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### Land, Labor and Reparations

Guadalupe T. Luna Northern Illinois University

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# LAND, LABOR AND REPARATIONS

GUADALUPE T. LUNA<sup>1</sup>

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## I. INTRODUCTION

Kim David Chanbonpin<sup>2</sup> and Ronald L. Mize, Jr.,<sup>3</sup> bring to LatCrit two legal historical essays that connect property and labor issues to the present. The first draws from the former Mexican land base presently comprising the American Southwest. The second examines a class of “agricultural underdogs”<sup>4</sup> that provided their labor to the nation’s food production systems during wartime.

Communities of color have long advanced the economic vitality of the agricultural sector and added immeasurably to the nation’s land base. They have further contributed to the nation’s domestic and global economic development. Attendant to their value added inputs they have nonetheless accrued a realm of legal injuries encompassing the focus of this cluster.

Kim David Chanbonpin’s essay takes on a group of promises the United States covenanted to individuals of Mexican, Indian, and Spanish descent, and formalized in the Treaty of Guadalupe Hidalgo that ended the United States war with the Mexican Republic in 1848.<sup>5</sup> In contrast, as the author shows, the intended class witnessed arbitrary legal interpretations that failed to protect their property interests. The lack of fidelity to constitutional principles evaporating as quickly as changing interpretations also failed to protect their proof of landownership. Facing a series of

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<sup>1</sup>Professor, Northern Illinois University.

<sup>2</sup>Kim David Chanbonpin, *How the Border Crossed Us: Filling The Gap Between Plume v. Seward and the Dispossession of Mexican Landowners in California After 1848*, 52 CLEV. ST. L. REV. 297 (2005) [hereinafter “*How the Border Cross Us*”].

<sup>3</sup>Ronald L. Mize, *Reparations For Mexican Braceros? Lessons Learned from Japanese and African American Attempts At Redress*, 52 CLEV. ST. L. REV. 273 (2005) [hereinafter “*Reparations for Mexican Braceros?*”].

<sup>4</sup>See, e.g., Guadalupe T. Luna, “*Agricultural Underdogs*” and *International Agreements, The Legal Context of Agricultural Workers in the Rural Economy*, 26 N.M. L. REV. 9 (1996) citing DWIGHT McDONALD, HENRY WALLACE: THE MAN AND THE MYTH 47 (2d ed. 1948).

<sup>5</sup>Treaty of Peace, Friendship, Limits and Settlement with the Republic of Mexico, Feb. 2, 1848 U.S.-Mex., 9 Stat. 922 [hereinafter “*Treaty of Guadalupe Hidalgo*”].

broken promises, the end result culminated with the drastic losses of their property interests.<sup>6</sup>

In the other essay of this cluster, Ronald L. Mize, Jr. targets the tarnished Bracero Program,<sup>7</sup> where yet a second set of international promises provided contract labor to meet the purported employment “needs” of agricultural employers.<sup>8</sup> The contracts, notwithstanding their negotiated labor protections failed their purported intent. Illustrating the contours of the Bracero experience through the ill-treatment of workers and the employer breaches of their contracts underscores yet another failed international agreement.

In line with the Conference goals both authors connect the city and the citizen but also link historical antecedents, and in the process the authors’ highlight a key LatCrit emphasis in linking the theoretical with praxis.<sup>9</sup> The author’s attention to praxis accordingly directs their arguments for restitution and reparations within the framework of land and labor issues.

## II. PROMISE SET I: LAND STRUGGLES

Kim David Chanbonpin’s essay grapples with the difficult history of California land law and connects the anti-Mexican fervor and legal rhetoric of the past with the anti-Mexican rhetoric of the present.<sup>10</sup> Specifically, Ms. Chanbonpin’s investigation brings to the LatCrit table a two-fold concern.

The first underscores the arbitrary ill-treatment of the former Mexican citizens that resulted in the loss of their property interests notwithstanding the promises formalized in the Treaty of Guadalupe Hidalgo. Second, Ms. Chanbonpin challenges the dominant silence of land law jurisprudence. As she contends, reconciling the silence and the lessons from the past with the dominant legal rhetoric of the period, enhances investigations that focus on critical intersections with law. Her analysis in weaving through the jurisprudence of land law, moreover, expedites her argument for restitution to those disenfranchised from their property.

The author’s value of examining legal decisions within “a full historical context” therefore takes us back to a period in time in which federal law lapsed to the dictates

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<sup>6</sup>See generally 5 SOUTHWESTERN J. OF LAW AND TRADE IN THE AMERICAS (1998) (Symposium issue).

<sup>7</sup>See 56 Stat. 1759 (1942). The Bracero Program received statutory authorization in 1951. 65 Stat. 119 (1957). The Bracero Program purportedly sought, moreover, to alleviate the unemployment difficulties near the U.S.-Mexico border. See generally Susan Taino, *Women’s Work and Unemployment In Northern Mexico*, in WOMEN ON THE U.S.-MEXICO BORDER RESPONSES TO CHANGE, 21 (Vicki L. Ruiz & Susan Tiano, ed. 1987)).

<sup>8</sup>The alleged labor shortages, as agricultural employers represented to the public including into the present remains the subject of intense criticism. See, e.g., George C. Kiser & Martha W. Kiser, MEXICAN WORKERS IN THE UNITED STATES: HISTORICAL AND POLITICAL PERSPECTIVES (1979); DENNIS NODÍN VALDES, AL NORTE AGRICULTURAL WORKERS IN THE GREAT LAKES REGION, 1917-1970, 108 (1991) [hereinafter “AL NORTE”].

<sup>9</sup>See generally Markus S. Schulz, *Collective Action Across Borders: Opportunity Structures, Network Capacities and Communicative Praxis in the Age of Advanced Globalization*, 41 SOC. PERSP. 587 (1998).

<sup>10</sup>Kim David Chanbonpin, *How the Border Crossed Us*, *supra*, note 2.

and whims of state actors. Ms. Chanbonpin's analytical study thus begins with *Plume v. Seward*, an 1854 California Supreme Court decision declaring: "when no legal title exists, property rights of first possessors trump the rights of those currently occupying the land."<sup>11</sup> The decision, as legally binding precedent illustrates that "although neither party to an ejectment suit could claim to be the true owner, the plaintiff, who could trace his ownership to a prior possessor, had a stronger claim than the defendants, who were in actual possession of the land."<sup>12</sup> In other words, the decision makes obvious that "when no legal title exists, property rights of first possessors trump the rights of those currently occupying the land."<sup>13</sup> *Plume's* legal template, consequently should also have applied to the former Mexican citizens. To their detriment, however, and as the author delineates, the benefit of the *Plume* decision failed the landowners claiming property under their former Mexican status.

The author, for example, illustrates in great detail the divorce between *Plume* and the "actual practice" of the Board of Land Commissioners.<sup>14</sup> The Commissioners, as the author's analysis reveals, "refused to give Mexican landowners the benefit" of legal precedent in which the *Plume* decision "recognized property rights to claimants who could prove constructive possession of the land."<sup>15</sup> The failure to apply *Plume*, she thus argues, provides "evidence of the uneven treatment of California landowners based solely on race."

Ms. Chanbonpin's presentation of the legal antecedents that promised to protect the nation's newest citizens ably shows how federal law failed the Treaty of Guadalupe Hidalgo and defaulted to the state. Colliding with state law and legal precedent crippled the Mexican landholders facing the Board of Land Commissioners entrusted with the task of settling their claims of ownership.<sup>16</sup> From a jurisprudential standpoint the California Land Act further pitted the Commissioners against the Treaty of Guadalupe Hidalgo enshrouded with the cloak of the supremacy clause of the United States Constitution.

In her essay, Kim David Chanbonpin shows one group on the basis of their race coupled with documents or other forms of proof could not meet the legal standards of the time, even with legal title to their tracts. In comparison, other claimants without documentation fell under the legal protection of the *Plume* decision. This legal framework makes evident the injury and the betrayal of longstanding legal principles the former Mexican citizens confronted.

The legal constraints of the time, as she underscores, points to a realm of property interests at the state and federal levels in which a class of citizens of Mexican, Indian, and Spanish descent faced artificially constructed shifting legal

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<sup>11</sup>*Id.*

<sup>12</sup>*Id.*, citing *Plume v. Seward*, 4 Cal. 94, 96, 1854 WL 656 (1854).

<sup>13</sup>*Id.*

<sup>14</sup>*Id.*

<sup>15</sup>*Id.*

<sup>16</sup>An Act to Ascertain and Settle Private Land Claims in the State of California, Mar. 3, 1851, 9 Stat. 631 [hereinafter "California Land Act"].

boundaries that followed the *Plume v. Seward* decision.<sup>17</sup> Attendant extra-legal practices further disenfranchised them from their possessory interests. Thereafter control of the nation's natural resources fell to the parties that betrayed the ethical standards of their political, legal and public positions. The author tackling the betrayal of the legal antecedents of the time further shows different forms of justice for some to the exclusion of the former Mexican citizens. Plume's attorney, for example, became Chief Justice Field of the California Supreme Court. Thereafter he became a member of the United States Supreme Court where he developed jurisprudential principles on the nation's natural resources that once belonged to the Mexican landholders.

Ms. Chanbonpin's other privileged examples show how white hegemony permitted a land base to accrue with application extending beyond the legal confines of the case. For example, during his tenure on the California Supreme Court, Field also determined the fate of land grantees and their claims of ownership. Long recognized for its rich natural resources, California thereafter became the beneficiary of federal agricultural legislation favoring a select few over the sacrifices of the State's agricultural workers exposed to the extensive anti-immigration politics of the present. The author thus brings to the LatCrit record additional required specificity on the legal treatment Mexican claimants faced and which made it "nearly impossible" to demonstrate proof of landownership.

In building on the jurisprudential value of LatCrit theory generally, Ms. Chanbonpin, thus succeeds in challenging the silence surrounding false legal and social norms specifically. The author's state law interpretations of a matter largely recognized as the jurisdictional realm of federal law highlights ultimately her proposed restitution claim. In sum, connecting the artificial legal boundaries of the past moves law forward and makes evident the required restitution of those betrayed and disenfranchised from treaty dictates.

Finally, a further discussion on the politics of the Land Commissioners may have demonstrated even more concretely the impact on those of Mexican descent. The author a recent law school graduate, however, demonstrates yet one additional point for the LatCrit enterprise. Her investigation makes clear that the world is bright for outsider jurisprudence, and shows that "once we 'remember context' and realign the case within the larger historical background, we see that race does indeed matter."<sup>18</sup>

### III. PROMISE SET II: CONTRACT LABOR AND AGRICULTURE

Agricultural employers retain a huge history of complaints over "the high cost and uncertain supply of productive and reliable seasonal workers."<sup>19</sup> Attendant to their "plight" employers rely extensively on state and federal governments in

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<sup>17</sup>Guadalupe T. Luna, *Chicana/Chicano Land Tenure in the Agrarian Domain: On the Edge of a "Naked Knife,"* 4 MICH. J. RACE & L. 39 (1998).

<sup>18</sup>Kim David Chanbonpin, *How the Border Crossed Us*, *supra* note 2, citing CORNELL WEST, RACE MATTERS, 3-13.

<sup>19</sup>Wayne A. Grove, *The Mexican Farm Labor Program, 1942-1964: Government Administered Labor Market Insurance For Farmers*, 70 AGRIC. HIST. 302 (1996). For a perspective on female farmworkers see generally Maria L. Ontiveros, *Lessons From the Fields: Female Farmworkers and the Law*, 55 ME. L. REV. 157 (2003).

capturing a workforce. Expediting the sectoral labor needs, moreover, produces agricultural directed benefits and exceptions to immigration laws and federal, health, and safety standards that otherwise would protect employees in the nation's food systems.<sup>20</sup> Attendant to their lobbying efforts agricultural employers and employees are in sum intricately involved in a relationship with federal law that allows exclusionary boundaries proving harmful to agricultural workers.

Ronald Mize, Jr., through his field research, addresses the Bracero Program, a governmental wartime response to the lobbying of the agricultural sector. Constituting a series of international agreements between the United States and Mexico, the Program created an exception to the immigration laws<sup>21</sup> of the period; and expedited the entry of contract labor to work in agriculture and the railroads.<sup>22</sup> Mize's essay links theory with praxis in directing compensation for a group of employees that faced the contractual breaches of their employment in the fields.

The Bracero Program, a much examined chapter in Chicano history, reveals the workers confronted the breach of their contracts, worked without compensation at times, witnessed the deduction of questionable expenses, and in general sustained harmful treatment.<sup>23</sup> Designed as a temporary measure to last during World War II, the Bracero Program survived long beyond its designated timeframe even though a few states were blacklisted for maltreatment of the workers.<sup>24</sup> And while the workers

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<sup>20</sup>Exceptions to key provisions of protective labor laws and immigration laws permitted other workers expedite a captured and subsidized workforce for agricultural employers and constitutes the doctrine of "agricultural exceptionalism." ERNESTO GALARZA, *MERCHANTS OF LABOR: THE MEXICAN BRACERO STORY* 106 (1964). Galarza is referencing Carey McWilliams's "Great Exception" characterization of the agricultural industry. McWilliams's interpretation identifies agribusiness as excepted from "common principles of social legislation" and "the basic tenets of free enterprise"). *See also* National Labor Relations Act, 29 U.S.C. § 152(b) (3) (2003) (denying farmworkers the right to organize and bargain collectively on the federal level). Compare with the Capper-Volstead Act, 7 U.S.C. §§ 291 *et seq.* (2003) allowing owner operators to engage in collective endeavors and constituting a known exception to anti-trust law with its penalties for monopolies.

<sup>21</sup>The Immigration Law of 1917 imposed literacy requirements, a head tax, and expanded the list of inadmissible classes of aliens permitted entry into the U.S. *See generally* OSCAR M. TRELLAS, II & JAMES F. BAILEY, III, *IMMIGRATION AND NATIONALITY ACTS: LEGISLATIVE HISTORIES AND RELATED DOCUMENTS* 54 (1979).

<sup>22</sup>For more recent exceptions reference The Seasonal Agricultural Worker Program (SAW Program), an exception to the stated goals of the Immigration Reform Control Act of 1986 in deterring the number of undocumented workers into the United States. Pub. L. 99-603, 100 Stat. 3359 (1986). In contrast to the Act's stated goals, the SAW Program permitted the entry of labor from foreign markets, ensuring the needs and demands of the agricultural sector were met. *See also* the North American Free Trade Agreement and its "principles" regarding labor. 101 Stat. 2057 (1993); and the role of the H-2A program. 8 U.S.C. § 1101 (2003) (temporary agricultural workers).

<sup>23</sup>The Bracero period in Chicano/a Studies has long drawn the attention of scholars. For a few references see JUAN RAMON GARCIA, *OPERATION WETBACK* 230-31 (1980); JULIAN SAMORA, *LOS MOJADOS: THE WETBACK STORY* (1971); the Bracero Program has recently generated some heated attention in legal journals and reviews. *See generally* 51 *UCLA L. REV.* (2003) (Symposium issue).

<sup>24</sup>Ronald L. Mize, *Reparations for Mexican Braceros?*, *supra* note 3.

experienced a realm of poor working conditions and inferior housing, the essay also exposes a host of negative externalities that mark the Bracero Program a notorious and defining moment in Chicano history.<sup>25</sup>

The added value of the essay extends to the author's field research of surviving Braceros. His interviews contribute much needed details of the injurious conditions of employment. The author's fieldwork, moreover, produces a payoff with his assisting recent litigation efforts that sought to reclaim funds deducted from the Bracero salaries.<sup>26</sup> His essay illustrates in concrete detail the questionable deductions from their pay that included *inter alia*, "farm implements/supplies such as carrot ties, blankets, room, excessive board, and transportation charges."<sup>27</sup> Emphasizing their treatment and the legal injuries Braceros sustained, can only assist in the effort to compensate the workers for the breach of their contracts.

Field research thus broadens the constraints of traditional legal discourse<sup>28</sup> that fails to link theory with praxis to communities in distress. Advocating a legal remedy for the Braceros that confronted deductions without compensation from their wages extends his arguments beyond the status quo. Don Jorge and Don Antonio in their interviews, for example, reveal much needed details on the process that brought the workers to the United States as well as their working and housing conditions. The interviews demonstrate the benefits that accrued to their agricultural employers by the workers contributions in purchasing equipment to harvest the farmers' crops. In its totality the value of field research expands limited theoretical debates that lack direct contact with impoverished communities.<sup>29</sup>

To bolster his argument, the author further turns to the Japanese Americans who succeeded in their efforts for compensation drawing from their unlawful imprisonment during wartime. He also leans on the efforts of African Americans who are presently seeking redress for their inestimable and unimaginable injuries stemming from the slavery period and unconscionable discriminatory and racist treatment by governmental actors in the public and private spheres.

Mize's essay, however, takes for granted the role of race and its intersection with law. Additional specifics could underscore the unjust enrichment of employers' gains in spite of their contractual promises to the workers of Mexican ancestry. Further research on the role of race, moreover, could prove of value in his call for

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<sup>25</sup>See GALARZA, note 20. To assist domestic workers over the failure to compensate them for their labor see The Migrant and Seasonal Agricultural Workers Protection Act, 29 U.S.C. §§ 1801 et seq., (2003). Although authorized to protect migrant workers, small family farms are exempted. This exposes a gap in the law because at times the head of a family is characterized as an independent contractor and additional members are not officially counted as workers. In other words this exemption might result in a greater number of employees allowed under the law and yet allows an owner operator to claim the exemption.

<sup>26</sup>Cruz v. United States, 219 F. Supp. 2d 1027 (2002) (charging *inter alia* the failure to return deductions and the peonage of the workers).

<sup>27</sup>Ronald Mize, *Reparations for Mexican Braceros?*, *supra* note 3.

<sup>28</sup>See generally Ediberto Roman, *Outsider Jurisprudence and Looking Beyond Imagined Borders*, 55 FLA. L. REV. 583 (2003) ("LatCrits should explore more ways to move beyond traditional means of dialogue.").

<sup>29</sup>Ronald Mize, *Reparations for Mexican Braceros?*, *supra* note 3.

compensation. For example, outside of the egregious misconduct in the workplace the Bracero contracts disallowed discrimination. Yet when in the public sphere of the communities they served, the workers faced hostile reactions such as “No Mexicans served,” and “We cater only to whites,”<sup>30</sup> illustrating further their forced marginalization.

Defining the contours of the Bracero history, moreover, includes the role of the United States in its neglect of the workers for what was designed as a temporary measure but which lasted years beyond its stated purpose. When the Braceros objected to their working conditions, employers garnered the support of the federal sector to stifle the workers’ efforts.<sup>31</sup> The Program’s history of jeopardizing foreign laborers to the arbitrary and capricious whims of their employers is ill received in communities of Mexican descent into the present.<sup>32</sup> A greater connection between the workers and their impact on domestic citizens of Mexican descent and other Latina/o groups thus, could further ground his claim for restitution. For example, while the mechanization of agriculture ultimately reduced the need for labor, the intensified criticism from worker advocates ultimately terminated the Bracero Program in 1964.

In sum, while the essay demonstrates a fundamental aim of LatCrit promoting multiple consciousnesses, the author’s investigation would benefit from yet further citing to LatCrit authors that have wrestled with the intersection of race, class, and gender in the framework of reparations and restitution law.<sup>33</sup> Without the assistance of earlier LatCrit engagement his effort consequently can be misread as somewhat on the conclusory side for those unfamiliar with the Bracero Program’s impact on Mexican nationals and Chicana/o communities.<sup>34</sup> Additional emphasis on the injuries sustained, their intersection with law, and the benefits that unjustly enriched their agricultural employers could also extend his claim for the workers.<sup>35</sup> In

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<sup>30</sup>DENNIS NODÍN VALDÉS, *AL NORTE*, *supra* note 8, at 108. The workers’ contracts in general “guaranteed paid transportation, a minimum wage, and inspected housing.” *Id.* at 94.

<sup>31</sup>Although some states were blacklisted the agreements between the two nations remained until beyond the stated purpose of the Act. For the influence of state governments on the experience of domestic agricultural workers attempting to improve their terms and conditions of employment *see* Allee v. Medrano, 94 S. Ct. 2191 (1977) (charging state officials and law enforcement actors directly interfering with organizing activities).

<sup>32</sup>*See, e.g.*, GALARZA, *supra* note 20. Mexican workers had long accommodated the needs of agricultural employers. One exception to the Immigration Act of 1917, for example, facilitated Mexican entry for labor purposes. Domestic based workers became known as *betabeleros* and were employed primarily in the sugar beet industry. DENNIS NODÍN VALDÉS, *AL NORTE*, *supra* note 8, at 9-11.

<sup>33</sup>A closer reading of Eric Yamamoto’s work would prove the opposite of the author’s assertion regarding advocacy.

<sup>34</sup>*See generally* Roman, *supra* note 28 (noting importance of citing to LatCrit scholarship generally).

<sup>35</sup>The author’s interviews and the further emphasis on the working conditions of the workers would also provide some lessons to the present efforts of introducing yet another guest worker program. *See generally* Sergio Bustos, *Legislation Would Offer Temporary Visas to Foreign Workers*, GANNETT NEWS SERV. July 26, 2003.



emphasizing their legal harm, moreover, a more precise definition of restitution as distinguished from reparations would add to the aim of compensating a class of workers neglected by yet even more international agreements.

#### IV. CONCLUSION

Both articles bring real life consequences impacting our communities of color generally but *gente* of Mexican descent specifically. The authors' treatment of difficult questions however, extends legal engagement that demands compensation for past injuries with consequences into the present. Their assertions of restitution and reparative justice, accordingly add to a legal record seeking equal treatment for the sacrifices of the past with real life consequences into the present.<sup>36</sup>

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<sup>36</sup>To the present the Latina/o communities face anti-immigrant rhetoric. *See generally* Erika Davila, *Harmony 101*, THE SANTA FE NEW MEXICAN, Oct. 19, 2003, at B1.