

“Law of Necessity”
An Analysis of the 1989 Migrant Housing Act on North Carolina Migrant Farmworkers

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Abstract

The intention of this thesis is to provide a critical analysis of the 1989 North Carolina Migrant Housing Act. This legislation extended housing protections to migrant labor camps with under 12 migrant workers, implemented water sanitation standards, and strengthened housing code to conform to federal OSHA regulations. Local newspapers reflected that the act was as an example of political compromise between North Carolina farmers' representatives and migrant worker representatives. Yet despite serving as a political victory, there was an incongruity between what the written legal code stated and what was enforced. Through the use of newspaper editorials, oral histories, photographs, and archival records that primarily focus on the Henderson County apple industry, this thesis argues that the 1989 Migrant Housing Act followed a historical trend of previous national migrant labor legislation such as the 1983 Migrant and Seasonal Agricultural Workers Act that was largely ignored and at best only marginally improved migrant housing and health conditions. This thesis will contend that the incongruity between legislation and the physical realities of migrant workers in North Carolina was predictable and due in part to an economic disincentive by growers to ignore housing and health legislation in order to cut costs, the political and economic influence of agricultural growers associations in North Carolina, and the lack of bargaining power of migrant workers, which made them susceptible to physical abuse. Lastly, this thesis will argue that the geographical and cultural disconnect between the majority Hispanic agricultural migrant worker and North Carolina communities provided little political incentive for the state government to strictly enforce migrant housing legislation in 1989.

1. Introduction

In 1988, “Day Haul Point” was at the center of migrant worker activity in Henderson County.¹ It was at the corner between Seventh Avenue and Ash Street in Hendersonville, North Carolina where migrant workers once gathered by the dozen and “would hop in the backs of the trucks, if the per-bushel price is right.”² Day Haul Point served as a snapshot of the lives of migrant workers in North Carolina. Workers with different nationalities and experiences unsure of “how long they would last” in any town.³ There existed an emotional disconnect between the “traditional”; or more established populations of these communities and the migratory workforce which passed through seasonally. The only evidence of migrant workers existing was stories of migrant students who passed through school in the fall, but by the time picking season was over, were nowhere to be seen, having moved along with their families along the agricultural migratory pattern of the East coast.⁴

The role of the agricultural migrant worker in the Henderson County community, was detached, connected only by necessity of the labor provided, with no acknowledgement of their membership within a ‘community.’ There was no title to the land on which they worked, and thus no ownership or connection to the community. A more direct participation in the larger Henderson County community did not change until the passage of the Immigration Reform and the Control Act of 1986 which granted amnesty to over three million undocumented immigrants and “redirected Mexican migration flows to emerging gateway states, such as North Carolina.”⁵ Within the 1986 IRCA existed a

legalization program “whereby undocumented aliens who could prove their continuous residence within the United States since before January 1, 1982 could legalize their status.”⁶ That same year North Carolina passed the 1989 Migrant Housing Act. The act was passed by the North Carolina General Assembly with the intention of conforming “migrant housing standards, to as much as possible, the Occupational Safety and Health Act of North Carolina, and to ensure safe and healthy migrant housing conditions.”⁷ Article 19 of the Act defined migrant as “an individual, and his dependents, who is employed in agricultural employment of a seasonal or other temporary nature.”⁸ Within Henderson County, there were disagreements as to whether updated housing conditions were justified. Farmers were apprehensive about implementing an “expensive proposition” through the implementation of portable toilets and freshwater.⁹ Unsanitary housing conditions as well as reports of slavery and physical abuse emerged from regions of North Carolina prior to the 1989 Act and led to growing political pressure that prompted the North Carolina General Assembly to action.

The 1989 Migrant Housing Act was viewed as “a rare agreement between agricultural and migrant workers interests” by the Asheville Citizen-Times.¹⁰ New regulations requiring “farmers to report to the state the existence of a camp” was cause for optimism among farm laborer activists. An exchange between the Executive Director of NC Legal Services and NC representative H. Martin Lancaster listed the potential of the 1989 Migrant Housing Act to “set the cogs in motion to get together on any issue.”¹¹ However, the 1989 Migrant Housing Bill followed a historical trend of previous national migrant labor legislation such as the 1983 Migrant and Seasonal Agricultural Workers Act, which was largely ignored and only marginally improved migrant housing and health conditions. Subsequent state budget cuts in 1990 from \$508,000 to \$246,000 for migrant housing inspection resulted in fewer labor camps inspections, which left lawyers wondering “if you have a law that can’t be enforced, what is it worth?”¹² The predictability of the incongruity between the 1989 Migrant Housing Act and its enforcement was due in part to an economic disincentive by growers to ignore housing and health regulation in order to cut costs, the political influence of grower’s associations in North Carolina, and the lack of bargaining power of migrant workers which made them susceptible to physical abuse and negligible enforcement of legislative protections.

Agricultural labor has remained a staple of North Carolina’s economy since the conclusion of the Civil War. The abuses and exploitations of these workers have existed just as long. However, it has historically been the case that those that are tied to the land suffer at the expense of the progress, and that “the development of commercial agriculture tends to displace subsistence farmers, creating a supply of rural wage laborers and mass migration to the cities.”¹³ It was not until after WWII that North Carolina acknowledged the conditions of migrant workers, a possible correlative effect of progressive reforms of the 1960s. However, newspaper publications of cases of slavery existed as late as the 1970s in North Carolina. Suggesting that although the abuses of migrant workers had entered the public sphere, the lack of political power towards action and bargaining power would not afford a change that aligned with a growing public conscious.

2. Historiography

Historical discourse on the conditions of migrant workers emerges in the mid-20th century, with most historians studying the Bracero Program, a federal work program that imported Mexican migrant workers during World War II. A study of Latino seasonal migration stems from this historical event, with most early scholarship such as Stephen H. Sosnick’s 1979 publication *Hired Hands*, focusing on the migrant labor conditions in California. Historiographical trends emerged in later decades along racial, and economic lines, with historians in large agreement that racial divides of the 20th century contributed to the poor conditions in which migrant labor occur both in the West Coast as well as the Atlantic migrant stream. Sosnick argues that the exploitation of migrant workers in the United States agricultural sector stems from the purposeful exclusion of agricultural workers from the 1938 Wagner Act which prevented the unionization of agricultural workers. Sosnick’s notes the trend of identifying crew leaders as the sources of migrant worker abuse, and argues that grower associations and their influence on legislation on the national and state level had more disastrous effects than the treatment of individual crew leaders. Sosnick is critical of the consequences of undocumented agricultural workers on depressing the wage rate of legal migrant workers. This argument of the undocumented workers negative consequences on agricultural labor rights and wages emerges in later scholarship.¹⁴ Peter Benson’s 2012 publication, *Tobacco Capitalism*, analyzes the North Carolina tobacco industry and is concurrent with Sosnick’s criticisms of undocumented labor use, illustrating that scholars believed national agricultural worker issues were applicable in North Carolina as well. Benson explains the controls of tobacco companies on setting the price of tobacco in the state, and the adverse effect it had on farmers statewide in the 1980s as companies increasingly imported cheaper foreign tobacco leaves, thus lowering the price of tobacco statewide. Benson theorizes that a sense

of dehumanization in regards to migrant workers has created a culture of blame for the conditions in which they live, an observation shared by migrant labor historian Cindy Hahamovitch. Benson's publication suggests that the continued exploitation by tobacco companies against farmers during the late 20th century meant that there would have existed little incentive for tobacco growers to have improved the working and living conditions of agricultural workers in North Carolina.¹⁵

Martha Menchaca's 2016 publication, *The Politics of Dependency: US reliance on Mexican Oil and Farm Labor*, shifts away from Sosnick and Benson by placing emphasis on the role of race in defining the abuses of migrant workers and their relationship with growers. Menchaca argues that agricultural workers were predominantly African American or Latino, thus reducing the level of urgency to correct the wage issue. Menchaca is able to look back on the decades following the end of the Bracero Program in 1965 and highlight the lack of INS (Immigration and Naturalization Service) in areas where agricultural producers employed large amounts of undocumented workers. Similar to previous historians, she highlights the consequences of policies that enabled undocumented workers to be employed in agriculture, particularly in the 1970s when workers' wages fell and farmworkers' unions were destabilized. Menchaca's portrayal of the migrant relations issues as interconnected with US-Mexico diplomatic relations provides a historiographical shift of the migrant worker issue from a domestic to an international issue.¹⁶ This shift is reflected in Saskia Sassen's 1990 publication "US Immigration Policy Towards Mexico in a Global Economy." A Columbia University sociologist, Sassen locates Mexican migration as part of a general trend termed as "economic internalization" and argues that by encouraging Mexican agricultural migration to the United States, "policymakers unwittingly set into motion powerful forces that may be beyond the ability of the traditional nation state to manage."¹⁷

Cindy Hahamovitch's 1997 publication, *The Fruits of Their Labor: Atlantic Coast Farmworkers and the Making of Migrant Poverty, 1870-1945* is part of a historiographical trend towards an analysis of the origins of migrant labor and poverty on the East coast. Hahamovitch documents the implementation of sharecropping after the Civil War and delves into the politics of race in migrant worker issues. Similar to Menchaca, she discusses the exclusion of agricultural labor from protective legislation of the New Deal and the reluctance of state governments to dedicate resources in part because of this racial component. Hahamovitch documents how politicians from the New Deal era ascribed the "lazy character" of the black migrant worker as a reason for the reported poor conditions and documents that wage rates were comparatively depressed in the Southern Atlantic region of the United States as opposed to the Northeast where wage rates and housing conditions were better. Hahamovitch records early migrant worker attempts to unionize amidst grower's efforts to destabilize strikers. Historians document these destabilization efforts in later decades, particularly in reference to the importation illegal migrants from Mexico.¹⁸

Rob Christensen's *The Paradox of Tar Heel Politics* documents the past century of North Carolina politics and captures the different political ideologies and movements that occurred in North Carolina during the 20th century. Christensen writes on reforms supported by Governor Sanford during the 1960s that were in line with other social movements of the time such as the Civil Rights movement. Christensen captures the rise of Jesse Helms, and the rise of conservatism in North Carolina. Both political movements seem to affect the migrant worker issue as increased attentiveness to the migrant issue arises in the 1970s as well as an opposition reluctant to fund migrant reforms.¹⁹

Within the North Carolina migrant worker historiography, Leon Frink's 2001 publication, *The Maya of Morganton* delves into the migration of the Guatemalan indigenous population in Morganton, North Carolina during the early 1990s. Frink's work documents the shift of Latino migration to the Southeastern United States in the late 20th century, and with it a shift in the focus of migrant labor studies particularly as it pertains to North Carolina. This is evident in works such as Frink's *Maya of Morganton* and Peter Benson's *Tobacco Capitalism*. While Frink's writing largely captures events that occur after 1993, her writings on the prelude to their arrival is significant. The displacement of African American workers by Latino employees shows a continuation in the hiring practices of attaining a cheap and vulnerable labor force to displace protesting workers. Frink's work gives some context as to how government inaction allowed for this transition in worker population to occur and glimpses into the conditions in which these migrant workers inhabited. Frink's work confirms that the same migratory paths that Hahamovitch depicts being used by workers in the early 20th century were utilized by Guatemalan refugees in the 1980s.²⁰ Within this historical tradition, the 1989 Migrant Housing Act displays a continuation of the trends marked by previous historians both within North Carolina as well as in other regions of the United States. These trends being the economic disincentive of government to enforce protective legislation particularly towards a marginalized migrant group that was politically inconsequential and absent from the public conscious and thus political elections. Although the racial component that Menchaca and Hahamovitch emphasize does not seem to play a leading role in the shortcomings of the 1989 Migrant Housing Act, the cultural disconnect between the "traditional" populations of rural North Carolina and what later became a largely undocumented and Latino workforce hindered the improvement of migrant conditions as communication and community assimilation were not easily achievable.

2.1 Migrant Conditions

Edward R. Murrow's CBS documentary *Harvest of Shame*, shed light on the issues of migrant worker labor streams that stretched from the Florida citrus farms up into New Jersey depicting images of rat feces, lack of clean water, and unsupervised children. Alongside the impoverished conditions shown on camera was the disconnection between viewers and the migrant workers. A geographical and socioeconomic disconnect that created an emotional disconnect between the two communities. *Harvest of Shame* was pivotal in the pursuit of improved migrant housing as a form of media advocacy. A movement that migrant workers themselves could not launch, reflecting their lack of political power and dependency upon others for the protection of their rights.²¹

The structure of agricultural labor in the United States during the 20th century produced certain types of abuses. Growers traditionally obtained migrant workers through the use of "middlemen" referred to as "crew leaders" within the Eastern United States and as "farm labor contractors" in the Pacific.²² Crew leaders relieved growers of the responsibility of both recruiting and transporting migrant labor on a seasonal basis. In theory, the crew leader managed the day to day interactions with migrant workers in order to allow growers to tend to other matters. In application, multiple instances of physical abuse emerged. Without recognizable migrant worker protections, the responsibility was on the crew leader as to whether to uphold any agreed upon wage structure or housing agreements. There was no homogenous migrant labor group, but instead different groups operating based on the ability of the crew leader to identify and attain work for the migrant workers. What emerged were both "stationary" migrant labor groups that remained and operated out of certain geographical areas and migratory groups that traveled from Florida to New Jersey on a seasonal basis as shown in *Harvest of Shame*. Within North Carolina, there emerged anecdotes of "suspected use of violence by crew leaders." Dale Boone, a crew leader in Nash County in 1981, admitted to knowing of crew leaders who "used force."²³ An *Asheville-Times* publication from the same year detailed the death of a migrant worker in Nash County from heat exhaustion.²⁴

The responsibility of migrant abuse was often shifted onto the crew leaders who were held responsible for distributing wages, food, and housing. North Carolina Department of Labor officials adopted a similar stance and argued that "crew leaders of migrant worker groups were the causes of many of the problems with the system."²⁵ Claims of the kidnapping of four migrant workers from Philadelphia emerged in 1980 out of Nash County.²⁶ The 1981 death of migrant worker Robert Anderson, received national attention due to the accusations of slavery that emerged against defendants Richard and Dennis Warren, crew leaders who were accused of having provided "inadequate food, water, and health care."²⁷ North Carolina newspapers writing on the death of Robert Anderson described the case as only the "tip of the iceberg."²⁸ Oftentimes stories of physical abuse were limited to anecdotes because "migrant workers did not stay in the area long enough to testify."²⁹ The agricultural farm labor structure was intended to alleviate the burdens of oversight to the grower in order to maximize profitability. However, the absence of migrant worker bargaining power allowed abuses to occur under this structure. Don Ward, a Henderson County Apple farmer, illustrated this disconnect by stating that in regards to housing, workers were in fact "satisfied" saying "if you give them anything nice, they tear it up."³⁰ This emotional disconnect was a consequence of the labor structure. Similarly New Deal politicians, had believed the poor living conditions of the African American agricultural worker were due to the genetic "laziness" of blacks.³¹ A similar "myth of passivity" had developed around Mexican-American workers, and a belief that "the Mexican accepts and resigns himself to whatever destiny brings him."³² This argument was racially charged, as well as a byproduct of the lack of checks and balances towards the migrant workers. This historically-grounded problem is a symptom of a problem at the macro rather than micro level. That it emerges in Henderson County is indicative of its existence. A misinterpretation of the agricultural labor structure confirms this trend, "a common approach, is to list the evils and abuses of the labor contractor system..and to conclude with a fanfare of righteousness that labor contractors ought to be abolished."³³

The interpretation of migrant labor abuse as an isolated grouping of events is evidence of a micro-scale understanding of the issue which is due to multiple reasons. The first being, that the rural location of migrant labor camps within North Carolina created a disconnect between the rural and urban populations which then manifested into disconnect in political communication and incentive. Secondly, North Carolina papers such as the *Rocky Mount Telegram* and *Asheville Citizen-Times* brought an increased social awareness to migrant worker abuses within North Carolina, however it also created the impression that these events were byproducts of "some scoundrels" among the crew leaders rather than a consistent problem that had persisted on a national level.³⁴ Peter Benson provides the term, 'structural violence' as "the social arrangements that systematically bring subordinated and disadvantaged groups in harm's way."³⁵ The perpetuation of structural violence within North Carolina was brought on by the shift away from addressing systemic issues of bargaining power and instead focusing on issues of "visibility" such as crew leader abuse. While it remains true that "structures don't act, people do" when speaking to the issue of migrant housing and

migrant conditions in North Carolina it is important to incorporate in our analyses both social structure and the political actors who are situated within those structures.”³⁶

Cases of physical abuse and deteriorated housing conditions pointed towards Eastern North Carolina, a region through which Atlantic Coast migrant streams more traditionally crossed. What cases such as that of Robert Anderson illustrated, was that recorded incidents of abuse and slavery were occurring in North Carolina as late as the passage of the 1989 Migrant Housing Act. The rate at which these abuses occurred was based on anecdotal evidence and estimations from state officials. However, state officials likely undervalued the rates at which these abuses were happening due to the presence of undocumented workers and crew leaders that had not registered with the state. In the case of undocumented workers, these abuses were likely to continue due to the lack of “legal rights or recourse and the constant threat of deportation if they complained or attempted to organize.”³⁷ Media coverage of North Carolina migrant labor between 1970 and 1990 as well as first-hand accounts seem to strongly suggest that a larger proportion of reported abuses emerged from Eastern North Carolina.³⁸ Given the likelihood that most cases of migrant abuse and deteriorating housing conditions were likely to go unreported, there existed the likelihood of a pattern of abuse. Apart from the threat of physical abuse existed the question of hygiene as a byproduct of migrant housing conditions. A correlation between migrant housing conditions and hygiene was evident. Parasites were identified in 30% to 50% of migrant farmworkers in North Carolina, a statistic attributable to their housing, “which is usually supplied by the farmer for whom they work” and is “generally substandard housing which has been abandoned by the farmer.”³⁹ This health report further identified the conditions under which migrant workers traditionally lived in North Carolina, as well as the adverse effect of the labor structure on their health.⁴⁰ Farmer complaints towards the cost of provisions of drinking water and toilet facilities in Henderson County confirmed the relationship between the health of the migrant worker and their dependency upon farmers, highlighting the economic incentive for farmers to neglect reforms and their rejection of “government interference.”⁴¹ Grower’s rejection of “government regulation” had historical precedent during the Bracero Era in Texas and was a common sentiment among growers in the United States.⁴²

Two theories suggest why migrant abuse was more common in the Eastern part of the state. A larger amount of crops including tobacco were produced in the Piedmont and the East. This alone meant that amount and size of farms required more migrant labor than Western North Carolina and would have proportionally resulted in a higher overall number of migrant abuses. This population difference would have been reflected in the ratio of media coverage by region of the state. However, how then does one explain the severity of abuses in Eastern North Carolina as opposed to the Western region? While one cannot assume that similar abuses did not occur in Henderson County, the lack of reported or substantial anecdotal evidence of human rights violations makes it difficult to gauge the rate at which the abuses occurred, even with an attempt to produce an estimated ratio of reported to non-reported cases. Secondly, the traditional patterns of migrant labor passed through the Piedmont and Eastern region as it crossed into Virginia. Again, this was likely due to historical trends and labor needs that prioritized the Eastern region of the state as well as the Piedmont region where “tobacco accounted for nearly one-third of the economic value of agriculture in the state.”⁴³ Firsthand accounts of migrant labor in Henderson County in 1981 confirm that an annual labor stream did in fact pass through the county, some predicted as many as 2,000 to 2,500 annually, with the peak coming in between August and October.⁴⁴ However one suspects that domestic agricultural workers were more common in Western North Carolina in order for growers to be assured that there would be enough workers to sustain production if the migratory labor streams dried up or redirected any given year. This was the case in the year after the passage of the 1986 IRCA law, a year which left growers “pinched for help in harvesting their spring vegetables” in 1987.⁴⁵ The 1983 Migratory Labor commission likewise suggested that improved conditions in Western North Carolina were due to the “higher level of skill necessary to harvest these crops. Many of the migrants work for the same farmer year after year. There does not seem to be dependence on labor contractors with the farmer contracting and paying the laborers directly.”⁴⁶

The alternative labor structure present in Western North Carolina directly affected the Henderson County apple industry and was representative of the fact that increased migrant worker bargaining power did in fact result in improved conditions comparatively speaking with other parts of the state. The variable under which conditions improved was the specific crop, apples in the case of Henderson County. That does not prove that the migrant workforce in Western North Carolina was not undocumented nor exploited, but rather that workers could not be replaced as easily thus increasing the bargaining power and leading to improved conditions. The Eastern part of the state used a more conventional migratory workforce that historically traveled from Florida to New Jersey, whereas to due geographic location, the Western part of the state was more apt to utilize a local base migratory workforce which not only encouraged improved conditions, but also played a role in the later settlement of a larger Latino community within Henderson County. Within an understanding of the treatment of migrant laborers regionally, anecdotal evidence and media coverage served as the best metric for determining these trends, a reliance on state records to validate or discredit the existence of migrant labor abuse was unreliable. Archived agriculture labor camp health inspections

records, reflected excellent grades on camps reported with no distinction between Henderson County and Nash County nor any signs of abuse. This however, was not evidence that migrant labor abuse was understated, but was representative of the fact that only a small amount of camps were accounted for due to the shortage of inspectors.⁴⁷

Although, the improved housing and living conditions of Henderson County seemingly reflected an increase in bargaining power it was more so reflective of the lack of collective voice on the part of the migrant workers. Any improvement in their bargaining power had not stemmed from increased political action, unionization, or legislative recognition of rights, but rather by the labor scarcity produced by the type of crop, in this case being the apple industry within Henderson County. Historically a similar pattern had been set in the Pacific Northwest during the Bracero Program, a federal program created during World War II in order to legally import Mexican laborers into areas of industry and agriculture. Geographic proximity to the Mexican border also played a role in the treatment of braceros, for example, “if Braceros in the southwest (United States) caused trouble for his employer, it was easy to fire him and bring in another more compliant worker.”⁴⁸ Although North Carolina was not within close proximity to the Mexican border, the skill set required to pick apples as opposed to tobacco did in fact improve conditions, but did not point towards a applicable policy reform towards improving migrant conditions, but rather a consequence of the crop produced in Henderson County.

2.2 Oversupply

Debate over migrant worker conditions involved accusations by activists that an unnecessary oversupply of migratory labor existed. A supposedly intentional oversupply of labor through the redirection of migratory labor patterns reduced the need of growers to pay out wage rates and further reduced the bargaining power of the workers as they were theoretically forced to compete with other workers for labor with no baseline or protections. Because of the pressure of surplus labor “highly qualified labor could be secured for low wages.”⁴⁹ The farmer’s perception of what labor was “worth” was based more on culture and custom rather than the concepts of supply and demand, “some had come to consider this oversupply as the supply of workers.”⁵⁰ It is difficult to gauge whether this was due to disagreement of what the appropriate labor supply was, however the financial incentive and historical normalization of an over-supply of labor is seen from the early 20th century up into the passage of the 1989 Migrant Housing Act in North Carolina. A similar development emerged in 1951 during the Bracero Program. The Department of Labor did not create a significant or enforceable policy towards deterring growers from seeking out “domestic or undocumented labor.”⁵¹ Enforced protections on the basis of Public Law 78 in 1949 from the Mexican Government on the conditional extension of the Bracero program past the conclusion of World War II meant that growers were asked to meet certain housing conditions as well as prevailing wage requirements. However, the US government was continuously unable to “impose sanctions upon employers who hired unauthorized labor” giving greater incentive for growers to import undocumented workers.⁵² Theoretically this allowed growers to maintain a lower wage rate across a given region rather than having to comply with federal regulations to the wages, safe transportation, and housing of the Bracero program.

However, a counter argument against criticisms of intentional oversupply revealed the complexity of the issue. Farmers argued that “oversupply” was needed given the unpredictability of workers needed to harvest a given crop in a region. Whereas media, activists and farmers did not disagree on the existence of labor “oversupply,” the debate revealed the emotional undertones of criticisms against farmers, suggesting that there was an intentionality in creating an “artificial oversupply” in order to increase profits. Farmers argued that “hiring more workers than needed to avoid problems under normal conditions hedged against abnormal absenteeism, quitting, breakdowns, pests, and weather and therefore protects a grower against delays and spoilage.”⁵³ During World War II, the perceived lack of labor was in fact a source of concern in and of itself to federal officials, due to the fact that “growers who expected labor shortages would plant fewer crops than were needed.”⁵⁴ The perceived threat to a finite food supply provided growers with some sense of bargaining power as it related to the flow and traffic of labor. The alternative, “shifting out of labor intensive production, was unlikely due to the demand for high-quality U.S. produce.”⁵⁵

During the Bracero Era, issues and threats of oversupply were controlled by requests for protection by the Mexican government. Within the legislation of the second-era bracero program of 1950-1965, the Mexican national government was able to attain protections that prevented “employers from securing labor for the purpose of displacing American workers or depressing their wages.”⁵⁶ The legality of the Bracero program allowed for an influx of Mexican labor into the United States, however under the theory of over-supply, also compelled lower income growers to hire undocumented labor through actions of illegality under the preposition that it was necessary in order to cut costs. Within the historical context of the Bracero program, ‘over-supply’ as a term, could only be determined by a governing body. The 1954 United States Joint Committee of Agriculture “conceded that there was an oversupply of possibly one

million undocumented agricultural workers.”⁵⁷ Given that North Carolina was not considered a traditional benefactor of the Bracero program, there were alternative manners of obtaining labor when a “shortage” was declared on the part of grower’s associations. In Florida, “foreign born workers from the Caribbean were brought in as part of a federal guest worker program.”⁵⁸ In addition to Mexican American farmworker migrations to Florida during the 1950s and 1960s there existed alternative manners of obtaining labor. Given the traditional Atlantic migratory labor stream, these same workers would have passed through North Carolina. An important question to consider, is how the historical narrative of oversupplying agricultural labor would have intertwined with the specialization of labor within the apple industry of Henderson County. Given the understanding that the migratory workforce within Western North Carolina was more domestic based than other regions of the state, one can predict that oversupply was not as prevalent as in Eastern North Carolina where agricultural mechanization was a serviceable alternative to undocumented labor.⁵⁹ In fact oversupply was not a source of conflict in agricultural years where production was below estimated levels or when freezes occurred.⁶⁰ In 1980, Henderson County encountered a surplus of about 300 workers due to an “especially dry weather.” An apple freeze in 1982 recounts the helplessness of migrant workers in attempting to find employment as well as expressing the vulnerability upon weather variables of both the farmer and the migrant worker.⁶¹ Certainly the agricultural weather patterns that afflicted Western North Carolina in 1981 and 1982 added a layer of complexity to the question of oversupply within NC, in that it confirmed that there was no certainty about the amount of labor needed from year to year, which conclusively made farmers wary of investing capital into migrant housing.

In North Carolina, the geographic distance from the Mexican border reduced the estimated amount of undocumented labor arriving from Mexico, however this did not mean that there was not an undocumented migrant worker population. Migratory labor was not exclusively from Mexico, as migration from the West Coast, Texas, and Florida was common. Within Henderson County anecdotal evidence suggests that a large portion of the agricultural migrant worker population was composed of undocumented laborers. The passage of the 1986 IRCA served as indirect metric for measuring the significance of the undocumented migrant labor pool within North Carolina. The bill itself penalized growers who knowingly hired undocumented labor. Fears as to whether it would be enforced or not were manifested into reality as reflected in newspaper editorials. There was documented dip in migrant labor in Henderson County the summer after the 1986 IRCA bill was ratified. One farmer counted “vegetables suffering a little bit at the beginning of the season because there was a labor problem.”⁶² Reaction to the 1986 IRCA was one of uncertainty within Henderson County. Prior to its passage, one interview argued that “if enforced, could have a chilling effect on the hiring of illegal workers, the law which threatened to fine farmers up to \$1000 per worker if charged, was intended to serve as a form of protection against the abuse suffered by migrant workers.”⁶³ What was understated within the passage of the 1986 IRCA bill was the “effect it had on geographical mobility and spatial redistribution of immigrants” including migrant labor streams in North Carolina. This comparative effect allows one to conclude that there were in fact a significant undocumented labor population that migrated through Henderson County both prior to and after the passage of the 1986 IRCA.⁶⁴ The return to ‘normalcy’ the following picking season (reintroduction of undocumented labor), confirmed the lack of enforcement of the IRCA’s penalty for fining farmers. Further confirming the separation of word and deed in regards to migrant legislation.

The question of undocumented labor within Henderson County prior to the 1989 Migrant Housing Bill, raised the importance of enforceability, a term that affected both migrant workers and farmers alike. From a national perspective of labor, a lack of enforceability, also coined as “legal exceptionalism” had “historically regarded farm labor as distinct from other kinds of work.”⁶⁵ The historical tradition of incongruity between legislation and its enforceability continued after the passage of the Farm Labor Contractor Registration Act of 1963, which required crew leaders to register their crews but which the US congress reported, “was largely ignored and that most of the abuses that it was designed to cure continued unabated.”⁶⁶ While the difficulty of enforcing legislation on a population of “transient crew leaders” who are “hard to locate, and even harder to control” is duly noted, there were serious faults that prevented migrant labor enforceability which ultimately came back to the inability of legislation to address migrant worker bargaining power.⁶⁷ The 1983 Migrant and Seasonal Agricultural Workers Act, intended to correct the flaws of the FCLRA act, “fared even worse” in regards to enforceability, as the Department of Labor’s ability to uphold legislatively mandated enforcement activities was curtailed” by political interests.⁶⁸ As of 1989, about “two-thirds of North Carolina’s thousands of labor camps were unregistered, one quarter got inspected, and a measly one percent comply with standards.”⁶⁹ As it related to the migrant housing issue in North Carolina, some farmers complained of the “red-tape” and “ensnarement” of agricultural employers in paperwork and “costly regulation.” While, there did exist farmers who were open to attempting to follow the proposed regulations, a historical precedent of insufficient camp labor reports due to insufficient camp inspectors had been set.⁷⁰ The rejection of any government intervention on the part of some growers associations and farmers, led to serious concerns over the effectiveness of the 1989 Migrant Housing Act a fear that was confirmed in 1990 with subsequent state budget cuts and the further reduction of camp labor inspectors.⁷¹

2.3 Unionization

Precedents for agricultural unionization had been set in the West Coast earlier in the 20th century under the leadership of Cesar Chavez and the UFW (United Farm Workers) who had advocated for improved conditions and wages for Braceros. Even in the Pacific Northwest, Braceros had not been hesitant to act, “when work and living conditions became unbearable they went on strike.”⁷² Similar complaints to those of North Carolina migrant workers were preceded by Braceros who dealt with “unsafe transportation, unsanitary toilets, and substandard living quarters.”⁷³ A portrayal of migrant workers purely as victims disallows anecdotes and histories of unionization efforts like that of the 1995 Case Poultry Plant strikes in Morganton, North Carolina. The environment within North Carolina however, was that of an “aversion to unionism” within an agricultural and formerly sharecropping South.⁷⁴ Fears of communism and anything resembling it, such as the right to unionize were incongruent with the plight of the migrant workers and were a higher priority within the American political system at that time.⁷⁵

The 1938 Wagner Act had excluded agricultural workers from the right to unionize, however this had not prevented the UFW and individual strikes from occurring after 1938. Efforts by UFW representative, Arturo Rodriguez to form a union body in North Carolina as well as forums hosted across the state were not successful.⁷⁶ Within North Carolina, the historical aversion to unionization, as well as the geographic isolation of many farms, made it difficult for union efforts to succeed. Despite being home to the “fifth largest number of farmworkers in the country” there was no mode of gaining public support through strike tactics, particularly in a geographic location that lacked the communal base of a permanent Latino population as was the case with the rise of the UFW in the West coast.⁷⁷ “Unlike California and Texas where the migrant laborers work in groups of 100 to 200 and have the opportunity to get together and discuss their problems, the North Carolina migrant workers are kept in small bands that are dependent on their crew leaders for everything.”⁷⁸ This observation illustrated the loss of bargaining power by migrants, their circumstance acting against the presence of power “only where men jive so closely together that the potentialities of action are always present.”⁷⁹ Without this base of community one “forfeits power and becomes impotent, no matter how great his strength and how valid his reasons.”⁸⁰ Complaints by Raleigh attorney John Brooks in 1976 that “migrant camps are revolting, yet no one is taking responsibility for improving them” reflected a public sympathy to migrant workers but also to the unrecognition of the possibility for migrant workers to possess political power, putting the onus on the government to act.⁸¹ A contradiction to the North Carolina conservative tradition of avoiding government intervention and ‘red tape.’

Wages were likewise indicative of the conditions of migrant workers and the success of that season’s crops. Within the farm labor structure of the Southeast, unethical crew leaders were known to withdraw wages from their migrant workers. Stories emerged of crew leaders owning new cars, and exploiting migrant workers into a state of debt by overcharging for supplies that they could not personally due to lack of transportation.⁸² Wage disparity dated back to “the exclusion of the 1938 Fair Labor Standard Act which had prevented agricultural workers from receiving the national minimum wage in order to reduce the cost of crops.”⁸³ Within the “campos” of the North Carolina tobacco fields, minimum wage standards were often ignored.⁸⁴ In regards to influence of oversupply in depressing the wages of the migrant labor, the conclusion of the Bracero program in 1965 had resulted in an increase in “farmworker wages to \$1, 40 below the national minimum.”⁸⁵ In California, Cesar Chavez and the UFW had made inroads to unionize farm workers and wages increased as growers not workers, were forced to compete for migratory labor. These successes are demonstrative of the fact that farmworker wages could in fact be used as a metric not only of the labor force available but of the successful enforceability of wage law.⁸⁶

It is difficult to judge the appropriate wage limit within agriculture. The ceiling or expected average of the migrant workers’ wages therefore are difficult to predict, however a baseline minimum wage would have reduced the extremity of the wage fluctuation as well as the effects that importation of undocumented labor would have on the depression of wages. Growers used this tactic to their advantage knowing that “the supreme law of necessity obliges all these people (undocumented workers) to emigrate to a foreign land in search of higher wages.”⁸⁷ It is not surprising that a sizable amount of growers were opposed to the implementation of such a standard, both in 1938 as well as in 1989 North Carolina. Although a federal minimum wage standard was established in 1967, the question arose again within North Carolina as to whether it was consistently enforced. The agricultural labor structure as well as the language and geographical dissonance of the Latino migrant worker prevented accurate data collection towards wage and wage disparity. Thus anecdotal evidence remained the best determinant for wage trends. Overall the health outcomes and dearth of social mobility, allows one to conclude that wages had likely not improved to the point of marking observable socioeconomic change.

The absence of bargaining power was in relationship with the conditions that afflicted North Carolina migrant workers during the mid to late 20th century included depressed wages, lack of unionization, and the absence of

enforceability in existing migrant legislation. The passage of the 1989 Migrant Housing Act did not directly address the issue of migrant bargaining power. The ratification of the 1986 IRCA bill, and the subsequent amnesty process of millions of agricultural workers was felt in North Carolina as well. The legalization of the undocumented labor force led to a depreciation of workers as many were legalized and moved into other sectors of local economies both in Henderson County and North Carolina. In Durham for example, “early immigrants were primarily recruited out of nearby agriculture or from more traditional immigrant gateways.”⁸⁸ The emergence of the 1989 Migrant Housing Act after the ratification of the 1986 IRCA and the depreciation of the Latino migrant labor force, could be seen as coincidental or as a continuation of a pattern in which proposed improvements to the living quality of migrant workers is first preceded by the temporary depreciation of the migrant labor pool. Such fears were espoused by Henderson County farmers concerns of the 1986 IRCA bill would “put them down to where they’re hardly interested in working, because it (1986 IRCA Bill) makes them available for all the food stamp programs and that kind of stuff.”⁸⁹ These comments indicated fears farmers shared both in Henderson County and nationally, that the increased bargaining power of migrant workers through the creation of alternative labor choices would shrink the labor pool thus justifying a labor ‘over supply.’

3. Conclusion

Efforts to help provide services to migrant agricultural workers emerged in Henderson County and North Carolina during the mid-20th century. Organizations such as Farm Workers Legal Association were critical of worker treatment and the lack of “protections” on the part of the government.⁹⁰ Migrant Health Clinics in Henderson and Nash County provided health services to workers during the picking seasons, and religious institutions provided assistance as well as a focal point for communal gatherings within North Carolina.⁹¹ In Henderson County, Telamon, a non-profit organization, provided migrant workers with “assistance for food, clothing, and structure” as well as assistance in providing educational resources to migrants.⁹² These initiatives to aid migrant workers provided relief, but were not proper substitutes for the enforcement of migrant worker related legislation. Historical factors that contributed to the failure of previous migrant labor legislation included the economic disincentive of farmers to follow housing and wage laws, the ability to import undocumented Latino and Caribbean labor, and the political disincentive for North Carolina political body to enforce laws that were not economically beneficial to a state economy reliant on agricultural production. Insufficient enforceability stemmed in part from lack of political incentive and reflected in the disconnect between the NC General Assembly and the NC Human Resources Department, whose yearly budget was a source of frustration.⁹³ The inability to unionize and the importation of undocumented labor reduced the bargaining power of migrant laborers from which to advocate for higher wages or standards of living. Given these factors and the failure of the NC General Assembly or the agricultural sector to properly assess them, any indication that the 1989 Migrant Housing Act was a shift away from a tradition of legal exceptionalism was optimistic. Rather the presentation of these factors and the failure of the government to prioritize them through financial investment in increased labor camp inspectors and greater enforceability of laws on the books indicated that any improvements brought on by the 1989 Migrant Housing Act would be marginal, resulting in an incongruity between the stated law and what was enforced.

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