the long run led to a safer supply of dairy products, such as the use of glass milk bottles, pasteurization procedures, and milking machines (*ibid.*). Indeed, scholars have noted that

Between 1850 and 1910 the annual flow of milk from American dairy cattle increased almost five times while the national dairy herd grew slightly more than three times. This increase of about 50 percent in milk yield per dairy cow was due to a variety of influences, notably: (1) interstate relocation (“westward movement”) of dairy activity after 1850; (2) advances after 1850 in care and feeding techniques, breeding, and breeds; (3) post-1850 diffusion of better techniques to regions where practices were poor in 1850; and (4) lengthening of the annual milking season (the number of days that cows were milked each year) as a result of improved economic opportunity for, and the commercialization of, dairying (Bateman, 1968:256).

With the introduction of mechanical equipment such as the milking machine, by the 1950s operating crews were necessary to ensure the proper operation of the dairy processes (United States Census Bureau, 1950). Because of such innovations and continued population growth, the number of farms increased tri-fold between 1850 and 1950 (United States Census Bureau 1950). Further between 1900 and 1950, the number of milk cows increased by approximately 20% (United States Census Bureau, 1950). With the continued industrialization of the United States in the early 20th Century, the movement to protect workers influenced lawmakers and resulted in the enactment of various labor protections. For example, the National Labor Relations Act was passed in 1935, and the Fair Labor Standards Act was enacted in 1938. Yet, as will be shown, these laws did not provide protections for dairy and other agricultural workers, and essentially left these people in a figurative “no man’s land.”

Today, the typical workday for a dairy worker is extremely arduous. Work hours are not the normal “9 to 5.” Rather, a dairy is a 24-hour a day, seven days a week operation. Cows must be milked two to three times a day, the animals must get plenty of physical activity, and the excrement must be picked up

and disposed of regularly (Midwest Dairy Association, 2014:1). With all of this work needing to be done, it would be devastating for the industry if immigrant workers were to be even further neglected or, even worse, eliminated. The American economy and the dairy industry would suffer greatly without immigrant dairy workers. The statistics are as follows: if immigrant labor were eliminated, the U.S. dairy herd would be decreased by 1.34 million cattle; milk production would be reduced by 29.5 billion pounds, and the number of farms would be reduced by an estimated 4,532 (National Milk Producers Federation, 2009). Moreover, retail milk prices would increase by an estimated 61%, and most shockingly, eliminating immigrant labor in dairy farms would reduce economic output by \$22 billion and 133,000 immigrant and native-born workers would be out of work (*Ibid.*).

It is estimated that dairy workers earn roughly \$10/hour or should make at least the state minimum wage (John, 2013). Additionally, dairy workers rarely receive formal training, with the greater part of instruction occurring on the job and typically performed by a fellow employee (Sorrentino, 2014). Further, dairy workers seldom take time off as they are regularly faced with the prospect of losing their jobs should they do so (*Ibid.*). In a December 2014 exposé, it was documented that at one dairy farm, the workers did not receive holiday pay, overtime pay<sup>2</sup>, sick pay, or workers' compensation (Sorrentino, 2014). This investigation is supported by additional research, which has shown that only 45.6% of dairy employers provide vacation time and 27.7% provide some form of health insurance (National Milk Producers Federation, 2009). It is likely that this is how the majority of dairy farms operate in the United States today, even though the provision of such benefits varies from state to state and is dependent on state and federal mandates.

In addition to worrying about the severe working conditions, many dairy workers, like most agricultural workers in general, face the reality of being in the United States without documentation. More than 70% of the farm workers currently working in the United States are foreign-born, with a majority coming from Mexico; it is estimated that about half of this population is undocumented (Wainer, 2014). Specifically with regard to dairy workers, in an investigation by Cornell University focusing on dairy workers in New York, it was determined that approximately two-thirds of the Spanish-speaking dairy workers in the state were undocumented (Sommerstein, 2013). In another example, out of the 8,300 dairy workers in Idaho, it has been estimated that as many as 90% are undocumented (Associated Press, 2013).

These workers have serious worries about being targeted by Immigration and Customs Enforcement (“ICE”) for deportation. Increasingly, dairy farms have been the target for ICE and Internal Revenue Service raids (Runyon, 2015). Studies show that in 2013, approximately 438,421 people were deported from this country (Gonzalez-Barrera and Krogstad, 2014). Roughly 240,000 of these deportations were for non-criminals, compared to the 198,000 deportations that were for criminals (*Ibid.*). It is estimated that 75% of all deportations are the result of an individual being apprehended by ICE (Gonzalez-Barrera and Krogstad, 2014). These statistics are significant as they show that ICE initiates most of the deportations occurring in this country; thus, undocumented individuals, including dairy workers, live in constant fear of being identified by ICE.

## Legal Provisions

Scholars note that lawmaking bodies have wrestled with “the problem of defining an agricultural worker and drawing the line between industry and farm” (Dyson, 1977:121). The complex nature of these jobs poses a difficult framework with which legislators must work. Even so, some of the legal remedies and protections that policymakers provide are insufficient or nearly nonexistent, especially for dairy workers. The following is a discussion of past and present legal provisions, most of which either do not address the dairy industry or exclude dairy workers from the law’s purview altogether.

### **National Labor Relations Act, 29 U.S.C. § 151, *et seq.***

The National Labor Relations Act (“NLRA”), 29 U.S.C. § 151 *et seq.*, was enacted in 1935 and regulates organized labor and the relationship with employers (Stockdale, 2013:764). As a response to the unionization movement, the NLRA affords workers with important rights, including that of collective bargaining. Yet much like its descendant, the Fair Labor Standards Act, the NLRA provides for an agriculture exception, supported by much of the same reasoning as that which supported the exception in the Fair Labor Standards Act. The purpose of this Act was to “diminish the cause of labor disputes burdening or obstructing interstate commerce” (Dyson, 1977:126). However, under § 152(3) “agricultural laborers” are not covered by the NLRA. In its current form, the NLRA uses the same definition from the Fair Labor Standards Act and defines “agriculture” as “includ[ing] farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation,

growing, and harvesting of any agricultural or horticultural commodities performed by a farmer or on a farm as an incident to or in conjunction with such farming operations” (29 U.S.C. § 203(f), current through 2014).

The NLRA explicitly identifies dairying as an agricultural activity. Indeed, the National Labor Relations Board (“NLRB”) has held as much. For example, in *Pine State Creamery Co., Inc.*, the NLRB determined that employees who handled milk operations on a dairy farm were “agricultural laborers within the meaning of the Act and were therefore exempt from its protections” (130 NLRB 892, 893 (1961)). Thus, the NLRA does not provide any sort of protection to this country’s dairy workforce.

### **Fair Labor Standards Act, 29 U.S.C. § 201, et seq.**

The Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq., establishes federal standards for minimum wage, overtime pay, child labor, and other important labor matters. The FLSA was originally part of President Franklin D. Roosevelt’s New Deal legislation and sought to provide basic protections and guarantees for workers (Canny, 2005:357). “[T]he FLSA became the New Deal’s attempt to meet the economic and societal problems of that era” (Canny, 2005:357). Yet, despite this desire to protect workers, agricultural workers were and continue to be left out. These standards are generally applied across the board to American employers and workers, but there are certain exceptions and loopholes for agricultural employers, so that they do not need to comply with the standards set forth in the Act.

At the outset, it is important to note the definition of “agriculture” under the FLSA: “Farming in all its branches and among other things includes the cultivation and tillage of soil, *dairying*, and the production, cultivation, growing, and harvesting of any agricultural commodities” (emphasis added; 29 U.S.C. § 203(f), current through 2014). Thus, it is apparent that Congress intended dairy workers to fall under this category. Litigation that occurred subsequent to the enactment of the FLSA more clearly defined the work that would be considered “agricultural,” and thus, exempt from the FLSA requirements. After the determination of various factors that can be assessed to decide whether specific work is agricultural in nature and thus exempt, (see *Maneja v. Waiialua Agric. Co.*, 349 U.S. 254, 265-70 (1955)), the Eighth Circuit Court of Appeals in *Wirtz v. Tyson’s Poultry, Inc.* determined that something as mechanical as a vertically integrated poultry operation qualified as “agricultural,” and was

therefore exempt from the standards of the FLSA (355 F.2d 255, 259 (8th Cir. 1966)). “A persuasive factor [in the decision] included Tyson’s assumption of all the risk involved by furnishing and owning the producing stock” (Canny, 2005:376). So, even if something as complicated and mechanical as a modern poultry operation can be considered to be “agricultural,” it is reasonable to infer that dairy operations will always be considered “agricultural” and therefore exempt from the FLSA.

Generally, the FLSA is geared toward the protection of workers in all industries “engaged in interstate commerce or in the production of goods for interstate commerce” (Canny, 2005, 365). Thus, as long as the dairy is engaged in “interstate commerce” or produces dairy products that are then sold in interstate commerce, it will be subject to the provisions of the FLSA.<sup>3</sup> Further, dairy operations will also be subject to state labor laws. Yet, as originally proposed and as it currently exists, the FLSA exempts agricultural workers from most of its protections. In order for an employer to qualify under the agricultural exemption, the work must be performed “on a farm.” For example, agricultural workers are not protected by workweek maximum hour limitations, nor are they afforded overtime pay. The explanations behind such exemptions are that “Congress wanted to pass a constitutionally viable bill; lobbyists urged their special interests; and legislators claimed to protect family farms” (Canny, 2005:366).

Moreover, another exception that affects agricultural workers is the lack of a required break time. Any breaks for workers are considered a matter “for agreement between the employer and the employees or their authorized representatives” (United



States Department of Labor, 2014:1). It has been estimated that the average agricultural worker can work as many as 62 hours per week (National Center for Farmworker Health, 2014); if one were to assess dairy workers alone, it is likely that this number would be as high as 72 hours given that dairy work is a nearly 24-hour operation. Clearly, the working hours of the dairy worker are more than the “average” job. The continued emphasis on the protection of the farm owners themselves has greatly affected the livelihood of the dairy worker, since the farm takes in far more money than it would if it had to pay overtime wages and insurance, among other benefits.

Courts have repeatedly held that dairy workers and work performed in conjunction with a dairy operation fall under the agriculture exception to the FLSA. For example, the Tenth Circuit in *NLRB v. Karl's Farm Dairy, Inc.* found that a worker as basic as a handy man that performed general tasks around the dairy was subject to the agriculture exception in the Act (570 F.2d 903, 904 (10th Cir. 1978)). Additionally, the District Court for the Western District of Louisiana found that a dairy worker who was engaged in the “first processing” of milk fell under the agriculture exception (*Wirtz v. Dunmire*, 239 F. Supp. 374, 380 (W.D. La. 1965)). Thus, even courts that are interpreting the language of the FLSA as Congress drafted it have interpreted it to include dairy workers and operations under the agriculture exception to the Act.

Despite these exceptions, there are certain specific requirements for employers to meet that do provide some protections for agricultural workers. For example, employers must pay workers at least the minimum wage; that is, workers must earn the minimum wage for the workweek (Mayer, Collins, and Bradley, 2013). Further, wages must be paid regularly and the employer must maintain pay records (*Ibid.*). Yet, these protections are insufficient to make up for the harmful effects created by the agriculture exception. Agricultural workers, including dairy workers, are still severely underpaid and are considered unskilled labor, even though their jobs are grueling and provide the country with vital products.

### **Migrant and Seasonal Worker Protection Act, 29 U.S.C. § 1801, et seq.**

Enacted in 1983 and amended in 1995, the Migrant and Seasonal Worker Protection Act, 29 U.S.C. § 1801, *et seq.*, is a law that provides protections and assistance to agricultural workers. The statute begins with a statement of purpose:

“It is the purpose of this chapter to remove the restraints on commerce caused by activities detrimental to migrant and seasonal agricultural workers; to require farm labor contractors to register under this chapter; and to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers” (29 U.S.C. § 1801, current through 2014). More specifically, as set forth by the Department of Labor, “[t]he Migrant and Seasonal Agricultural Worker Protection Act [AWPA] . . . protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping” (United States Department of Labor, Wage and Hour Division, 2008:1).

In the 1960s, Congress became aware of the abuses perpetrated upon farmworkers by farm owners and farm labor contractors. Such abuses included “misrepresenting the nature and availability of work, providing inaccurate information about pay, transporting crews in uninsured, unsafe vehicles, forcing crew members to buy goods and services from the contractor at excessive prices, payroll irregularities, and supplying miserably inadequate housing” (Pederson, 1984:254). In response, the Farm Labor Contractor Registration Act was adopted in 1963 and there was subsequent related legislation, but all of this was ultimately supplanted by the AWPA (Pederson, 1984:254).

Workers protected under the AWPA are accorded certain assurances and protections, including, but not limited to, the following: the agricultural employer, agricultural association, or farm labor contractor cannot violate the terms of the working arrangement nor can they provide false or misleading information to the worker; transportation must be safe and fully insured; provided housing must be certified by the appropriate federal, state, or local agency; the housing must meet the applicable state health and safety standards; the housing terms and conditions, as well as the rights guaranteed under the AWPA, must be posted in a conspicuous location and in the native language of the workers; payroll records must be kept for the workers; wages must be paid when due; and no person can discriminate against a migrant or seasonal worker in any manner (Beardall, 2012:19-46).

There are two classes of agricultural workers that are protected by the AWPA: migrant and seasonal. These classes are not mutually exclusive and can be defined as follows: (1) “migrant agricultural workers are those individuals who are employed in agricultural employment of a seasonal or other

temporary nature and who are required to be absent overnight from their permanent places of residence;” (2) “Seasonal agricultural workers under MSPA [AWPA] are those individuals who are employed in certain agricultural employment of a seasonal or other temporary nature and who are not required to be absent overnight from their permanent places of residence” (Pederson, 1984:264). The usage of words like “migrant” and “seasonal” signal that Congress only intended for workers who worked temporarily to be covered by the statute. This excludes dairy workers from the Act’s purview, given that dairy work occurs year round, and the workers do not move from job to job as often as migrant farmworkers.

Indeed, courts have determined that dairy workers do not fall under the purview of the AWPA. The court in *Lopez v. Lassen Dairy, Inc.* determined that dairy workers’ employment is not subject to the AWPA because the work is neither seasonal nor temporary (2010 WL 3210765 (E.D. Cal. Aug. 10, 2010)). So even though this Act provides basic protections and benefits to farm workers, including payment of wages when due, payroll and recordkeeping requirements, and safety regulations, dairy workers are not protected by it. The exclusion of dairy workers from the Migrant and Seasonal Agricultural Worker Protection Act is a clear instance of how the federal government has failed to adequately protect this vulnerable population.

## Unemployment Benefits

When a person’s employment with a specific employer is terminated, he or she may become eligible for unemployment benefits, pursuant to the specific state statute. These benefits are intended to provide a short-term income for someone who is “in between jobs,” so to speak. However, these benefits are not given out freely; one must meet certain requirements in order to qualify. For example, in Michigan one may be eligible for such benefits if (1) the person is authorized to work in the United States, (2) has earned enough money to open a new claim or have benefits remaining from a prior benefit year, (3) is able and available for work, and (4) did not voluntarily leave the last job without good cause attributable to the employer (Unemployment Insurance Agency, 2014). While the requirements do not appear to be overly burdensome, workers may face a variety of problems when attempting to obtain these benefits, including difficulty navigating the agency’s system or a determination by the agency that the worker does not qualify for such benefits, even though he or she may meet the eligibility requirements. Despite this, unemployment benefits

do not provide the worker with any sort of legal protection, only temporary income while looking for a new job.

## Public Assistance Benefits

Much like unemployment benefits, federal public benefits programs offer assistance to low-income individuals. Such programs include financial assistance, food stamps, emergency assistance, and medical assistance, including Medicaid. These benefits are subject to eligibility requirements. Most of these programs require that the applicant be a “qualified immigrant,” a category which usually consists of (1) lawful permanent residents, or (2) refugees, asylees, people granted withholding of removal/conditional entry/paroled into the country, among other groups. Thus, should the applicant meet one of these requirements, he or she may be eligible to receive public benefits. These eligibility requirements are not as stringent as other federal program standards, so it is likely that individuals like dairy workers would be able to apply for, and receive, these types of benefits. But again, like unemployment benefits, public benefits do not provide the worker with any sort of legal protection.

## Preference Allocation for Employment-Based Immigrant Visas: INA 203(b)

The provisions discussed below are only immigration options, and do not provide any protections other than the issuance of a Legal Permanent Resident card or other visa.

The Immigration and Nationality Act provides for visas to be allocated to noncitizens on the basis of employment. The statute lists types of employees that may be able to obtain an employment-based visa for entry into the United States. The most relevant provision for dairy workers would be either § 203(b)(3)(A)(i) or § 203(b)(3)(A)(iii). Section 203(b)(3)(A)(i) allows for visas for “[q]ualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States” (Immigration and Nationality Act, §203(b)(3)(A)(i), current through 2014). Section 203(b)(3)(A)(iii) provides visas for “[o]ther qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States” (Immigration and Nationality Act, § 203(b)(3)(A)(iii), current through 2014).

## JSRI Celebrates 25 years of Scholarship, Outreach, and Community Engagement



The Julian Samora Research Institute (JSRI) celebrated its 25th anniversary as the premier Latino research institute in the Midwest on October 30 – November 1, 2015. Established in 1989, JSRI has conducted research on Latino communities in the Midwest and outreach activities in Michigan. It has also provided research services to agencies and organizations focusing on Latino issues.

The celebration consisted of several activities that included an academic conference, a music concert, an exhibit on Latino Auto Workers, two documentary films on Latino dairy workers, and an exhibit of Casasola photographs of the Mexican Revolution. The conference theme was “Latinos in 2050: Restoring the Public Good” and featured scholarly panels on immigration, health, labor in the dairy industry, neoliberalism and Latinos, farmworkers, Latino leadership, criminal justice, ethnic identity, Latino auto workers, educational barriers, demographic changes, immigrant incorporation, and other topics. The conference was attended by more than 150 participants.

The music concert featured the Sones de México ensemble, Chicago’s premier music group specializing in Mexico’s folk music and dance styles, including huapango, son istmeño, gusto, chilena, and son jarocho, among others. The twice-Grammy-nominated ensemble demonstrated various styles of music and was joined on stage by the MSU Graduate Brass Quintet and by Ricardo Lorenz, Associate Professor of Composition and Chair of the Composition Area in the College of Music. The Ensemble also performed “Fiesta Mexicana” for students at Pleasant View Magnet School, and “Geografía Musical de México” for community members at Cristo Rey Community Center.

The multimedia exhibit at MSU Museum was titled “Latino Auto Workers: From the Margins to the Core” that included a historic photograph collection gallery. Latinos were involved in

the GM Sit Down Strike of 1936-37 in Flint, MI. The strike led to the consolidation of the United Auto Workers in the auto industry, to the improvement of working conditions, and major increases in wages for workers.

Finally, the celebration featured two documentary films on Latino dairy workers, *Hide and Immigrant America: The Worst Job in New York*. Both films described the working conditions of Latino dairy workers in an industry that is experiencing a demographic shift in its labor force, with more and more Latinos employed as milkers on the nation’s dairy farms.

According to Rubén Martínez, Director, “The conference was a major success, with many participants describing the event as a “fantastic conference.”” The events included students, community members, and scholars from throughout the country. Keynote speakers were Michael A. Olivas, Julie Leininger Pycior, and José Angel Gutiérrez. Olivas holds the William B. Bates Distinguished Chair of Law at the University of Houston Law Center and is the Director of the Institute for Higher Education Law and Governance at the University of Houston. He specializes in higher education issues, is the author or co-author of several books, and practices law. In addressing a question from members of the audience about the anti-immigration work of Kris Kobach, Olivas noted that in the courts the score is “Olivas 7; Kobach 0.”



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## OLASW Celebrates its 17th Annual Awards Banquet



On Thursday, November 13, 2014, the Organization of Latino Social Workers (OLASW), Michigan Chapter celebrated its 17th Annual Recognition Awards Banquet at La Terraza Restaurant in Detroit, Michigan. The National Association of Social Workers began the program with speeches by Dr. Maxine Thorne, Executive Director and Duane Breijak, Director of membership services.

Ms. Lupe Lara, LMSW, ACSW, Director, Consortium of Hispanic Agencies in Detroit, spoke on "Ethical Issues of Unaccompanied Child Immigrant Crisis: What Social Workers Need to Know" and a one credit CEU was offered.

OLASW honored Michigan's leaders and advocates that are dedicated to advancing Latino social justice issues in the state of Michigan. Its 2014 Annual Award Winners were:

**High School Student of the Year:** Celeste Salazar  
Huron High School

**BSW Student of the Year:** Adriana Carreon  
Michigan State University

**MSW Student of the Year:** Esther Ayers  
University of Michigan

**PhD Student of the Year:** Elise Hernandez  
University of Michigan

**Community Activist of the Year:** Laura Sanders  
Washtenaw Interfaith Coalition for Immigrant Rights

**Social Worker of the Year:** Isaias Solis  
Ingham County Health Department

Supporters of the event included the Julian Samora Research Institute, Michigan State University; Michigan State University School of Social Work; Wayne State University School of Social Work; University of Michigan School of Social Work; State Farm

Insurance Agent Susan Cobb-Starrett.

The primary mission of the Organization of Latino Social Workers (OLASW) is to define and advance the Latino agenda within the social work profession in the United States and Puerto Rico. OLASW is a national professional organization representing Latino social workers.

OLASW is committed to improving the overall health and psychological well-being of the Latino population. Toward this end, OLASW seeks to promote access to educational and economic opportunities for all Latino social workers. 

## MSU Exhibit Honors Latino Auto Workers

The Julian Samora Research Institute (JSRI) partnered with Michigan State University Museum to organize a multimedia exhibit that recounted the experiences of Latino auto workers in Michigan. Latino auto workers contributed to the exhibit through oral history interviews, short essays, photographs, and various artifacts that highlighted dimensions of their employment experiences. The exhibit was scheduled to coincide with JSRI's 25th anniversary and its celebration activities at the end of October, 2014, and continued showing through the end of January, 2015.

The exhibit was titled "Latino Auto Workers: From the Margins to the Core." It consisted of seven banners that provided a brief history of Latinos in Michigan and featured the experiences of Latino auto workers in their own voice. It displayed artifacts and documents from former and current auto workers, including items from their fathers and grandfathers who were employed at automobile manufacturing plants. Audio stations featured



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## Milking Them for Their Worth Continued from Page 11

Under Section 203(b)(3)(A)(i), dairy workers could fulfill the second and third requirements, as the work is not seasonal in nature and there are not enough domestic workers to fill open positions. The problem that such individuals would have in qualifying for this type of visa is that dairy work is not likely to be considered “skilled,” as interpreted under the statute. The work that dairy workers perform is extremely labor intensive and requires diligent, attentive individuals; however, such work does not require two years of institutional, specialized training as is required by the statute. Therefore, dairy workers could not obtain legal permanent resident status (and resulting derivative benefits) in the United States under this section. It would be far more likely for dairy workers to obtain a visa under Section 203(b)(3)(A)(iii), due to its minimal requirements, as set forth by its broad language. Despite this, it may be difficult to obtain this visa, as the process is extensive and dairy work may not be viewed as necessary as that of workers from other sectors.

### H-2A Visas

A common visa issued to foreign workers for agricultural jobs is the H-2A visa, codified in the Immigration and Nationality Act at Section 101(a)(15)(H)(ii)(a). Established as a successor to the *Bracero* program, this visa is issued to workers “having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services” (Immigration and Nationality Act, Section 101(a)(15)(H)(ii)(a), current through 2014). This is a guest worker program that has long been the object of discussion, and many groups, including the dairy industry, support reforms to the program. For example, Farmworker Justice in its 2010 report addressing the H-2A program, stated that reforms are necessary because “[f]oreign guest workers should not be treated as disposable human machines, nor should they be used to deprive U.S. workers of available jobs or to undermine wages and working conditions of U.S. workers” (2010:8).

“Agricultural employers in the United States may request nonimmigrant agricultural workers in order to mitigate a shortage of ‘able, willing, and qualified’ domestic workers available for employment” (Bent, 2011:744). The process to obtain an H-2A visa is complicated. It begins with an employer attempting to recruit domestic workers to perform the job and obtaining a wage

determination to ensure that the wage to be paid is that which is paid to others in the same position and that the wage paid will not adversely affect the wages of domestic workers in similar positions. The employer then files a labor certification application with the Department of Labor so that foreign workers may be granted the visa to come to the United States to perform the work indicated in the application. Once granted, the employer files the petition and visa application with the United States Citizenship and Immigration Services. If no defects are found in the application, approval of the visa petition will then be communicated to a consular office in the noncitizen’s country for the ultimate processing of the immigrant visa.

As the Fifth Circuit Court of Appeals held in *Salazar-Calderon v. Presidio Valley Farmers Association*, an employer is required to offer employment consistent with the H-2A regulations, regardless of whether these regulatory terms and protections are included in the clearance order or temporary labor certification application (765 F.2d 1334, 1342 (5th Cir. 1985)). If a worker is present in the United States under an H-2A visa, he or she is guaranteed the following, but not limited to, benefits pursuant to the provisions under 20 CFR § 655, et seq.: free housing; workers’ compensation insurance; free tools, supplies or equipment necessary to complete the job; meals (either prepared or kitchen facilities provided for workers to prepare their own food); transportation (or reimbursement) for any worker who completes 50% of the contract period; a guarantee of employment for at least three-fourths of the workdays of the total contract period, as indicated in the job offer; a proper wage with the appropriate deductions, equal to either the amount of the Adverse Effect Wage Rate, prevailing wage, or state minimum wage; payroll records; an hours and earnings statement; and a work contract. Despite these guarantees, H-2A workers are not eligible for federal public assistance programs, including nonemergency Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income, and Temporary Assistance for Needy Families.

The statute indicates that H-2A visas are issued on a temporary basis; “temporary” means “where the employer’s need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than one year” (Bent, 2011:745). While the text of the statute uses the term “agricultural,” which includes dairy operations, this type of visa is currently unworkable within the context of the dairy industry because of the visa’s “temporary” requirement. The dairy industry has year-round production, whereas agricultural and

crop production jobs are seasonal in nature. Thus, the H-2A visa cannot provide legal protection for dairy workers.

Congress has explicitly recognized the special nature of the dairy industry and its exclusion from the H-2A program. In a February 2013 hearing, members of the House of Representatives expressed concern about the current nature of the program (Agricultural Labor, 2013). For example, Representative Goodlatte from Virginia asserted that this program is costly and ineffective. “We can do this by designing a program with practical safeguards and expanding the current universe of jobs to include dairy jobs and work in food processing plants, among other things” (Agricultural Labor, 2013: 5). Similar sentiments were echoed by Representative Lofgren from California, who recognized that the H-2A program poses a problem for those dairies that are in need of more employees (Agricultural Labor, 2013: 5-6).

The assertion that the H-2A visa cannot provide more workers for dairies due to its temporary nature is supported by the testimony of Chalmers R. Carr, III, president of Titan Farms, LLC, during his appearance before this committee hearing. “[S]ome of the major problematic areas of the H-2A program [are]: . . . Limited Participation - The program mandates that the job is seasonal in nature . . . This precludes participation in the program for any year round producer, such as the dairy, livestock and nursery industries, penalizes operations for diversifying and prevents growth within our industry” (Agricultural Labor, 2013: 25). Even though Congress has recognized that there is an issue with the H-2A program and its relationship with dairy workers, it does not appear that any major reforms to the program will occur, especially today when immigration reform is highly controversial. Thus, this legal avenue cannot, at present, provide any relief for dairy workers.

## POLICY RECOMMENDATIONS

It has been noted that historically, agriculture is an industry that is “uniquely worthy of protection” (Canny, 2005:368). However, as is apparent from the discussion above, legal protections have fallen short of adequately protecting agricultural workers, especially those in the dairy industry. Today, there has been a renewed effort to fight for the basic rights that dairy workers deserve and should be afforded. Filed on May 1, 2014 in United States District Court, Northern District of California, *Ruiz, et al. v. Darigold, Inc.*, a class action suit was brought against Darigold, one of the nation’s largest dairy producers (No. 3:14-

cv-02054 (N.D. Cal., June 10, 2014)). The plaintiffs, concerned consumers, alleged that Darigold engaged in deceptive business practices, endangering both the livestock and their employees. The plaintiffs had purchased Darigold’s products based on its representations of sound business practices, and filed suit after learning of gross misrepresentations concerning its treatment of cows and dairy workers (Rodriguez, 2014:1). While the complaint was ultimately dismissed, the fact that the suit was filed in the first place shows that people have become aware of the deplorable treatment of dairy workers. This is an important first step in reforming the treatment and legal protections available to dairy workers.

Dairy workers today have organizations that focus on protecting them. The 1960s saw the rise of Cesar Chavez and the movement to unionize farmworkers across America with the founding of the United Farm Workers Union (UFW). Today, the UFW operates in ten states and works to protect the rights and lives of farmworkers, including dairy workers. For example, the UFW has negotiated with large dairies in Oregon to ensure the ratification of work contracts that protect workers’ rights and provide for fundamental benefits (United Farm Workers, 2014).

Additionally, there have been several attempts by lawmakers to move forward with meaningful change to the agricultural labor system as well as the immigration system, but nearly all of these efforts have stalled or failed. For example, in 2009 the Agricultural Jobs Opportunities, Benefits and Securities Act was introduced in the House of Representatives. This bill sought to include dairy workers in the H-2A program, but it was met with heavy resistance by groups opposing immigration reform, and by H-2A contractors who did not want to see workers’ rights expanded (Bent, 2011). Further, the H-2A Improvement Act was introduced in the Senate in 2010, but again, was not moved forward (*Ibid.*). The bill sought to exempt dairy workers from the “temporary or seasonal” requirement for H-2A visas, and provided for a three-year visa for the workers (Bent, 2011). Both of these bills would have been immensely helpful in the effort to provide dairy workers with greater protections. As stated by author Merrill Bent, “Both acts . . . could alleviate the current labor shortages faced in . . . dairy states” (2011:751).

Further, efforts aimed at immigration reform have been met with fierce resistance, especially from the Republican Party and its conservative members. The Border Security, Economic Opportunity, and Immigration Modernization Act proposed by

Senator Charles Schumer has moved at the pace of a slow crawl through the Senate. The bill was introduced in early 2013 and as of early 2015, it has only had a few hearings. While the process for a bill to become law takes time, the slow progression of this bill has been deliberate, as it has received fierce criticism from the opponents of immigration reform. For example, Senator Tom Coburn, during the May 7, 2013 hearing regarding the bill, characterized the country's immigration problem as a "disease" (Agricultural Labor, 2013:1). Presidential actions, too, have been challenged by critics. In November 2014, President Obama took executive action to make it possible for over four million undocumented individuals to stay in the United States, while at the same time making it easier for "highly-skilled immigrants, graduates, and entrepreneurs" to stay and work in the country. While these protections appear to help many people, there is an effort in Congress to undo these actions. As recently as January 2015, members of the House of Representatives acted to threaten the funding of the Department of Homeland Security on account of its implementation of the presidential actions (Foley, 2015:1). Therefore, it is unclear how long these programs will continue to benefit undocumented immigrants.

To date, there have been minimal changes made to the legal protections afforded to agricultural workers, and the protections available to dairy workers are severely lacking. Serious action must take place to rectify this gross inequity that perpetuates dangerous workplaces and opportunities to exploit dairy workers. First, perhaps the most important improvement and recommendation that can be made to improve the legal avenues available to dairy workers would be to expand the Migrant and Seasonal Agricultural Worker Protection Act to cover all agricultural workers, including dairy workers. As has been identified by Farmworker Justice in its 2013 report *The Agricultural Worker Protection Act At 30*, "[t]he rationale for excluding these workers, if ever valid, no longer exists. Congress should eliminate the distinction between migrant and seasonal workers; all workers deserve to live in decent housing, and all workers deserve disclosure of accurate information before they commit to a job" (2013:11). If dairy workers were to fall under the purview of AWPA, it would open a whole new range of rights that would be available to them. For example, employers would be required to pay dairy workers a reasonable wage, provide them with disclosures about the job, and ensure that provided housing is inhabitable and transportation is safe. These reforms would make a world of difference to the current state of the dairy worker.

Second, in the absence of immigration reform, the "temporary or seasonal" requirement for H-2A visas should be reformed so that dairy workers can come into the United States for these jobs, and if undocumented, not live in fear that he or she may be picked up by Immigration and Customs Enforcement (ICE). As previously discussed, a significant percentage of dairy workers in this country are here without documentation. Because of this status, these people cannot leave the country even for something as serious as the death of a family member because of the likelihood of being detained by ICE. If dairy workers were to be included in the H-2A visa program, the benefits would be twofold: first for the dairy worker the fear of deportation would subside because now he or she is in the country with work authorization and can perform the job without the fear of deportation; and second, the employer would be able to quickly obtain a workforce that is capable to perform the jobs, thus alleviating the labor shortages faced by dairy farms.

Third, efforts should be taken to reform the FLSA, as well as the NLRA, so that agricultural workers are protected by the provisions of both of these laws. More important of the two, the FLSA currently does not provide for overtime pay or maximum work hour limits for agricultural workers. This has led to gross abuses of the dairy worker's labor. Some of the reasoning behind such exemptions is that they would be too costly for farmers to pay these additional costs. While that may have been the case at the time of enactment, the agriculture industry in this country has grown dramatically in recent decades. As previously indicated, the dairy industry generated \$140 billion a year in economic output, with \$29 billion in household earnings.



To be sure, paying dairy workers overtime pay would result in a reduction in the amount of revenue that the employer takes in; yet when measured with respect to the amount of money that goes into litigating issues such as labor disputes and the losses due to limited productivity due to employee turnover and poor working conditions, this amount of money may be equal to or less than the money that goes into litigation and can be recovered through increased productivity, thus making it a more prudent business choice. Moreover, enacting maximum work hour limits would be beneficial for both parties, as it would provide the dairy worker with respite and the employer with a workforce that is more rested and focused. The United States has changed drastically since the turn of the 20th Century, and its labor laws should reflect as much.

## CONCLUSION

“For so long...dairies have been able to get away with exploiting their workers and treating them like animals” (Arrieta, 2004:1). Dairy workers are under-protected and under-served, making them vulnerable to a predatory labor system. They have endured an extensive history of discrimination, both economic and social. They are helpless under today’s laws and will remain as such unless real reform is undertaken. With the proposals made herein, dairy workers can achieve some parity with their labor brethren. The time is now to speak out and make it known that such deficiencies need to be remedied. 🌱

Endnotes:

<sup>1</sup> Ashley Byers is a graduating student at the MSU College of Law and the 2014-2015 Legal Research and Writing Scholar with the Julian Samora Research Institute and the MSU College of Law.

<sup>2</sup> Under federal law, however, employers are not necessarily required to provide overtime pay. See the discussion regarding the Fair Labor Standards Act, *infra*.

<sup>3</sup> If the dairy is engaged in operations that are wholly contained to the specific state, and its products are not sold outside of the state, it will not be engaging in “interstate commerce.” However, in today’s world, it is likely that very few operations will fall into this category, as many operations are heavily involved in commerce and transactions with other states.

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## Latino and Latina Immigrants in Rural Communities of the Midwest: The Role of Cultural Identity in Wellbeing and Job Satisfaction<sup>1</sup>

by Corinne Valdivia, Lisa Y. Flores, Stephen Jeanetta, and Domingo Martínez<sup>2</sup>

The aim of this article is to highlight the strengths that Latino newcomers bring to new settlement contexts located in rural towns of the Midwest. We share findings from a multi-year study that used mixed methods research, that include focus groups, photovoice, and a household survey of 460 Latino and Latina newcomers who had settled in three different regions of Missouri. The study explored the roles of identity, networks, and human and economic capitals in negotiating a new cultural, economic and political context. Many newcomers migrated from large cities in the US or rural and urban centers predominantly in Mexico, but also Central and South America. The project's research framework focused on the strengths and assets of newcomers, and how these play out in the process of negotiating change and settlement.

The migration of Latinos/as in the last 15 to 20 years is an issue central to the economic development of rural communities in the Midwest because the way newcomers integrate socially and economically will define the future not only of their families but of the rural communities in which they live as well. A key, unique asset that Latinos hold is their strong cultural identity:

many of them are newcomers to the country and the region, and their children are the first generation born or raised in the US. As the fastest growing population group, one that is young and with families, Latinos/as are and will be an important force in the creation of wealth in rural communities.

We study the role that cultural identity plays in livelihood outcomes such as earnings, wellbeing, and job satisfaction. Practices and policies to support integration are discussed, as the social, political and economic conditions of a community shape the climate in which settlement takes place. The newcomers' acculturation strategies show how they negotiate this context using their cultural, human, economic, and social capitals.

### CONTEXT

The process of demographic and cultural change in communities of the Midwest and the South is one of the most important transformational events shaping the future of U.S. agriculture and rural America. Migration has been the source

of labor for agriculture in the US and Latino/a population growth has alleviated decades of population decline, contributing to the economic vigor of rural communities. Migration destination patterns changed dramatically in the 1990s from large metropolises to rural towns; from temporary and male migration to permanent and male/female settlement in rural areas of the South and the Midwest.

Young Latino immigrant families are settling in rural communities, responding to the demands for labor in agriculture, food processing, construction, services and related industries. According to the U.S. Census Bureau, the foreign-born population is at its highest point in the U.S. since 1930, and a significant portion come from Latin American countries. As a result, the demographic, cultural and socioeconomic landscape of rural communities is changing. By 2000, 60% of meatpacking plants had relocated to non-metro areas. The industry impacted the composition of rural communities and their schools, as a significant number of those employed in meatpacking were foreign born (Valdivia et al., 2012).

Our research in Midwestern communities sought to understand how Latino/a newcomers, who have different cultures, languages, and norms, developed their livelihood strategies, “how they get by and get ahead”, and if they become part of the economic, social, and cultural fabric of the communities where they settled. We combined the sustainable livelihoods assets-based approach with a human ecology framework to study their acculturation process and how newcomers adapt to their new community contexts.

## THE PROJECT

The project was conducted in three regions of Missouri between 2006 and 2009, interviewed over 600 Latino and Latina newcomers, and 460 Latino/a individuals using a household survey (Valdivia & Flores, 2012). We first conducted case studies (16) of the process of immigration, focus groups (6) on social networks, family and employment with men and women, and Photovoice activities (3) to understand the context of reception. These research activities provided insights into the decisions to move, the process of settlement, finding a job and making a living, and differences in the experiences of women and men. The qualitative research was the basis of a subsequent household survey, which resulted in 460 Latino and Latina individuals interviewed between 2008 and 2009. We gathered data on (a) demographic characteristics, migration experiences, acculturation strategies, employment history, and social networks; (b) context of reception (the community

welcoming mat) features related to perceptions about language pressure, experiences with discrimination and the social environment of the community; and (c) acculturation strategies (bicultural integration, assimilation, separation, marginalization) and subjective wellbeing.

## PULL FORCES

When asked about their future plans, 50% responded that they planned to stay in the communities where they live, while only 10% planned to leave and go back to their country. The rest were undecided about staying in the community or moving to another one. This survey took place in the midst of the economic crisis, when almost 30% of the respondents had lost their jobs. When asked how their quality of life had changed since leaving their country, 70% indicated it had improved, while almost 10% indicated that it had worsened.

Immigrants have been pulled into the Heartland mainly by meat and poultry processing plants, but they remain because they are finding that these communities are good places to raise their families. Wage earnings may not be the main impetus for Latino/a immigrants' decision to migrate to and stay in the Midwest, nor the key to how Latino/as define their quality of life. In another study, we found that although Mexican immigrant women's wages in the Midwest had not increased, they still perceived that they were getting ahead (Valdivia & Dannerbeck, 2009).

## A STRENGTHS BASED APPROACH

Much of the research on immigrants and settlement communities has concentrated on assessments of the challenges faced by education, health care and other service delivery systems, drawing attention to the deficits newcomers face compared with other cultural groups (language limitations, low skills, documentation issues, etc.). Our sustainable livelihoods approach draws attention, instead, to the strengths people have, their assets, both tangible and intangible, and their capabilities—human agency—in developing meaningful lives (Valdivia et al., 2012). Traditionally the focus has been on the human, economic, and social capitals that people access and control. Along with these, we have focused on culture, an intangible asset that can contribute to wealth creation (Valdivia et al., 2008).

Context and institutions matter in how people relate and conduct transactions. In particular, context is key to understanding the paths of integration of newcomers (Valdivia

et al., 2008). Our study of Latino/a immigration to the Midwest takes into account the context of reception or community climate in the new settlement, to find how it affects their livelihood strategies in making a living, accumulating assets, and developing meaningful lives that in turn contribute to the wealth of rural communities (Valdivia et al., 2012).

An assets-based approach to community and rural development begins by identifying the key issues and factors unique to the context and people in order to understand the forces and constraints driving the process of integration. Immigration, migrants, and newcomers in the US, are often portrayed as the problem, creating a difficult environment or context.

The context and community perceptions affect newcomers' actions and sense of wellbeing. In Missouri, racial profiling (measured using the disparity index) had a negative effect, not only on the earnings of foreign-born Latino/as, but also on earnings of native born Latino/as (Dozi & Valdivia, 2008). Perceptions of discrimination or of not being accepted because of their English speaking ability, or the color of their skin, led women in rural counties to stay indoors (Flores et al., 2010), developing a sense of isolation (Valdivia & Dannerbeck, 2009).

Developments in the cultural identity literature can help us view culture not as an obstacle but as an asset upon which individuals draw to create strategies to function in various domains in society. Ecological models of human development also help us understand how the context - school, home and work at the micro level, interactions among these at the community level, and policies and institutions at the macro level - shapes livelihood strategies through how individuals interact with these environments. The approach recognizes the multiple ways that individuals can adapt in new and changing environments: acculturation is the process of adapting. Traditionally people think of this process in terms of assimilation, i.e. the newcomers shedding their culture and taking on the culture of the host country. This has been believed to be the best way by which newcomers can succeed.

Acculturation is the adaptation process to the social and cultural context of the receiving community. A multidimensional acculturation model recognizes that there are several paths in adapting to a new context, and may be more informative than linear acculturation models. This includes the possibility of adopting the culture of the new context while not shedding their own culture, or creating a new culture of marginalization.

In our research using 2000 Census data for non-metro regions in Missouri (Valdivia et al., 2008) we employed a very simple approach to identify four acculturation strategies:

“Assimilation” if the respondent only spoke English while identified as Hispanic, “Bi-cultural” if he/she spoke both English and another language well, “Separated” if he/she only spoke Spanish well, and “Marginalized” if the respondent could not speak neither English nor Spanish well (Valdivia et al., 2008). Foreign-born Latino/as who were Bicultural had higher earnings than those who were Assimilated. For Latino/as born in the US and living in non-metro Missouri, a Bicultural acculturation path contributed to income earnings while the Assimilation path did not. We also found that being educated while speaking English well had a positive effect on income earnings.

In our research with households in the three regions studied we tested a different measure of acculturation to Latino and Anglo cultures and found that Anglo acculturation – the subscale score of English—and biculturalism made positive contributions to income earnings of Latino/as. (Valdivia & Dozi, 2010).

## THE ROLE OF ETHNIC IDENTITY IN LATINO/A IMMIGRANTS' LIVES

Ethnic identity refers to an individual's sense of self as a member of a specific ethnic group. In our project, we assessed the role of ethnic identity in the lives of Latino/a immigrants via open-ended questions that were part of the focus group interview protocol and through a validated measure via the household surveys. Below, we highlight findings related to ethnic identity.



## ETHNIC IDENTITY ASSESSMENT

We held focus groups with Latino/a newcomers in each of the three rural communities that we partnered with in our project. Most newcomers indicated that they maintained strong

ties to their culture of origin, regardless of the time they had spent in the U.S. This was evidenced through their language preference for Spanish, endorsement of traditional beliefs and practices from their home country, and primary patterns of interaction among family members and within the local Latino immigrant community.

Focus group participants were mostly monolingual, indicating that they only spoke Spanish. Traditional beliefs and practices were reflected in the roles of men and women in the household and in religious practices. One participant indicated that “another thing that makes me feel part of my own culture is participating at church.” Participants discussed the value of Catholicism in the family and indicated the importance of finding a Catholic church having once moved into town. In terms of social interactions, focus group participants indicated that they largely socialized with family members and with other Latino/a immigrants. Few mentioned significant relationships with members of the receiving community.

Latino/a newcomers in our study indicated a desire to adapt to the new culture and environment. This was evidenced through their expressed desire to learn English and to understand how health and school systems operated. They also described adjusting to a different time orientation in the U.S. (“You identify with the order...wake up at certain times and be punctual.”), adjusting to American food, and acquiring new skills, such as learning how to drive.

## **ETHNIC IDENTITY AND JOB SATISFACTION**

Work plays an important role in the lives of immigrants, and is often cited as one of the pull factors in the settlement of Latino/a immigrant settlement in Midwestern communities. In one study associated with our project, we were interested in understanding factors related to Latino/a immigrants’ job satisfaction. Specifically we explored the effects of ethnic identity, Anglo acculturation, Latino/a acculturation, perceptions of the community, job tenure, work hours, and salary on participants’ job satisfaction.

Our findings indicate that immigrants who had strong levels of ethnic identity, who were more acculturated to Anglo culture, and who perceived low levels of discrimination and racism within the community reported high levels of job satisfaction. The other variables were not significantly related to the job satisfaction of Latino/a immigrants in our sample. Also, consistent with our focus group data, quantitative data suggested that Latino/a immigrants in our study held high levels of ethnic identity, with average scores of 3.06 (standard deviation of .58) on a 4-point

scale.

Similar to prior research that has found positive associations between ethnic identity and career outcomes, we found that a strong sense of identity had a positive effect on the job satisfaction of Latino/a immigrants in our sample. It appears that work is linked to Latino/as’ ethnic identity, and that positive attitudes about Latino/a culture contribute in a number of positive ways to Latino/as’ career development. Thus, community agencies and community activists working with Latino/a immigrants can help these individuals to maintain ties to their culture of origin and to develop ethnic pride. For example, having events within the schools and/or community that recognize important cultural holidays or simply having celebrations (i.e., festivals, parades) that reflect the immigrant cultures represented in the area are suggested. This is especially important in contexts where negative messages and stereotypes about Latino/a culture are prominent or in environments that try to persuade immigrants to disconnect with their ethnic roots.

## **THE CONTEXT OF RECEPTION – COMMUNITY CLIMATE**

The context of reception—the community’s welcoming mat—has many layers. At the macro level it is shaped by state and federal immigration policies, and how these are enforced at the local level. In the day-to-day, it is influenced by the labor conditions at work and by the social networks that support the newcomers, such as relatives, friends, and local organizations. At the community level it is influenced by public attitudes and by the perceptions and knowledge of the newcomers (Valdivia et al., 2008; Flores et al., 2010). The relations between new and old residents impact both long term settlement and long run returns to families and community. Overall wellbeing is impacted by how families settle, how households organize, and especially how child care is provided.

Our studies have used two different types of measures of the context of reception. Initially we used indicators like the Disparity Index (developed and used by Missouri Attorney General’s Office to identify racial profiling in automobile stops by police) as a proxy for community climate. Racial disparity had a negative impact on the earnings of both native born and foreign-born Latino/as in non-metro regions of Missouri with the 2000 Census data. Subsequently, the three indexes used in our 2008-2009 household survey of Latino newcomers were used to examine effects on income earnings, well-being, and job satisfaction.



Newcomers' perceptions of racism and discrimination had multiple effects, namely (1) low levels of job satisfaction (Valdivia & Flores, 2012); (2) low levels of personal well-being (Valdivia, Morales, & Flores, 2011); and (3) a negative impact on income earnings (Valdivia & Dozi, 2010). We are currently studying the expectations of receiving community members and Latino newcomers with regard to the integration of immigrants, learning about their expectations through various methodologies, and sharing findings in community meetings. We are informing and facilitating conversations with long-term residents and Latino newcomers through community forums to identify activities that can promote positive interactions between these groups.

### ACCULTURATION AS THE EXPRESSION OF HUMAN AGENCY

Individual capitals and capabilities are key factors in developing meaningful livelihoods. In addition to cultural capital, as shown above, human, economic, and social capitals (networks of family, friends, and links to organizations) are also key in the settlement process, in making a living, and getting ahead. Along with acculturation, ethnic identity and the context of reception, social and human capitals were also studied. Several studies found that job tenure and age contributed to the earnings of Latino/a migrants (Dozi & Valdivia, 2008; Valdivia et al., 2008). Being female (Latina) meant their earnings were lower than Latino men's. Family, friends, and church were significant network relations in settling in the community, finding a job, and obtaining assistance in emergencies; the importance of these networks varied by place. These networks (social capital) contributed to both income earnings and well-being (Valdivia et al., 2008).

Cultural capital and the context of reception were significant

factors shaping acculturation strategies, which in turn affect if Latino/a immigrants get by and get ahead in Midwestern rural towns. We found that those who are currently on the bicultural acculturation path have greater earnings than those who are in the separated path. The good news in these rural communities is that only few newcomers are marginalized. Those who are in the separated acculturation path have strong networks of family and friends, but do not have the networks that bridge to the community at large and facilitate access to new information. Our findings, as well as evidence from other studies, highlight the importance of ethnic identity, acculturation, language proficiency, and cultural values on immigrants' jobs, career development paths, and wellbeing.

### HERE TO STAY — BUILDING BRIDGES AND WELCOMING MATS TO FACILITATE INTEGRATION

What lessons does this research offer on improving the livelihoods of Latino/a newcomers in rural areas of the United States? To identify strategies that reduce mobility, it is necessary to understand other factors that may push immigrant workers out of the receiving (new settlement) community. Participants who perceived that members of the community held stereotypes about their culture or had negative attitudes about the newcomers reported lower levels of job satisfaction than their counterparts who felt more welcomed.

Foreign-born immigrants' migration patterns to rural counties in the Midwest and South are influenced by the availability of jobs and by the benefits of living in small rural communities. The "welcome mat" (context of reception) impacts their economic and social integration in the community. Many newcomers may have made great sacrifices to move to rural towns, and it seems that their satisfaction and comfort are critical factors in how they feel about their jobs and their sense of well-being.

Ethnic identity and Anglo acculturation are significant in promoting the careers of newcomers, as is the community climate in their sense of well-being. Our findings did not show that maintaining a strong level of Latino/a acculturation results in negative attitudes about one's job. Rather, they suggest that the development of English language skills may serve to reduce some work-related barriers and increase functioning on the job (Valdivia & Flores, 2012), and that bicultural acculturation has a higher pay-off in earnings. The on-going process of engaging long term residents and Latino newcomers, and sharing the findings in ways that inform, aim to address existing or perceived

barriers and facilitate community engagement that contribute to the integration of Latino newcomers and their families. 

Endnotes:

<sup>1</sup> Since 2004 the University of Missouri has been studying the process of Latino settling in rural areas, collaborating with newcomers and members of the receiving communities. We thank the community organizations and field assistants in this project. Funding was provided by National Research Initiative Grant No. 2006-35401-17429 from the USDA Cooperative State Research, Education, and Extension Service Rural Development Program, currently Agriculture and Food Research Initiative (AFRI) of the National Institute of Food and Agriculture (NIFA) of the United States (2006-2010); by Rural Development and Agricultural Economics AFRI USDA Grant No. 2011-67023-30105 (2011-2014), and funding from the University of Missouri Strategic Initiatives between 2004-2007. For more information visit the Assets and Integration projects at the University of Missouri Cambio Center website ([www.cambio.missouri.edu](http://www.cambio.missouri.edu))

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## MSU Exhibit Honors Latino Auto Workers

Continued from Page 13

excerpts from oral history interviews with former auto workers. During the time of the exhibit, the museum received nearly twenty thousand visitors. At the 25th anniversary conference, a panel of former auto workers presented their experiences as employees of the automobile manufacturing industry.

The project noted that Rafael Arceo participated in the GM Sit-down Strike of 1936-37 in Flint, Michigan. The strike led to the consolidation of the United Auto Workers in the auto industry, to the improvement of working conditions, and major increases in wages for workers. The exhibit featured several Latino auto workers, including Sixto Olivo, Marta Bobillo, Art Reyes II, Rudy Reyes, and others. Their personal accounts noted the importance of a regular income for their families and the upward social mobility experienced as a result. They also highlighted the leadership opportunities provided by the United Auto Workers. The materials were designed to be a traveling exhibit. 

## JSRI Celebrates 25 years

Continued from Page 12

Pycior, a former student of Dr. Julian Samora, is a recognized professor of history at Manhattan University. Her research focuses on Mexican Americans. One of her books is on the political relationship between President Lyndon B. Johnson and Mexican Americans. She also has a book with Bill Moyers which consists of his speeches and commentaries. Her presentation at the conference highlighted democratic renewal and the mutual aid legacy of U.S. Mexicans.

Gutiérrez is Professor of Political Science at the University of Texas at Arlington, where he founded the Center for Mexican American Studies in 1994. He has a long and distinguished history as a Chicano activist, public servant, and scholar. In his presentation he provided an overview of Mexican American political generations, highlighting today's demographic shift and its political implications. He also encouraged young people to begin preparing financially for retirement, noting the increases in life expectancy. 

## Book Review - Transforming Citizenship: Democracy, Membership, and Belonging in Latino Communities

Continued from Page 5

administrative practices must take heed of the claims made through rights claims. The author presents deep analyses of the challenges and strengths that exist within the Latino community to achieve full political incorporation and participation. Some examples are provided to show how some groups have already achieved full public participation. Rocco concludes that there is much work to be done to transform exclusionary practices, but his proposed model is a starting point in the right direction.

He makes a persuasive argument that shared experiences of exclusion, life in the margins, and membership in day-to-day informal communities provide the basis for claims for inclusion and rights to a fuller citizenship to can be pursued via collective action. This book is innovative in addressing issues about the Latino pan-ethnic category. However, it could have been more effective in capturing the factors related to country of origin's political history and its influence on Latino political behavior because of the diversity in political systems and conditions that Latinos bring with them. It would be most appropriate for academic graduate level courses and supplemented with the readings cited within. 

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