Resource ID#: 4477

FARMWORKER JUSTICE FUND INC.

Farmworkers and Public Policy

Farmworkers

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March 15, 2000

The Capitol, Washington, D.C.

There is a lot of talk these days about ethics in politics. In fact, it often appears – especially in this pre-election season – that the central concern of politicians is not with legislation or policy issues, but rather values, integrity, morals, and character.

There are at least two distinct ways to respond to these claims. On the one hand, the call to ethics can be understood as little more than empty rhetoric, a way of drawing in the public with a positive message that reveals almost nothing about any serious position on a political issue. After all, who is against morality, integrity or strong values? There are plenty of reasons to view politics in this cynical light, as a public discourse where image rules over substance and one imagines almost anything can be said if it appears to garner positive press and is vague enough to offend no powerful interests. It is a very real challenge to most people in this room that roughly half of all Americans feel so alienated from the political process, so tired of the cliches and empty promises of candidates and governmental officials, or simply so disinterested, that they do not even bother to exercise their right to vote.

On the other hand, the call to ethics might actually be something more serious, a heartfelt desire for a different mode of political discourse. Regardless of the complex demands, manipulations and negotiations of real world politics, political leaders who speak of grounding legislative practice in morality may actually be expressing some very genuine concerns, seeking to bind together a concerned public with a world of well-intentioned leaders. For the purpose of this discussion, let us take politicians at their word when they claim an interest in creating a closer link between legislation and core values of decency, equity and the public good.

This may seem like a surprising way to begin a talk on farmworkers and public policy. However, the situation of our nation's farmworkers is, in many ways, best described as a moral issue, an ethical challenge to the larger social

order that raises questions about our professed belief that honest, necessary labor should be rewarded with the ability to reasonably provide for one's self and one's family. Not only are the continued struggles of our nation's farmworkers a moral issue, there may be no better way to approach the policy issues surrounding farm labor than through an appeal to basic questions of ethics.

In order to clarify this position, it is useful to briefly review the contemporary situation of America's farmworkers and the general trend of policy responses to farm laborers' continued poverty.

There are approximately 1.5 million seasonal farmworkers in the United States, nearly 700,000 of whom are migrants, which means that they travel over 75 miles from their homes in order to work. The median income of farmworkers is less than $7,500 per year and two-thirds of migrant families and 70 percent of migrant children live below the poverty line. Despite the expanding economy, farmworkers wages have been steadily declining in real terms, having lost 11 percent of their purchasing power over the last decade, despite increases in the federal minimum wage. Regardless of their exceptional poverty, fewer than 17 percent of farmworkers use any needs-based assistance.

When considering the significance of these figures, it is important to remember that we are not discussing a marginalized group defined by particular social characteristics – such as the homeless, single-parent families relying on public assistance, etc. – but rather a collection of individuals who fall under this category solely because of their engagement with a particular type of labor. Farmworkers are the epitome of the working poor – they are people bound together by their common engagement with necessary, difficult work central to the functioning of an important and profitable sector of the American economy. Despite their obvious contributions to American society, the majority of farmworkers earn less for a year of difficult labor than many professional families spend on the education of one child for a single academic year.

Farmworkers' life expectancies are lower than that of most Americans and infant mortality among farmworker children is double the national average. Physicians treating farmworkers generally compare their health to that of residents of the developing world, with laborers and their families suffering from chronic infections, advanced untreated diseases and numerous problems resulting from

limited access to medical care. Forty percent of migrant children work in the fields. Fifty percent of migrant children are behind national scholastic averages as early as the first grade and the majority never graduate high school.

The point of reviewing these statistics is twofold. First, these numbers present one element of a moral tale whose fundamental inequity simply cannot be denied. To draw attention to these problems, however, is not necessarily to accuse growers of bad faith, malicious intent or a lack of concern for the laborers they depend upon. This is a poor political strategy and may not adequately respond to the true problem at hand which is the structure of the farm labor system. Second, the fact that farmworkers are an employment category is a clear sign that their status does not relate to any essential element of the workers themselves – their skills, abilities, social positioning, attitudes, etc. – but is instead a expression of the inequities of the structure within which they labor. In fact, farmworkers typically move out of agriculture as soon as other options present themselves. As such, farmworkers' poverty is neither an accident nor an inevitable state of affairs and there is no inherent reason why the conditions briefly outlined above must continue into the 21st century.

So, how does farmworker poverty and disempowerment relate to policy? To contextualize the issue, it is important to draw attention to the fact that farmworkers have been consistently denied equal legal protections in a manner that has institutionalized their status as second-class laborers. When the United States developed the broad array of basic labor protections in the 1930s that we now take for granted, farmworkers were excluded from virtually every piece of significant legislation. For example, farmworkers were excluded from the Fair Labor Standards Act, which created a national minimum wage, a forty-hour workweek, mandatory overtime wages and child labor provisions. They did not begin to be covered until 1966, nearly thirty years after the law was originally passed, and the current FLSA specifically denies farmworkers the right to overtime pay, excludes laborers on small farms from any protection, and allows children as young as twelve to work in the fields. Farm laborers were also excluded from the Social Security Act of 1935 until 1950, and denied unemployment insurance benefits until 1976. Farmworkers remain fully excluded from the National Labor Relations Act.

Coupled with these exclusions, agricultural employers have repeatedly pressured the government to ensure a steady supply of farm laborers through a variety of policies

generally producing increased immigration among vulnerable populations, who have often been channeled into agriculture. The most significant of these policies was the bracero program which allowed between 4 and 5 million Mexican workers to be brought into the United States from 1942 through 1964 to labor almost exclusively in agriculture. It is quite striking that few well-educated non-Latino Americans have ever heard of this program despite the fact that it is generally credited with setting up immigration patterns which later produced the waves of undocumented immigration of the 1970s to the present.

Of course, it is quite important to recognize that there have also been a number of important policies designed to reduce farmworker poverty and improve farmworker health, education, legal access and job training. These programs have made a significant impact on the lives of millions of farm laborers and represent a meaningful policy response to the social conditions of farmworker poverty and exclusion.

Still, there is no escaping the fact that farmworkers remain our nation's poorest and most marginalized laborers, even as they remain a necessary component of the multi-billion dollar fresh fruit and vegetable industry. Despite the current economic expansion and the continued financial success of many agricultural employers, farmworkers' wages are decreasing in real terms and agricultural work has become so undesirable that the farm labor workforce is increasingly composed of poor, undocumented, recent immigrants. Over the last two decades, an ever larger percentage of farmworkers are immigrants (increasing from 60 percent to 80 percent in the last 10 years) as domestic laborers continue to leave agricultural employment. Not only are these workers immigrants, but four out of every ten workers are recent immigrants, generally those laborers with the least resources and fewest employment options. Central to this situation is the fact that the population of undocumented farmworkers has risen from around 10 percent in 1989 to over 50 percent today. Over the last ten years, the composition of the farm labor workforce has transformed substantially such that the agricultural industry currently relies upon an oversupply of vulnerable recent immigrant workers over half of whom cannot be legally employed and who represent precisely those workers most vulnerable to abuse.

To make sense of the relationship between farmworkers and public policy, it is important to consider how different policy options impact upon the structure of the farm labor

system. Overall, most policies to date do not significantly address the structural causes of farmworker poverty, which is not a simply product of low wages, but rather a combination of relatively low hourly wages coupled with seasonal employment within a context that relies on an oversupply of disempowered laborers. Central to the structure of the farm labor system is the fact that the workers – the most vulnerable participants in the system – are forced to bear the burden of virtually all of the costs associated with the uncertain and shifting demands of the industry.

On average, farmworkers labor 25 weeks per year, a figure relating to both the seasonality of farm labor as well as the fact that workers are not compensated for travel costs, work-search costs, or under-employment related to weather, seasonality or market conditions. While there are elements of agricultural labor that are particular to the industry, there are no inherent reasons why jobs which are seasonal, involve travel, or shift in intensity over time require workers to live in poverty. Many seasonal workers – from schoolteachers to construction workers in northern states – earn a steady living. Similarly, many jobs involving travel – flight attendants, truck drivers, independent consultants, to say nothing of professional athletes – keep workers and their families well above the poverty line. Typically, seasonal or travel-based industries pay workers enough money to cover periods of unemployment or underemployment, or provide adequate benefits to compensate workers for the expense, dislocation, and stress of constant travel. At the very least, these industries ensure that their workers earn a living wage.

The significant oversupply of laborers also plays a role in farmworkers' low wages. As numerous studies have shown (most recently, a 1997 GAO report), there are more farm laborers in the United States than positions, allowing agricultural employers to utilize workers in a manner that consistently reduces farmworker earnings. For example, it is often to the agricultural employers' advantage to hire 100 workers for 3 hours, as opposed to 50 workers for 6 hours, or 33 workers for 9 hours, a practice that, quite obviously, impacts workers in a very negative manner

To the degree that existing policies effect the structure of the farm labor system they generally fall into one of four categories: 1) policies that do not impact or marginally impact the structure of the system; 2) policies that support the existing structure through omission and exemptions; 3) protective policies that fail to improve the system through

non-enforcement, or; 4) policies that formally support the structure through specifically disempowering legislation and regulation.

1. Many policies either do not impact the farm labor system directly or have a marginal impact on the overall structure, These policies include the very important social service programs directed towards farmworkers, which seek to ameliorate the effects of an inequitable system by providing specialized medical care, education and other benefits. These assistance programs cost roughly $600 million of government money each year, which has been estimated as roughly the equivalent of 10 percent of American farmworkers' total annual earnings
2. Other policies support the farm labor system through omission or exemption, such as the exclusion of farmworkers from federal labor protections described above and the numerous state exclusions for key issues, such as workers compensation.
3. Still, other policies which offer the potential to combat many of the most pernicious and dangerous aspects of the farm labor system – such as the Agricultural Worker Protection Act and various health and safety regulations – have limited impact as a result on serious under-enforcement regarding wages, workplace conditions, transportation, and housing.
4. Finally, there are those policies that are specifically designed to take advantage of farmworkers by exacerbating the structural conditions of the system's inequity and workers' fundamental disempowerment. This is typically done by increasing the supply of available workers within a system that is already characterized by an oversupply of laborers and by playing off of the vulnerability of many farmworkers' undocumented status in a manner that serves agricultural employers while failing to address workers' concerns.

So, given the current moment of economic prosperity – when it should seem increasingly troubling for our nation to rely on an entire group of poor laborers to harvest our crops – what sorts of new farmworker policies are we facing? One might imagine that this would be a time for a renewed

interest in addressing the inequities that characterize the farm labor system, a time of national moral reckoning with an unfair system that need not continue. Sadly, nothing could be further from the truth.

The number one farmworker policy issue of the moment is the proposal of a new guestworker program. This new program, which has been repeatedly presented in Congress, is characterized by an general orientation similar to the famously controversial bracero program as well as the current H-2A program which has been the subject of repeated exposes and extensive litigation. Rather than seeking to address the significant problems with these programs (as revealed by numerous studies by the GAO and other independent entities), the new proposal creates a system that actually provides reduced protections for guestworkers than the bracero program designed and implemented over 50 years ago. In addition, the new program cynically plays off of undocumented workers' vulnerability by promising program participants with the possibility of receiving legal working papers after five years of continual employment. While this may appear to be a concession to workers, the minimum requirement of 180 days of agricultural labor per year exceeds current employment patterns, rendering it unclear as to how many participants will actually qualify (here, it is useful to compare the minimum working days to the SAW program which required only 90 days of agricultural labor to qualify for a program designed to assist the agricultural industry). Also troubling is the fact that the promise of future working papers provides employers with a means of ensuring a docile workforce since any complaint will likely be met by dismissal and possible blacklisting, punitive elements common in both the bracero and H-2A programs.

This brings us back to the question of ethics in politics and the idea that farmworker policy must be grounded in the basic moral claim that these laborers deserve a better deal.

The basic statistics regarding farmworkers reveal with undeniable clarity a situation that has repeatedly served to shame our nation. Whether recounted brilliantly by John Steinbeck, Carey McWilliams, Edward R. Murrow or Robert Coles, the moral claim of farmworkers represents a central element of the history of 20th century America. It is no accident that the situation of farm laborers has remained an powerful component of our nation's attempt to reckon with its sense of self on moral terms. Similarly significant is the fact that Latinos publicly entered the national political stage through the farmworker movement of the

1970s. While much of the enthusiasm and activism of that era has passed, Latino politics – which is finally being adequately recognized – remains deeply bound at both a symbolic and grassroots level to the issue of farmworkers' rights. The point here is that the moral claims of farmworkers continue to resonate powerfully within a very real historical and political context, providing an important base from which to create policy.

Let us return for a moment to the proposal for a new guestworker program since this is the most pressing current policy issue. Leaving aside the facts and numbers, the legislative technicalities and particular provisions of different visions of guestworker programs, doesn't something *feel* wrong about this idea? Doesn't it seem profoundly undemocratic to import workers from poor nations to labor in our country under conditions that Americans will not accept? Doesn't it seem fundamentally wrong to choose not to improve the situation of our farm laborers, but instead to construct a mechanism through which foreign workers labor under special restrictive contracts to serve the special needs of an particular industry already dependent on hundreds of thousands of poor workers?

Sadly, policy debates regarding farmworkers are enormously divisive, often in ways that mask the commonalties and potential cooperation that might be found between agricultural employers and the laborers they depend upon. Of course, real world politics is often crass and vicious, a realm of negotiations and power plays where those with influence virtually always triumph over those with less money and fewer important connections. There is no question that the agricultural industry significantly outweighs farmworkers and farmworker advocates in terms of political clout. Still, there exists a space for moral claims, especially as regards the stark inequalities that characterize the farm labor system, and especially when these issues are not presented in an accusatory manner.

It is almost impossible to justify the continued poverty of our nation's farmworkers. Still, most Americans know nothing about the lives of the people who pick our crops. The truth is, unlike many low wage workers whose labor our high standard of living relies upon, farmworkers have a direct, almost visceral bond with virtually every American. This point should be emphasized in every attempt to create new policy or combat detrimental policy proposals. First of all, farmworkers labor within our borders, thereby subject to American laws and a certain vision as to what constitutes

a decent wage and an acceptable workplace. Secondly, farmworkers are linked to the lives of all Americans in a very immediate sense. Virtually every piece of fruit and every vegetable we eat was hand-picked by a farmworker. When we reach into a bin at the supermarket to pick out an apple, orange or head of lettuce, our actions mirror that of the farmworker. Often the last hand to touch the produce we buy was that of a migrant worker. Through the simple act of purchasing a plum, cucumber or tomato, we are bound to a web of interconnected lives, with hands on both ends.

If we were to see farm laborers as people like ourselves, could we really accept their treatment, here in our country, where we ostensibly believe in freedom and fairness, and the idea that those who work hard should be justly rewarded? If we saw farmworkers not as a faceless group reflected in a series of depressing statistics that prove both the reality of their struggles and the clarity of their otherness and difference, could we accept a guestworker program that requires the creation of a special class of workers, laboring on American soil, yet denied the very protections we understand as the foundation for democratic practice? If we saw farmworkers as people just like us, what freedoms, rights, safe working conditions, decent wages, or adequate health care would we feel comfortably denying them?

I am not suggesting that addressing farmworkers problems through public policy is an easy task, or one that can meet with immediate, obvious or total success. My point is that it is not entirely naive – though it may be wishful – to inject moral discourse into the policy debate regarding farmworkers. There is a great deal of discussion about ethics and politics these days and there are real reasons for this that involve concerns that extend beyond strategy and partisan positioning. To the degree that the desire to articulate an essential bond between politics, policy and moral commitment expresses a serious social commitment to basic ideals of fairness, the facts are clearly on the side of farmworkers. The inequities of the farm labor system are both undeniable and difficult to evade and, on ethical terms, they demand to be addressed.

If the world is not only about imbalances of power, but it is also about moral struggles then these struggles are of great import for challenging the farm labor system and improving the lives of our nation's farmworkers Where we stand on our presentation of what is actually the problem, how we represent farmworkers to the larger public and within the

political realm, has everything to do with envisioning a solution and imagining that there is, in fact, a different and more equitable future for our nation's farm laborers.

To read an agenda for reform -- a statement of our vision for the future of public policy on migrant farmworkers -- prepared by the Farmworker Justice Fund, Inc. and National Council of La Raza, click here.

To read a biographical sketch of Prof. Daniel Rothenberg, author of *With These Hands: The Hidden World of Migrant Farmworkers Today*, please click here or press "up."