Prospects for a Bilateral Immigration Agreement with Mexico: Lessons from the Bracero Program

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Notes

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I. Introduction

When the United States, Mexico, and Canada began negotiating the North American Free Trade Agreement (NAFTA), immigration, as well as labor and environmental, concerns arose among the discussions of free trade.[1] While the countries came to sign NAFTA-related side agreements on labor rights and the environment, Mexico and the United States chose to avoid the controversial immigration issue out of fear that it would derail the whole project.[2] However, there were promises that negotiations for a bilateral immigration agreement would continue after the passage of NAFTA.[3] Over five years later, no such agreement has been reached despite the increasing economic integration of the two countries.

Last year Mexican Labor Minister Jose Antonio Gonzalez Fernandez expressed his government's intention to ask the United States to join Mexico in examining the possibility of a worker exchange program when the NAFTA labor side-accord comes up for review in the future.[4] Such a bilateral effort, the Bracero Program, was executed in the 1940s and 1950s.[5] Under this program Mexican agricultural workers were legally permitted to temporarily enter the United States to work. The Bracero Program remains the only example of a bilateral immigration program between the United States and Mexico.[6] Since then, the U.S. government

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1. Roberto Rodriguez & Patrisia Gonzalez, *Now That NAFTA's Law, Deal with Immigration*, PHILA. INQUIRER, Dec. 18, 1993, at A9.

2. *Id.*

3. *Id.*

4. *NAFTA: Mexico to Seek Analysis of Legal Worker Exchange Under Free Trade Agreement*, BNA INT'L TRADE DAILY, Mar. 4, 1999, at D4 [hereinafter *NAFTA: Mexico to Seek Analysis*].

5. A series of agreements between the United States and Mexico, most significantly the 1942 Bilateral Agreement and the 1951 Bilateral Agreement, formed the basis of the Bracero Program throughout its existence. *See infra* notes 11, 18-19, 107, and accompanying text.

6. Luis Herrera-Lasso, *The Impact of U.S. Immigration Policy on U.S.-Mexico Relations*, 3 UCLA J. INT'L LAW & FOREIGN AFF. 357, 359 (Fall/Winter 1998-1999).

has made little effort even to discuss a new bilateral program for Mexican immigration to the United States.[7]

This Note will examine the bilateral nature of the Bracero Program, and the various factors that made the program possible from 1942 until 1964. That is, what brought about the air of cooperation, what drove it away, and what was accomplished in the interim. Ultimately, this examination will demonstrate that the economic and political conditions that exist today are similar to those that existed when the Bracero Program was established, providing hope that a new bilateral labor agreement between Mexico and the United States may be forthcoming.

A bilateral immigration program could provide significant advantages over unilateral immigration policy. First, the two countries could more effectively achieve their migration goals through a cooperative effort since the policies of either nation can influence migration patterns.[8] Additionally, cooperation and compromise in the area of immigration can improve overall relations between Mexico and the United States so that cooperation will continue in other fields, such as trade.[9] However, differences in the sociopolitical atmosphere of the two countries and weaknesses in the Bracero Program itself indicate that a new agreement would not and should not follow the Bracero model. Nonetheless, the failures in cooperation and the weaknesses of the earlier program can provide some of the best insight on how any future bilateral immigration program should be structured.

II. Background Information

With the attack on Pearl Harbor and the entry of the United States into World War II, the fear of impending labor shortages in the agricultural sector of the economy resulted in a new, more positive official attitude toward Mexican contract labor.[10] Informal negotiations with Mexico culminated in the signing of a bilateral agreement on August 4, 1942, creating the Bracero Program.[11] As President Truman's Commission on Migratory Labor put it: "The negotiation . . . [was] a collective bargaining situation in which the Mexican Government [was] the representative of the workers and the Department of State [was] the representative of our farm employers."[12]

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7. *See* Marc R. Rosenblum, *My Neighbor, Myself: Mexican Influence on U.S. Migration Policy*, 3 UCLA J. INT'L LAW & FOREIGN AFF. 527, 535 (Fall/Winter 1998-1999).

8. Both push and pull factors affect immigration. *See infra* notes 195-97 and accompanying text.

9. *See infra* notes 159-70 and accompanying text.

10. KITTY CALAVITA, INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE I.N.S. 19 (1992). In the previous decade, the United States had taken a restrictionist stance on Mexican immigration. *See infra* note 35 and accompanying text.

11. *Id.*

12. *Id.*

Over the next two decades, the U.S. government transported five million "braceros"[13] from Mexico, providing growers and ranchers in twenty-four states with an "endless army" of cheap labor.[14] Initially, the (now defunct) Farm Security Administration, which was part of the Department of Agriculture, conducted recruitment and contracting.[15] However, control slipped into the hands of the individual growers from 1948 until 1951.[16]

In 1951, Congress enacted Public Law 78, granting, for the first time, specific statutory authority for the United States to negotiate an agreement with Mexico to import Mexican farmworkers under contract.[17] Under this authority, the U.S. government negotiated the 1951 Bracero accord, an agreement that reestablished the government-to-government contract system and set forth elaborate guarantees and benefits for the Mexican laborers.[18] This accord served as the international framework for importing Mexican contract workers until the program's demise in 1964.[19]

III. The 1942 Bilateral Agreement

A. Political Circumstances in the Early 1940s

1. U.S. Relations with Mexico.—Relations between the United States and Mexico were relatively cordial during this time period, despite the tensions of the previous decade.[20] In the 1930s, the Mexican government decided to nationalize the nation's oil industry.[21] This strained relations as powerful U.S. oil interests found their property expropriated by the Mexican government.[22] However, in November of 1941 an agreement settling the outstanding problems with the expropriation was reached, "finally placing the two governments on a firm basis of friendship and cooperation."[23]

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13. "Bracero" is a Spanish term literally meaning one who works with his arms. The nearest English equivalent is "field hand." RICHARD B. CRAIG, THE BRACERO PROGRAM: INTEREST GROUPS AND FOREIGN POLICY ix n.1 (1971).

14. CALAVITA, *supra* note 10, at 1, 3.

15. *Id.* at 20-21.

16. *Id.* at 42.

17. *Id.* at 43; *see also infra* notes 123-27 and accompanying text.

18. CALAVITA, *supra* note 10, at 45-46.

19. *Id.* at 45.

20. *See* Rosemary Thorp, *The Latin American Economies, 1939-c.1950, in* 6 THE CAMBRIDGE HISTORY OF LATIN AMERICA 117, 123 (Leslie Bethell ed., 1994).

21. TULIO HALPERIN DONGHI, THE CONTEMPORARY HISTORY OF LATIN AMERICA 217 (John Charles Chasteen trans., Duke Univ. Press 1993).

22. *See* Thorp, *supra* note 20, at 123.

23. *Id.* It is interesting to note the conditions of the agreement as indicative of the level of cooperation:

The Second World War also brought the two countries closer together. In the early stages of the war, Mexico, along with most other Latin American countries, tried to remain neutral, despite U.S. pressure.[24] Nonetheless, on July 15, 1941, the United States completed a commercial agreement with Mexico whereby the United States would supply export facilities for the products most needed for Mexican industry and purchase the entire surplus of eleven strategic raw materials from Mexico.[25] Relations improved further when Mexico abandoned its policy of neutrality in World War II in favor of strong collaboration with the United States.[26] Immediately after Pearl Harbor Mexico declared war against the Axis powers, enhancing the atmosphere of cooperation dramatically.[27] Attorney General Francis Biddle then asked the State Department to approach Mexico officially on the bracero matter.[28]

In addition, immigration issues between Mexico and the United States were rather subdued at this time. As a growing industrial nation, the United States was "a country in need of the talents of those outside our national frontiers."[29] Even so, a large flow of Mexican immigration did not develop until World War I.[30] At this time, Congress enacted the Immigration and Nationality Act of 1917.[31] Though the statute appeared to be highly restrictive, it contained a loophole allowing the commissioner general of immigration to admit certain classes of workers, including agricultural laborers, for temporary employment.[32]

Reportedly, about 73,000 temporary Mexican workers were admitted from 1917 to 1921.[33] Although no reliable evidence actually exists on the

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> [T]he United States promised financial assistance to stabilize the Mexican peso, to buy Mexican silver in large quantities, to furnish loans and credits for the completion of the Mexican portion of the Pan-American Highway, and to negotiate a trade treaty. Mexico undertook to pay US$40 million to American citizens. As for the oil dispute, a joint commission of two experts was to be set up to value the expropriated properties and recommend the amount and method of compensation. The experts' recommendations were made, and accepted . . . . Some slight modifications followed, but, with the settlement, a long and difficult chapter in United States-Mexican relations was closed.

Id.

24. DONGHI, *supra* note 21, at 216-17 (describing the Pan-American preference for neutrality and efforts by the U.S. to persuade Latin American countries to join the Allied cause).

25. Thorp, *supra* note 20, at 123.

26. *See id.* at 122.

27. *See id.*

28. CRAIG, *supra* note 13, at 40.

29. *Id.* at 5-6.

30. *Id.* at 6.

31. Immigration and Nationality Act of 1917, Pub. L. No. 64-301, ch. 29, 39 Stat. 874 (codified as amended at 8 U.S.C. § 1181 (1994)); CRAIG, *supra* note 13, at 6-7.

32. Immigration and Nationality Act of 1917, Pub. L. No. 64-301, ch. 29, 39 Stat. 874 (codified as amended at 8 U.S.C. § 1181 (1994)); CRAIG, *supra* note 13, at 7.

33. *Study of Population and Immigration Problems, Administrative Preservations [III], Admission of Aliens into the United States for Temporary Employment, and "Commuter Workers": Hearing Before the Comm. on the Judiciary*, 88th Cong. 27 (1963).

influx of temporary Mexican workers from 1900 to the 1940s,[34] records on annual permanent immigration from Mexico reveal several fluctuations resulting primarily from a restrictive immigration law enacted in 1924 and renewed during the Great Depression in the early 1930s.[35] It is also clear that agricultural labor continued to flow sporadically to and from Mexico in the time between the wars.[36] But before 1942, Mexican laborers had never come to the United States "under the auspices of an international accord."[37]

When U.S. intervention in World War II created a domestic manpower shortage, the American government recognized the need to allow more temporary Mexican workers into the United States.[38] A bilateral approach to legalizing such immigration "was facilitated by the widespread perception, based on experience, that the peculiarities of Mexican labor migration to the United States did not make it amenable to control through independent, unilateral efforts by either government."[39] The bilateral approach was also made possible because both the U.S. and Mexican governments shared the view, though based on different values, that "the permanent settlement of Mexicans in the U.S. was not desirable, though temporary migration and employment of workers was considered beneficial to both countries."[40] With common goals, the two nations worked together in fashioning a program to expand temporary migration from Mexico to the United States.[41]

2. Internal U.S. Politics.—By no means was the Bracero Program unanimously accepted in the United States, even at its inception.[42] The

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34. CRAIG, *supra* note 13, at 7.

35. *Id.*

36. *Id.*

37. *Id.* at 37.

38. *Id.* at 38.

39. Larry Manuel Garcia y Griego, The Bracero Policy Experiment: U.S.-Mexican Responses to Mexican Labor Migration, 1942-1955 21 (1988) (unpublished Ph.D. dissertation, UCLA) (on file with the University of Texas at Austin, Benson Latin American Collection). These peculiarities included such push and pull immigration factors as the significant disparity in wealth between the two bordering nations, the long-established presence of large Mexican communities already in the United States, and U.S. employers' desire for Mexican workers. *See* CRAIG, *supra* note 13, at 16-17 (commenting on "the discrepancy in earning power that lured the Mexican laborer northward"); Garcia y Griego, *supra* at 21 (describing Mexican immigration to the United States as a continuation of settlement patterns established in colonial times when Texas, New Mexico, and California were part of New Spain); Monica L. Heppel & Luis R. Torres, *Mexican Immigration to the United States After NAFTA*, 20 FLETCHER F. WORLD AFF., Summer/Fall 1996, at 53 (noting U.S. agriculture's historical demand for Mexican workers); *see also infra* notes 195-97 and accompanying text (describing push factors from Mexico and pull factors from the United States that continue to influence Mexican immigration today).

40. Garcia y Griego, *supra* note 39, at 63.

41. *Id.* at 2.

42. *See* CRAIG, *supra* note 13, at 35 ("[T]he entire question of imported Mexican agricultural labor was one of conflict. . . . Viewed nationally or internationally, the program was always a struggle.").

principal opponents of the program were the representatives of organized labor, the AFL-CIO, and later a number of "social reform-human rights organizations."[43] They argued that there was no shortage of domestic workers: "[T]here were . . . many unemployed individuals who would gladly accept agricultural work if only decent wages and working conditions were offered."[44] They worried that imported labor would undermine the wages, working conditions, and employment opportunities of domestic farm laborers.[45] With a ready and willing alternate labor force, employers could force American workers either to accept whatever they were offered or be replaced by Mexican workers.[46]

The role of labor unionism in agriculture before and during the 1940s can help to explain the failure of these opposition groups in preventing the implementation of the Bracero Program.[47] The Industrial Workers of the World (IWW) were the first to undertake the task of unionizing agricultural laborers.[48] They were largely unsuccessful mostly because of repeated labor shortages and diversions of their efforts elsewhere.[49] As Richard Craig describes it,

> Following some early successes in organizing field workers in the 1920-1940 period, a clearly discernible trend away from organizing field labor and toward organizing the processors of field crops became more apparent. During World War II, the drive by organized labor in agriculture lapsed into virtual nonexistence.[50]

Opponents of the program were also up against a powerful interest group—the growers—who insisted there was a labor shortage and demanded aid from the government.[51] Long before the attack on Pearl Harbor, southwestern growers claimed to be experiencing a labor shortage and complained to their representatives in Congress.[52] Initially, their complaints were deemed to be a "mere repetition of the age-old obsession of all farmers for a surplus labor supply" to keep the costs of labor down.[53] However, the threat of declining economic conditions soon convinced Congress otherwise.[54]

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43. *Id.* at 28-29.
44. *Id.* at 29.
45. *Id.* at 30-31.
46. *Id.* at 30.
47. *Id.* at 8.
48. *Id.* at 9.
49. *Id.*
50. *Id.*
51. *Id.* at 37, 24 ("The forces of agribusiness supported the legalized importation of Mexican agricultural laborers with a seldom equaled political acumen and adroitness.").
52. *Id.* at 37.
53. *Id.* at 38-39.
54. *See id.* at 39.

B. Economic Conditions in the Early 1940s

As the United States prepared for war and initiated a draft, the demands of growers for Mexican workers became increasingly urgent.[55] When the United States actually became involved in hostilities, domestic farmers faced being unable to harvest the 1942 crop if more labor was not forthcoming.[56] Growers welcomed domestic migrant workers from Oklahoma and Arkansas, but most of these laborers preferred the more lucrative option of working in the booming defense industry.[57]

Not only was labor short, but farmers were asked to produce more and more to sustain the war effort.[58] Agricultural production was one of the most important links "in the chain of aggregate action" for the war, and its weakness threatened "the cause of victory."[59] Government officials began to recognize that labor importation was valuable to the national defense and, therefore, could not be denied.[60]

As Table 1 indicates, unemployment levels did indeed drop dramatically in 1942 and continued to fall through 1944 while remaining at extremely low levels through 1945. Even opponents of imported labor could no longer argue that the labor shortage was just a myth created by southwestern growers.[61] The great demands of the war were felt in all sectors of the economy, including the agricultural sector.[62]

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55. *Id.* at 37.
56. *Id.* at 39.
57. *See id.* at 37.
58. *Id.* at 39.
59. *Id.*
60. *Id.* A telegram from California Governor Culbert Olson to the Secretaries of Agriculture, State, and Labor reflected the growers' strategic emphasis on national defense. The telegram read, "Without a substantial number of Mexicans, the situation is certain to be disastrous to the entire victory program, despite our unified efforts in the mobilization of youth and city dwellers for emergency farm work." *Id.*
61. *Id.* at 38-39.
62. *Id.* at 39.

Table 1: U.S. Unemployment 1939-1948[63]

Year	Unemployment Rate (%)
1939	17.2
1940	14.6
1941	9.9
1942	4.7
1943	1.9
1944	1.2
1945	1.9
1946	3.9
1947	3.9
1948	3.8

C. *Cooperation on the Bracero Program*

1. Competing Interest Groups Collaborate.—Under pressure from the growers, an interagency committee, composed of representatives from the War Manpower Commission and the Departments of State, Labor, Justice, and Agriculture, conducted a study on imported agricultural labor.[64] The plan the committee produced for recruiting Mexican labor "reflected the committee's efforts to resolve the conflicting demands of farmers, organized labor, and the United States and Mexican governments."[65] Thus, before formal negotiations with Mexico began, the four interest groups most impacted by the program had submitted their input.[66]

2. Negotiations with Mexico.—On June 15, 1942, Ambassador George Messersmith met with Mexican Foreign Minister Ezequiel Padilla to request Mexican approval of the Bracero Program.[67] The Mexican president, Avila Camacho, had already ordered a study on how a temporary worker program would affect Mexico.[68] The advantages and disadvantages were examined in detail and thoroughly debated by Mexican government officials.[69]

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63. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, HISTORICAL STATISTICS OF THE UNITED STATES, COLONIAL TIMES TO 1970 (Part 1) 135 (Basic Books 1976) (Bicentennial ed., 1975). Specific statistics on agricultural unemployment are not available before 1948. *Id.*

64. CRAIG, *supra* note 13, at 40.

65. *Id.*

66. *Id.*

67. *Id.*

68. ERNESTO GALARZA, MERCHANTS OF LABOR: THE MEXICAN BRACERO STORY; AN ACCOUNT OF THE MANAGED MIGRATION OF MEXICAN FARMWORKERS IN CALIFORNIA 1942-1960 47 (1964).

69. Otey M. Scruggs, *Evolution of the Mexican Farm Labor Agreement of 1942*, 34 AGRIC. HIST. 140, 146 (1960).

The Mexican government had a number of concerns about such a program.[70] They doubted that there was a real labor shortage in the United States and felt that the growers simply sought cheap labor.[71] It also feared a repeat of "the mass reverse migration"[72] of Mexican workers from the United States that occurred during the Depression should the economy take a turn for the worse.[73] Furthermore, Mexico was concerned with the possible discrimination its nationals would face in certain southern states.[74] Finally, it feared, a mass exodus of laborers could threaten Mexico's own economic development.[75]

Despite these concerns, the Mexican government recognized the advantages of the program.[76] They had been assured that it would be a government-to-government program in which Mexico would have a strong voice.[77] By working on American farms, the braceros would acquire technical skills that could benefit Mexican agriculture.[78] The braceros would also have the opportunity to earn substantial money for themselves, their families, and their country, thus alleviating rural poverty and providing a safety valve to deal with a politically explosive underemployed population.[79] Finally, it was a chance for Mexico to contribute significantly to the war effort, and refusing the American request risked "antagoniz[ing] the consumer of a potentially large amount of Mexican raw materials during the war."[80] Mexico decided that overall the positive effects of the program outweighed the negative.[81]

Claude Wickard, Secretary of Agriculture and head of the U.S. delegation attending the Inter-American Conference of Agriculture in Mexico City in July 1942, helped convince Mexican officials to consent to a trial run.[82] An official accord was signed on July 23 and went into

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70. CRAIG, *supra* note 13, at 41.

71. *Id.*

72. *Id.* Mass reverse migration describes the return to Mexico of workers who had migrated to the United States but could not find work in the depressed U.S. economy.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* at 41-42.

77. *Id.* at 41.

78. *Id.*

79. *See id.* at 18.

80. *Id.* at 41-42.

81. *See id.* at 42.

82. Scruggs, *supra* note 69, at 146-47. Wickard spoke with a number of Mexican officials about the Bracero Program. In particular, Foreign Minister Padilla expressed reluctance because of the exploitation and discrimination suffered by Mexicans who had worked on U.S. farms in the past. CRAIG, *supra* note 13, at 42. He wanted any agreement to include governmentally-sponsored protections for the braceros, such as anti-discrimination provisions and assurances that the U.S. farmers would not exploit the braceros to depress U.S. farm wages generally. *Id.*; *see also* Scruggs, *supra* note 69, at 146-48. Representatives of both governments ultimately agreed to include such guarantees in

effect on August 4.[83] Mexican negotiators insisted on and obtained governmentally-sponsored guarantees for the braceros,[84] and both countries participated in the administration of the wartime program.[85] The United States Employment Service began recruitment by certifying that a specified number of braceros would be needed at a future date.[86] The Ministry of Foreign Affairs's migrant labor bureau and the Mexican Departments of Labor and the Interior assigned quotas to various states, and Mexican and U.S. officials screened prospective workers at the recruitment center in Mexico City.[87] Those chosen were then transported to the United States and placed on farms throughout the country.[88] When they completed their contract period, the braceros were returned to the recruitment center in Mexico.[89] With both countries involved in implementing the program, the undertaking was truly bilateral.[90]

D. Compromises and Guarantees

Through the negotiations, the Mexican government obtained a number of guarantees for the braceros.[91] Generally, braceros would not engage in any U.S. military service, and they would not be subjected to any discriminatory acts.[92] They were also guaranteed transportation, living expenses, and repatriation as required by Mexican labor law.[93]

For wages, the bracero would not be paid less than U.S. workers doing similar work and never less than thirty cents an hour.[94] The agreement specified that piece rates were to be calculated to allow the average bracero to receive at least the minimum hourly wage.[95] Furthermore, braceros who were unemployed for more than twenty-five percent of the contract period would receive a three dollar per day subsistence wage, and those unemployed for less than twenty-five percent

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the bilateral agreement. *Id.* at 147-48; *see also infra* text accompanying notes 91-97. Officials also considered support of the program to be a contribution to the war. Scruggs, *supra* note 69, at 146.

83. CRAIG, *supra* note 13, at 42.

84. *Id.*; CALAVITA, *supra* note 10, at 19; *see also infra* text accompanying notes 91-97.

85. CRAIG, *supra* note 13, at 42. The Mexican government wanted to protect Mexican workers from racial, religious, and other forms of discrimination in the United States. *Id.* at 23.

86. *Id.* at 42.

87. *Id.* at 42-43.

88. *Id.* at 43.

89. *Id.*

90. Garcia y Griego, *supra* note 39, at 2.

91. CALAVITA, *supra* note 10, at 19-20.

92. CRAIG, *supra* note 13, at 43. Texas was specifically precluded from receiving braceros because of a long history of discrimination against and exploitation of Mexican workers in that state. CALAVITA, *supra* note 10, at 20.

93. CRAIG, *supra* note 13, at 43.

94. CALAVITA, *supra* note 10, at 19.

95. *Id.*

of the period would be paid the same unemployment benefits that U.S. farmworkers received.[96] Additionally, braceros would be permitted to elect representatives to negotiate with their employers within the terms of their contract.[97]

The Mexican government enjoyed supervisory power over the individual contracts between the braceros and the U.S. government (through the Farm Security Administration).[98] The U.S. government, in turn, subcontracted with the individual employers.[99] Thus, the Mexican government avoided cumbersome dealings with individual farmers and could rest assured that the program had the U.S. government's backing.[100]

The bilaterally sanctioned labor importation program clearly benefited agricultural interests at the expense of American labor interests.[101] Mexican laborers harvested thousands of acres of crops on land that would otherwise have lain fallow.[102] However, the growers were displeased with many of the particulars of the program and made every effort in subsequent years to render them meaningless.[103] They especially disliked the government-to-government nature of the program, preferring a direct recruitment system.[104] It was not long before they managed to move the U.S. administration of the program from the Farm Security Administration to the War Food Administration, a "'friendlier agency.'"[105] In fact, after the wartime program ended in 1947,[106] the new program negotiated with Mexico replaced the government-to-government contracts with direct grower-to-bracero agreements.[107]

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96. *Id.* Unfortunately, there were no unemployment benefits for domestic farmworkers. Mexican naiveté about U.S. agricultural conditions also revealed itself in Mexico's insistence that braceros be guaranteed "housing facilities equal to those enjoyed by domestic farm workers in the area," CRAIG, *supra* note 13, at 45, and the same protections against occupational diseases and accidents as those enjoyed by domestic farm labor under U.S. law. *Id.* At the time, American agricultural labor did not have any worker's compensation. *Id.*

97. CALAVITA, *supra* note 10, at 19-20.

98. CRAIG, *supra* note 13, at 43.

99. *Id.*

100. *Id.* at 43-44.

101. *Id.* at 46.

102. *Id.*

103. *Id.*

104. *Id.*

105. CALAVITA, *supra* note 10, at 22 (quoting OTEY M. SCRUGGS, BRACEROS, "WETBACKS," AND THE FARM LABOR PROBLEM: MEXICAN AGRICULTURAL LABOR IN THE UNITED STATES 1942-1954, at 240 (1988)).

106. On April 28, 1947, Congress passed Public Law 40, declaring that the program "may be continued up to and including December 31, 1947, and thereafter shall be liquidated within thirty days." Farm Labor Supply Program-Extension-Liquidation, Pub. L. No. 80-40, 61 Stat. 54 (1947). A hearing of the House Committee on Agriculture at the end of 1947 sanctioned "a *de facto* extension of the contract labor system through administrative action." CALAVITA, *supra* note 10, at 26.

107. CALAVITA, *supra* note 10, at 27. The postwar Bracero program was evidenced on the international level by bilateral agreements between the United States and Mexico dated March 25, and April 2, 1947, February 21, 1948, and August 1, 1949. CRAIG, *supra* note 13, at 53.

IV. The 1951 Bilateral Agreement

A. Political Circumstances and Economic Conditions

Several political factors converged to create the impetus for a new bracero agreement in 1951. The Korean War brought on an international crisis similar to World War II.[108] It has been noted that "crisis situations in the international environment may permit weaker nations to diplomatically achieve victories in a short period."[109] The war limited the choices available to the United States.[110] Facing renewed labor shortages, the United States had to either meet Mexican demands or go without agricultural labor at a sensitive time.[111]

Table 2 illustrates the low unemployment rates at the time compared to the unemployment rates in the agricultural sector in particular for the same time period. This evidence of a labor shortage helped overcome the negative reaction to the Bracero Program within the United States, including opposition from the President's Commission on Migratory Labor.[112] A report issued by the commission charged the program with adversely affecting the wages and working conditions of domestic workers,[113] but, as wartime conditions once again increased the need for agricultural workers, Congress and the President were hardly in a position to reject grower demands.[114]

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108. CRAIG, *supra* note 13, at 66.
109. *Id.* at 52.
110. *See id.* at 69-70.
111. *Id.* at 52, 70.
112. *See id.* at 66-67.
113. *Id.* at 67.
114. *Id.* at 70.

Table 2- U.S. Unemployment 1948-1957[115]

Year	Overall Unemployment Rate (%)	Agricultural Unemployment Rate (%)
1948	3.8	5.5
1949	5.9	7.1
1950	5.3	9.0
1951	3.3	4.3
1952	3.0	4.8
1953	2.9	5.6
1954	5.5	8.9
1955	4.4	7.2
1956	4.1	7.3
1957	4.3	6.9

Other considerations also influenced the demands of the Mexican negotiators. Mexican officials had stood staunchly against border recruitment centers because they believed such recruitment contributed to illegal immigration.[116] However, during the period of direct recruitment, illegal immigration increased substantially because growers found it easier to hire illegal workers than to contract braceros from the interior of Mexico.[117]

In response, the Mexican and U.S. governments agreed to a provision in the 1949 bilateral accord[118] that afforded preference to illegal immigrants already in the United States over immigrant workers who were not yet in the United States.[119] Instead of reducing illegal immigration, this provision actually increased unlawful entries into the United States from Mexico, as Mexican workers realized that it was easier to get a bracero contract by first crossing the border.[120] Without government-to-government contracts, the U.S. government was not directly accountable for the bracero's contracts and enforcement of the recruitment requirements was very lax.[121] With increased bargaining power in 1951, the Mexican

115. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *supra* note 63, at 135. Unemployment rates by industry before 1948 are unavailable.

116. CALAVITA, *supra* note 10, at 27-28.

117. *Id.* at 28.

118. The 1949 bilateral accord was one of several Bracero Program agreements entered into in the post-World War II period. *See supra* note 107.

119. *Id.*

120. *Id.*

121. *Id.* at 29.

government wanted to be sure to get the U.S. government's guarantee that contract provisions would be fulfilled.[122]

In 1951, Congress quickly passed Public Law 78,[123] granting specific statutory authorization for the U.S. government to guarantee the provisions of a bilateral agreement on migratory labor.[124] Public Law 78 limited the use of braceros to regions where the secretary of labor certified that: (1) a shortage of domestic workers existed; (2) the use of braceros would not have an adverse effect on the wages and working conditions of similarly situated domestic workers; and (3) the employer tried, but was unable, to hire domestic laborers at wages and hours similar to those offered Mexicans.[125] Under these terms, Mexico was able to negotiate the return of the government-to-government system that it desired.[126] The new agreement became effective on August 11, 1951.[127]

B. Compromises and Guarantees

The 1951 agreement was much more detailed than the 1942 agreement, especially with regard to the recruitment procedures, and the U.S. government guaranteed the fulfillment of contract provisions.[128] Mexico was to receive a minimum of thirty days notice as to the number of workers needed and would allocate quotas to particular areas.[129] At recruitment centers in the interior of Mexico, the representatives of the U.S. Labor Department chose qualified candidates who were then examined by Mexican officials.[130] The braceros chosen would then be transported to a reception center in the United States, where contracting with the growers would begin.[131]

The employer would pay for the bracero's passage to the United States and to the place of work from the reception center.[132] Wages would be "either a stipulated amount or the prevailing area wage paid domestic workers for performing similar tasks, whichever was greater."[133] If braceros were unemployed for more than twenty-five percent of their contract period, they would receive a subsistence payment for the

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122. CRAIG, *supra* note 13, at 70-71.
123. Agricultural Workers-Republic of Mexico, Pub. L. No. 82-78, 65 Stat. 117 (1951).
124. CRAIG, *supra* note 13, at 71-72.
125. 65 Stat. at 118.
126. *See* CRAIG, *supra* note 13, at 69-72.
127. *Id.* at 78.
128. *Id.* at 79.
129. *Id.*
130. *Id.*
131. *Id.* at 80.
132. *Id.*
133. *Id.*

unemployed time.[134] More significant guarantees required employers to carry insurance policies or to post indemnity bonds to cover the payment of benefits if state laws did not cover occupational injuries or diseases.[135] Employers had to furnish adequate lodging, including beds, blankets, and cooking facilities, for free and agree to permit representatives from both governments to inspect the facilities provided.[136] Importantly, braceros were also effectively given the right to join American labor unions.[137] Through these guarantees, the 1951 bracero agreement "remedied many of the worst ills engendered by a system of direct recruitment."[138]

C. *Weaknesses and Controversies*

Even if circumstances today resemble the circumstances that existed when these bilateral agreements were created and a new bilateral agreement on Mexican immigration can be reached, virtually all commentators agree that any new guest worker program requires substantial improvements over the Bracero model.[139] Although the 1951 agreement provided more protections for the bracero and domestic workers, the U.S. government did not enforce them adequately.[140] As one commentator put it, "'United States employers benefitted [sic] from a risk-free pool of menial labor. . . . And they determined all the working conditions, hours, wages, and living accommodations.'"[141] Particularly during the period of direct recruitment, but even after 1951, braceros received insufficient food and substandard housing, and suffered inadequate wages, unsafe working conditions, and unemployment during the contract periods.[142] Many even deserted their employers.[143]

The U.S. government also ignored the provisions of the agreements intended to protect the domestic labor market.[144] Although, under Public

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134. *Id.*

135. *Id.* at 81.

136. *Id.*

137. *Id.*

138. *Id.* at 83.

139. *See, e.g.*, Philip L. Martin, *Economic Integration and Migration: The Case of NAFTA*, 3 UCLA J. INT'L L. & FOREIGN AFF. 419, 437 (Fall/Winter 1998-99) (explaining the arguments against guest worker programs in the context of the failures of the Bracero Program); Mark Krikorian, *Slave Trade*, NAT'L REV., Sept. 14, 1998, at 55, 56 (criticizing the temporary visas used to employ foreign high-tech workers as comparable to the slave-like conditions of the Bracero Program); Bruce Goldstein, *The Agribusiness Proposals for a New "Guestworker" Program Should Be Rejected—Supporters of Farmworkers Should Oppose S. 1814 and S. 1815*, *at* http://www.crlaf.org/fjf126gw.htm (last visited Feb. 21, 2000) ("The bracero program should not be repeated . . . .").

140. CALAVITA, *supra* note 10, at 70.

141. *Id.* (quoting GRACE HALSELL, THE ILLEGALS 8-9 (1978)).

142. *Id.* at 42.

143. *Id.* at 43.

144. *See id.* at 70-71.

Law 78, the secretary of labor was to certify that the importation of foreign labor would not adversely affect wages and working conditions for domestic workers,[145] in areas where braceros were concentrated, agricultural wages remained the same or fell.[146] Studies showed that growers deliberately used the Bracero Program to lower farm wages, and research linked the growers' inability to hire willing domestic laborers to the low wages that resulted from the importation of foreign workers.[147] In addition to the negative effects on domestic laborers and braceros, the Bracero Program also attracted illegal immigrants to the United States.[148] The program also increased permanent immigration to the United States.[149] As many have observed, "there is nothing more permanent than temporary workers."[150] If foreign workers are easily available, employers come to depend on them.[151] Human rights abuses and general immigration considerations led to the eventual demise of the Bracero Program as the labor shortage subsided at the end of the Korean War and, as Table 3 indicates, unemployment in the United States was again on the rise in the agricultural sector.

145. Agricultural Workers-Republic of Mexico, Pub. L. No. 82-78, 65 Stat. 117, 118 (1951).

146. CALAVITA, *supra* note 10, at 70.

147. *Id.* at 71.

148. Heppel & Torres, *supra* note 39, at 51, 62. Except from 1955 to 1959, a large number of the Mexican workers in the United States during the Bracero Program were illegal. Martin, *supra* note 139, at 437.

149. Martin, *supra* note 139, at 437.

150. *Id.*

151. *Id.*

Table 3—U.S. Agricultural Unemployment 1958-1964[152]

Year	Unemployment Rate
1958	10.0
1959	9.0
1960	8.3
1961	9.6
1962	7.5
1963	9.2
1964	9.7

V. Comparison to the 1990s

A. Positive Factors for Bilateralism

Circumstances today resemble, in significant ways, the political and economic conditions that made the 1942 and 1951 bilateral agreements possible. NAFTA has opened up trade between Mexico and the United States, so cooperation is at a level similar to that experienced during World War II and the Korean War.[153] Generally, the concept of globalization is becoming increasingly important, and many argue that with the free flow of commerce there should be a liberalization of the flow of people, or at least a corresponding openness to bilateral programs on migration.[154]

More specifically, direct cooperation in the area of trade has generated interdependence between the United States and Mexico, implying greater institutionalization and interaction in other areas.[155] New institutions and increased interaction can facilitate future cooperation on immigration by enhancing rapport, creating opportunities for discussion, and establishing

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152. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *supra* note 63, at 136.

153. Rosenblum, *supra* note 7, at 527 (commenting on the deepening bilateral relationship between the United States and Mexico since the passage of NAFTA). NAFTA established four principles of cooperation on trade:

> (1) [t]he elimination of tariff and nontariff barriers to trade between Canada, Mexico, and the U.S.; (2) [e]qual treatment in each country for all goods and services produced in North America; (3) a commitment not to erect new obstacles to trade after NAFTA is signed; and (4) a commitment to extend to NAFTA partners any special trade preferences that any of the three countries make available to non-NAFTA countries.

Martin, *supra* note 139, at 425.

154. *See* Rodriguez & Gonzalez, *supra* note 1 ("[I]t is illogical to promote the free flow of trade, goods, technology, capital and ideas while continuing to criminalize the flow of labor."); *see also* Herrera-Lasso, *supra* note 6, at 362 (explaining that the divergence between liberal trade policy and restrictionist immigration policy has led to confusion among Mexicans about U.S.-Mexico relations).

155. Rosenblum, *supra* note 7, at 532.

mechanisms and models for bilateral negotiation and implementation.[156] In fact, the Binational Commission, used to advance bilateral cooperation on NAFTA and other issues, now has a full working group on migration.[157] In 1995, this group created a joint agenda for addressing Mexico's human rights concerns and U.S. law enforcement concerns.[158] They then established joint training programs for border agents on both sides of the border and institutionalized contact between the Mexican consulates, Immigration and Naturalization Service (INS), and border patrol officials.[159] Finally, the group completed various studies, including "a joint analysis of the characteristics, causes, and effects of migration for both countries."[160]

Furthermore, Mexico desires cooperation on migration issues,[161] and greater interdependence improves Mexico's ability to influence U.S. policymaking. As one observer has noted, "NAFTA 'placed Mexico on the U.S. map on a national scale.'"[162] After all, NAFTA was really the first time Mexico actively and successfully influenced U.S. domestic politics.[163] Mexico would have had more leverage if it had directly linked immigration to NAFTA,[164] but the United States continues to need Mexican cooperation in a variety of areas, such as border control.[165]

Additionally, as World War II and the Korean War placed foreign policy in the national spotlight (thus enhancing Mexico's bargaining position) the priority attached to hemispheric free trade by the United States has heightened the importance of U.S.-Mexico relations for current U.S. policymakers.[166] The Mexican government can easily link cooperation on immigration to Mexico's continued receptivity to trade friendliness.[167] After all, U.S. hostility toward Mexican immigrants could turn Mexican voters against the United States.[168] Mexico's demo-

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156. *Id.*

157. *Id.* at 536 ("Bilateral migration relations were prioritized when the subgroup on Migration and Consular Affairs was elevated to full working group status in 1990.").

158. *Id.*

159. *Id.*

160. *Id.* at 536.

161. *See NAFTA: Mexico to Seek Analysis*, *supra* note 4.

162. Rosenblum, *supra* note 7, at 551 (quoting interview with Minister Frederico Salas, Coordinador General de Asesores in Mexico City, Mexico (June 26, 1998)).

163. *Id.*

164. Rodriguez & Gonzales, *supra* note 1.

165. *See* Martin, *supra* note 139, at 423 (describing a proposal by ex-U.S. Attorney Alan Bersin (also known as the "Border Czar") to make "a Grand Bargain with Mexico, in which the U.S. would offer more immigrant slots for Mexicans in exchange for Mexico preventing illegal emigration"); Rosenblum, *supra* note 7, at 542-43, 548 (proposing that Mexico could "link cooperation on migration" to the United States' need for Mexico's assistance to "implement a 'laser visa' border crossing card" program for which border crossers would have to pay a $45 fee).

166. Rosenblum, *supra* note 7, at 552.

167. *Id.* at 550-51 (describing various economic linkages Mexico could make to improve its bargaining position with the United States).

168. *Id.* at 541-42 (reporting that public opinion in Mexico has become incensed over the

cratization makes it increasingly difficult for Mexican politicians to ignore the populace's demands. In fact, with the recent electoral defeat of the PRI, the political party that controlled Mexican politics for most of the twentieth century, partisan competition has opened up "political space for anti-American positions."[169] The Mexican government can emphasize how a bilateral approach to immigration policy could help defuse anti-American sentiments, as well as any accompanying anti-NAFTA backlash, by showing the Mexican people that the United States recognizes the need to take the Mexican viewpoint into account.[170]

Another parallel from the 1940s and 1950s is apparent in current economic conditions. Just as the war economies opened up room for cooperation on migration, the booming U.S. economy of today also increases the chances of a bilateral agreement. Growers have complained of farmworker shortages,[171] and, since unemployment rates are generally low, the usual skepticism with which Congress receives the growers' complaints is reduced.[172] In 1999, the U.S. unemployment rate was between 4.4% and 4.1% all year long.[173] In January 2000, it was even lower, at 4.0%.[174] American farmers are quick to remind Congress that "the last time the U.S. enjoyed an unemployment rate approaching 4% was in the early 1960s," and back then they could count on cheap labor from the braceros.[175] While during World War II the growers' regular labor pool left the farms for better jobs in the defense industry,[176] today farm laborers are leaving for year-round jobs in construction, landscaping, food service, and other low-skill occupations with equal or better pay.[177] Farm wages themselves increased by five percent in 1999, more than the non-farm blue-collar wages.[178] The faster rate of increase in farm wages

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increasingly anti-immigrant, anti-Mexico policies of the U.S.).

169. *Id.* at 542; Herrera-Lasso, *supra* note 6, at 365 (reporting, prior to the 2000 elections, that "[O]pposition leaders are using the issue of immigration to weaken the legitimacy of Ernesto Zedillo's presidency, whose foreign policy with the U.S. must be seen as the most important element of Mexican foreign policy. . . . [This could] destabilize current trends of cooperation and good-will developed in areas such as trade").

170. Rosenblum, *supra* note 7, at 555.

171. Joel Millman, *The Outlook: U.S. Farmers Seek New Bracero Program*, WALL ST. J., Aug. 31, 1998, at A1.

172. *See supra* notes 51-53 and accompanying text; *see also* STEPHEN H. LEGOMSKY, IMMIGRATION AND REFUGEE LAW AND POLICY 244 (2d ed. 1997) (describing the "general skepticism about . . . growers' claims that domestic farm labor is in short supply" when they press for more agricultural guest workers).

173. Bureau of Labor Statistics, *Economy at a Glance*, *at* http://stats.bls.gov/eag/eag.us.htm (last visited Feb. 15, 2001).

174. *Id.*

175. Millman, *supra* note 171.

176. *See supra* text accompanying note 57.

177. Millman, *supra* note 171.

178. Scott Kilman, *On the Farm: A Special News Report About Life on the Job and Trends Taking*

signals a need for farm labor that a new bilateral program could meet. And with the strong economy, Congress and the President can more easily justify to domestic labor defenders a bilateral program that somewhat liberalizes immigration policy.[179]

In fact, agricultural labor organizers in the United States today may even help to make a new program more viable. As discussed above, efforts to organize agricultural workers in the 1940s ended unsuccessfully.[180] However, in 1965, César Chávez started the United Farm Workers Union (UFW), which has been successfully improving the working conditions of farm laborers.[181] Although labor unions usually oppose liberalizing employment immigration, the UFW is largely a Chicano organization that is likely to support a bilateral program with Mexico.[182] The UFW itself might strengthen a new bilateral guest worker program by monitoring and reporting on enforcement of proposed safeguards.

Finally, the perception that Mexican labor migration to the United States was not amenable to control through unilateral efforts by either government, the perception that led to the creation of the Bracero Program, has been reaffirmed since the termination of the program.[183] Unilateral steps taken by the United States, for example, to stem the tide of illegal immigration have proven ineffective.[184] In fact, the United States experienced a significant increase in the pace of Mexican immigration in the 1970s and 1980s.[185] In the 1990s, approximately 200,000 Mexican immigrants (legal and illegal) came to the United States each year,[186] and one to two million additional Mexicans (legal and illegal) worked at least seasonally in the United States each year.[187]

The U.S. response to the massive flow of unauthorized migration has focused on apprehending those attempting illegal entry.[188] Yet, instead of deterring attempted illegal entries, the U.S. strategy has only caused migrants to pay professional smugglers higher fees and to attempt crossing

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Shape There, WALL ST. J., Aug. 17, 1999, at A1.

179. *Cf. supra* notes 61-62 and accompanying text.

180. *See supra* notes 48-50 and accompanying text.

181. *See* RICHARD GRISWOLD DEL CASTILLO & RICHARD GARCIA, CÉSAR CHÁVEZ: A TRIUMPH OF SPIRIT xiii (1995).

182. *See* Press Release, UFW & Labor Help Kick Off Battle for New Amnesty Law as Some 1000 Workers Attend a Town Hall Meeting in Fresno (June 6, 2000) (calling for blanket amnesty for undocumented workers and the elimination of employer sanctions for the hiring of such undocumented workers), *at* http://www.ufw.org/6600.htm.

183. *See supra* note 39 and accompanying text.

184. *See* Martin, *supra* note 139, at 422.

185. Herrera-Lasso, *supra* note 6, at 360.

186. Heppel & Torres, *supra* note 39, at 52.

187. Martin, *supra* note 139, at 422.

188. *See id.* (explaining that the U.S. has responded to illegal immigration by increasing the number of Border Patrol agents and expanding the use of technology to apprehend illegal entrants at the border).

the border several times before successfully entering.[189] There has, in turn, been a significant increase in the number of migrants who have died while attempting to gain unauthorized entry.[190] The U.S. strategy has also created an unintended incentive for unauthorized migrants to remain in the United States once they have entered since re-entry is ever more difficult.[191]

Cooperation with Mexico has advantages that improve the chances of having greater success in achieving the migration goals of both countries.[192] Although in the long run, both governments expect NAFTA to create jobs in Mexico for people who might otherwise immigrate to the United States,[193] reduced migration is an unrealistic expectation in the near- to medium-term future.[194] Conditions in both countries will continue to influence immigration decisions.[195] Conditions pulling Mexicans to the United States include the demand for immigrant labor by U.S. employers, opportunities and higher wages, and family connections in this country.[196] Conditions pushing Mexicans to leave Mexico include demographic population growth, urban and rural insecurity, economic restructuring disruptions, and severe degradation of the environment in Mexico.[197]

While it may be impossible to completely control illegal immigration from Mexico, "[t]he question is whether it can be reduced and maintained at a tolerable level while protecting democratic values and civil liberties."[198] The Mexican government is concerned about protecting the human rights of Mexicans in the United States, while the U.S. government focuses on the illegal Mexican immigrants and toughening border controls.[199] However, as during the Bracero Program, common goals exist,[200] and "both sides would benefit from normalizing existing flows of migrants in order to gain control of the border [and] limit smuggling."[201] Furthermore, both countries can benefit from legitimate Mexican migrants temporarily working in the United States.[202] For

189. *See id.* at 422-23.

190. Herrera-Lasso, *supra* note 6, at 361.

191. *Id.* Re-entry is also a federal felony. 8 U.S.C. § 1326 (1994 & Supp. V 1999).

192. Rosenblum, *supra* note 7, at 553.

193. *See* Martin, *supra* note 139, at 422.

194. *See id.* at 422; Heppel & Torres, *supra* note 39, at 51; Herrera-Lasso, *supra* note 6, at 369; Rosenblum, *supra* note 7, at 553-54.

195. Rosenblum, *supra* note 7, at 553.

196. Herrera-Lasso, *supra* note 6, at 360, 369.

197. *Id.*; Rosenblum, *supra* note 7, at 553-54.

198. Heppel & Torres, *supra* note 39, at 52.

199. *Id.*

200. *See supra* notes 40-41 and accompanying text.

201. Rosenblum, *supra* note 7, at 540.

202. *Id.*

poverty-stricken population while also pumping money into the Mexican economy as migrants send their paychecks home to support their families.[203] For the United States, Mexican migrants provide cheap labor,[204] keeping the cost of farm products down for consumers and allowing U.S. farmers to compete more effectively with foreign farmers.[205] If the migrants are legal, the governments can impose safeguards to protect human rights as well as protect domestic laborers.[206] These overlapping goals improve the prospects for a new bilateral program.

B. Negative Factors for Bilateralism

Undeniably, significant differences exist between the time of the Bracero Program and the present that could work against a new bilateral effort. Immigration tensions, particularly with regard to Mexican immigration, have been on the rise in recent years.[207] The anti-immigrant attitude in the United States has yielded some extreme legislation.[208] In 1994, for example, California voters approved Proposition 187, establishing a state screening system to prevent illegal aliens from obtaining state benefits, including public education.[209] In 1996, the U.S. Congress passed two anti-immigrant bills, the Personal Responsibility and Work Opportunity Reconciliation Act[210] (Personal Responsibility Act) and the Illegal Immigration Reform and Immigrant Responsibilities Act[211] (IIRIRA). The Personal Responsibility Act made it more difficult for unauthorized immigrants, and even many legal immigrants, to receive welfare benefits.[212] IIRIRA, a severely restrictionist law, increased the number of Border Patrol agents,[213] allocated funds for new fences along the border,[214] and made it more difficult for poor legal immigrants to sponsor family members for immigration[215] or receive welfare assistance.[216]

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203. *See* CRAIG, *supra* note 13, at 17-18; Rosenblum, *supra* note 7, at 540.

204. *See* Rosenblum, *supra* note 7, at 540.

205. *Id.*; Millman, *supra* note 171.

206. *See infra* notes 226-27 and accompanying text.

207. *See* Martin, *supra* note 139, at 421 ("Due to the volume of migration flows, Mexico-U.S. migration has become an increasingly contentious political issue in the U.S.").

208. Kitty Calavita, *U.S. Immigration Policy: Contradictions and Projections for the Future*, 2 IND. J. GLOBAL LEGAL STUD. 143, 149 (1994).

209. Martin, *supra* note 139, at 421.

210. 8 U.S.C. § 1613 (Supp. IV 1998).

211. Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546 (codified in scattered titles of U.S.C. (Supp. IV 1998)).

212. 8 U.S.C. § 1613 (Supp. IV 1998).

213. *Id.* § 1101.

214. 19 U.S.C. § 69 (Supp. IV 1998).

215. 8 U.S.C. § 1183 (Supp. IV 1998).

216. *Id.* § 1612.

These measures have drawn much criticism from the Mexican government and public, straining U.S.-Mexican relations.[217] Furthermore, the passage of these acts reflects Congress's and the U.S. public's perception that immigration from Mexico is a threat to the national interest of the United States.[218] It may be difficult to persuade voters and their representatives that a bilateral immigration agreement would prove beneficial.[219] Many in Mexico believe that "the existence of a powerful U.S. Congress and demands imposed on the U.S. executive by domestic interests still present the largest obstacles to bilateral cooperation."[220] The U.S. president is particularly constrained on immigration issues by labor interests. Labor interests today, including agricultural workers, continue to influence immigration policy-making. As discussed above, a new bilateral guest worker program may enjoy the support of the UFW, a largely Chicano farmworkers' union.[221]

Nonetheless, other labor interests are likely to object to an employment immigration program with Mexico. It will be difficult to convince them that more guest workers would not threaten domestic laborers' wages and working conditions. Although unemployment in the general economy is very low,[222] agricultural unemployment rates are nearly twice as high.[223] In 1998, 8.3% of hired farmworkers were unemployed.[224] In 1999, that rate increased slightly to 8.9%.[225] These are major obstacles to any legalized foreign worker programs.

VI. Conclusion

Any plan for a bilateral legalized worker program would have to address the human rights and illegal and permanent immigration problems of the Bracero Program. It would also have to overcome the fears of domestic labor and persuade American workers that such a program would not adversely affect the domestic job market. Additionally, it would have to overcome the extreme anti-immigrant attitude that has dominated U.S. public opinion in recent years. Nonetheless, it appears that conditions are quite favorable for a new immigration agreement with Mexico in light of the atmosphere of cooperation that exists, the confidence that the United

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217. Rosenblum, *supra* note 7, at 541.

218. Herrera-Lasso, *supra* note 6, at 362-63.

219. *See* Rosenblum, *supra* note 7, at 553 ("Congress' more intense restrictionism in the 1990s may be more of an obstacle to cooperation than a bargaining asset to the president.").

220. Rosenblum, *supra* note 7, at 543.

221. *See supra* note 182 and accompanying text.

222. *See supra* text accompanying notes 171-174.

223. BUREAU OF LABOR STATISTICS, EMPLOYMENT AND EARNINGS, tbl. 26, http://www.bls.gov/cpsaatab.htm#charunem (last visited Jan. 2000).

224. *Id.*

225. *Id.*

States is enjoying with a booming economy, and the existence of common migration goals between the two countries.

Many in Mexico have suggested that a new bilateral guest worker program, "operat[ing] within currently existing migratory labor markets," could satisfy the migration goals of both Mexico and the United States by replacing "highly exploited undocumented migrants" with regulated guest workers.[226] Legalizing migrant laborers on a bilateral basis allows both governments to ensure adequate safeguards for labor. With such protections, Mexican workers would have an incentive to remain within the program, the Mexican government would have assurances that their citizens' human rights would not be violated, and U.S. labor would be more likely to support the use of foreign labor.[227] U.S. growers should support the program, even with safeguards for the laborers, because it would help satisfy their need for a "just-in-time labor force."[228] For both countries, such a program would also promote the return of Mexican immigrants to Mexico, minimizing "brain drain"[229] so that Mexico can benefit from the migrants' new skills and conform to the seasonal fluctuations of the U.S. growers' demand for labor.[230]

Of course, both countries must insist that enforcement of the safeguards be taken seriously to avoid a repetition of the worst aspects of the Bracero Program. Any bilateral migration agreement should contain mechanisms that provide serious incentives for enforcement of workers' rights under the agreement.[231] For example, commentators have argued that automatic monetary sanctions for breaches of rules in international agreements can significantly strengthen the rights and obligations created by the agreement.[232] Including this type of sanctions provision in any new bilateral migration program would penalize the United States if it were to ignore its obligations under the agreement as it did under the Bracero

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226. Rosenblum, *supra* note 7, at 540, 554. The United States has a unilateral guest worker program, the H-2A program, that permits a limited number of migrant workers to temporarily enter the United States to perform unskilled agricultural labor. 8 U.S.C. § 1101(a)(15)(H)(ii)(a) (1994). However, Mexican government officials propose that the United States replace this program with a bilateral one, with more effective guarantees for the migrant workers. *See* Rosenblum, *supra* note 7, at 540. Growers have also sought an expanded guest worker program to meet their labor needs. *See* Millman, *supra* note 171.

227. Rosenblum, *supra* note 7, at 554.

228. Millman, *supra* note 171.

229. Rosenblum, *supra* note 7, at 540. "Brain drain" refers to the loss of trained workers to a foreign country. RANDOM HOUSE UNABRIDGED DICTIONARY 253 (1993).

230. Rosenblum, *supra* note 7, at 540.

231. Laura Okin Pomeroy, Note, *The Labor Side Agreement Under the NAFTA: Analysis of Its Failure to Include Strong Enforcement Provisions and Recommendations for Future Labor Agreements Negotiated with Developing Countries*, 29 GEO. WASH. J. INT'L L. & ECON. 769, 800-01 (1996).

232. *See* Andreas F. Lowenfeld, *Remedies Along with Rights: Institutional Reform in the New GATT*, 88 AM. J. INT'L L. 477, 488 (1994); *see also id.* at 800 (arguing that the United States should have used greater monetary sanctions in the NAFTA labor side accord to ensure that each participating country would enforce its own domestic labor laws).

Program. Thus, the experience with the Bracero Program, while teaching us what mistakes to avoid, demonstrates that there are good prospects for a new bilateral program today.

—Maria Elena Bickerton