

THE GEOGRAPHY OF INJUSTICE: BORDERS AND THE CONTINUING IMMISERATION OF CALIFORNIA AGRICULTURAL LABOR IN ERA OF 'FREE TRADE'

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"The Federal Reserve Board Chairman, Alan Greenspan, whose reputation does not rest on cheap sentiment, has said that migrant labor allowed America's economy to grow faster, with less inflation, in the 1990's."¹

"You have industries in the United States saying, 'Look, we really depend on the use of these people we used to call illegal immigrants,'" said United States ambassador to Mexico, Jeffrey Davidow. 'We cannot really run the hotel industry in Las Vegas without them. Agriculture in California would be lost if it weren't for them.'"²

"So it is not only the free movement of goods and capital that makes an economy sing; maybe it is the free movement of labor, too. Migration's tides 'respond to deep underlying economic incentives, are all but impossible to stop, and must instead be regulated,' [Mexican] President Fox told the United States Congress."³

I Introduction

Why is it that when the reigning ideology governing the expansion of "free trade" is *anti-regulatory*, all agree that the movement of *people*, or rather laborers, must be carefully regulated? Indeed, why are borders strengthened for people just as states of the Western Hemisphere embark on a thorough reconfiguration, and even a dismantling, of borders for capital and goods?⁴

The same year that the North American Free Trade Agreement (NAFTA) came into affect, the U.S. implemented Operation Gatekeeper, its most stringent program for fortifying the border to date. The question remains, though, will the expansion of NAFTA into the Free Trade Agreement of the Americas slow, in either the short run or the long run, the border fortification, of which Gatekeeper is such a stark example? The answer is probably not. Rather, the expansion provides the conditions that will

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¹ Tim Weiner, *In a World at Flood Tide, An Effort to Lift the Gate a Bit*, N.Y. TIMES, Sept. 9, 2001, at 4.4.

² *Id.* at 4.1.

³ *Id.* at 4.4.

⁴ After the terrorist attacks of September 11, 2001, the answer to this question may seem obvious. But the increased security along U.S. borders that those attacks are leading to post date by a considerable extent the earlier militarization of the border addressed in this essay.

make continued fortification *necessary*. This essay will explain why and how such a "free trade"-induced fortification will lead to the continuing immiseration or impoverishment of the very people the U.S. Ambassador says are necessary to our economy, California farm workers.

From the beginning, California agriculture has been a "globalized" enterprise. An export model served in part as a foundation for the Spanish and Mexican colonial rancho system. This export model intensified during the global wheat boom of the 1860s and again in the 1890s with California's transformation into fruit and specialty vegetable empire.⁵ The dual process of a fairly crude "primitive accumulation" and the cultivation of a large, transient, highly pauperized, and non-local workforce provided the basis for the development of export crops in California to both Eastern cities and overseas. The term, "Primitive accumulation," has its roots in Marxian theory to denote the often violent process of disposing peasants and indigenous peoples from the land. The process encompasses a tearing asunder of established social relationships and their replacement with a regime of modern private property, trade in goods and labor, and capitalist social relations in general.⁶ Towards the end of the first volume of *Capital*, Marx could easily have been writing about California when he described "primitive accumulation" as:

The spoliation of the church's property, the fraudulent alienation of the State domains, the robbery of the common lands, the usurpation of feudal and clan property, and its transformation into modern private property under circumstances of reckless terrorism, were just so many of the idyllic methods of primitive accumulation.⁷

Indeed, Marx wrote to his American correspondent, Friedrich Sorge, in 1880, "I should be very much pleased if you could find me something good (meaty) on economic conditions in California. California is very important to me because nowhere else has the upheaval most shamelessly caused by capitalist centralization taken place with such speed."⁸

The bloody history of the process of "primitive accumulation," centralization, and intensification of agriculture in California is extensively documented, and extensively criticized. Perhaps the most famous criticisms are those of Henry George in the 1870s and Cary McWilliams in the 1930s.⁹ Each showed, and historians such as Cletus Daniel have made clear, that the progressive development of capitalist relations

⁵ See, e.g. CLETUS DANIEL, *BITTER HARVEST: A HISTORY OF CALIFORNIA FARMWORKERS, 1870-1941* (1981); see also DAVID IGLER, *INDUSTRIAL COWBOYS: MILLER AND LUX AND THE TRANSFORMATION OF THE FAR WEST, 1850-1920* (2001); CAREY MCWILLIAMS, *Factories in the Field* (1971); KEVIN STARR, *Americans and the California Dream, 1850-1915* (1973); KEVIN STARR, *Inventing the Dream: California Through the Progressive Era* (1985); STEVEN STOLL, *The Fruits of Natural Advantage: Making the Industrial Countryside in California* (1998); Richard Walker, *California's Golden Road to Riches: Natural Resources and Regional Capitalism, 1848-1940*, 91 *ANNALS ASS'N AM. GEOGRAPHERS* 167 (2001).

⁶ KARL MARX, *Capital* (Vol. 1) 667-670 (1987 ed.).

⁷ *Id.* at 685.

⁸ MCWILLIAMS, *supra* note 5, at 56.

⁹ See HENRY GEORGE, *OUR LAND AND LAND POLICY* (1871); see also McWilliams, *supra* note 5.

in California brought with it a continuing impoverishment, or immiseration, of agricultural workers, both in absolute and in relative terms. This immiseration is not *despite* California's "globalization" but because of it.¹⁰ At the same time, the continued immiseration of agricultural workers in California is a *necessary pre-condition* of California's on-going integration into global markets and global food production systems. As the economist Varden Fuller showed in 1930, the assumption of continual and ever-cheapening labor served as the basis for capitalization of California farms.¹¹

To fulfill this assumption, and to compete in global markets, California agriculturalists have had to scour the globe for labor and to continually induce a labor over-supply in the fields.¹² This process has only intensified in recent years. The conclusion to be made is that California agriculture's global ambition, a precondition of which is its procurement of a foreign labor over-supply, is dependent on *strong* borders, and not weak borders, at least for workers.¹³

II Globalization: Nothing New, Everything New

This essay began by saying that California agriculture has always been a global enterprise. But such a statement hides as much as it reveals. It avoids the question: What is meant by global? Or, more accurately, what is meant by globalization? This is the question that geographer Neil Smith asks in a compelling argument about what he calls the "restructuring of spatial scale."¹⁴ As Smith notes,

¹⁰ DANIEL, *supra* note 5.

¹¹ *The Supply of Agricultural Labor as a Factor in the Evolution of Farm Organization in California: Hearings Pursuant to S. Res. 266 Before the Senate Comm. on Education and Labor, 76th Cong., 3d Sess. 1977, Ex. 8762-A (1940)* (statement of Varden Fuller, economist).

¹² See, e.g., DANIEL, *supra* note 5; see also DON MITCHELL, *THE LIE OF THE LAND: MIGRANT WORKERS AND THE CALIFORNIA LANDSCAPE* (1996).

¹³ See, e.g., PETER ANDREAS, *BORDER GAMES: POLICING THE U.S.-MEXICO DIVIDE* (2000); see also JOSEPH NEVINS, *OPERATION GATEKEEPER: THE RISE OF THE "ILLEGAL ALIEN" AND THE REMAKING OF THE U.S.-MEXICO BOUNDARY* (2001).

¹⁴ Neil Smith, *The Restructuring of Spatial Scale and the New Global Geography of Uneven Development*, 52 JINBUN CHIRIGAKA (HUMAN GEOGRAPHY) 51 (2000) (exposing Smith's ideas in a particularly cogent manner); see also Neil Smith, Afterword, *UNEVEN DEVELOPMENT: CAPITAL, NATURE AND THE PRODUCTION OF SPACE* (2d ed. 1990); see also Neil Smith, *Contours of a Spatialized Politics: Homeless Vehicles and the Production of Geographical Scale*, 33 SOC. TEXT 54 (1992); see also Neil Smith, *Satanic Geographies of Globalization*, 10 PUB. CULTURE 169 (1997) (extensive theoretical work now exists on geographical scale in geography). Cf. SPACES OF GLOBALIZATION: REASSERTING THE POWER OF THE LOCAL (Kevin Cox ed., 1997); Kevin Cox, *Spaces of Dependence, Spaces of Engagement and the Politics of Scale, or: Looking for Local Politics*, 17 POL. GEOGRAPHY 1 (1997); Andrew J. Herod, *The Production of Scale in United States Labour Relations*, 23 AREA 82 (1991); Andrew J. Herod, *Labor's Spatial Praxis and the Geography of Contract Bargaining in the U.S. East Coast Longshore Industry, 1953-1989*, 17 POL. GEOGRAPHY 145 (1997); Sallie Marston, *The Social Construction of Scale*, 24 PROGRESS IN HUM. GEOGRAPHY 219 (2000); Erik Swyngedouw, *Neither Global nor Local: Globalization and the Politics of Scale*, in SPACES OF GLOBALIZATION: REASSERTING THE POWER OF THE LOCAL *supra*.. See generally Donald M. Mitchell, *The*

some aspects of globalization are not particularly new: "A world market in *commodity capital* extraction and exchange was largely in place by the nineteenth century."¹⁵ Such a world market was pretty much assumed in the theories of Adam Smith and Karl Marx. Even so, this world market is not geographically "replete," and other economic forms continue to exist in the "interstices."¹⁶ By contrast, a world market in *finance capital* only developed from the upheavals of the global depressions of the 1920s and 1930s, and it was only institutionalized after World War II with the development of such "Bretton Woods" organizations as the World Bank and the IMF.¹⁷ Finally, a global market in *production capital* did not truly develop until after the economic restructurings of the 1970s when new production strategies led to forms of competitive production that "simply outgrew the national markets" and new distribution systems allowed for production to move out of existing industrial regions.¹⁸

This last development has brought with it a significant transformation in the global spatial division of labor.¹⁹ As Smith notes, "the period since the late 1970s has witnessed an unparalleled global movement of labor, the wages of which are also a part of production capital."²⁰ That is to say, the globalization of production capital – which, as important as the restructuring of global financial and commodity capital may be, is the driving force behind the current wave of globalization and has brought with it an unprecedented labor migration.

NAFTA and now the FTAA, like the General Agreement on Tariffs and Trade that led to the development of the World Trade Organization, are best understood as a means for writing the rules of economic cooperation and competition for these different markets at a scale larger than the nation-state. But they all do so with the explicit goal of maintaining, rather than undermining, the forms of economic inequality – the geography of injustice – that make such markets possible.

The story is simple. As stated before, California already relied on a global labor force long before the upheavals of the current period. Therefore the story of progressive globalization, needs to be placed within a story about uneven capitalist development and the constant restructuring of geographical scale.²¹ Geographical

Scales of Justice: Localist Ideology, Large-Scale Production, and Agricultural Labor's Geography of Resistance in 1930s California, in ORGANIZING THE LANDSCAPE: GEOGRAPHICAL PERSPECTIVES ON LABOR UNIONISM 159 (Andrew J. Herod ed., 1998).

¹⁵ Smith, *The Restructuring of Spatial Scale and the New Global Geography of Uneven Development*, *supra* note 14, at 52.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See, e.g., DOREEN MASSEY, SPATIAL DIVISIONS OF LABOR: SOCIAL STRUCTURES AND THE GEOGRAPHY OF PRODUCTION (1984); ANDREW SAYER & RICHARD WALKER, THE NEW SOCIAL ECONOMY: REWORKING THE DIVISION OF LABOR (1992); Kevin R. Cox, *The Politics of Globalization: A Skeptic's View*, 11 POL. GEOGRAPHY 428 (1992).

²⁰ Smith, *The Restructuring of Spatial Scale and the New Global Geography of Uneven Development*, *supra* note 14, at 53.

²¹ See SPACES OF GLOBALIZATION: REASSERTING THE POWER OF THE LOCAL, *supra* note 14; see also Herod, *The Production of Scale in United States Labour Relations*, *supra* note 14, at 82; see also Smith, *The Restructuring of Spatial Scale and the New Global*

scale refers to the extent or range at which particular processes and relationships are bounded. We are all used to thinking in terms of scale. For example, there are local, regional, national and global scales. What is harder to grasp is that these scales, and the relationships between them, are continually being restructured through economic, social, political and cultural processes and contestations. Geographical scale, in political economic terms, is a means of bounding and adjudicating rules and relations of capitalist competition and cooperation of sameness and difference. In other words, one of the on-going questions facing the managers of capitalism is how to balance the competing and contradictory tendencies within capitalism, on the one hand, a drive towards *equalization*. That is, the tendency towards the equalization of profit rates and wages as well as the processes that are usually identified as the homogenizing forces of globalization – and on the other hand, a drive toward (and need for) *differentiation*.²²

Over the course of the long development of contemporary capitalism, the national scale has been the most obvious result of this contradiction.²³ The institutional structures and borders of the contemporary nation-state developed and were entrenched as a means of bounding a scale of capitalist competition *within* a framework of cooperation.²⁴ Of course, the nation-state has developed for a whole host of other reasons such as the instillation of loyalty to a central authority, the monopolization of legitimate violence over a territory, the competitive desire for colonial supremacy, the institutionalization and purification of national identity, etc.²⁵ But what is interesting is the ways that, at least when seen from the perspective of the political economy, these other reasons for nation-state development establish a series of *problems* that the capitalist economy must either negotiate or find ways to take advantage of.²⁶

At smaller scales within the nation-state, processes of equalization and differentiation are also continually negotiated, as any glance at an American metropolitan region, with its radically uneven geography of wealth and poverty, of investment and disinvestment, makes clear.²⁷ Like the nation-state, the “urban” as a

Geography of Uneven Development, *supra* note 14, at 51; see also Smith, *The Satanic Geographies of Globalization: Uneven Development in the 1990s*, *supra* note 14.

²² See generally DAVID HARVEY, *THE LIMITS TO CAPITAL* (1982); DAVID HARVEY, *SPACES OF CAPITAL: TOWARDS A CRITICAL GEOGRAPHY* (2001); Smith, *The Restructuring of Spatial Scale and the New Global Geography of Uneven Development*, *supra* note 14.

²³ Smith, *The Restructuring of Spatial Scale and the New Global Geography of Uneven Development*, *supra* note 14, at 142–47.

²⁴ *Id.*

²⁵ See, e.g., BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGINS AND SPREAD OF NATIONALISM* (1991); *BECOMING NATIONAL: A READER* (Geoff Eley & Ronald G. Suny eds., 1996); ANTHONY D. SMITH, *NATIONAL IDENTITY* (1991).

²⁶ See George Henderson, *CALIFORNIA AND THE FICTIONS OF CAPITAL* 28 (1999) (for an excellent argument on seeing capitalism as a series of (structured) problems that individual capitalists need to overcome).

²⁷ See, e.g., NEIL SMITH, *THE NEW URBAN FRONTIER: GENTRIFICATION AND THE REVANCHIST CITY* (1996); Smith, *The Restructuring of Spatial Scale and the New Global Geography of Uneven Development*, *supra* note 14.

scale is a means for adjudicating the drive for equalization and differentiation.²⁸ So too is the sub-national region (consider the degree to which "the South" or "the West" are coherent entities,²⁹ and consider the sheer volume of *difference* that these entities contain).

The current wave of globalization (that is, the need to develop global markets in production capital and to write new rules for global finance capital) as it is embodied within institutions like the World Bank and trade agreements like the FTAA, especially when examined in the light of the development of the EU or ASEAN, can, in these terms, be read as a means to write the rules of capitalist cooperation and competition at the *supra*-regional and global scales.³⁰ For technological reasons and because of capitalism's inherent need to continue to grow, the scale of the nation-state has become less than optimum for adjudicating cooperation and competition of productive and financial capital. The development of these global markets requires not a complete transcendence of local and regional labor markets, as President Vicente Fox suggests, but rather their *reinforcement*.³¹

To see why this is the case, it is necessary to understand globalization as a process not just of expansion of *markets*, but of on-going, *uneven* geographical development. This analysis requires addressing the question of why *difference* is both so necessary and so persistent in the global economy, despite all forces tending toward homogenization.³² Put more crudely, why will a rising tide of trade not lift all boats? The answer to this question comes from two related arguments. The first concerns the nature of capital *accumulation*, and the second argument centers on the notion of *social reproduction*.

The accumulation of capital, of course, is the very reason for capitalism.³³ While this drive toward continual accumulation gives birth to a wide spectrum of obstacles and contradictions, – significantly the constant tendency toward the type of *over*-accumulation that was so central to the Depression of the 1930s – the need to continually accumulate capital implies the need for the capitalist economy to continually expand geographically.³⁴ To grow requires taking up new space, or reconfiguring old spaces.³⁵ Both processes – absolute growth in new spaces and relative geographical expansion as old spaces are reconfigured – have been and are

²⁸ HARVEY, *THE LIMITS TO CAPITAL*, *supra* note 22; DAVID HARVEY, *THE CONDITION OF POSTMODERNITY: AN ENQUIRY INTO THE ORIGINS OF CULTURAL CHANGE* (1990); DAVID HARVEY, *THE URBAN EXPERIENCE* (1989).

²⁹ See, e.g., EDWARD L. AYERS ET. AL., *ALL OVER THE MAP: THE ORIGINS OF AMERICAN SECTIONALISM* (1996).

³⁰ See, e.g., Erik Swyngedouw, *Authoritarian Governance, Power, and the Politics of Rescaling*, 18 ENV'T & PLAN. D: SOC'Y & SPACE 63, 64-66 (2000).

³¹ Weiner, *supra*, note 1, at 4.4; Nevins, *supra*, note 13.

³² See, e.g., ARJUN APPADURAI, *MODERNITY AT LARGE: CULTURAL DIMENSIONS OF GLOBALIZATION* (1996); DON MITCHELL, *CULTURAL GEOGRAPHY: A CRITICAL INTRODUCTION* (2000).

³³ MARX, *supra*, note 6, at 667-70.

³⁴ See HARVEY, *THE LIMITS TO CAPITAL*, *supra* note 22; SMITH, *UNEVEN DEVELOPMENT*, *supra* note 14; see also HENRI LEFEBVRE, *THE SURVIVAL OF CAPITALISM* (1976); see also MICHAEL STORPER & RICHARD WALKER, *THE CAPITALIST IMPERATIVE* (1989).

³⁵ See LEFEBVRE, *supra* note 34.

important. Both are related to the expansion not just of capitalism in general, but of capitalist value in particular.³⁶

During the period of active colonial expansion, absolute geographical growth was made possible through the opening of new swaths of land: the Americas, Asia, and Africa.³⁷ Over the course of several centuries, California transformed itself from a remarkably varied and diverse series of Native American homelands into one of the premier regions of capitalist development and innovation. This transformation is as good of an example of this process of absolute expansion as one could want (as Marx recognized),³⁸ – even if this transformation could only be accomplished by California continuing to import new laborers.³⁹ Nonetheless, by the end of the nineteenth century, politicians and theorists from across the political spectrum – from the colonialist apologist Halford Mackinder in Britain to V.I. Lenin in exile in Vienna – began to realize that the *absolute* expansion of capitalism in geographical space was no longer possible.⁴⁰ The end of colonialist expansion was at hand and some argued this inability for capitalism to continue to expand absolutely would lead to a period of constant crisis resulting eventually in capitalism's demise.⁴¹

Clearly this did not happen (despite the ever deepening crises that faced the capitalist economy over the course of the twentieth century). The question then is what accounts for what the French theorist Henri Lefebvre referred to as the "survival of capitalism."⁴² One answer to that question has been that continued expansion – continued accumulation – has been affected through the production and reproduction of *relative* geographical space.⁴³

Relative geographical space can be defined as the relationship between places and landscapes, but in order for it to be so defined, we need to examine the *differences* between spaces that allow them to be related.⁴⁴ Difference for example, between farmworkers' housing and suburban California housing development,⁴⁵ is in part a result of the drive for relative surplus value under capitalism. Relative surplus value derives from two processes. On the one hand, relative surplus value can be created when the overall value of labor power falls, often because of a rise of productivity, but also through the socialization of the laborers' own reproduction costs. As David Harvey notes, capturing this form of relative surplus value is a highly ephemeral business, and if it is to be systematized then it requires a "class strategy of some sort (subsidies on basic commodities, cheap food, and housing policies, etc.)."⁴⁶ Thinking

³⁶ See HARVEY, SPACES OF CAPITAL, *supra* note 22.

³⁷ SMITH, UNEVEN DEVELOPMENT, *supra* note 14, at 140; HARVEY, THE LIMITS TO CAPITAL, *supra* note 22, at 413-415.

³⁸ MCWILLIAMS, *supra* note 5, at 56; see also Walker, *supra* note 5.

³⁹ See DANIEL, *supra* note 4; see also Fuller, *supra* note 11.

⁴⁰ See SMITH, UNEVEN DEVELOPMENT, *supra* note 14.

⁴¹ See ROSA LUXEMBURG, THE ACCUMULATION OF CAPITAL (1968).

⁴² LEFEBVRE, THE SURVIVAL OF CAPITALISM, *supra* note 34.

⁴³ See HARVEY, THE LIMITS TO CAPITAL, *supra* note 22; see also LEFEBVRE, PRODUCTION OF SPACE, *supra* note 35; see also SMITH, UNEVEN DEVELOPMENT, *supra* note 14.

⁴⁴ See *supra* notes 13-21.

⁴⁵ Don Mitchell, *California Living, California Dying: The Political Economy of Landscape*, in HANDBOOK OF CULTURAL GEOGRAPHY (forthcoming).

⁴⁶ HARVEY, THE LIMITS TO CAPITAL, *supra* note 22, at 31.

in terms of geographical *scale*, the geographical implications of this strategy are clear. Nationalist production and labor policies have often been geared toward assisting national capitals in capturing precisely this form of relative surplus value in the global commodity markets through state subsidies for housing, staple foods, transportation, etc.

As financial and production capital burst the bounds of the nation-state, so global markets in these were forged, then new forms of "leveling the playing field" in terms of labor subsidation were demanded – demands that organizations like the IMF and trade agreements like NAFTA and the FTAA have risen to meet. These demands are often contradictory. For example, as corporations have sought to protect their fixed investment in established production facilities, they have at the same time been taking advantage of the cheaper, and often subsidized labor elsewhere, while the organized workers and other social groups have fought to retain vestiges of state support for housing, wages, etc. In part, the structural adjustment programs of the IMF can be seen as attempts to impose a new set of rules for capturing this form of surplus value at a global scale. Those IMF rules and programs that we have come to call "structural adjustment," together with the "Washington Consensus," or what Daniel Singer (1999) called "American Plan" capitalism,⁴⁷ helped advance, intentionally or not, a further, often more brutal "class strategy" for capturing relative surplus value, such as the elimination of welfare and other working class subsidies in specific geographical areas (the American and European inner city, the countryside of a developing country for example), together with the development of new fetters on union activity, drives down wages by creating a labor surplus, by making poverty a natural feature of the landscape, or, by undermining workers' own collective power.⁴⁸

The second form of relative surplus value is more "local." Again, Harvey explains the process well. Individual capitals, he notes:

can leverage the gap between socially necessary labour time and their own private costs of production. Capitalists employing superior production techniques and with higher than average productivity of labour can gain an excess profit by trading at a price set by the social average when their production costs per unit are well below the social average.⁴⁹

As Harvey goes on to note, this form of relative surplus value is even more ephemeral than the other because the competitive drive in capitalism, the necessary drive to continue to profit, to accumulate surplus value, "forces other producers to catch up or go out of business."⁵⁰ The competitive race for productivity, then, leads to a constant pressure to depress exchange values – the very means by which surplus value is realized. The only way to profit from this contradiction is to meet it on its own terms and to continually seek ways to depress the real cost of labor – through both a real and an effective decline in wages.⁵¹

⁴⁷ DANIEL SINGER, *WHOSE MILLENNIUM? THEIRS OR OURS?* (1999).

⁴⁸ See, e.g., JAMIE PECK, *WORKFARE STATES* (2001); Frances Piven & Richard Cloward, *REGULATING THE POOR* (1992).

⁴⁹ HARVEY, *THE LIMITS TO CAPITAL*, *supra* note 22, at 33.

⁵⁰ *Id.*

⁵¹ *Id.*

The roots of both intra- and inter-class conflict within this form of relative surplus value production are clear. Capitals compete with each other to capture relative surplus value, if not exactly in a zero-sum game, then at least in a game that does have winners and losers. Meanwhile, these same capitals both individually and collectively compete with laborers who seek to raise their own wages – to capture more of the surplus value being produced. But the interesting issue is the changing *geography* of this process. As Neil Smith explains, the more capitalism develops, “the more it relies upon the appropriation of relative [rather than absolute] surplus value.”⁵² In Marx’s words, over time, a point has been reached in capitalism’s history in “which the development of the productivity of social labour becomes the most powerful lever of accumulation” – that is relative surplus value dominates over absolute surplus value.⁵³

This development of productivity of labor, interestingly, is in large part a function of an investment in *fixed capital*.⁵⁴ Fixed capital is that portion of capital immobilized in the “things” that make production possible – machines, factories, houses, roads, communication systems, fields, etc. – some of which are collectively provided for, others of which are developed by individual capitals, and still others of which are left to the devices of working people.⁵⁵ To the degree that “globalization” leads to a greater overall productivity of labor, then it does so, to some large degree, through a continued investment in fixed capital. Some of this fixed capital is, necessarily, fixed in place, that is, completely *immobile*.⁵⁶ In Smith’s wonderful phrase, “if relative surplus value [is] the most powerful lever of accumulation, then fixed capital is the pivot upon which this lever gains its power.”⁵⁷ In essence, capitalism now develops by exploiting geographical *differences* in the endowment of fixed capital.⁵⁸ These differences *are* relative geographical space. And here the differences in markets for commodity, finance, and productive capital take on new importance, for the kinds of fixed capital important to each are varied and often contradictory, and the ways in which capital circulates through the landscapes that fixed capital defines is enormously complex.⁵⁹ Following Smith, and building on this notion of complexity, we can begin to see that the geographical patterns that define the worlds we live in are the product

⁵² SMITH, UNEVEN DEVELOPMENT, *supra* note 14, at 89.

⁵³ *Id.* (quoting MARX, GUNDRISSE 769 (1973)).

⁵⁴ See, e.g., HARVEY, THE LIMITS TO CAPITAL, *supra* note 22, at 204-238; Don Mitchell, *Landscape and Surplus Value: The Making of the Ordinary in Brentwood, California*, 12 ENV’T & PLAN. D: SOC’Y & SPACE 7, 30 (1994).

⁵⁵ HARVEY, THE LIMITS TO CAPITAL, *supra* note 22; *Labor, Capital and Class Struggle Around the Built Environment in Advanced Capitalist Societies*, 6 POL. & SOC’Y 265 (1977).

⁵⁶ See GEORGE HENDERSON, CALIFORNIA AND THE FICTIONS OF CAPITAL 28 (1999) (for an excellent argument on seeing capitalism as a series of (structured) problems that individual capitalists need to overcome).

⁵⁷ SMITH, UNEVEN DEVELOPMENT, *supra* note 14, at 89.

⁵⁸ HARVEY, THE LIMITS TO CAPITAL, *supra* note 22, at 208-223 (A further implication of capital’s reliance on fixed infrastructure is that that infrastructure often becomes a fetter rather than an aid to accumulation – as with outdated factories, outmoded transportation systems, inappropriate housing stock, and so forth).

⁵⁹ *Id.* at 223-38.

of contradictory tendencies: first, the more that social development emancipates space from society, the more important does spatial fixity become; second, and foremost, the tendencies towards differentiation and universalization, or equalization, emanate side by side in the belly of capitalism.⁶⁰

They do so at a multitude of geographical scales ranging for the bodies of working people to the neighborhoods and villages they live in, to the urban centers that concentrate and accumulate finance capital, to the space of the nation with its borders and laws and regulatory apparatuses.⁶¹ Difference and equalization, or at least some dialectic between these, is endemic in every cell, pore, and social body that capitalism produces.⁶² Relative geographical space is the engine of relative surplus value production and hence the very means by which the capitalist economy can continue to move.⁶³ To eliminate difference under the guise of globalization would be to eliminate capitalism. Therefore, any agreements about how trade in commodity, finance and production capital is to be organized must effectively preserve, rather than destroy, difference, even if such a preservation is not written directly into the language of the agreements.

But there are other reasons why difference (inequality) must be preserved. These other reasons also center on the importance of relative surplus value to the continued growth of capitalism. Surplus value originates in the difference between the time a laborer works to repay the value of her or his own labor-power, and the total time a laborer works.⁶⁴ In Marx's terms absolute surplus value derives from lengthening the working day.⁶⁵ Relative surplus value derives from changing the *ratio* of time worked to repay the value of labor power, and time spent producing surplus value.⁶⁶ We have already seen that that ratio results in part from the productivity of labor. It also results, of course, from driving down the cost of labor power.⁶⁷ That is, employers have a vested interest in continuing to lower the real cost of their labor. In more formal terms, they have a vested interest in lowering the cost of the *social reproduction* of laborers.

As Marx argues, the reproduction of the working class is a precondition for the reproduction of capital.⁶⁸ Laborers must eat, drink, have time to relax, sleep, and have shelter. All of these are part of the cost (and value) of labor power. "In contradistinction ... to the case of other commodities," as Marx spells out the obvious point, "there enters into the determination of the value of labour-power a historical and moral element."⁶⁹ If the historical development of a place, the geography of the capital fixed in place, demands that workers travel to and from work by car rather than on foot, then the costs of such travel must be figured into the cost of labor (workers wages).

⁶⁰ SMITH, UNEVEN DEVELOPMENT, *supra* note 14, at 90.

⁶¹ Don Mitchell, *The Devil's Arm: Points of Passage, Networks of Violence and the Political Economy of Landscape*, 43 NEW FORMATIONS 44-60 (2001) (hereinafter Mitchell, *The Devil's Arm*).

⁶² See HENDERSON, *supra* note 26.

⁶³ See SMITH, UNEVEN DEVELOPMENT, *supra* note 14.

⁶⁴ MARX, CAPITAL, *supra* note 6, at 207.

⁶⁵ *Id.* at 299.

⁶⁶ *Id.*

⁶⁷ *Id.* at 303.

⁶⁸ *Id.* at 537.

⁶⁹ *Id.* at 168.

If single-family homes are part of the "historical and moral" expectations of the working class, then the costs of these too, must somehow be figured into the costs of wages. By contrast, if the historical standard in a specific location is tar-paper shacks, a cheap diet of grains giving only a few calories over 2000, and no expectation of medical care, then wages can be much lower.⁷⁰ One of the signal features of capitalist uneven development has been not just the *exploitation* of these differences, but their development and maintenance, for they are exactly what allows for relative surplus value to continue to be produced.⁷¹

The reproduction of the working class is indeed a precondition of the reproduction of capital, but exactly *how*, and *where* the working class is reproduced is always a result of social struggle and development. This question returns us to the fields of California and the border with Mexico. A border that seems to be doing anything but fading away as the economies of the Americas restructure in the image of "free trade." By focusing on the geography of laborers, we can begin to understand just why, in an era of free trade, borders are becoming more not less important.⁷² To put that another way, the processes we call "globalization" can better be understood as a reconfiguration of the *relative geographical spaces* that comprise the globe, and as a reconfiguration of geographical *scale*, such that relative surplus value can continue to be produced and captured in a world defined by a radically changed geography of production.⁷³ Therefore, let's return to the fields of California, and to the border that makes capitalist production in those fields not only competitive, but possible.

III The Geography of Capitalist Labor Reproduction in an Era of "Free Trade"

A. Still Factories in the Fields

Carey McWilliams wrote in 1949, seven years after the *bracero* guest worker program had been implemented, that "[o]ne can travel the length of the San Joaquin Valley, at the height of the season, on the main highway...without being aware of the fact that tens of thousands of workers, an army of 200,000, are somewhere camped, somewhere at work."⁷⁴ McWilliams' estimate of the number of farmworkers in California was most likely a significant underestimate. However, it does say something about the *geography* of California agricultural labor, namely that the worlds within which this labor is reproduced are largely hidden, though often in plain sight.⁷⁵ While much of the army of laborers who work the California fields are still fairly well hidden from our everyday view, the important point is that that army has *grown*.⁷⁶ At the same time, California agricultural work has grown more intensely seasonal, making the insecurity

⁷⁰ HARVEY, *THE LIMITS TO CAPITAL*, *supra* note 22, at 383; *see also* Mitchell, *Landscape and Surplus Value*, *supra* note 54.

⁷¹ *See* SAMIR AMIN, *UNEQUAL DEVELOPMENT* (1976); *see also* MASSEY, *supra* note 19; *see also* Smith, *Uneven Development*, *supra* note 14.

⁷² *See* ANDREAS, *supra* note 13; *see also* Nevins, *supra* note 13.

⁷³ *See* Smith, *The Restructuring of Spatial Scale*, *supra* note 14.

⁷⁴ CAREY MCWILLIAMS, *CALIFORNIA: THE GREAT EXCEPTION* 169 (1976 ed.).

⁷⁵ *Id.*; *see also* MITCHELL, *THE LIE OF THE LAND*, *supra* note 12.

⁷⁶ ALICIA BUGARIN & ELIAS LOPEZ, *FARMWORKERS IN CALIFORNIA* (1998) [hereinafter BUGARIN, *FARMWORKERS*].

of farmwork in California greater.⁷⁷ Throughout 1990s, the agricultural economy in California demanded some 800,000 to 900,000 laborers each year. Nevertheless these workers filled the equivalent of only 300,000 to 350,000 year-round jobs, according to the agricultural economist Philip Martin.⁷⁸ Seasonal labor demand grew by over 20% in the 1980s and 1990s.⁷⁹ In 1989, three years after the 1986 amnesty program and twenty-five years after the *bracero* program had ended, perhaps 7% of all California farmworkers were undocumented aliens. By 1995, official counts, which are always underestimated, suggested that the percentage had increased to thirty-seven. While Latin Americans comprise only 40% of the undocumented aliens in the US, 90% of those detained as illegal are Mexican.⁸⁰

Simultaneously, the legal structure of California agriculture has been radically transformed.⁸¹ New share cropping systems have been implemented in crops like strawberries. These systems shift the risks associated with production and harvesting to the most marginal of farmers, themselves often only recently "settled out" from the migratory labor stream.⁸²

Elsewhere, new labor contracting systems have been developed that shift the burden of compliance to laws governing wages, work conditions, health, safety, and farmworker housing, from farm owners to some 155,000 subcontractors. Under state and federal laws, these subcontractors, and not necessarily the 77,000 farms that they work on, are the official "site" of employment and the subcontractors are the official employers. In a typical year, only about 1/5 of 1% of these 155,000 subcontracting "employers" are inspected.⁸³ Indeed, between 1993 (before NAFTA and Operation Gatekeeper) and 1997 (three years after the implementation of these), the number of inspections of agricultural workplaces declined 30% (647 to 455); and citations for child labor and worker's compensation violation both declined by about 75% (153 to 39 and 99 to 26, respectively).⁸⁴ Total criminal citations for violations of agricultural workplace and living place laws declined from 144 to 15 (90%), and civil citations declined from 282 to 130 (54%).⁸⁵ While pay-related citations increased by more than 100%, the number (from 30 to 65) is still quite small. Over the period, penalties assessed against growers and contractors declined more than 60% (from \$1,603,400 to \$631,200).⁸⁶

⁷⁷ See Mitchell, *The Devil's Arm*, *supra* note 61 (this section is based on, and develops, arguments laid out in note 61); see also Mitchell, *California Living*, *supra* note 45.

⁷⁸ Cited in BUGARIN, *FARMWORKERS*, *supra* note 76, at 9.

⁷⁹ *Id.* at 7.

⁸⁰ Carol Nagengast, *Militarizing the Border Patrol*, 32 NACLA REP. ON AM. 37, 40 (1998).

⁸¹ BUGARIN, *FARMWORKERS*, *supra* note 76.

⁸² MIRIAM J. WELLS, *STRAWBERRY FIELDS: POLITICS, CLASS AND WORK IN CALIFORNIA AGRICULTURE* (1996).

⁸³ See BUGARIN, *FARMWORKERS*, *supra* note 76, at 21; See also Fred Krissman, *Farm Labor Contractors: The Processors of New Immigrant Labor from Mexico for California Agribusiness*, 12 AGRIC. & HUM. VALUES 18-46 (1995); see also Dawn Thilmany & Philip L. Martin, *Farm Labor Contractors Play New Roles in Agriculture*, 49 CAL. AGRIC., Sept.-Oct. 1995, at 5:37-40.

⁸⁴ BUGARIN, *FARMWORKERS*, *supra* note 76, at 19.

⁸⁵ *Id.*

⁸⁶ *Id.*

However, the proportion of penalties collected to those assessed improved, even if actual dollar amounts are minuscule (considering that agriculture is more than a \$25 billion a year industry): in 1993, only 9% of assessed penalties were collected (\$142,302) while in 1997 that had improved to 19% (\$122,376).⁸⁷ During this same period, while the number of field sanitation inspections varied greatly (from a high of 592 in 1994 to a low of 190 in the first three quarters of 1997), the rate of non-compliance to sanitation laws remained steady, at about 60%.⁸⁸ As we will see *infra*, all these numbers continued to decline to new lows in the year 2000 that make California's policing of labor conditions in the fields in the mid 1990s seem quite stringent.

With the growth of farm labor contractors, growers have shed responsibility for housing workers. In 1955, there were some 9,000 registered employer-owned labor camps in California. In 1998 there were 500.⁸⁹ Workers sleep in barns and sheds, in automobiles and trailers, on the open ground and in caves, in self-constructed shacks and substandard apartments.⁹⁰ They have little access to safe drinking water and sanitary toilets.⁹¹ In the fields, laws requiring water and toilets are rarely enforced, leading to serious public health concerns not only for farmworkers, but also for the fruit and vegetable eating public.⁹² Conditions for workers in California are every bit as bad – and to some degree considerably worse – now as they were in 1913 when workers rioted in a hops camp, which led to the writing of the first field and camp sanitation laws;⁹³ as they were in the late 1920s when communist unions found fertile fields for organizing;⁹⁴ as they were in the late 1930s when John Steinbeck (1936, 1939) and Carey McWilliams (1939) did so much to expose them;⁹⁵ as they were in the 1950s when Cesar

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 23.

⁹⁰ *Id.*; William Langeweische, *Invisible Men*, THE NEW YORKER, 23 Feb.–2 Mar. 1998, at 141; see also Mitchell, *supra* note 61; see also WELLS, *supra* note 82.

⁹¹ See BUGARIN, FARMWORKERS, *supra* note 76.

⁹² Barbara Herries-Harhorn, *California Farmworkers: Dilemmas in Developing Interventions for Health and Medical Care Concerns*, 57 HUM. ORG. 369 (1998); Ketty Mobed et al., *Occupational Health Problems Among Migrant and Seasonal Farmworkers*, 157 W.J. MED. 367 (1992); John R. Myers & David Hard, *Work-related Fatalities in the Agricultural Production and Services Sectors, 1980-1989*, 27 AM. J. INDUS. MED. (1995), at 51; NATIONAL ADVISORY COUNCIL ON MIGRANT HEALTH, *LOSING GROUND: THE CONDITION OF FARMWORKERS IN AMERICA*, (Sept. 1995), at 7; see also WELLS, *supra* note 82.

⁹³ See DANIEL, *supra* note 5; see MITCHELL, *THE LIE OF THE LAND*, *supra* note 12. See generally CARLETON H. PARKER, *THE CASUAL LABORER AND OTHER ESSAYS* (1920).

⁹⁴ See DANIEL, *supra* note 5; see MITCHELL, *THE LIE OF THE LAND*, *supra* note 12.

⁹⁵ See generally MCWILLIAMS, *Factories in the Field*, *supra* note 5; see generally MCWILLIAMS, *ILL FARES THE LAND* (1942); see generally JOHN STEINBECK, *GRAPES OF WRATH* (1939); see generally JOHN STEINBECK, *THEIR BLOOD IS STRONG* (1938); see generally DEVRA WEBER, *DARK SWEAT, WHITE GOLD: CALIFORNIA FARM WORKERS, COTTON, AND THE NEW DEAL* (1994).

Chavez began his long organizing campaigns;⁹⁶ and as they were in 1985 when advocates for farmworkers found dozens of strawberry pickers living in caves etched out of the hillsides near the amazingly productive California strawberry fields.⁹⁷

The relatively few moments when conditions have improved in the fields have been the direct result of labor militancy.⁹⁸ Worker power, and not "trade," has been at the root of any push towards decent living and working conditions in California.⁹⁹ Decline in working conditions can be mapped almost directly onto the waning of worker power.¹⁰⁰ With this in mind, President Fox's argument about needing to regulate migration across the border, and Alan Greenspan's frank admission about the value of immigrants to the U.S. economy, coupled with the U.S. Ambassador's equally frank admission that illegal aliens are critical to the U.S. economy, take on new meaning.¹⁰¹ But to see why means turning our attention to the border itself, and form there to gaze upon the spaces of social reproduction and the "historical and moral" elements that define them under the banner of "free trade."

B. The Border

As Peter Andreas relates in his book, *Border Games*, one of the strategies of the Clinton administration in its campaign to secure passage of NAFTA was to promise a fortification of the U.S.-Mexico Border.¹⁰² The Mexican government also adopted this rhetoric. For some time, nativist groups along the border had been campaigning against what they saw as an increasingly anarchic border that had become a major conduit not only for illegal immigrants, but also for illegal drugs, and the Clinton administration was convinced that it had to mollify the nativists (as well as less extreme American nationalists).¹⁰³ In Andreas's words, "the result has been the construction of both a borderless economy and a barricaded border."¹⁰⁴ Or as the geographer Joseph Nevins has argued the case, "the level of porosity of the boundary is a function of the type of transnational flow crossing the international divide."¹⁰⁵ Capital and most commodities have little trouble. The border is little more than a turnstile. Potential migrants and some drugs, on the other hand, find the full weight of the state arrayed against them.¹⁰⁶ The border serves as a fortified gate, and Operation Gatekeeper could

⁹⁶ See generally ERNESTO GALARZA, *FARM WORKERS AND AGRI-BUSINESS IN CALIFORNIA 1947-1960* (1977); see generally PETER MATTHIESSEN, *SAL SI PUEDES: CESAR CHAVEZ AND THE NEW AMERICAN REVOLUTION* (1969).

⁹⁷ WELLS, *supra* note 82, at 210-214.

⁹⁸ See generally DANIEL, *supra* note 5; see generally J. TELHO & LINDA C. MAJKA, *FARM WORKERS, AGRIBUSINESS AND THE STATE* (1982); see generally MCWILLIAMS, *FACTORY IN THE FIELDS*, *supra* note 5; see generally MITCHELL, *THE LIE OF THE LAND*, *supra* note 12.

⁹⁹ Fuller, *supra* note 11 (Indeed, as farmers in California have long admitted, it is only by fully minimizing the costs of labor that they can sell their produce in distant markets).

¹⁰⁰ See BUGARIN, *FARMWORKERS*, *supra* note 76.

¹⁰¹ Weiner, *supra* note 1 at 4.1, 4.4 (refer also to accompanying text).

¹⁰² See generally ANDREAS, *supra* note 13.

¹⁰³ *Id.* at 85-93.

¹⁰⁴ *Id.*

¹⁰⁵ NEVINS, *supra* note 13 at 178.

¹⁰⁶ *Id.*

not be better named.¹⁰⁷ The question that then arises concerns the *effects* for the economy, and for the workers of this sort of simultaneous opening and fortification of the border. That is, how does a fortified border function to *regulate* the movement of peoples as well as goods, and to whose benefit?

Before Operation Gatekeeper was implemented in 1994, deaths of migrants trying to cross along the California portion of the border averaged about 20 per year. In the years since, they have climbed to more than 100 per year.¹⁰⁸ Along the whole of the border, there is an average of more than one migrant death a day.¹⁰⁹ As more and more parts of the border have been fortified, and as migrants are pushed further into the mountains and deserts, deaths have increased. While such deaths are not the intent of policies like Gatekeeper, they are obviously its consequence.¹¹⁰ Beyond the obvious and direct cost in human life, Gatekeeper has increased other costs for migrants. The cost of crossing the border has drastically increased. The California Rural Legal Assistance Foundation now estimates that the smuggling of migrants across the border is now a \$7-8 billion dollar business, and that the cost to individual migrants has skyrocketed since 1994.¹¹¹

One of Gatekeeper's specific aims is to stop migrant-smuggling.¹¹² With this the risks associated with smuggling have drastically increased and smugglers – coyotes – now take greater chances, putting their charges at risk, and have become more violent than they were before Gatekeeper.¹¹³ They have passed the increased costs of doing business to those they are smuggling. The effect has been an increase in indentured servitude as labor sub-contractors exercise a form of debt-peonage while migrants attempt to pay off their debts.¹¹⁴ Such indentured undocumented workers are doubly powerless: powerless to leave their jobs and powerless to report their

¹⁰⁷ V. Robinson, *The Social Legitimation of State Violence: Stigmatization of Migrant Workers and the Homeless in the United States* (unpublished paper, Department of Geography, Rutgers University).

¹⁰⁸ Ken Ellingwood, *Data on Border Arrests Raise Gatekeeper Debate*, L.A. TIMES, Oct. 1, 1999, at A3; Gregory A. Gross, *5-Year-Old Gatekeeper Is Praised, Denounced*, SAN DIEGO UNION-TRIBUNE, Oct. 31, 1999, at B1; Claudia Smith, *Condemning Migrant Job Seekers To Death*, SAN DIEGO UNION-TRIBUNE, Apr. 6, 1999, at B7; see NEVINS, *supra* note 13.

¹⁰⁹ Leonel Sanchez, *Activist Urges More Humane Border Strategy; Immigrant Deaths On Rise Since '94*, SAN DIEGO UNION-TRIB., Feb. 15, 2001, at B3 (noting that the INS reported some 391 deaths on the U.S. side of the border in 2000. The Mexican Foreign Ministry, which tries to count crossing-related deaths on both sides of the border, reported 499 deaths in 2000 and more than 1500 since Gatekeeper went into effect).

¹¹⁰ See NEVINS, *supra* note 13.

¹¹¹ See Gross, *supra* note 108.

¹¹² See ANDREAS, *supra* note 13; see also NEVINS, *supra* note 13.

¹¹³ See ANDREAS, *supra* note 13; see NEVINS, *supra* note 13; see also Ellingwood, *supra* note 108; see also Michael Huspek, *Border Violence: Implicating Operation Gatekeeper*, SAN DIEGO UNION-TRIB., Aug. 27 1997, at B5.

¹¹⁴ DANIEL ROTHENBERG, *WITH THESE HANDS: THE HIDDEN WORLD OF MIGRANT FARMWORKERS TODAY* (1998); see Langerweische, *supra* note 90.

conditions.¹¹⁵ Workers not held in perpetual debt still face a high degree of powerlessness, since their illegal status makes it exceedingly difficult to report labor, housing, health or other abuses.¹¹⁶ In particular, the cost of *deportation* has dramatically increased because of Gatekeeper, making workers reluctant to expose themselves to that threat, thereby decreasing their power even further.

The fortification of the border has had a documented negative effect on the willingness of migrant workers – both documented and undocumented – to participate in union organizing and, for that matter, to avail themselves of all manner of government programs.¹¹⁷ As one study has shown, “nearly all the undocumented hired farmworkers are fearful of interacting with government officials: they refrain from reporting occupational injuries to government agencies and do not seek medical assistance from government-supported service providers.”¹¹⁸ The economic advantage to growers and other businesses that rely on undocumented labor is obvious. Real wages in some crops dropped by more than 40% during the 1980s and 1990s,¹¹⁹ and they continue to fall.¹²⁰ While not all of this decline can be attributed to changes along the border, the majority of it can. The border has served to lower the cost of the reproduction of labor power by helping to ensure the immiseration of a whole class of working people made powerless to confront their conditions.

The implementation of a regulated “guest worker” program to see workers across the border will not change matters much, if the current small-scale programs are any indication.¹²¹ Guest worker programs may serve to further fortify or otherwise “make safe” the border – or at least help give that appearance – but they will do little to redress the fundamental power differential that exists between capital and labor as it circulates across that border. Guest workers are tied to specific employers. If they are fired or the job ends, they are immediately made “illegal.” The case of 29 quarry workers in Boulder County, Colorado is indicative.¹²² A quarry owner recruited these workers in Queretaro state, Mexico, on the promise of \$10 an hour jobs. They entered the country legally on H2B temporary work visas. After housing the workers in squalid conditions, and then failing to pay them what he had agreed, the quarry owner fired the workers. Since the visa was tied to employment at the quarry, the workers were instantly “illegal.”¹²³ While the Immigration and Naturalization Service (INS) could

¹¹⁵. Josiah M. Heyman, *State Effects on Labor Exploitation: The INS and Undocumented Immigrants at the Mexico-United States Border*, 18 CRITIQUE OF ANTHROPOLOGY 157 (1998).

¹¹⁶. *Id.*

¹¹⁷. *Id.*; see NEVINS, *supra* note 13.

¹¹⁸. See Herries-Hathorn, *supra* note 92; see also Mitchell, *California Living*, *supra* note 45.

¹¹⁹. See WELLS, *supra* note 82.

¹²⁰. See *infra* notes 147-155 and accompanying text.

¹²¹. The history of the *bracero* program is a guide. It was exactly that program, after all, the Cesar Chavez and the United Farmworkers understood had to be eliminated if farmworkers unionizing was to be successful.

¹²². Michael Janofsky, *Dismissed Immigrants Say the System Betrayed Them*, N.Y. TIMES, Sept. 2, 2001, at 1:24.

¹²³. *Id.*

renew or extend their visas, it would only do so if the workers secured another sponsoring employer. The effect is, in essence, a form of bonded servitude.

While both advocates and critics of guest worker programs say that such perfidious behavior by employers is not the norm, the program nonetheless places a great deal of power in employers' hands. For its part, the INS says that it does not keep track of guest workers who lose their jobs,¹²⁴ seemingly expressing little interest in such abuses of the guest worker program. The lack of enforcement of employer sanctions for using undocumented labor is well known, as is the willingness of INS agents to raid workplaces during organizing drives.¹²⁵

The point is that the border as it now exists: a fortified, heavily policed fence that pushes migrants into the deserts and mountains, and that plays such an important role in both lowering wages and undermining worker power in the U.S., is the exact geographical representation of the importance of geographical difference to continued capitalist development under the regime of free trade.¹²⁶ The border reifies difference and makes it available as an input to profit. It helps *reproduce* the very differences that are leading so many migrants north and across the border. To undermine the border, to open it up to the free movement of workers, to allow workers the same freedoms *and rights* that are now being given capital, would simultaneously undermine U.S. production.¹²⁷ As the U.S. ambassador to Mexico so candidly admitted, both agricultural and service (and indeed many other) industries are simply impossible in the U.S. without *illegal* labor.¹²⁸

Strengthening the fortification of the border for workers seeking employment within the U.S. has the effect – whether intended or not does not matter – of driving down wages directly, and of driving down the cost to employers of doing business. As neo-classical economic models suggest, under a regime of unlimited labor movement, and given equal rights within the resulting market, labor rates would tend

¹²⁴ *Id.*

¹²⁵ See, e.g., Nurith C. Aizenman, *INS Raids Follow Union Organizing; Aliens Say Law Is Being Misused*, THE WASH. POST, Dec. 6, 1999, at A3; Heyman, *supra* note 115 (membership in the United Farmworkers has fallen to about 27,000 from a high of near 100,000 in the 1970s); see Andy Furillo, *With Union in Decline, Farm Workers Turning Elsewhere*, SACRAMENTO BEE, May 22, 2001.

¹²⁶ See NEVINS, *supra* note 13.

¹²⁷ As participants at the University of Richmond Law School Symposium noted, at which this argument was presented, simply opening the border, might, in fact, have the effect of further lowering wages. But free trade areas are based on the equalization of rights for capital and investors. Extending these same rights, that is truly dismantling the border for people, would, over time, undermine precisely the sort of differential advantages that capital seeks to exploit through compacts like NAFTA and FTAA. The point of my argument is that it will be impossible to open the border in anything like a just manner because the geographical differences in rights that the border reifies are crucial to the geography of relative surplus value production. It is also a (partial) solution to the contradiction of over-production: to the degree that wages are lowered for some (e.g. migrant workers), they may be maintained at higher real levels for others, who are then "freed" to consume, which, of course, is critical, since surplus value is such only to the degree that it is realized in exchange..

¹²⁸ Weiner, *supra* note 2, at 4.1.

towards equilibrium across space. Closing and fortifying the border assures that this equilibrium is never reached, while also assuring that enough workers are nonetheless on hand, and in so thoroughly a powerless condition to guarantee that localized wage rates will also not rise too high. Immiseration is a crucial function of the border. Keeping the border closed to workers, and thus reifying differences in rights across a single labor market, assists in the externalization of the reproduction costs of labor by helping to create a thoroughly *uneven* geography of production.

C. Looking South, Moving North

To say that much does not say anything about either *where* the costs of reproduction are borne, or *why* so many people keep attempting to cross the border, no matter how fortified it becomes. The answer to the second question, of course, is obvious: they are looking for work. They are drawn to the border to work in Maquiladoras, they are drawn to northern Mexican agribusinesses (many of them U.S.-based), and, especially, they are drawn across the border to work in services, manufacturing, and agriculture. But, this only raises the further question of why so many people are on the move; why so many are willing to risk their lives and to pay exorbitant costs to cross the border; why so many will rip themselves away from their families – their children and their spouses, their parents and their communities – and risk not seeing them for years (if ever again).

Part of the answer is implicit in our earlier discussion of uneven development.

Radical differences in the "historical and moral elements" that govern social reproduction – and so the cost of labor – set up what demographers call a series of "push" and "pull" factors, and people have been responding to these for generations.¹²⁹ By moving, they can both improve their lot and offer their labor at a cut rate in the new location.

As we know, "historical and moral elements" are not simply a natural feature of the landscape. Sometimes they are a matter of law. In preparation for the implementation of NAFTA, Mexican President Salinas engineered a repeal of Section X of Article 27 of Mexico's Constitution. This section guaranteed communal rights to land. Its repeal allowed for lands to be mortgaged, sold off, privatized, and engrossed.¹³⁰ The repeal of Section X has paved the way for a new and, as ever, quite vicious, round of primitive accumulation.¹³¹ The result was the displacement of hundreds of campesinos, most of whom are indigenous peoples. Cultivated acreage in Mexico dropped 37% between 1994, the year of NAFTA's implementation, and 1998.

As John Ross has written, campesinos are becoming minimum wage workers on what were once their own lands.¹³² Their control over the means of production, to put it in crude terms, has been alienated from them, and like Europe's peasants at the end of

^{129.} See, e.g., *POPULATION MIGRATION AND THE CHANGING WORLD ORDER* (W.T.S. Gould & A.M. Findlay eds., 1994); *DEMOGRAPHIC DYNAMICS OF THE U.S.-MEXICO BORDER* (John R. Weeks & Roberto Ham-Chande eds., 1992) (for recent work by geographers on population mobility and economic change).

^{130.} See *id.* (for analysis).

^{131.} MARX, *supra* note 6, at 667-724.

^{132.} John Ross, *The Burro at the Palace*, 62 *THE PROGRESSIVE* (1998) 9:28-29 (referring to minimum wage in Mexican terms, of course – a wage that plummeted in the wake of the massive devaluation of the peso in 1995).

feudalism, they have become "free labor" – free of everything but their labor power.¹³³ Campesinos are now free to move north to the burgeoning industrial farms of Baja and Sonora, the bustling, if wholly degrading, Maquila districts, and of course the U.S. Reporters for the *New Yorker* have had no trouble turning up indentured Zapotec peasants living in converted chicken sheds on flower farms in San Diego and Riverside, and their even less fortunate compatriots living without shelter in the ravines below Southern California's sprawling, faux-Spanish suburbs.¹³⁴

The migration expert Douglas Massey notes that "as subsistence, command, or bureaucratic economic structures are replaced with market mechanisms [as is NAFTA's intent], workers are displaced from their former livelihood and thrown onto uncertain labor markets."¹³⁵ These "market mechanisms" as Massey notes, are not somehow natural and objective, but constructed. Beginning in 1982, the Mexican government embarked on a program of IMF and World Bank directed neoliberal economic restructuring. As Massey details, this restructuring entailed abandoning the import-substitution model that had governed Mexican development to that point, and replacing it with a regime of export-oriented production, lowered and eliminating tariffs, creating new rules to encourage outside investment and foreign business ownership, and abandoning longstanding welfare programs.¹³⁶ Encoding such changes in NAFTA created "a direct U.S. financial and political interest in Mexico's free market reforms, and any Mexican president who acted unilaterally against U.S. financial and political interests could expect to pay a very high price at home and abroad."¹³⁷ Massey is worth quoting at length here:

In ratifying NAFTA, therefore, the United States was ratifying the free market economic model that President Salinas had implemented in Mexico; and if one approves of that economic model, then logically one also approves of the transformations that follow from it. In urban areas, workers have been shed in record numbers from government bureaucracies, state-owned firms, and private companies. In rural areas, privatization has brought a wave of land consolidation, mechanization, and a shift to capital-intensive production methods, all of which have worked to displace subsistence farmers and small landowners. As unemployment has risen and inflation has oscillated between extremes over the past decade, Mexicans have sought ways of managing risk.¹³⁸

One means of managing this risk has been to send one or more household members north to risk crossing the border in search of work. "The consolidation of Mexican markets under NAFTA, in short, unleashed precisely the sort of social, political, and economic transformations that have served as engines of international

¹³³ See MARX, *supra* note 6.

¹³⁴ See Langewiesche, *supra* note 90.

¹³⁵ Douglas S. Massey, *March of Folly: U.S. Immigration Policy after NAFTA*, 37 AM. PROSPECT 22 (1998), available at <http://www.prospect.org/print/V9/37/massey-d.html> at ¶ 8.

¹³⁶ *Id.* at ¶ 15.

¹³⁷ *Id.* at ¶ 16.

¹³⁸ *Id.* at ¶ 17.

migration elsewhere in the world."¹³⁹ In short, neo-liberal development is not a "solution" to international migration, but its cause.¹⁴⁰

Massey convincingly argues that first, NAFTA-type development will only continue to increase flows of migration, migration that is more permanent than temporary. Second, Massey convincingly argues that current U.S. immigration policy, as implemented through Gatekeeper and similar programs, will do little more than encourage "stagnant wages, declining labor standards, and a growing population of impoverished, unhealthy, and poorly educated Mexican Americans."¹⁴¹ In a study conducted with a colleague, Massey showed that, before the Immigration Reform and Control Act of 1986 (IRCA), undocumented Mexican migrants earned the same wages as those with documents. However, after IRCA, undocumented Mexican migrants earned 28% less than those with documents, and "the post-IRCA wage penalties were especially severe in agriculture and among migrants hired through subcontractors."¹⁴² But, this is not to say that ICRA has been effective in its stated aims. Rather, the employer sanctions associated with IRCA have done little more than create "a new black market for immigrant labor."¹⁴³

Massey argues that the net effect of agreements like NAFTA and stepped up border fortification through IRCA-like laws and Operation Gatekeeper-like programs of enforcement is a policy that is "backfiring."¹⁴⁴ On the contrary, such a policy is deeply profitable. It is, in fact, making profitability possible through the exploitation and enforcement of differences in citizenship, in access to land, in wealth, in realistic desires, and of whole new fields for the accumulation of capital. It is creating a classic reserve army of labor¹⁴⁵ in California and elsewhere in the U.S. that allows, as Alan Greenspan so frankly admitted,¹⁴⁶ vibrant economic growth without a rise in real wages for most workers, commonly known as inflation.¹⁴⁷ This is in large part because Mexico, and not California, is the location for the reproduction of California agriculture's labor force, and the stark differences between the "historical and moral elements" between the two places, as degraded as California's conditions are becoming, are precisely the means by which relative surplus value is leveraged. Taken together, the upheavals of NAFTA-like neo-liberal reform and an increased

¹³⁹ *Id.* at ¶ 18.

¹⁴⁰ *Id.* at ¶ 5.

¹⁴¹ *Id.*

¹⁴² *Id.* at ¶ 46.

¹⁴³ *Id.* at ¶ 47.

¹⁴⁴ *Id.* at ¶ 5.

¹⁴⁵ MARX, *supra* note 6, at 602-603.

¹⁴⁶ Wiener, *supra* note 1, at ¶ 12.

¹⁴⁷ See Doug Henwood, *Income & Poverty*, 80 LEFT BUS. OBSERVER (Nov. 1997) (showing real wages have declined for poor and middle income Americans by 3.2% and 3.0 % respectively between 1989 and 1996) available at http://www.panix.com/~dhenwood/Stats_incpov.html. See also Doug Henwood, *Boom for Whom*, 93 LEFT BUS. OBSERVER (Feb. 2000) (showing that real wages for middle income Americans began to rise in 1997 and 1998, but had not yet regained value lost in the earlier period), available at <http://www.panix.com/~dhenwood/IncPov98.html> (last visited Oct. 21, 2001).

militarization of the U.S. border make increased exploitation, that is increased surplus value production, possible.

Uneven development, the growth of California agriculture through the immiseration of workers both in California and to the south, is a precondition, rather than a by-product, of globalization. There is no clearer evidence for this than the sheer numbers of agricultural employers and subcontractors who avoid paying California's minimum wage, and sometimes avoid paying workers altogether. A series of stories published in the *Sacramento Bee* in May and June 2001 begin to hint at the scale of the problem. A state study of vineyard employers showed that some 35% paid workers below minimum wage in 1998.¹⁴⁸ Failure to pay workers altogether was not rare. However, not a single vineyard operator, nor the subcontractors that serve them, was prosecuted for wage violations that year.¹⁴⁹ Simultaneously, between 1996 and 1999, while workplace deaths across the country were dropping, deaths of California farmworkers increased by 33% (from 57 to 76 per year).¹⁵⁰ Official reports of pesticide poisonings have decreased from highs in the 1980s, but anecdotal evidence from farm area clinics suggest that exposure is far higher than official statistics indicate.¹⁵¹ It is hard to determine realistic numbers, however.

As always, the State of California remains reluctant to enforce its own agricultural safety, living and wage laws. Democratic Governor Gray Davis recently vetoed a bill that would have put more teeth into California farm labor law by imposing jail time for growers or contractors who knowingly violate labor laws.¹⁵² In an effort that is nothing more than sickeningly symbolic, California now employs a total of 19 farm inspectors, who issued a total of only 87 citations in 2000.¹⁵³ While these inspectors assessed \$530,000 in fines, they collected only \$66,000.¹⁵⁴ At the peak of the 2000 season, farms employed 509,000 people, which only accounted for between 50% and 60% of the farmworkers resident in the state.¹⁵⁵ Such a huge surplus of labor certainly implies its constant cheapening. But it also implies that the costs of reproducing California's labor force are fully externalized from the point of production – and placed either in the source region (Mexico and south), or onto what tattered remains of the California public assistance system including public hospitals, food banks, homeless shelters, etc. which may still exist.

IV. FTAA: Deepening the Geography of Injustice

¹⁴⁸ Andy Furillo, *Toiling Under Abuse*, SACRAMENTO BEE, May 20, 2001, at A1.

¹⁴⁹ *Id.*

¹⁵⁰ Andy Furillo, *Farm Labor's Dangers Detailed*, SACRAMENTO BEE, May 27, 2001, at A1; see also <http://www.cfbf.com/release/2001/pr-082401.htm> (noting the California Farm Bureau Federation states the decline in total U.S. workplace deaths on its website while never mentioning the fact that California farmworker deaths are on the increase) (last accessed Oct. 21, 2001).

¹⁵¹ Furillo, *supra* note 150.

¹⁵² Andy Furillo, *Farm Labor Reforms Far From Certain*, SACRAMENTO BEE, May 22, 2001, at A1.

¹⁵³ Andy Furillo, *Citations Rare for Violators: The State Labor Chief Points to an Alternate Approach – Education*, SACRAMENTO BEE, May 20, 2001, at A13.

¹⁵⁴ *Id.*

¹⁵⁵ See generally *California Labor by the Numbers*, SACRAMENTO BEE, May 20, 2001.

Into this environment comes the Free Trade Agreement of the Americas. President Bush, and before him President Clinton, described the FTAA as the expansion of NAFTA to the whole of the hemisphere. While there are differences in the details between the two agreements, it is clear that the intent is the same: an effort by national elites, themselves driven by degrees of access to power, to implement a hemispheric neo-liberal regime of trade that shifts power from people to property, from workers to investors, and from campesinos to corporations. The effect will be to produce yet more free labor. Such labor will consist of not only laborers who are free to sell their labor because they have no other way to support themselves but also laborers who must exercise this freedom under conditions of excruciatingly straightened circumstances.

During the Quebec Summit of the Americas, President Bush spoke in ringing tones about how with the FTAA:

[w]e seek freedom not only for people living within our borders, but also for commerce moving across our borders. Free and open trade creates new jobs and new income. It lifts the lives of all our people, applying the power of markets to the needs of the poor. It spurs the process of economic and legal reform. And open trade reinforces the habit of liberty.¹⁵⁶

In California, we can see the content of that freedom, the validity of those laws, and just what it means to apply the power of the market to the needs of the poor. Such cynicism on the part of those who tout the unending benefits of neo-liberal reform, no matter how often we hear them, is hard to swallow. But the telling part is the first sentence of Bush's statement. Freedom is for people living within our borders. Freedom is also for goods that cross those same borders. Freedom does not extend, however, to those people who cross borders in search of the work that their freedom to sell their labor power demands and provides us with exactly the freedom President Bush finds so attractive. Our good living is predicated on their continuing immiseration.¹⁵⁷ For them, there is Operation Gatekeeper; there is the non-enforcement of labor laws; there is the continued intensification of seasonality in California farm work, and the subsequent need for ever greater numbers of truly immiserated workers; there is the direct attack on the power of organized labor. We know just what President Bush means when he says that "I don't want labor protections to be used to destroy the free trade agreement."¹⁵⁸

The FTAA, like NAFTA, will not lift all into prosperity; it will deepen the uneven development that makes capitalism possible by creating geographical discord between markets for commodities and goods and for the reproduction of labor. To do otherwise would undermine the very basis for trade. Strong borders and differential treatment will remain the rule for workers. The new rules of cooperation and competition for financial and productive capital at the global scale will demand at least this much. The era of primitive accumulation – but now primitive accumulation in relative geographical space – is not over.

¹⁵⁶ David E. Sanger, *Bush Links Trade with Democracy at Quebec Talks*, N.Y. TIMES, Apr. 22, 2001, at 1.

¹⁵⁷ Mitchell, *supra* note 45.

¹⁵⁸ *Id.*