Proposition 187 and Operation Gatekeeper: Cases for the Sociology of International Migrations and Human Rights

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RESUMEN

Este artículo examina la vulnerabilidad de los inmigrantes como sujetos de derechos humanos. Esta condición de ausencia de poder es analizada en la relación que los inmigrantes establecen con la sociedad receptora en el marco de dos ejercicios de soberanía. Por una parte, la noción clásica de los derechos soberanos que hacen distinciones sociolegales entre nacionales e inmigrantes/extranjeros. Por otra, la noción moderna de soberanía de algunos Estados que se adhieren a los estándares internacionales de los derechos humanos. El artículo se enfoca en el debate acerca de la Proposición 187 y la implementación de la Operación Guardián en la experiencia de inmigrantes mexicanos en los Estados Unidos. En su conclusión, el autor postula que la globalización de la economía conlleva el surgimiento de estándares internacionales, incluidos los de los derechos humanos. Este proceso conduce a la desaparición gradual de la condición de vulnerabilidad de los inmigrantes y a su integración en condiciones de igualdad con los nacionales respecto al Estado y la ley, incluyendo el derecho al voto en elecciones locales.

Palabras clave: 1. migración internacional, 2. derechos humanos, 3. soberanía, 4. México, 5. Estados Unidos.

ABSTRACT

This article examines the vulnerability of immigrants as subjects of human rights. This condition of powerlessness is analyzed in a framework of two exercises of sovereignty within the relationships that immigrants establish with the receiving society. On one hand is the classic notion of sovereign rights, which draws socio-legal distinctions between nationals and immigrants/foreigners. On the other hand is a modern notion of sovereignty accepted by certain States that adhere to international human rights standards. The article focuses on the debate about Proposition 187 and the implementation of Operation Gatekeeper in the experience of Mexican immigrants in the United States. In his conclusion, the author postulates that economic globalization brings about the emergence of international standards, including those for human rights. This process leads to the gradual disappearance of immigrants' condition of vulnerability and their integration, under equal status with nationals, in respect to the State and the law, including the right to vote in local elections.

Keywords: 1. international migration, 2. human rights, 3. sovereignty, 4. Mexico, 5. United States.

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*Introduction**

This article discusses a social process conceived within the framework of the dialectical relations between two exercises of sovereignty conceptualized in a diagram. It involves the interrelationship of economics, law, and society. It begins from the illustration of one dimension of these dialectical relations in the contradiction between the stated objectives of "Proposition 187" and the reality in California, as research findings describe it. The second section of the article examines the contradiction between the claims of sovereignty used to justify Operation Gatekeeper and the exercise of sovereignty to commit the United States to international standards of human rights.

Proposition 187: A Case of Institutional Racism

Proposition 187 appeared on the ballot for the gubernatorial elections in California on November 8, 1994. The voters approved it by close to two-thirds of the total ballots cast. Its main objective was "to prevent illegal aliens in the United States from receiving benefits or public services in the State of California"[1] and to establish mechanisms aimed at the removal of all undocumented immigrants from California. According to the *New York Law Journal,* the official ballot argument described Proposition 187 as "the first giant stride in ultimately ending the illegal alien invasion" (Mailman, 1995). On December 14, U.S. District Judge Mariana R. Pfaelzer of the Central District of California issued a decision to block the implementation of the law until trial. In 1997, the same court declared Proposition 187 unconstitutional because, basically, its violation of the "supremacy clause", invaded the jurisdiction of federal immigration laws.

The court's main argument about the proposition's unconstitutionality, namely, its violation of the "supremacy clause", has marked the public debate on Proposition 187.[2] This is, perhaps, the primary reason for the lack of in-depth discussion about Proposition 187's basic premises. This article argues that Proposition 187 was based on biased perceptions, tainted by racist and xenophobic ideologies, and that its basic provisions represent instances of "institutional racism"[3] against people of Mexican origin, iden-

* An earlier version of this article was presented at the American Sociological Association Meetings held in Washington, D.C., August 12, 2000. This version has benefited significantly from the comments of Professor Andrew Weiggert of the University of Notre Dame.

[1] From Section 1 of the text of Proposition 187. For the full text of the proposed law, portions of which this article reproduces, see "1994 California Voter Information: Proposition 187. Text of Proposed Law" at http://www.altenforst.de/faecher/englisch/immi/proptxt.htm.

[2] The U.S. Constitution preempts immigration matters for the exclusive jurisdiction of the federal government.

[3] Michael Haas defines institutional racism as "the set of policies, practices, and procedures that adversely affect some ethnic groups so that they will be unable to rise to a position of equality" (1992, 99). On this topic, see particularly Chapter 5.

tified as such by the color of their skin.[4] The article further argues that Proposition 187 was made possible by the conditions of "vulnerability" that an ethnic minority of Mexican origin, in general, and Mexican immigrants, in particular, have experienced in the United States as subjects of human rights.

In order to call a perception "biased", one has to provide some objective basis to define an "unbiased" perception. The concluding remarks of a U.S. Department of Labor research report serve that purpose:

> In effect, migrant workers, so necessary for the success of the labor-intensive U.S. agricultural system, *subsidize* that very system with their own and their families' indigence. The system functions to transfer costs to workers who are left with income so marginal that, for the most part, only newcomers and those with no other options are willing to work on our nation's farms (U.S. Department of Labor, 1994, p. 40, emphasis added).

The most relevant point of this conclusive statement is the U.S. Department of Labor's acknowledgment of the positive impact of the presence of migrant workers in the United States. This impact is so positive that the Department of Labor calls it a *subsidy* to the U.S. agricultural system. Notably, the Department of Labor study reports that 94 percent of the migrant farmworkers included in its research study were Mexican nationals The report's conclusion completely contradicts the "findings", that proponents used to justify Proposition 187 to the voters of California. Those "findings", quoted below, take the anti-immigrant prejudice of California voters for granted. This explains why Proposition 187 refers to "findings," without citing their source.

The Department of Labor report cited above appeared in May 1994. That publication date is noteworthy, since it means that the study was available to those who drafted the text of Proposition 187.

Section 1, "Findings and Declarations", of Proposition 187 reads:

> The People of California find and declare as follows: That they have suffered and are suffering economic hardships caused by the presence of illegal aliens in this State. That they have suffered and are suffering personal injury and damage caused by the criminal conduct of illegal aliens in this State.

Section 5, "Exclusion of Illegal Aliens from Public Social Services", proposes to add a Section 10001.5(c) to the Welfare and Institutions Code:

> If any public entity in this state to whom a person has applied for public social services determines or reasonably suspects … that the person is an alien in the United States in

[4] Skin color is certainly not the only socially recognized identifier of a Mexican, Hispanic, or Latino background. It is, however, the most apparent and most frequently used one in the United States. See this article's elaboration of this a propos of hate crime.

> violation of Federal Law, the following procedures should be followed by the public entity… (3) The entity shall notify the State Director of Social Services, the Attorney General of California and the United States Immigration Service (INS) of his or her apparent illegal immigration status.

In California, where Immigration and Naturalization Service (INS) (1998) statistics show[5] that, for decades, more than 90 percent of apprehensions have been of Mexican nationals, the term "illegal alien" is socially synonymous with Mexican (Romo, 1983, pp. 89-111). Under these social conditions, the clearest *a priori* indicator of an "apparent" illegal immigration status is skin color (Almaguer, 1994, p. 212). This explains why there is such an enormous difference between INS apprehension statistics and the U.S. Bureau of the Census estimates.[6] According to this latter source, Mexican nationals account for slightly more than 50 percent of all undocumented immigrants in the United States from all countries (Feagin, 1999, p. 297). The discrepancy between INS apprehension data and the U.S. Bureau of the Census estimates of the undocumented Mexican population strongly suggests, "ethnic profiling" of Mexican nationals by the INS.

Racism has been defined in such a variety of ways as to provoke confusion. This article accepts the definition of Robert Miles, which understands it as both an ideology and a practice.[7] As ideology, it is a set of values, beliefs, myths, perceptions, and norms that include a racial trait, and it is a criterion for the exclusion of a group, socially distinguished by that trait, from a system of distribution of public resources or services. As a practice, racism is the enactment of that criterion of exclusion. It is argued here that Proposition 187 turned persons who "look Mexican" because of the color of their skin into potential victims of racial discrimination. An elaboration of this point is ahead, where police racial profiling and hate crimes are discussed.

The discrepancy between the INS apprehension statistics (over 90 percent of those apprehended are Mexican) and the U.S. Bureau of the Census estimate (slightly more than 50 percent of all undocumented immigrants from all countries are Mexican) leads one to believe that skin color is the most likely feature that makes people in California "reasonably suspect" who is and who is not Mexican. The validity of such an assumption does not remove its prejudicial nature, since people virtually equate "looking Mexican" with being an "illegal alien". When the law of the land establishes that a public official can use the a priori assumption that there is "reasonable suspicion" that a person is an "illegal alien" as a basis for the obligation to report such an encounter to the police, that law is "institu-

[5] Nationals of 190 countries were apprehended in 1997. Aliens from Mexico predominated in the statistics, accounting for 96.2 percent of the total (INS, 1998, p. 165, Table 57).

[6] Personal compilation based on US Bureau of the Census, Current Population Survey, 2000.

[7] Robert Miles analyzes this conceptual distinction in his *Racism after "Race Relations"* (1993, pp. 60-62).

tionalizing" several exclusionary consequences on the basis of racial appearance. This is achieved primarily by promoting the profiling of "illegal aliens" based on their "look" as Mexicans. This implies that *a)* visibly apparent indicators exist to show that a person might be an illegal alien; and *b)* such a suspicion, based on certain physical features of a person, constitutes sufficient grounds to arrest that person. In the social construction of the profiling of a Mexican, skin color is undoubtedly the most salient indicator.

This fits into what Howard S. Becker (1996) called "labeling"[8] of people as "deviants", the "label" being applied in this case to a whole ethnic minority in California, distinguishable as Mexicans, due to the color of their skin, and thus under suspicion of being illegal aliens. It is argued here that this constitutes racism.[9]

The Dialectics of the Vulnerability of International Migrants

The basic thrust of this article is that a social process exists that results in a condition of vulnerability[10] for international migrants as subjects of human rights. The following diagram, "Dialectic of Migrants' Vulnerability", depicts this social process, which implies *a)* a socio-legal inclusiveness that arises out of a dialectical process between two legal notions of sovereignty and *b)* the social construction of conditions of vulnerability for international migrants, who are displaced by the dynamics of the international relations arising from the globalization[11] of international markets.

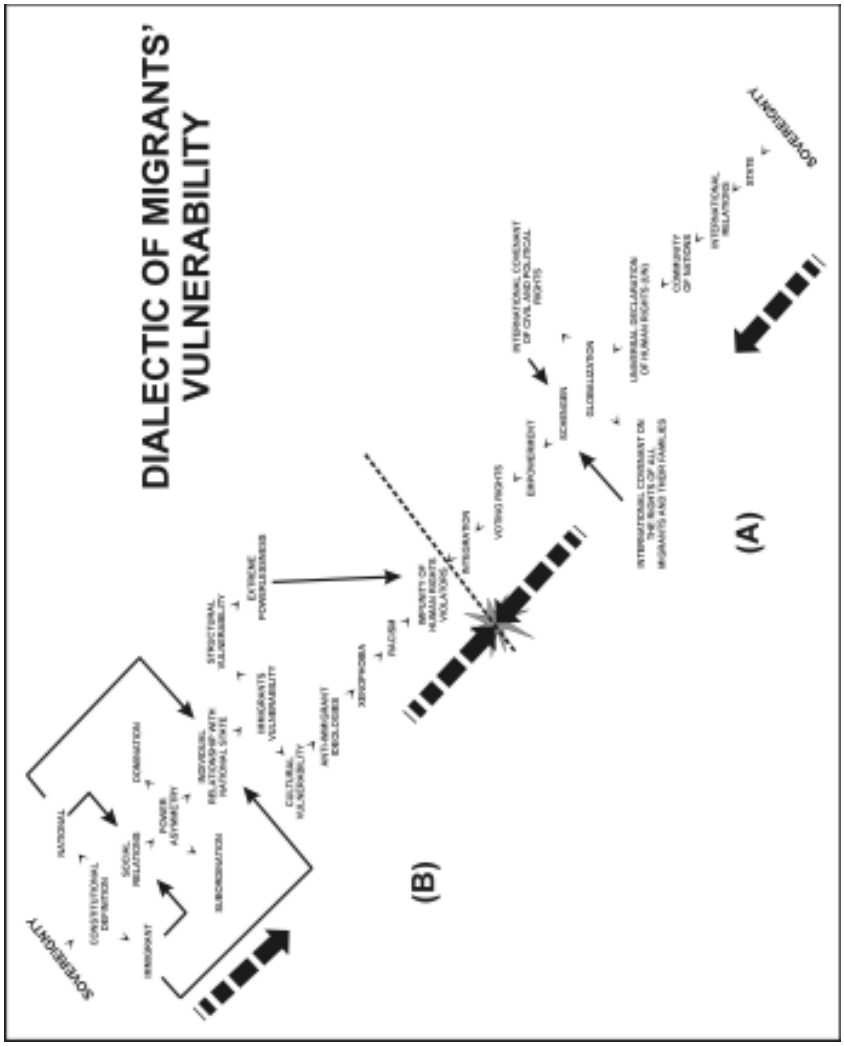
The theoretical framework within which the socio-legal inclusiveness implied in the diagram should be understood is a dialectical process. This process begins when a country, exercising its sovereignty, duly commits itself to adopting an international standard of human rights and remakes

[8] A basic premise of Becker's "labeling" theory can be found in his words: "Social groups create deviance by making rules whose infraction constitutes, and by applying those rules to particular people and labeling them as outsiders. From this point of view, deviance is not a quality of the act a person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender'. The deviant is one to whom that label has been successfully applied; deviant behavior is behavior that people so label"(Becker, 1966, p. 9).

[9] This is not sociologically different, all proportions kept, from the a priori criminalization of Jews by the Nuremberg Laws in Nazi Germany. One could argue that the way Hitler took advantage of a general sentiment of anti-Semitism prevalent in Germany to win overwhelming approval for the infamous Nuremberg Laws was not sociologically different from the way Governor Wilson took advantage of widespread anti-Mexican prejudices in California in order to win approval for Proposition 187 as part of his successful reelection strategy. At that time, California was producing, as it still does, one-third of all U.S. agricultural output, with a labor force that is 90 percent Mexican (see U.S. Department of Labor, 1994).

[10] This social construct refers to a condition of powerlessness. It precedes the "labeling" understood as an act of power over vulnerable people.

[11] For the purposes of this article, Anthony Giddens definition is the most fitting. "Globalization can… be defined as the intensification of worldwide social relations, which link distant localities in


DIALECTIC OF MIGRANTS' VULNERABILITY
SOVEREIGNTY
NATIONAL
CONSTITUTIONAL DEFINITION
IMMIGRANT
SOCIAL RELATIONS
POWER ASYMMETRY
DOMINATION
SUBORDINATION
INDIVIDUAL RELATIONSHIP WITH NATIONAL STATE
STRUCTURAL VULNERABILITY
EXTREME POWERLESSNESS
IMMIGRANTS VULNERABILITY
CULTURAL VULNERABILITY
ANTI-IMMIGRANT IDEOLOGIES
XENOPHOBIA
RACISM
(B)
IMPACTS OF HUMAN RIGHTS VIOLATIONS
INTEGRATION
VOTING RIGHTS
EMPOWERMENT
SCHENGEN
GLOBALIZATION
INTERNATIONAL COVENANT OF CIVIL AND POLITICAL RIGHTS
UNIVERSAL DECLARATION OF HUMAN RIGHTS (UN)
INTERNATIONAL COVENANT ON THE RIGHTS OF ALL MIGRANTS AND THEIR FAMILIES
COMMUNITY OF NATIONS
INTERNATIONAL RELATIONS
STATE
(A)
SOVEREIGNTY

that standard constitutionally into a law of the land. This exercise of sovereignty (A) becomes dialectically opposed to another exercise of the same legal nature (B) that makes a socio-legal distinction between nationals, on the one hand, and immigrants as foreigners, on the other. These two exercises of sovereignty (A) and (B) depicted in the diagram as dialectically opposed, become interrelated in the practice of international relations arising from the phenomenon of globalization.[12] Thus, the thesis in this dialectical process *à la Hegel* is (A), and the antithesis is (B), although, historically, (B) has preceded (A). More will be said below about the synthesis, namely, integration.[13]

In the past, as human societies have confronted problems of power and authority, the source or locus of authority has moved from God, to the State, to the people. The definition of sovereignty[14] has been based chronologically on the three sources. At their origin in medieval times under the doctrine of Christian unity, the concepts of "sovereignty" and "sovereign" were one and the same, except for the semantic distinction between an attribute and the subject of its enactment.

The diagram above starts from the Hegelian notion of a dialectic process. Here, this process consists of two opposite exercises of sovereignty, each with different objectives and opposed to each other as a *thesis* opposes an *antithesis,* and out of which a synthesis emerges. Implicit in this dialec-

such a way that local happenings are shaped by events occurring many miles away and viceversa. This is a dialectical process because such local happenings may move in an obverse direction from the very distant relations that shape them. Local transformation is as much part of globalization as the lateral extension of social connections of time and space" (Giddens, 1990, p. 64).

[12] Malcolm Waters' comments on Giddens' definition, quoted above, help to clarify the meaning of globalization implied in the diagram: "This definition usefully introduces explicit notions of time and space into the argument. It emphasizes locality and thus territoriality and by this means stresses that the process of globalization is not merely or even mainly about such grand, center-stage activities as corporate mega-mergers and world political forums but about the autonomizations of local life worlds. Globalization, then, implies localization, a concept that is connected with Giddens' other notions of relativization and reflexivity. The latter imply that the residents of a local area will increasingly come to want to make conscious decisions about which values and amenities they want to stress in their communities and that these decisions will increasingly be referenced against global scapes. Localization implies a reflexive reconstruction of community in the face of the dehumanizing implications of rationalizing and commodifying" (Waters, 1995, pp. 4-5).

[13] There are two contrasting notions of integration. One, predominant in the United States, derives from the studies of Robert Ezra Park, whose followers, according to Michael Haas, have argued "that differences between ethnic groups are a function of attitudes of prejudice" (Haas, 1992, p. 61). This thesis assumes that such differences can be removed through intense interethnic interactions, which could lead to a color-blind society. About this assumption, Haas comments, "There are at least four flaws in integrationism. First, it is a theory of assimilation. The closer an ethnic group resembled the dominant culture, the more it would be 'tolerated' and ultimately 'accepted' and 'admitted' to equal status…" The other notion of integration, predominant in Western Europe, is more recent. This is epitomized by the Schengen Agreement, binding for member states of the European Union, where integration means equal rights for nationals and foreigners. The latter notion is the one adopted in this article.

[14] For an in-depth analysis of the historical context in which the notion of sovereignty has evolved, see Jens Bartelson (1995).

tic is the inclusiveness of two cognitive domains, namely, law and sociology. One is of a legal or normative nature and the other of a social nature. The bridge between the two dimensions is the passage from a norm to actual human behavior in the empirical context of social relations. The diagram assumes such inclusiveness in alluding to a social process in which the main actors are those defined, constitutionally, as nationals and, legally and socially, as foreigners or immigrants. The main feature of this inclusiveness is the dialectical dynamic, energized by the international relations of globalization. In that context, the vulnerability of international migrants becomes the focus of a contradiction between (A) a classical notion of the sovereign rights of nations to define who is a national and who is not, and to control immigration by controlling their borders (this is further elaborated toward the end of the article); and (B) a modern notion of sovereignty susceptible to self-controls through a state's sovereign decision to adhere to international standards of human rights.

A further elaboration of the dialectical contradiction between (A) and (B) includes the notion that all nation-states have the sovereign right to define who is a national and who is a foreigner, as well as the sovereign right to control their borders. In both cases, the implication is to define the frontier between the essential inner and outer components of a nation. Most democratic nations have these rights written in their constitutions. Although such legitimate distinctions do not explicitly place the foreigner,[15] as defined, in a subordinate position vis-à-vis the national, as defined, when they interact socially within the receiving country, the duality (national-foreigner) is nevertheless very often transformed, or, socially constructed, into an object of *de facto* discrimination against foreigners by nationals. As Robert Miles amply discusses, this distinction is implicit at the origin of all kinds of discriminatory practices against foreigners as such, at the personal, group, and institutional level.[16] This implies a power structure wherein nationals are more likely to occupy dominant positions vis-à-vis foreigners, and the latter are more likely to occupy subordinate positions.

As this likelihood becomes a practice in recurrent patterns of social relations between nationals and foreigners, the subordinate position of foreigners vis-à-vis nationals begins to be taken for granted socially, until it becomes a sort of "common understanding", or what Bourdieu (1997, pp. 158-93) calls a *habitus,* a by-product of the practice of those same social relations. The subordinate position in which the foreigner-immigrant finds himself or herself in the host society is not an act of nature. Here the diagram's distinction between "structural" and "cultural" becomes relevant to the discussion.

[15] The terms "foreigner" and "immigrant" are used interchangeably in this article.

[16] For a discussion of the dominant/subordinate relation of nationals/immigrants assumed in most recipient countries, see Miles (1993, pp. 207-15), particularly in reference to what he calls the problem of "Euro-racism".

Thus far, this article has attempted to establish that international migrant-foreigners are likely to be in a condition of subordination in the host society, which renders them powerless and leads to their vulnerability. Following the diagram, it is argued that such a condition of vulnerability has two dimensions, one "structural", and the other "cultural". The paragraph quoted above from the U.S. Department of Labor Report illustrates structural vulnerability. This research finding concludes that the contribution of migrant workers represents a "subsidy" to the U.S. agricultural system. To the extent that one can assume that migrant workers do not provide such a subsidy voluntarily, one can safely conclude that it is the result of a condition of powerlessness-vulnerability. The same concluding paragraph confirms this by stating that this "subsidy" derives from the "indigence" of migrant workers and their families. The subordinate position of migrant workers vis-à-vis the U.S. agricultural system is implied in the paragraph's last sentence, where it says that "the system functions to transfer costs to workers who are left with income so marginal that, for the most part, only newcomers and those with no other options are willing to work on our nation's farms". This is the structural vulnerability alluded to in the diagram. It alludes to a social adscription of a condition of powerlessness such as implied in the reference to a "transfer of costs to workers who are left with income so marginal…" This article argues that a principal factor of the "structural vulnerability" of people of Mexican origin in the United States is the color of their skin. This is not to suggest that all Mexicans or Latinos or Hispanic are equally subjected to a condition of structural vulnerability, let alone automatically subjected. It means that ceteris paribus, the color of the skin is a sufficient condition, in some places in the United States, to identify someone as "Mexican". The same criterion of the skin color appears in the racial profiling of blacks that the Christopher Commission found in its investigation of police brutality in the Los Angeles Police Department (Feagin *et al.,* 2001, p. 150).

The "cultural vulnerability" consists of the values, beliefs, myths, and ideologies produced in the immigrants' host society to support and reproduce the structural vulnerability. This is equivalent to what Karl Marx would have called a "superstructure", which tends to justify the "economic base" in which the migrants are rendered powerless.

In contrast to "structural vulnerability", which alludes to an objective dimension such as skin color, "cultural vulnerability" alludes to a subjective dimension, in the sociological way defined by Max Weber with his concept of *Gemeinter Sinn,* or what it is implied by Pierre Bourdieu with his concept of *habitus.* "Cultural vulnerability" basically implies an outcome of power-a power implied in every ideological justification for the condition of subordination. Thus, ethnic prejudices, anti-immigrant rhetoric, xenophobia and racism would fall into the realm of "cultural vulnerability". Its theoretical importance lies not only in the function it

plays in the social reproduction of the conditions of "structural vulnerability", but in the way both dimensions of vulnerability tend to reinforce each other in the social context of the actual relations between nationals and foreigners. A dramatic extreme of this virtual symbiosis between the two dimensions occurred in California.

This began on a dirt road in the Black Mountain/Rancho Peñasquitos area of northern San Diego County on November 9, 1988, the day that the bodies of two Mexican migrants were discovered. One was that of 22 year-old Hilario Salgado Castañeda. The other was the body of Matilde de la Sancha, aged 18. They were legally in the United States. Both held temporary work permits while their requests for the legalization of their status in the United States were being processed. Autopsies showed that the two died from bullets fired from a high-powered rifle at close range. Evidence regarding this crime surfaced several months later. A 17-year-old youth, Kenneth Alexander Kovzelove, was boasting to his friends at a U.S. Army training camp for parachutists that he had killed several Mexicans. His bragging prompted one of his companions, Dennis Bencivenga, 19 years old, to go to the San Diego police and confess that he had accompanied his friend Kenneth on an expedition to "kill Mexicans". In high school, both youths had belonged to a racist group associated with the "skin heads". According to Bencivenga, he only accompanied Kovzelove and drove the pick up truck. Kovzelove rode in the back, in the truck bed, armed with a high-powered rifle manufactured in Korea. Bencivenga's statement led to Kovzelove arrest. Kovzelove was tried, convicted, and sentenced to 50 years in prison for premeditated murder. During his trial, Kovzelove stated that he hated Mexicans and he had joined the army because he was convinced that, sooner or later the United States would have to invade Mexico militarily. He didn't want to lose the opportunity to participate in such an action and he was preparing for the invasion. He stated that on the day of the murders "his violence valve was wide open". Further, he said that he wished that fifty Mexicans had come at him so that he could have finished them all off with his high-powered rifle. When the Superior Court Judge of San Diego County, William D. Mudd, pronounced the sentence, he said the following to Kovzelove: "You are a cold-blooded murderer. There is no other way to put it… You will get the punishment that you deserve. These were not crimes of passion, but crimes of racial hatred".[17]

This statement illustrates an extreme case of the "structural vulnerability" of migrants. The hate that Superior Court Judge William D. Mudd found as an aggravating circumstance in sentencing Kovzelove to 50 years in prison does not refer to a random individual. It is an indication that such a crime could not have happened to just anyone. According to state-

[17] The words of Judge Mudd are from an article in the San Diego Union-Tribune, February 14, 1990, B1. Other quotations are from earlier published articles, especially one headlined: "Slayings Linked to White Supremacy Beliefs," San Diego Union-Tribune, March 25, 1989, B1.

ments made by both Kovzelove and his accomplice Dennis Bencivenga, they set out to look for Mexican migrants. The selection of the two migrants killed was not totally random. They were selected to be killed because they "looked like Mexican" migrants. One can view their deaths as the most eloquent evidence of their "structural vulnerability".

The sociological relevance of this concept lies in its application to all cases of hate crimes. Indeed, all victims of a hate crime are identified by a "sign", which, in the mind of the perpetrator, indicates that the victim is what he or she is seeking, that is, a subject of his or her hate. Such "signs" —whether skin color, gender, mannerisms the perpetrator perceives as an identifier of homosexuality, style of hair or dress, nose ring, Star of David or other religious ornament a victim wears— are social constructs that render vulnerable (powerless) the people who exhibit them conspicuously. A condition of vulnerability, socially ascribed to the victim, precedes all hate crimes. "Cultural vulnerability", appears vividly in Kenneth Kovzelove's statements about his motives for killing the two Mexican migrants.

The repetition of the main elements of the Kovzelove crime some years later persuaded the author of the relevance of the conceptual framework used here. As reported on July 19, 2000, in the *Los Angeles Times* (B1, B6) and the *San Diego Union-Tribune* (A3, A17), a group of four Mexican migrants, all more than 60 years of age and legally in the United States, were beaten with steel bars and metal pipes, while their aggressors screamed racists slurs at them. The migrants were badly hurt. One escaped death only because he was taken for dead when the aggressors returned to the scene to beat the four migrants again. The seven white teenagers involved were arrested and prosecuted as adults, according a statement by the San Diego Police Department. Their case is still pending resolution by the Supreme Court of the State of California. On the walls of an old abandoned trailer where the accused teenagers were arrested, the police found graffiti with racist anti-Mexican slurs and the letters "KKK".

What makes this incident particularly noteworthy for the purpose of this article is that it took place in the Black Mountain Road/Rancho Peñasquitos area of northern San Diego County, precisely the place where Kovzelove killed the two Mexican migrants. Even though there is no evidence of a connection between the Kovzelove incident and the latter one, the recurrence of what were officially reported as "hate crimes" reinforces the relevance of this article's analysis. It is difficult to document a causal association between anti-immigrant rhetoric and physical aggressions against immigrants, such as the ones that occurred on Black Mountain Road. It is reasonable to assume, however, that Kovzelove's anti-Mexican ideology did not originate in a vacuum.

From the theoretical perspective that views culture as a social force, it is hypothesized here that the "cultural vulnerability" of Mexican immigrants in the United States originates from the distance existing between the real

contributions to the United States of Mexican immigrants (both legal residents and undocumented), on the one hand, and dominant public perceptions about the consequences of their presence, on the other. In other words, it originates from the distance between the motives and objectives of Proposition 187, and the real contributions the U.S. Department of Labor has acknowledged from its research findings.

In reality, in the United States, there is widespread ignorance and resistance to the reality reported by the U.S. Department of Labor regarding the contributions of Mexican migrant workers to the U.S. economy. The problem was recognized in a recent report prepared by the U.S.-Mexico Migration Panel, a binational panel of migration experts that the Carnegie Endowment for International Peace and the Instituto Tecnológico Autónomo de México (ITAM) convened for the presidents of Mexico and the United States (U.S.-Mexico Migration Panel, 2001, p. 11).

There is resistance in the United States to accepting the existence of a real demand for an immigrant labor force. This demand is depicted in the cover of a leading U.S. magazine, *U.S. News & World Report* (September 23, 1996). In this issue, the title of a special report indicates that the U.S. demand for an irregular immigrant labor force is not restricted to agriculture: "Illegal in Iowa: American firms recruit thousands of Mexicans to do the nation's dirtiest, most dangerous work".

The research conducted by the author in Mexico has been recognized in the first attempt by the governments of Mexico and the United States to produce a joint study of immigration from Mexico to the United States. The author's findings have been published in the three volumes entitled *Mexican Immigration to the United States, Binational Study.*[18] An updated version of the data presented in this study about the U.S. demand for undocumented immigrant labor from Mexico appears in table 1 and figures 1 and 2.

Table 1 shows some of the sectors of the U.S. economy that have had a demand for undocumented immigrant workers from 1988 to 2000. The metropolitan area of Los Angeles includes a higher number of undocumented immigrants from Mexico than any other major U.S. city. Some of the most relevant findings derived from the table are: *1)* the rising trend in demand from U.S. manufacturing; *2)* the declining trend in demand for farmworkers; *3)* the persistence of demand for domestic service (Mexican nannies); *4)* the significant increase in demand from the construction sector; and *5)* the diversification of the demand in the case of tourism.

[18] This research, conducted by the author, is the Zapata Canyon Project, consisting basically of a survey in which personal interviews have been systematically conducted at the main crossing sites of irregular migrants at the Mexican-U.S. border in the cities of Tijuana, Mexicali, Ciudad Juárez, Nuevo Laredo, and Matamoros with a randomly selected sample of individuals on Fridays, Saturdays, and Sundays of every week, from September 1987 to the present. This project has produced the only time-series database on the flows of irregular migrants from Mexico. For the author's previous reports on this project, see, among others, Bustamante 1988, 1989, and 1998.

Table 1. Undocumented Mexicans with Work Experience in Los Angeles, California, by Type of Employment (1988-2000).

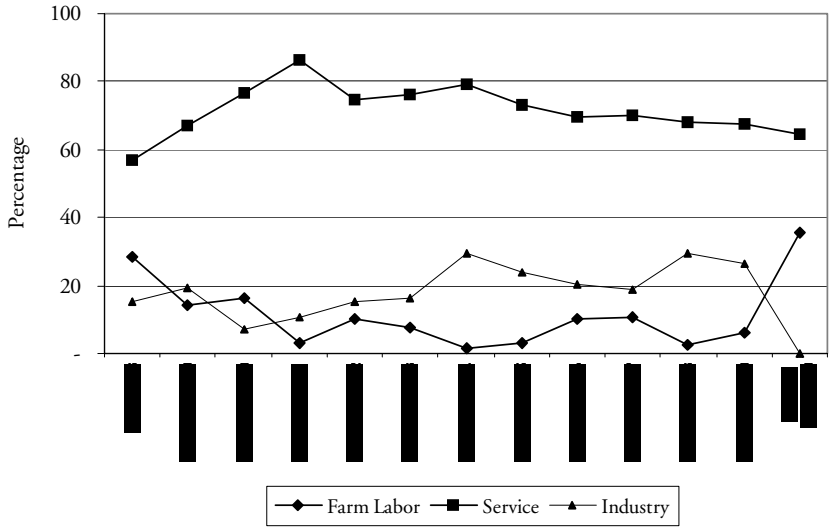
Industry %	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Tourism	12.1	15.6	10.9	12.2	10.7	13.5	14.3	13.6	17.6	16.6	11.3	9.2	9.3
Domestic Service	9.1	6.4	14.0	16.6	13.8	12.4	17.2	18.9	17.8	14.0	14.7	9.8	7.6
Other Services	12.2	9.4	12.6	8.0	8.3	10.4	4.0	2.9	1.4	0.8	0.4	0.7	0.3
Farm Work	29.8	25.9	40.5	22.1	22.0	18.7	12.5	9.9	7.0	6.1	6.8	13.9	28.8
Manufacturing	16.7	23.5	11.0	12.0	12.6	10.9	12.1	19.8	22.4	27.6	28.8	34.5	26.8
Construction	13.9	15.0	9.2	25.6	30.3	31.6	30.0	32.2	28.0	30.7	33.1	28.8	25.1
Self Employed	1.0	1.8	0.5	0.4	0.0	1.0	0.9	0.2	0.2	0.1	0.4	0.1	0.0
Other	5.2	2.4	1.4	3.1	2.3	1.4	9.1	2.5	5.6	4.1	4.6	3.0	2.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Zapata Canyon Project, El Colegio de la Frontera Norte, 1988-2000.

Figures 1 and 2 show the trends in U.S. demand for undocumented immigrants by gender, with reference to those whose permanent residence is in Mexico City. The line at the top of Figure 1 ("female") refers basically to domestic service, mostly characterized by Mexican nannies. Figure 2 ("male") shows a declining trend in the U.S. labor demand in the areas of services and industry. In contrast, it shows an increasing trend for farm labor. The latter is a recurrent finding in periods of economic crisis as it can be seen in the same figure for the years of the early 1990s.

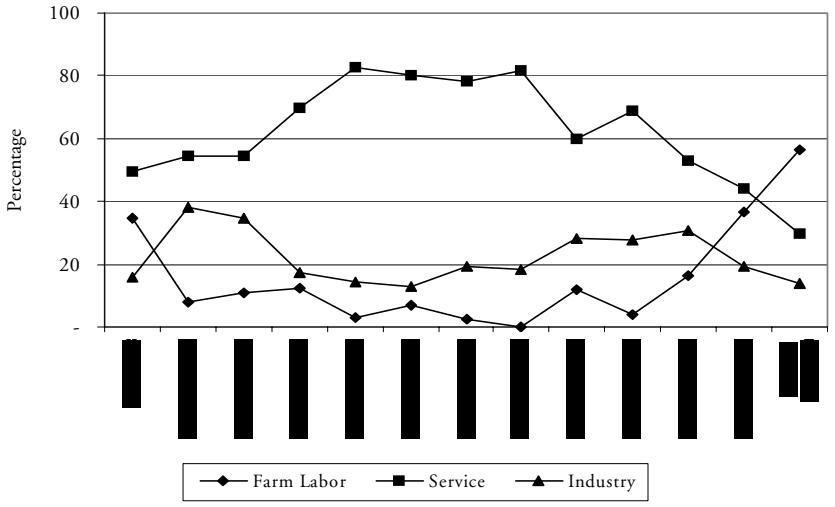
The purpose of presenting these data is to demonstrate the empirical basis that exists for speaking of U.S. demand for undocumented immigrant labor, and the gap between this empirical reality and the predominant views in the United States that assume the exogenous nature of the presence of "illegal aliens" from Mexico, the criminal nature of their presence, and the notion that the solution to the "problem" should be unilateral and of a law-enforcement nature. On the contrary, the data this article presents indicate: 1) that the presence in the United States of undocumented or irregular immigrants from Mexico is due to an interaction of causal factors originating in *both* countries, that is, the interaction of supply and demand in a *de facto* international (Mexico-United States) labor market; 2) the bilateral economic nature of this phenomenon, which can only be addressed by bilateral action; and 3) the responsibility both countries share in producing the supply and demand factors that give shape to the phenomenon. The article will elaborate below on this notion of responsibility.

Figure 1. Trends in U.S. Labor Demand for Undocumented Females from Mexico City Entering the U.S. through Tijuana (1987- 2000).



Source: Zapata Canyon Project. El Colegio de la Frontera Norte. 1987 - 2000

Figure 2. Trends in U.S. Labor Demand for Undocumented Males from Mexico City Entering the U.S. through Tijuana (1987- 2000).



Source: Zapata Canyon Project. El Colegio de la Frontera Norte. 1987 - 2000

Migrant Deaths at the Border and Operation Gatekeeper

One of the most delicate aspects of the controversy between Mexico and the United States over the migratory phenomenon is the increasing number of deaths of migrants at the border. Two NGOs based in California, the American Civil Liberties Union of San Diego and Imperial Counties and the California Rural Legal Assistance Foundation, filed a petition on May 9, 2001, denouncing the United States of America before the Inter-American Commission on Human Rights for violating Article I of the American Declaration of the Rights and Duties of Man, which precludes States from acting in a manner that causes unnecessary injury. Without prejudging the course this petition may take, or the decision the Organization of American States court may make on its merits, the case is very relevant to the discussion of immigration and sovereignty in this article.

The petitioners claim that the United States is responsible for the deaths of migrants at the border (651 between October 30, 1994 and May 24, 2001, including 12 deaths that occurred May 23, 2001) (*San Diego Union-Tribune,* May 24, 2001, A1 and A23, and *Los Angeles Times,* May 24, 2001, A1 and A28). The petition, based on testimony and documentation presented to a Congressional hearing, refers to the design, implementation, and expansion of Operation Gatekeeper, which began on October 30, 1994. This U.S. Border Patrol operation is designed to "detour" the entry of irregular immigrants from the urban area of San Diego to the mountains of Tecate and the desert areas east of San Diego, as far as Yuma, Arizona. As the chief of the San Diego District of the U.S. Border Patrol explicitly recognized, the purpose of this operation was to channel the entry of irregular immigrants away from urban centers to areas of the border where the terrain is so inaccessible as to signify a "mortal danger" for those attempting to enter the United States through it (Smith, 2001). The same criterion resulted in the geographical expansion of Operation Gatekeeper to the desert areas east of the mountains surrounding Tecate.

Maps 1, 2 and 3 reveal that from 1995 through 2001, the location of migrant deaths, which have increased at an annual rate of 25 percent, has moved from west to east, away from the urban area of San Diego.[19] The displacement of migrant deaths does not represent a diminishing number of illegal entries, since Operation Gatekeeper was not designed to stop entry but only to detour illegal migrants away from the San Diego urban area, where they were more visible. That strategy resulted in channeling illegal migrants toward the desert areas, where more than 700 have died since the operation's inception in 1994.

What has not changed is the volume of the flow of irregular entries. The

[19] The author expresses his gratitude to Claudia Smith, attorney for the California Rural Legal Foundation, for permitting the reproduction of maps depicting data she has assiduously compiled.

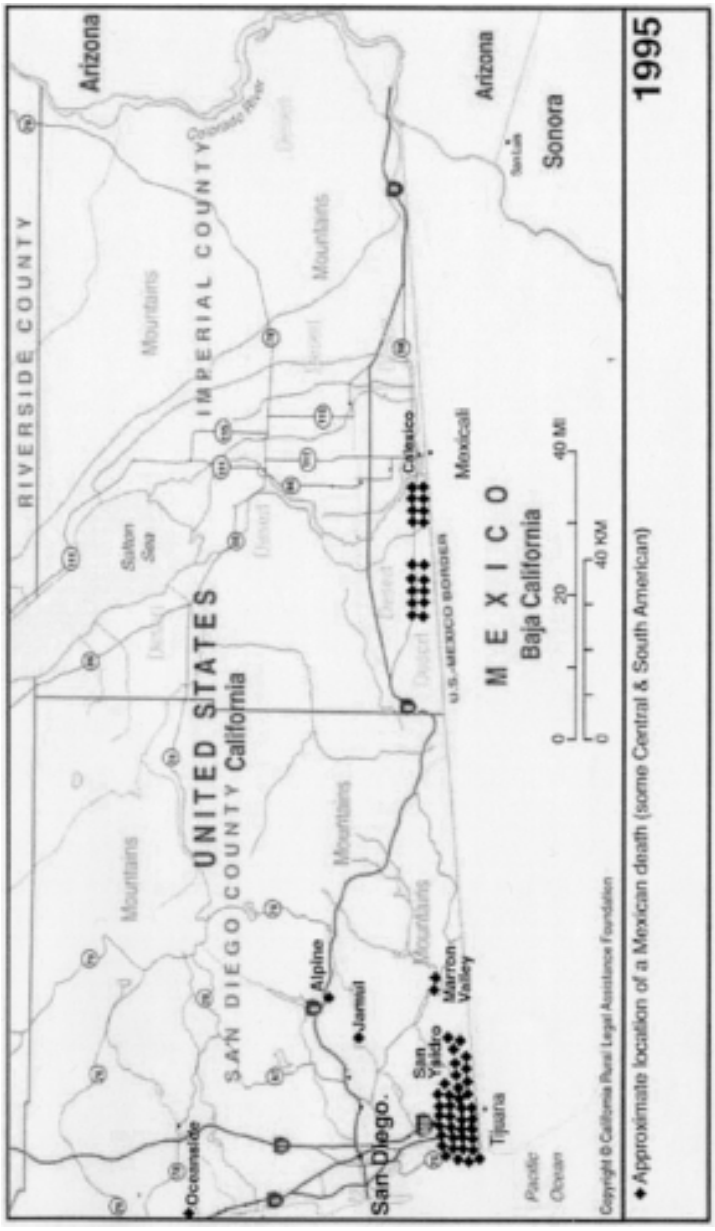
U.S. General Accounting Office (GAO) has concluded that no reliable data exist to indicate that Operation Gatekeeper has deterred illegal crossings (GAO, 1999). The experts on the U.S.-Mexico Migration Panel, convened by the Carnegie Endowment for International Peace, stated: "This report's point of departure is the growing appreciation that the enforcement approach is failing to produce the promised outcome of reducing further unauthorized immigration. Moreover, it has perverse, if predictable consequences" (U.S.-Mexico Migration Panel, 2001, p. 5).

The most relevant point about Operation Gatekeeper is that the U.S. government has argued that it is its sovereign right to control its borders, and, therefore, this "operation" should be understood as derived from that sovereign right. The petitioners of the case against the U.S. government before the Inter-American Commission on Human Rights responded as follows:

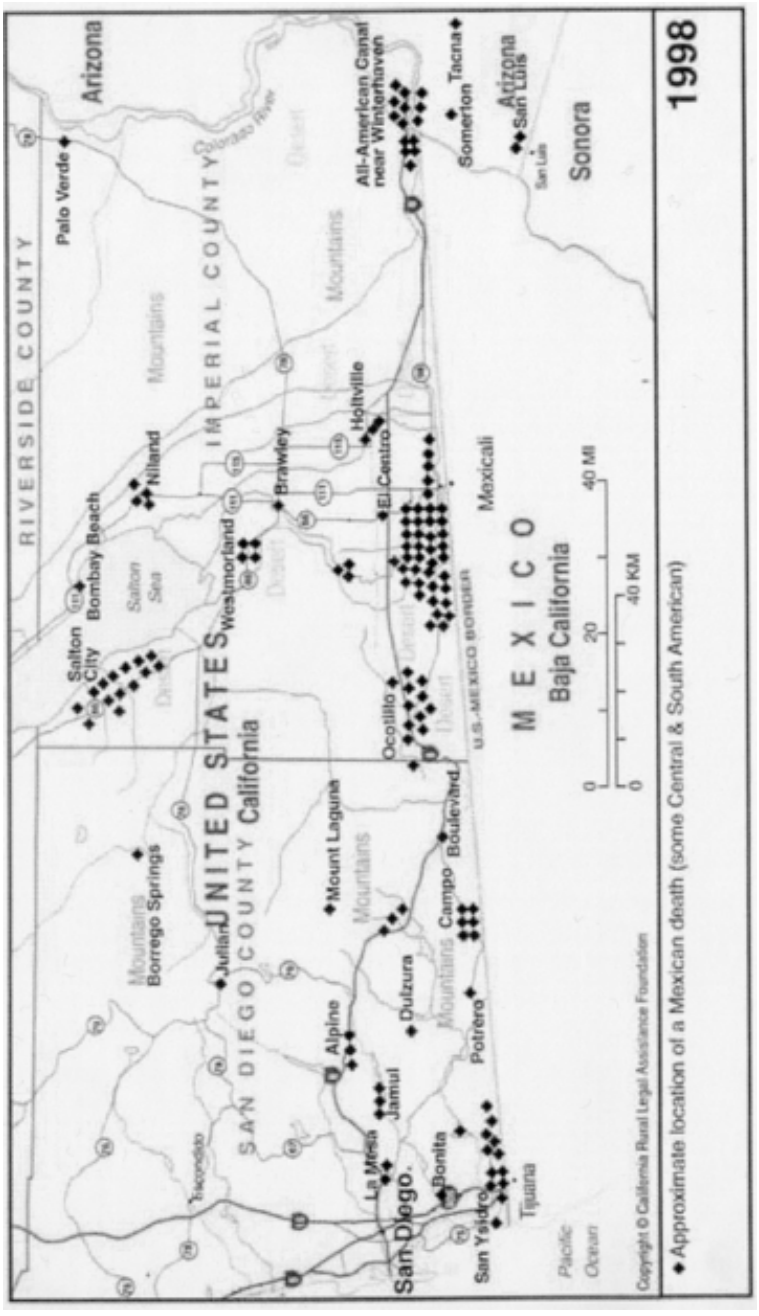
> While the United States has a right to protect its border and implement an effective border policy, it must do so in a manner that minimizes the threat to life and the security of the person. Because its border policy is explicitly designed to maximize the threat to life and because it has failed to take sufficient action to mitigate the increasing number of migrants' deaths, the United States has violated Article I of the American Declaration (Inter-American Commission on Human Rights, 2001).

This article views the case of Operation Gatekeeper along the lines of the main points of the diagram of the dialectics of the vulnerability of international migrants. On the one hand, the U.S. government claims that Operation Gatekeeper represents the exercise of a sovereign right. On the other hand, it signed, and the U.S. Senate subsequently ratified, the United Nations (UN) International Covenant on Civil and Political Rights. It is well known that this international UN instrument, originally promoted by the United States, represents the commitment of UN member States to protect human rights, as the UN Universal Declaration of Human Rights defines them. The constitutional decisions made subsequently by the executive and legislative branches of the U.S. government also represent the sovereign right of the United States to establish a self-limitation on its sovereign right to control its own borders. The preeminence of human rights over any other question defined as "internal", such as the control of immigration, has been a practice of U.S. foreign policy over the last 20 years, as its support for international interventions in South Africa, Somalia, Haiti, Kosovo, and Indonesia (East Timor) indicate. This criterion has been consistent with the U.S. position in international conferences, such in the Regional Preparatory Committee Meeting for the Americas for the UN World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, held in Santiago de Chile. In the U.S. plan of action for this meeting in Chile, the United States committed itself to making "a special effort to guarantee the human rights of all migrants and

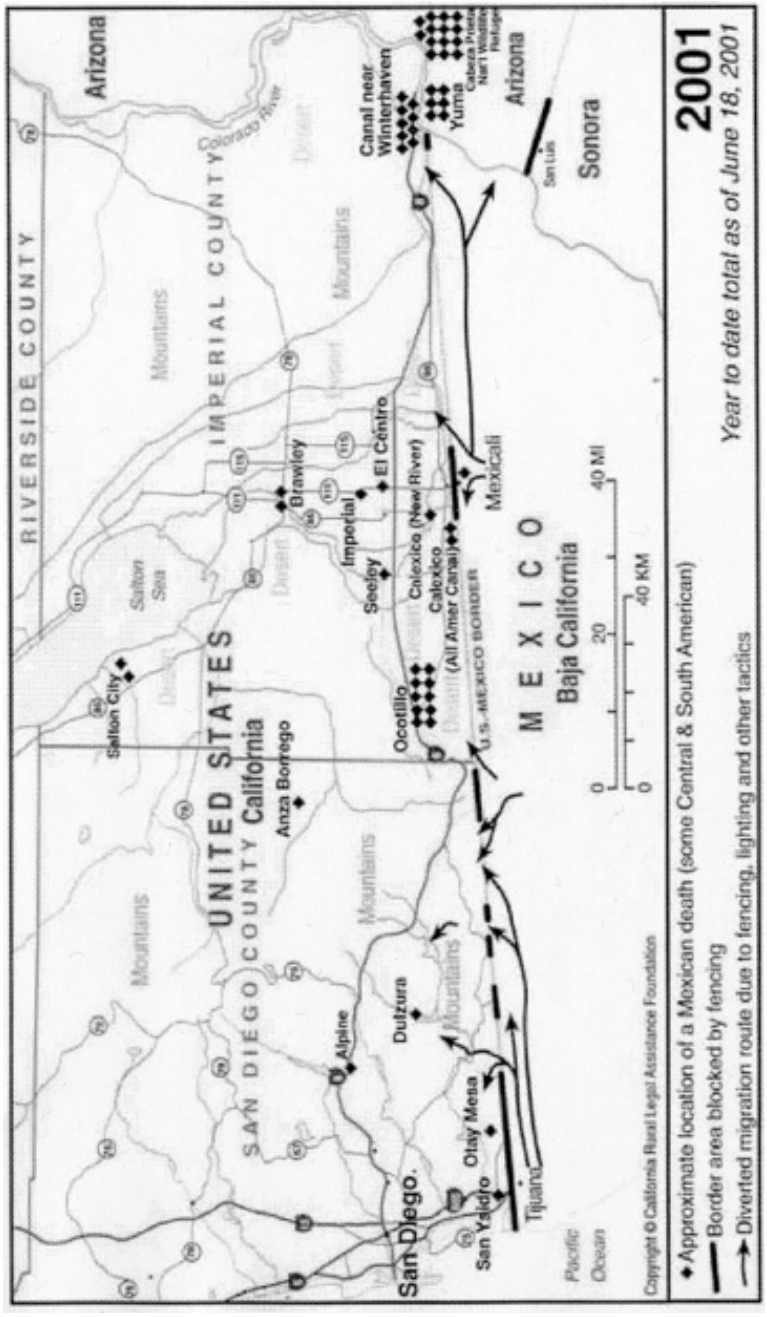
Map 1


RIVERSIDE COUNTY
IMPERIAL COUNTY
SAN DIEGO COUNTY
UNITED STATES
California
Arizona
MEXICO
Baja California
Sonora
Mexicali
Calexico
Oceanside
San Diego
Alpine
Jamiil
San Ysidro
Marron Valley
Tijuana
Salton Sea
Mountains
Desert
Pacific Ocean
U.S.-MEXICO BORDER
0 20 40 MI
0 40 KM
Copyright © California Rural Legal Assistance Foundation
◆ Approximate location of a Mexican death (some Central & South American)
1995

Map 2


RIVERSIDE COUNTY
IMPERIAL COUNTY
SAN DIEGO COUNTY
UNITED STATES
California
Arizona
MEXICO
Baja California
Sonora
Palo Verde
Salton City
Bombay Beach
Niland
Westmorland
Brawley
Holtville
El Centro
Mexicali
All-American Canal near Winterhaven
Somerton
Tacna
San Luis
Arizona
Sonora
Ocotillo
Mount Laguna
Borrego Springs
Julian
Alpine
Dulzura
Campo
Boulevard
Potrero
La Mesa
Jamul
Bonita
San Ysidro
San Diego
Tijuana
Pacific Ocean
Salton Sea
Colorado River
Desert
Mountains
U.S.-MEXICO BORDER
0
20
40 KM
0
40 MI
Copyright © California Rural Legal Assistance Foundation
♦ Approximate location of a Mexican death (some Central & South American)
1998

Map 3


RIVERSIDE COUNTY
Arizona
IMPERIAL COUNTY
Colorado River
Mountains
Salton Sea
Desert
Canal near Winterhaven
Yuma
Cabeza Prieta Nat'l Wildlife Refuge
Arizona
Sonora
San Luis
Brawley
El Centro
Imperial
Seeley
Calexico (New River)
Calexico (All American Canal)
U.S.-MEXICO BORDER
Mexicali
Ocotillo
UNITED STATES
SAN DIEGO COUNTY California
Anza Borrego
Salton City
Alpine
Dulzura
Otay Mesa
San Ysidro
San Diego
Tijuana
MEXICO
Baja California
Pacific Ocean
0
20
40 MI
0
40 KM
Copyright © California Rural Legal Assistance Foundation
◆ Approximate location of a Mexican death (some Central & South American)
Border area blocked by fencing
Diverted migration route due to fencing, lighting and other tactics
2001
Year to date total as of June 18, 2001

make the promotion and protection of human rights… the responsibility of every State" (U.S.-Mexico Migration Panel, 2001, p. 24).

The dialectical contradiction of the vulnerability of international migrants, suggested in the diagram, applies fittingly to the contradiction between the claims of sovereignty used to justify Operation Gatekeeper and the exercise of sovereignty to commit the United States to international standards of human rights. This is particularly important when one conceives of "human rights" as the source of "empowerment" for otherwise powerless foreigners/immigrants. Mme. Mary Robinson, UN High Commissioner for Human Rights, proposed the notion of human rights as a source of empowerment in her 1997 inaugural speech at Oxford University, where she said, "One lesson we need to learn, and to reflect in our approach, is that the essence of rights is that they are empowering" (Robinson, 1998, p. 6). Thus, vulnerability is understood here as a condition characterized by an absence of "empowerment".

This notion of human rights as a source of empowerment is crucial for the understanding of the notion of vulnerability, as used in the diagram. Note that although human rights also derive from the notion of sovereignty, it is from a dialectically opposite direction. The theoretical assumption behind this dialectical relation is that the dynamics of international relations over the last 50 years have brought about a process of international trade relations called globalization. This goes far beyond the relations of trade and financial exchanges between nations with which this process began. The virtual shrinking of the world through instantaneous electronic communications has facilitated a new worldwide process of socialization of norms and values resulting in the internationalization of more and more aspects of our everyday lives. This has meant that all over the world individuals behave according to similar rules, regardless of their geographical location. This process of globalization has contributed to human rights becoming an international standard for the behavior of nation-states.

A 1999 meeting in Bratislava, Slovakia, organized by the Organization for Economic Cooperation and Development (OECD) illustrates this. The author witnessed some uninhibited expressions of vehemence from representatives of a number of Eastern European countries as they tried to demonstrate their readiness to join the European Union. In order to be admitted as new member States, these countries have to demonstrate not only their willingness to accept the international standards agreed upon by the current European Union member States, but also their ability as nations to comply with those standards. Some of these international standards involve immigrants' human rights.[20] This is not to suggest that joining the

[20] The International Organization for Migration (IOM) reviewed the main sources of standards specifically addressing international migrants. It identified the "core migrant rights" in an official document (1996): ,: right to life; prohibition of slavery/slave trade; prohibition of prolonged arbitrary detention; prohibition of torture or other cruel, inhuman, or degrading treatment; prohibi-

European Union is the only way toward the empowerment implied in the notion of human rights *à la Robinson.* Nor does it suggest that current European Union member States fully comply with all the international standards, particularly those involving human rights, to which they have agreed. However, the relations that gave birth to the European Union vividly illustrate what the process of globalization involves in different stages and different regions of the world, namely, the internationalization of values, principles and normative standards.

In this process of internationalization of standards, particularly important to the understanding of the diagram is that stage marked by the sovereign decision of a country to accept adherence to human rights standards.[21] Most democratic nations have constitutional procedures for legislative bodies, most commonly the Senate, to ratify international agreements or treaties. Most of these constitutions equally rank constitutional law and international agreements or treaties, provided they have been duly ratified. Such a decision taken by democratic nations implies an exercise of sovereignty. This act of sovereignty is the same used to define who is a national and who is a foreigner. These notions of sovereignty shown at the opposite extremes of the diagram share the same origin in the thought of Jean Bodin, Francesco de Vitoria, and, later, with the full emergence of nation-states, Diderot (in his famous 1751 essay on political authority), Sieyès, and the Encyclopedists, particularly Jaucourt, who together developed the classical notion of sovereignty as being originally based on, and derived from, the people (Bendix, 1978, pp. 362-70). These notions of sovereignty, as used in the diagram, are not different but only dialectically opposed in their respective exercises.

As nations realize that their compliance with certain international standards is a necessary condition for joining certain international organizations, they have to internalize such standards, converting them into the law of

tion of systematic racial discrimination; right to self-determination; right to humane treatment as a detainee; prohibition of retroactive penal measures; right to equality before the law; right to non-discrimination; right to leave any country and return to one's own country; and the principle of non-*refoulement.*

[21] The most important international standards specifically applicable to migrant human rights are: the International Covenant on Civil and Political Rights (adopted by General Assembly Resolution 2200A (XXI), December 16, 1966, effective March 23, 1976); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by General Assembly Resolution 39/46, December 10, 1984, effective June 26, 1987); Resolution 1998/10 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities; and the most comprehensive standard (not yet in force, pending ratification by two member-states), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted by General Assembly Resolution 45/158, December 18, 1990, and ratified by 12 member-states as of June 30, 2000). Resolution 1998/10 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities states in one of its preamble paragraphs that it is, "deeply concerned by the increasing phenomena of extreme racism, xenophobia and violent intolerance which affect, in particular, migrant workers, men and women, and their members of their families".

the land through constitutional procedures and ratification by legislative powers.

Many countries, including the United States, decided to upgrade the UN Universal Declaration of Human Rights from the level of "principles of international law" to that of "the law of the land" by ratifying the UN International Covenant on Civil and Political Rights.[22] Once the U.S. Senate, in a sovereign act of the United States, had ratified this important set of human rights standards, it became the "law of the land". Then something very important happened. These human rights, as defined, were a source of empowerment for those previously deprived of this kind of legal condition, who, in turn, attained virtual equality with the rest of the human beings in the host society, regardless of nationality.

When a country exercises its sovereignty to commit itself duly to adopting an international standard of human rights, by remaking it into a law of the land, this exercise of sovereignty becomes dialectically opposed to that other sovereign exercise that makes a distinction between nationals and foreigners. This is a typical dialectical contradiction. It is what Hegel meant by his notion of the dialectic relations between a thesis and an antithesis.

The diagram depicts these as two dialectically opposed exercises of sovereignty, which become interrelated by an intermediary factor derived from the practice of international relations. This intermediary factor is what we call globalization.

To the extent that globalization implies that countries interested in joining certain international organizations accept certain exogenous rules, there exists an implicit, self-imposed limitation on an otherwise unrestricted exercise of sovereignty. Thus, all countries have the sovereign right to decide who is a national and who is a foreigner and to exercise control over their borders, but this cannot be construed as a basis to legitimize the violation of human rights of those so defined as foreigners. Once a country has exercised its sovereignty by committing itself, in an international community of nations, to accepting, promoting, and defending the rights of all humans, as defined by the Universal Declaration of Human Rights, it has implicitly agreed to limit its sovereign right to establish or condone a difference between nationals and foreigners in regard to their human rights.

In other words, the increasing intensity and expansion of international relations in the world, increasingly referred to as "globalization", implies that there is no sovereignty above the right of a country to limit its own sovereignty.

[22] Judging by the number of countries that have ratified the International Covenant on Civil and Political Rights (140 as of December 31, 1997), it is the most important international standard-setting instrument for legal questions relating to the human rights of international migrants. No doubt this instrument will be superseded by the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families when it enters into force. So far, only 12 of the 20 countries that are required, at a minimum, for its ratification.

When a country has taken the constitutional decision to commit itself to the protection of human rights as they are understood in the Universal Declaration, the basis for empowerment is born dialectically, out of an act of sovereignty in favor of those previously deprived of the rights this international standard protects. The dialectical relation between the thesis and the antithesis has then reached full completion. In the process, this dialectical relation produces a synthesis, namely, *integration*. Thus, the "integration" of immigrants as subjects of human rights in a host country means a de jure absence of inequalities between nationals and foreigners as far as their respective relations with the State is concerned.

Both a difference and a distance exist between a *de jure* and a *de facto* absence of inequalities. Sometimes the former comes well ahead of the latter. There is a period of praxis of the former in the lag between them. The birth of *de jure* conditions of equality for immigrants as a component of the host country's "law of the land" marks the beginning of an empowerment for immigrants that did not exist before. This relates inversely to the end of their conditions of vulnerability, as they are understood here.

The Inter-American Court of Justice used the core of this argument in a recent decision, Consultative Opinion CO-16/99, entitled "On the Right of Information about Consular Assistance under the Constitutional Rights of Due Process". This court decision refers to the Vienna Conventions on Consular Affairs, approved in 1963 by 92 countries, including all member States of the Organization of American States (OAS), except Belize. Articles 5 and 36 of the Vienna Convention established the right of foreigners to receive assistance from consular officers of their countries of origin, and it mandated that the authorities of the receiving country notify said consular officers of arrests or detentions of any form. Most importantly, this court decision interpreted an OAS member State's failure to comply with these rights of foreigners, derived from the Vienna Convention, as a violation of the rights of due process, as established by article 14 of the OAS Covenant of Civil and Political Rights, article II of the American Declaration of Human Rights, and article 8 of the American Covenant on Human Rights.[23]

The diagram implies that the vulnerability of migrants as subjects of human rights, understood as the result of a social process that involves the State, has a dialectical counterpart, also involving the State. That counterpart is understood here as the integration of immigrants. If "vulnerability" is understood as a condition of an absence of empowerment, "integration" is understood as its opposite, that is, an empowerment of immigrants. By the same theoretical logic according to which "vulnerability" cannot exist without the role of the State as an instrument of its virtual confirmation, "integration" cannot exist without the role of the State as an instrument of its actual confirmation.

[23] Saavedra (2000). Saavedra is an attorney for the Inter-American Commission on Human Rights.

There is, however, an important difference. In the case of "vulnerability", the process from which it originates is endogenous. It comes from the dynamics of the social relations between nationals and immigrants/foreigners. The "subordinate" position imposed on the latter is something the receiving-country State "confirms". Here, "vulnerability" is virtually "completed" by the role of the State, whether by commission or omission, but always in the context of a differential treatment granted to nationals vis-à-vis foreigners. This involves a process that is "internal" in a social and legal sense. By contrast, its dialectical counterpart, "integration", is exogenous. The process from which "integration" derives originates more often than not from an "international standard", which derives, in turn, from the context of international relations as an expression of globalization.

The relevance of this difference is very practical when it comes to the accountability of nation-states that have committed themselves to abiding by international human rights standards. The international community processes this accountability in accordance with the principle of the "international responsibility of a State". This is the principle of international law alluded to earlier when the co-responsibility of Mexico and the United States was argued with regard to the deaths of migrants at the U.S.-Mexico border. This principle is generally understood as a nation-state's obligation to repair injuries the actions or omissions of its officials cause in the context of international relations and, concomitantly, to compensate the injured party or parties.

In opposition to the universal acceptance of this principle is the reality of power differentials between countries of origin and countries of destination of international migrations. These power differentials are reflected in the absence of recipient countries in the meager list of those that have ratified the UN International Covenant for the Rights of All Migrant Workers and their Families, approved in 1990 by the UN General Assembly.

Although no other instrument of international standards provides the elements for a nation's accountability concerning the human rights of international migrants, a number of existing international standards nevertheless assume the vulnerability of migrants (U.S.-Mexico Migration Panel, 2001). At this juncture, the international nature of "vulnerability" acquires particular relevance in the dialectics of the two exercises of sovereignty this article has discussed.

The use of the concept of "vulnerability" has so far implied that the immigrants/foreigners are individuals.[24] They are understood, however, to be citizens or nationals of a country different from the destination of their immigration. This definition implies a context of at least *de facto* interna-

[24] For an excellent discussion on the rights of foreigners/immigrants, see Goodwin-Gill and Perruchoud (1988).

tional relations between the country of origin and the country of destination. Thus, it implies individuals who are in some position of power in the social continuum between none at all ("extreme absence of power") and some. The former conditions belong to the internal (domestic) responsibilities of a State. The latter belong by contrast to the international responsibility of a State. Indeed, in the area of human rights, a country can no longer successfully claim that a violation of human rights belongs exclusively to the realm of its "internal affairs", once the violation has reached a certain level of persistence and international exposure. Illustrations of this point are increasingly apparent in the international scene. The case of apartheid in South Africa was perhaps a turning point in the end of a successful use of the argument of "no intervention in the internal affairs" in matters pertaining to human rights. There was a point where the international community decided to make the nation-state of South Africa accountable for its international responsibility in the violation of the human rights of its own citizens. The arrest of General Augusto Pinochet in England was another benchmark in the international standards concerning the individual responsibilities of "heads of State" in the case of certain levels of human rights violations.

If one understands accountability as a function of the power of those who demand it, the absence of power, corresponding to "vulnerability", makes accountability for such a condition virtually impossible. Whatever the extent of such accountability, it is undoubtedly internal. Indeed, it corresponds to the context of an internal power structure where inequalities give rise to their own kinds of accountability of an internal nature. When the notion of vulnerability refers to immigrants as subjects of human rights, we are dealing by definition with an international phenomenon, which can be distinguished as such by the different nature of accountability for human rights violations of the nations involved.

"Integration", as understood here, is very different, in that the party interested in accountability is the international community, represented by the UN or any other international organization in which member States have accepted the principle of accountability. Thus, "integration", as opposed to "vulnerability", implies an external process for the assessment of accountability. The enforcement of this external accountability implies an actualization of the principle of "international responsibility of the State".

At this point, the sequence that follows the arrow after "international relations," from right to left in the diagram, integrates into the theoretical discussion in a straightforward sense. The notion of an "international community" can only come from patterns of practice of international relations according to a set of rules previously agreed upon by the nations involved.

This is the foundation of the United Nations as the representation *par excellence* of the international community. One could say the same of the Universal Declaration of Human Rights as the representation *par excel-*

lence of a set of "principles" or core values agreed upon by the community of nations as a *raison d'être* of the United Nations. Further intensity and expansion of international exchanges within the process of "globalization" lead to a virtual upgrading of the UN set of principles, such as those included in the Universal Declaration of Human Rights, to a set of standards binding for member States' behavior toward each other. Such was the process that led to the UN International Covenant on Civil and Political Rights, mentioned above. Such was the process that led to the birth of the European Community and, eventually, to the current European Union.

To the extent that these international entities represent historical illustrations of different stages of globalization, there is implicitly an evolution of the dialectical process represented in the diagram. This is far from being merely an abstraction. A dramatic example of the process, through which the two exercises of sovereignty depicted in the diagram collide, is once again the case of South Africa and the end of *apartheid.* Relevant for our discussion is the definition of sovereignty on which Afrikaners based their claim that *apartheid* was "an internal affair" about which no external power had the right to intervene.

So far, the Schengen Agreement, signed by most of the European Union member States, represents the epitome of the process of integration, implying the leveling of nationals and immigrants as equals under the law of the land. The Schengen Agreement's recommendation to allow immigrants to vote in local elections, as a means of achieving their integration, indicates how far the notion of sovereignty has come.

Conclusion

This article has tried to explain a social process that implies the inclusiveness of three fields of knowledge: economics, law, and sociology. The conceptual framework within which this inclusiveness is conceived is presented in a diagram that depicts a set of dialectical relations between several exercises of sovereignty. Basically, between two sovereign rights, and a third one dialectically opposed to the other two: *1)* the sovereign right of a nation-state to define who is a national and who is an immigrant-foreigner; *2)* the sovereign right of a nation-state to control its borders; and *3)* the sovereign right of a national government to commit its country to limiting its own sovereignty through due ratification by its legislative branch of internationally agreed-upon standards of human rights.

California's Proposition 187 illustrated a sort of sub-contradiction, implicit in the basic contradiction between *1)* and *3).* This contradiction is between the objectives of Proposition 187 and a definition of the reality in California derived from the research findings of a U.S. Department of Labor study on the impact of irregular or undocumented immigration from Mexico.

This article has argued that international patterns of economic relations, defined as globalization, have energized the dynamics of the dialectical relations discussed here. It is assumed that globalization is a source of internationally agreed-upon standards of human rights, to the extent that economic trade relations lead to the emergence of new "rules of the game", designed to create trust between parties, security for their transactions and operators, and certainty of outcomes in their economic relations.

Finally, "integration" is assumed to be the synthesis of the dialectical relations discussed in this article. It is the logical corollary of the social process that goes from the origin of the conditions of vulnerability of immigrants/foreigners as subjects of human rights, and an emergence of international standards, including those of human rights, derived from the process of globalization, which leads to a *de jure* empowerment of immigrants/foreigners that, in turn, leads to an end of their condition of vulnerability.

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