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Migrating Identities: On Labor, Culture, and Law

*Leti Volpp**

“If Asians would just stop abusing their own, we’d be rid of sweatshops.”¹

Introduction

When is the language of culture used to explain the exploitation of immigrant workers? Cultural pathology arguments are made by those seeking to defend corporate practices and in turn, are invoked by advocates defending the rights of immigrant workers. This essay examines the causes of the deployment of cultural narratives, and the dehumanizing and depoliticizing effects of their use. When exploitation is explained through cultural difference, it suggests that neither the liberal state, nor the capitalist system, is responsible for subordination.

I. Workers as Victims

My concern with the depiction of cultural pathology as a source of labor abuse stems from my representation, as a member of a team of attorneys, of two groups of immigrant workers who

* Associate Professor of Law, Washington College of Law, American University. J.D., 1993, Columbia University; M.Sc., 1989, University of Edinburgh; M.S.P.H., 1988, Harvard School of Public Health; B.A., 1986, Princeton University. This essay was written for a panel called “The Multi-Dimensionality of Identity Within the Context of Work & Migration” at the North Carolina Journal of International Law and Commercial Regulation’s Symposium, “Work, Migration & Identity,” held January 26, 2002, at the University of North Carolina. Many thanks to Hiroshi Motomura for asking me to participate in the Symposium, to the U.C. Riverside Center for Ideas and Society for fellowship support, to Donald Moore for erudite cites, and to Muneer Ahmad and Julie Su for both their labor defending the rights of immigrant workers and for our conversations about this work.

¹ Comment of the director of a garment industry association representing retailers and manufacturers to labor attorney Julie Su. E-mail from Julie Su to Leti Volpp (Feb. 14, 2002) (on file with the North Carolina Journal of International Law and Commercial Regulation).

were smuggled into the United States for the purpose of labor exploitation. The first was a group of Thai workers who were held in indentured servitude in a region of Los Angeles known as El Monte, some kept for as long as seven years, sewing garments for several of the nation's largest manufacturers and retailers.² The second was a group of deaf Mexican workers who were brought into the United States and forced to solicit donations on the subways and streets of New York and Chicago.³ In both cases, the federal government brought a criminal prosecution of the individuals who exploited the workers. Through their role as material witnesses, the workers were able to gain the possibility of legal immigration status in the form of S visas.⁴

² See *Bureerong v. Uvawas*, 922 F. Supp. 1450 (C.D. Cal. 1996); Laura Ho, Catherine Powell & Leti Volpp, *(Dis)Assembling Rights of Women Workers Along the Global Assembly Line: Human Rights and the Garment Industry*, 31 HARV. C.R.-C.L. L. REV. 383 (1996). Attorneys from the Asian Pacific American Legal Center; the Asian Law Caucus; the ACLU Immigrants' Rights Project; the ACLU of Southern California; Rothner, Segall, Bahan, & Greenstone; Bird, Marella, Boxer & Wolpert; and Hadsell & Stormer represented the workers. *Bureerong*, 922 F. Supp. at 1457.

³ See *United States v. Paoletti-Lemus*, No. 97-CR-768 (E.D.N.Y. Dec. 12, 1998). Attorneys from the ACLU Immigrants' Rights Project; the Legal Aid Society; the National Employment Law Project; Sullivan & Cromwell; and the Yale Lowenstein International Human Rights Clinic represented the workers. For a description of this case by another co-counsel for the workers see Michael J. Wishnie, *Sweatshops, Slave-Traders, and the First Amendment* (unpublished manuscript, on file with the North Carolina Journal of International Law and Commercial Regulation) (arguing for the recognition of the rights of noncitizens under the Petition Clause of the First Amendment to petition without deportation consequences). See also American Civil Liberties Union, *Workers' Rights, Case Study*, at <http://www.aclu.org/issues/immigrant/workrights.html> (last visited May 8, 2002).

⁴ S visas can be granted for critical reliable information essential to the success of an authorized criminal investigation or prosecution, and they can be converted after three years into a green card. Immigration and Nationality Act § 101(a)(15)(S), 8 U.S.C. § 1101(a)(15)(S) (2001); 22 C.F.R. § 41.83 (2002). See Julie A. Su, *Making the Invisible Visible: The Garment Industry's Dirty Laundry*, 1 J. GENDER RACE & JUST. 405, 410 (1998); *Abused Deaf Mexicans Allowed to Stay in U.S.*, NEWS & OBSERVER (Raleigh, NC), June 20, 1998, at A12. S visas have been granted in response to advocacy on behalf of other immigrants classified as material witnesses for criminal prosecutions, for example, to a group of women and teenaged girls from Mexico who were forced to work as prostitutes in migrant camps in Florida and to a South Asian domestic worker abused by her employers. See generally Mireya Navarro, *Group Forced Illegal Aliens into Prostitution*, N.Y. TIMES, April 24, 1998, at A10; Mireya Navarro, *In the Land of the Free, A Modern Slave*, N.Y. TIMES, Dec. 12, 1996, at A22.

The S visa is the same carrot that Attorney General John Ashcroft recently proffered as an inducement to noncitizens to come forward with reliable critical information

Advocating for the workers within the context of the criminal process required twisting their lives into a narrative of worthy victims. As a victim, one is considered to be without responsibility for one's location. Of course, this logic constructs one as disempowered, infantilized, and incapable, which is why the state must step in to protect. In both cases, the government told the workers that they could not speak publicly so as not to jeopardize the criminal prosecution, or they would lose their material witness status.⁵

In the El Monte litigation, because the criminal prosecution was followed by creative and precedent-setting civil litigation, there was an opportunity to fight the characterization of these workers as silent and abject. Julie Su, the key attorney for the El Monte workers, consistently insisted that the workers were agents, masters of their destiny in suing major garment industry companies and that in fact, they were "heroes."⁶ But without this reinscription, immigrant workers subject to labor violations remain in the imagination as passive victims, compliant in the face of the most extreme forms of labor abuse, assisted only by the largesse of the benign state.

concerning terrorism and be rewarded with potential legalization, thereby cushioning the blow of what critics described as a dragnet. See Neil A. Lewis, *The Informants: Immigrants Offered Incentives to Give Evidence on Terrorists*, N.Y. TIMES, Nov. 30, 2001, at B7. What was described as a dragnet was the plan to conduct more than five thousand investigatory interviews of male noncitizens between the ages of eighteen and thirty-three from certain countries who sought entry into the United States on tourist, student, and business visas. Tom Brune, *U.S. to Question Immigrants; Terror Probe Seeks 5,000 Who Fit Profile*, NEWSDAY, Nov. 14, 2001, at A62. Represented by Ashcroft as a new program, the proffer of potential legalization contained no guarantee that those noncitizens who made their identity known to the government and shared information that did not turn out to substantially contribute to the success of an authorized criminal investigation or prosecution would not be removed from the country. Lewis, *supra*.

⁵ As Julie Su points out, because the El Monte workers were material witnesses, the prosecutors at the U.S. Attorney's office warned them not to speak out about the abuses they had endured. Whereas this restriction may have made sense in the context of the criminal prosecution, it served to silence, indeed make invisible again, the Thai workers at a time when their own voices needed to be heard.

Su, *supra* note 4, at 415. A similar dynamic operated with the deaf Mexican workers.

⁶ *Id.*

The victimization of both sets of these workers was truly horrendous. At the same time, representing these workers so that they received public sympathy and legal success necessitated a certain kind of voyeurism, a horrified gaze. For example, always highlighted in the narrative of the deaf Mexican case was the fact that those who smuggled in the workers had brutalized them with electric cattle prods.⁷ This resulted in unfortunate consequences beyond the depiction of these individual workers. First, the focus on high profile cases involving extreme brutality seems to immunize the public to mundane, everyday violations.⁸ One advocate for low-wage workers in Los Angeles reported that the press was subsequently reluctant to cover cases of garment worker exploitation if there was no slavery or other shocking fact involved.⁹ Second, implied in both cases was the suggestion that these workers were the victims of a barbaric immigrant culture.

II. When Cultural Narratives Dehumanize

Slavery and other shocking facts in cases of immigrant abuse are widely understood as the product of immigrant-on-immigrant violence, as practices that would not be surprising in the "Third World," but would be out of place in the United States.¹⁰ Culture

⁷ See, e.g., Joseph P. Fried, *Deaf Peddlers Were Tortured With Stun Guns, Enforcer Says*, N.Y. TIMES, Oct. 24, 1997, at B5.

⁸ That public interest attorneys have devoted an enormous amount of resources to these cases has reflected both the compelling nature of these cases and the desire to create legal precedent through cases with such harsh facts. For example, the El Monte litigation survived a motion to dismiss before the case settled, in which the court recognized the principle of joint liability so that the manufacturers and retailers could be considered potentially legally responsible for wages and working conditions, along with the contractors. See *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1480-81 (C.D. Cal. 1996).

⁹ Muneer Ahmad, Remarks at the Migrant Women Transgressing Borders Panel, Conference in Honor of Mary Joe Frug, New England College of Law (Mar. 31, 2001). At the time, Ahmad was an attorney for the Asian Pacific American Legal Center in Los Angeles.

¹⁰ See, George White, *Workers Held in Near-Slavery, Officials Say*, L.A. TIMES, Aug. 3, 1995, at A1. Victoria Bradshaw, then Labor Commissioner of the State of California, reacted to the discovery of the Thai workers in El Monte by saying, "I never would have believed a situation like this could exist in the United States." *Id.* Her statement can be read to rest on two assumptions: that the exploitation was solely the product of immigrants exploiting immigrants and not related to the practices of U.S.-based corporations, and that the United States is a site of liberation, not worker

is the motor that animates this assumption and is also what drives the depiction of the passive immigrant worker and the brutal immigrant boss. Immigrant workers are perpetually presented as victims, and those who violate their rights are portrayed as immigrants incapable of understanding the rule of law.¹¹ When victimization and violations occur among immigrants, culture is given a particular explanatory power. Specific cases of abuse are conceptualized not as reflecting the behavior of a few individuals, but are thought to characterize the cultures of entire nations. Immigrant communities are discussed in culturalist language¹² and considered to be engaged in traditional practices that have not changed over time.¹³ This echoes narratives of development and

exploitation.

¹¹ For an analogous argument, see Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L.J. 201 (2001) (claiming that international human rights discourse has constructed a triad of savages, victims, and saviors). Mutua argues that the metaphor of the victim is the "giant engine that drives the human rights movement," and that this rhetoric limits understandings of how "human dignity" is understood or protected. *Id.* at 227, 244–45.

Of course, when immigrant workers are portrayed as "illegal aliens," they are depicted not as victims but as unscrupulous actors violating the law.

¹² As an example, a book created to commemorate the Smithsonian Institution's exhibit on the history of sweatshops, used as a photograph title the following description of the sweatshop operators in El Monte: "The matriarch, Suni Manasurangkun, is seated in a chair." See Peter Liebhold & Harry R. Rubenstein, *A History of American Sweatshops, 1820–Present*, in BETWEEN A ROCK AND A HARD PLACE, 69 (1999). We can see this photo title and its invocation of the "matriarch" as a legacy of how anthropology, the discipline principally concerned with culture, was developed in the context of colonial power relations, which served to shape the perception and representation of societies considered to be alien. See TALAL ASAD, ANTHROPOLOGY AND THE COLONIAL ENCOUNTER 9, 16–18 (1973).

¹³ For a discussion of how a certain idea of history and historical time is used to indicate progress and development, see generally DIPESH CHAKRABARTY, PROVINCIALIZING EUROPE: POSTCOLONIAL THOUGHT AND HISTORICAL DIFFERENCE (2000). Chakrabarty uses the example of a Wall Street Journal article on the market in India, whose author depicts the Indian subject as accomplishing the impossible, of living in several centuries at once:

Indians who study in the US and Britain often return home to arranged marriages. Even many people who have chosen their own spouses opt to move in with their extended families. Such traditional family bonds inhibit Western marketers' access. Yuppies, deferring to their elders, don't make household purchasing decisions. . . . Indians are capable of living in several centuries at once.

Id. at 49 (quoting Miriam Jordan, *Marketing Gurus Say: In India, Think Cheap, Lose the*

progress that remove some societies temporally and spatially from civilization and cast them as being in need of the benign or repressive influence of the West.¹⁴

The behavior of devalued groups is widely perceived as more culturally determined than the behavior of dominant communities in a society.¹⁵ The powerful are depicted as having no culture, other than the universal culture of civilization; in contrast, those without power are culturally endowed.¹⁶ Therefore, the behavior of racialized minorities is ascribed to cultural dictates rather than reason or will, which is dehumanizing because of the Enlightenment project that correlated modernity with the capacity to reason. In this discourse, some follow cultural traditions of oppression and victimization while others create and respect the rule of law.¹⁷ Of course, the so-called "Asian values debate" has played into the idea that there in fact are "Western values" of democracy, freedom, and the rule of law, as opposed to "Asian values" of culture and tradition, whether as espoused by heads of state in Asia, or by observers of garment industry exploitation in

Cold Cereal, WALL ST. J., Oct. 11, 1996, at A9).

¹⁴ See Kim Benita Furumoto & David Theo Goldberg, *Boundaries of the Racial State: Two Faces of Racist Exclusion in United States Law*, 17 HARV. BLACKLETTER L.J. 85, 86 (2001).

¹⁵ See Leti Volpp, *Feminism versus Multiculturalism*, 101 COLUM. L. REV. 1181 (2001); Leti Volpp, *Blaming Culture for Bad Behavior*, 12 YALE J.L. & HUMAN. 89 (2000).

¹⁶ This is the insight of Renato Rosaldo. RENATO ROSALDO, *CULTURE AND TRUTH: THE REMAKING OF SOCIAL ANALYSIS* 198 (1989). I borrow this wording from Diane Nelson, who, writing in the context of Guatemala, states:

As Renato Rosaldo . . . suggests, the powerful tend to feel they have no culture, save for the universal culture of civilization. But this comfortable position is disrupted by Mayan organizing, which forces ladinos to think critically about their own identifications, a process that makes many people quite cranky.

DIANE M. NELSON, *A FINGER IN THE WOUND: BODY POLITICS IN QUINCENTENNIAL GUATEMALA* 25 (1999).

¹⁷ As Etienne Balibar has written, behind the idea of cultural difference wherein immigrants are supposed to shed culture so they can be "integrated" and "emancipated" lies barely reworked variants of the idea that the historical cultures of humanity can be described into two main groups: one assumed to be universalistic and progressive, the other supposedly irremediably particularistic and primitive. Etienne Balibar, *Is There a Neo-Racism?* in RACE, NATION, CLASS: AMBIGUOUS IDENTITIES 17, 25 (Etienne Balibar & Immanuel Wallerstein eds., 1991).

the United States.¹⁸ But this false dichotomy must be challenged.¹⁹

What is forgotten in this story is that immigrants do not bring with them to the United States a frozen, monolithic culture. We should understand culture as being in a constant state of becoming, not as self-contained and impermeable.²⁰ Culture is constantly negotiated and highly contested by those claiming particular cultural identities. Thus, we see that what may be the most vibrant labor organizing over the past several years has been that by immigrant workers, often based at independent workers' centers—hardly passive victims of an oppressive culture. Immigrant worker organizing could be understood as a form of actively-engaged citizenship.²¹ As such, we can center immigrant workers as citizen-subjects deeply involved in democratic processes, not as culturally-driven victims.²²

¹⁸ For a criticism of the idea that labor regimes in Asia and Mexico are despotic and paternalistic, and that such conduct is not found in advanced capitalistic countries, see Aihwa Ong, *The Gender and Labor Politics of Postmodernity*, in *THE POLITICS OF CULTURE IN THE SHADOW OF CAPITAL* 61, 66–67 (Lisa Lowe & David Lloyd eds., 1997).

¹⁹ See Amartya Sen, *Human Rights and Asian Values*, *NEW REPUBLIC*, July 14 & 21, 1997, at 33. For another rebuttal of the idea that there is a clash between “Asian” and “Western” values, see AIHWA ONG, *FLEXIBLE CITIZENSHIP: THE CULTURAL LOGICS OF TRANSNATIONALITY* 185–213 (1999).

For a discussion and criticism of a similar discourse that bifurcates European modernist values from African cultural values, see MAHMOOD MAMDANI, *CITIZEN AND SUBJECT: CONTEMPORARY AFRICA AND THE LEGACY OF LATE COLONIALISM* 1 (1996).

²⁰ ALLAN PRED, *EVEN IN SWEDEN: RACISMS, RACIALIZED SPACES, AND THE POPULAR GEOGRAPHICAL IMAGINATION* 66–67 (2000).

²¹ See Linda Bosniak, *Citizenship and Work*, 27 *N.C. J. INT'L L. & COM. REG.* 497 (2002); Jennifer Gordon, *We Make the Road By Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 *HARV. C.R.-C.L. L. REV.* 407 (1995) (describing immigrant worker organizing).

²² This would be a refashioning of the popular assumption that immigrant workers stand outside the center of who constitutes the U.S. citizenry, an assumption that is fueled not only by how we center the citizen (as opposed to the alien) as the paradigmatic member, but also by the idea that those who are purportedly motivated by culture cannot be full members in the political community. For a discussion of different dimensions of citizenship, see generally Linda Bosniak, *Citizenship Denationalized*, 7 *IND. J. GLOBAL LEGAL STUD.* 447 (2000); Leti Volpp, “*Obnoxious to Their Very Nature*”: *Asian Americans and Constitutional Citizenship*, 5 *CITIZENSHIP STUDIES* 57 (2001), reprinted in 8 *ASIAN L.J.* 71 (2001). For example, Asian Americans are seen as perpetually alien and incapable of engaging without corruption in the political process. *Id.* See ROSALDO, *supra* note 16 (discussing how cultural endowment and citizenship

III. When Cultural Narratives Depoliticize

Cultural arguments are also used to displace attention from governmental failures and corporate greed. When labor violations are depicted as if they are imported by immigrants from other parts of the world, the United States stands apart as presumptively immune from such violations. This notion is especially egregious in the context of the garment industry, where the actions of U.S.-based transnational corporations are the principle source of labor violations.²³ The garment industry is structured like a pyramid, with workers on the bottom, contractors under great pressure in competition with one another to survive in the middle, and manufacturers and retailers at the top, setting the terms and often only accepting bids so low that the contractors cannot pay minimum wage and overtime.²⁴ The government estimates that more than sixty percent of garment shops in Los Angeles and New York do not pay minimum wage or overtime, although advocates say the percentage is even higher.²⁵

The assumption that immigrants bring with them to the United States a less democratic and more inhumane culture than that of the United States deflects attention from multiple sources of labor abuse. Workplace violations against immigrant workers are not connected to the lack of U.S. labor enforcement,²⁶ historical legal

seem inversely correlated); Renato Rosaldo, *Cultural Citizenship, Inequality, and Multiculturalism*, in *LATINO CULTURAL CITIZENSHIP* 27–29 (William V. Flores & Rina Benmayor eds., 1997).

²³ See Ho, Powell & Volpp, *supra* note 2, at 385–87.

²⁴ See Su, *supra* note 4, at 409–10. See also Richard P. Appelbaum, *The Los Angeles Apparel Industry: A New Ethnic Flashpoint?*, in *BETWEEN A ROCK AND A HARD PLACE*, *supra* note 12, at 55–57 (describing power of retailers, the close coordination of manufacturers with retailers, the precarious existence of contractors, and the impoverishment and harsh conditions for workers). Appelbaum reports testimony that ninety-six percent of Los Angeles apparel factories violate health and safety regulations, half of these serious enough to threaten life and limb. *Id.* at 56.

²⁵ See Mae M. Cheng, *Garment Makers Cheating Workers, Feds: 60% Short Pay*, *NEWSDAY*, Oct. 17, 1997, at A8.

²⁶ For a description of limited action by both federal and state labor law enforcement, see Steve Nutter, *The Structure and Growth of the Los Angeles Garment Industry*, in *NO SWEAT: FASHION, FREE TRADE, AND THE RIGHTS OF GARMENT WORKERS*, 199, 210–11 (Andrew Ross ed., 1997) [hereinafter *NO SWEAT*]. For the argument that the return of the sweatshop in recent years is “primarily the product of the decline of government regulation and diminishing union strength,” see Michael Piore, *The Economics of the Sweatshop*, in *NO SWEAT*, at 135, 140.

relationships such as subcontracting that were explicitly created and judicially sanctioned so as to immunize companies from legal responsibility,²⁷ the support of the U.S. government for greater rights for corporations and not workers,²⁸ or the pursuit of profit by transnational corporations on the global assembly line. The United States is typically understood as the site of liberal equality, human rights, and democracy, even while U.S. laws and corporate practices are foundational to the fact of exploitation.

We could look, as one example, at the treatment of immigrants by the U.S. government. The horror greeting the reports of the El Monte apartment complex served to erase the fact that the workers were liberated from servitude only to be thrust into Immigration and Naturalization Service (INS) detention.²⁹ Forced to wear yellow prison uniforms and shackled when transported, they were released only after active protest by a statewide coalition of organizations, attorneys, and community members.³⁰ Immigrants

²⁷ For a description of this history, see generally Bruce Goldstein, et al., *Enforcing Fair Labor Standards in the Modern American Sweatshop: Rediscovering the Statutory Definition of Employment*, 46 UCLA L. REV. 983, 998–99 (1999). The authors write:

As the International Ladies' Garment Workers' Union (ILGWU) organized at the turn of the century and made inroads into organizing the garment workers, the women's garment manufacturers, who had previously performed all aspects of garment production in-house, began sending precut fabric purchased by the manufacturer to outside sewing contractors, who would then sew, press, and finish the garments. The garment contractors, often former garment workers themselves, had few skills and almost no capital, and so kept their shops small, ranging from nineteen to thirty sewers. The contractors' primary role was to recruit labor, and they relied on their ties to the ethnic communities from which they came to keep a steady flow of unskilled and cheap workers The historical shift from inside production work to outside contracting work meant little in terms of the actual work performed by the workers and who ultimately supervised and controlled the work. Economically, it redounded to the benefit of the manufacturers who shielded themselves from the labor costs and liabilities.

Id.

²⁸ See Peter M. Cicchino, *Defending Humanity*, 9 AM. U. J. GENDER SOC. POL'Y & L. 1, 6 (2001) (criticizing relentless monetarization and commodification of people).

²⁹ See Julie Su, *El Monte Thai Garment Workers: Slave Sweatshops*, in NO SWEAT, *supra* note 26, at 143.

³⁰ See *id.* at 144–45. Julie Su writes that this erasure in part happened because of the kinds of strategic narratives used:

We stay away from the immigration aspect of their case because we fear backlash in this climate. When the workers were first discovered, the news

fleeing persecution are routinely subjected to INS detention.³¹

Legal invocations of "culture" too often fail to understand culture as imbricated with the material or the political, but rather, present culture as if it is somehow cordoned off from economic and political concerns. Politics, culture, and the economy should be understood as constituting an inseparable terrain,³² but this rarely transpires. Thus, when the exploitation of garment workers is understood to stem from culturally-driven desires to ignore the importance of labor laws on the part of immigrant contractors, this directs attention away from the material and political structure of the workplace.³³ In particular, then, the exploitation of garment workers is not perceived as the product of profit-making schemes of retailers and manufacturers who then escape legal responsibility for this exploitation.³⁴ Instead, workplace exploitation is depicted

media referred to them as "Thai nationals" or "illegal immigrants." We insisted on calling them "workers," thus shifting the focus from their immigration status to their experiences in the United States in the garment industry. But when United States immigration policies contribute directly to the vulnerability of immigrant workers and facilitate the kind of exploitation workers suffer, have we not distorted the workers' experience by downplaying that aspect of their lives and of their struggle?

Su, *supra* note 4, at 416.

Similarly, outrage over "female genital mutilation" served to elide the long-term immigration detention of Fauziya Kassindja, who was the first person successfully granted asylum in the United States in this kind of case, in a maximum security prison in New Jersey, where she was shackled, placed in isolation, tear-gassed, and beaten. For a description of this and a criticism of how only certain kinds of human rights violations are made visible, see Isabelle Gunning & Hope Lewis, *Cleaning Our Own House: "Exotic" and Familiar Human Rights Violations*, 4 BUFF. HUM. RTS. L. REV. 123, 130-31 (1998).

³¹ For example, the deaf Mexican workers were kept in INS detention in a motel in Queens for an entire year while serving as material witnesses. See Kevin McCoy, *Mexican Ready to Put Bondage Behind Him*, DAILY NEWS (New York), July 17, 1998, at 6.

³² For this point, see Lisa Lowe & David Lloyd, *Introduction*, in *THE POLITICS OF CULTURE AND THE SHADOW OF CAPITAL 1*, *supra* note 18.

³³ For an example of a cultural analysis of a workplace that does focus attention on political and material questions, see Kath Weston & Lisa B. Rofel, *Sexuality, Class and Conflict in a Lesbian Workplace*, in *LONG SLOW BURN: SEXUALITY AND SOCIAL SCIENCE 115* (Kath Weston ed., 1998).

³⁴ For examples of litigation strategies to fight this evasion of responsibility, see *Bureerong v. Uvawas*, 922 F. Supp. 1450 (C.D. Cal. 1996). See also *Lopez v. Silverman*, 14 F. Supp. 2d 405, 413 (S.D.N.Y. 1998) (recognizing garment industry

as the product of immigrant culture.³⁵ Obliterated in this discourse about immigrant culture and workplace rights is that transnational corporations, supported by specific U.S. policies, violate workers' rights.³⁶

IV. Conclusion

Cultural narratives can be attractive to advocates who work with immigrant workers, because these narratives often prove successful—they accord with common understandings about the relationship between immigrant identity and culture. Workers may be more likely to win redress when they are considered not only as victims of labor abuse, but also as victims of culture. For example, an advocate may invoke the purported cultural passivity of an immigrant worker to explain why she did not leave an exploitative workplace situation.³⁷ But cultural pathology arguments are problematic.³⁸ First, these arguments rely upon

manufacturer also as an employer under the Fair Labor Standards Act standard of the "suffer or permit to work" test). In the interest of disclosure, I worked on the early stages of *Lopez* as an attorney at the National Employment Law Project.

³⁵ See, e.g., *Sweatshop Exhibit Draws Protests*, PHILA. INQUIRER, Sept. 21, 1997, at A12 (quoting the director of a garment industry association as stating: "That there are sweatshops we do not dispute. There are ethnic groups imprisoning their own."). For other examples of statements blaming exploitation in the garment industry solely on the practices of Asian immigrants; see E-mail from Julie Su to Leti Volpp, *supra* note 1 (describing quote by president of a garment manufacturer: "If Julie Su really wants to be a champion of justice, why doesn't she go after unregistered contractors in her backyard—and I'll take her hand and show them to her. Why doesn't she go after contractors and manufacturers in the Asian community who aren't paying people?"). See also Jane H. Lii, *Week in Sweatshop Reveals Grim Conspiracy of the Poor*, N.Y. TIMES, Mar. 12, 1995, at A1. The title of the article suggests that the poor are to blame, somehow involved in a conspiracy to exploit themselves ("conspiracy of the poor"), rather than the victims of such ("conspiracy against the poor"). The content of the article was criticized as portraying worker exploitation as a Chinese cultural tradition. See James Ledbetter, *The Times: Tryin' to Find Chinatown*, VILLAGE VOICE (New York), Apr. 19, 1995, at 9.

³⁶ See ARUNDHATI ROY, *Power Politics: The Reincarnation of Rumpelstiltskin*, in POWER POLITICS (2001); Ho, Powell & Volpp, *supra* note 2, at 386, 414.

³⁷ E-mail from Sameer Ashar, NYU Immigrants' Rights Clinic, to Leti Volpp (describing use of cultural pathology arguments on behalf of immigrant workers in domestic servitude cases) (Oct. 10, 2000) (on file with the North Carolina Journal of International Law and Commercial Regulation).

³⁸ For criticisms of this strategy in the context of advocating for gender-based asylum, see generally Susan Musarrat Akram, *Orientalism Revisited in Asylum and*

cultural racism, which positions the culture of certain communities as either inferior or incompatible with the values of the dominant community.³⁹ Second, arguments of cultural racism on behalf of an immigrant worker resurface as cultural explanations that elide the culpability of the state or non-immigrant entities in workplace abuse.⁴⁰ Thus, the claim that a worker came to the United States in

Refugee Claims, 12 INT. J. REFUGEE L. 7 (2000); Anita Sinha, *Domestic Violence and U.S. Asylum Law: Eliminating the "Cultural Hook" for Claims Involving Gender-Related Persecution*, 76 N.Y.U. L. REV. 1562; Leti Volpp, *Gazing Back*, 14 BERKELEY WOMEN'S L.J. 149 (1999) (reviewing SHERENE RAZACK, *LOOKING WHITE PEOPLE IN THE EYE: GENDER, RACE AND CULTURE IN COURTROOMS AND CLASSROOMS* (1998)).

³⁹ As defined by geographer Allan Pred, cultural racism is: "wherein skin pigment, hair color, and other bodily markers are unreflectedly translated into highly charged cultural markers; wherein outward biological difference and cultural difference become automatically (con)fused with each other and entire groups thereby racialized." PRED, *supra* note 20, at 66.

Verena Stolcke describes the rise of cultural racism as the product of a shift in the rhetoric of anti-immigrant exclusion from inegalitarian racism to what she calls "cultural fundamentalism," which she argues depicts immigrants as threatening because of their differences of cultural heritage and the incommensurability of these differences with purported European values. Verena Stolcke, *Talking Culture: New Boundaries, New Rhetorics of Exclusion in Europe*, 36 CURRENT ANTHROPOLOGY 1, at 4-5 (1995).

Stuart Hall importantly points out that rather than to claim a decline in biological racism and a concomitant rise in cultural racism, it may be more accurate to observe that biological racism and cultural differentialism are two "logics" that are always present, though in different combinations and differently foregrounded in different contexts and in relation to different subject populations. Stuart Hall, *Conclusion: The Multi-cultural Question*, in UN/SETTLED MULTICULTURALISM: DIASPORAS, ENTANGLEMENTS, TRANSDISRUPTIONS 209, 224 (Barnor Hesse ed., 2000).

⁴⁰ The dynamic of cultural racism is especially strong vis-à-vis immigrant women, whether depicted as garment workers or as victims of culturally driven violence. There is a prevalent narrative that depicts immigrants from certain nations as bringing to this country a deviant and more gender subordinating culture. Extensive concern has been expressed about unassimilable immigrant culture, depicted as sexist and backward. Some feminist activity seeks to liberate women from their oppressive culture; witness recent pronouncements about the Taliban and Islam. Valerie Kuklenski, *Speaking for Those Who Can't: Afghan Women are Leno's Mission*, DAILY NEWS OF L.A., Oct. 14, 2001, at L7. For a criticism of this discourse, see Paola Bacchetta et al., *Transnational Feminist Practices Against War* (Oct. 2001), at <http://home.earthlink.net/~jenniferterry/transnationalstatement.html> (last visited Apr. 17, 2002) (on file with the North Carolina Journal of International Law and Commercial Regulation).

Concerns that ascribe the entirety of the oppression a woman may face to her culture often result in remedies that require her to shed that culture in order to be free from oppression, in a troubling binary that poses gender and culture, or gender and race, or gender and immigration, at odds. We can see echoes of this in the reform efforts around trafficking, which have been driven primarily by the question of sex trafficking, as

search of “the American Dream,” frequently proffered by labor advocates, diverts attention from the role of U.S.-based companies or the United States government in promoting or ignoring labor abuse.

In conclusion, we must look closely at the narratives used about immigrants and labor workplace exploitation. There is grave danger in replicating discourses that redound to the detriment of all immigrants. Seeking legal redress for injuries that reflect what we think of as marked attributes or behaviors—for example, in the form of cultural pathology—can fix the identity of the injured as a social position.⁴¹ This codifies that meaning against any possibility of ambiguity or struggle for repositioning, creating something like a plastic cage.⁴² We must move beyond the equation of immigration culture and labor abuse to envision

opposed to any other kind of labor trafficking. What has driven reform efforts are concerns about women, with a primary identity as victims of male violence, and concerns about women, with a primary identity as immigrants. This has led, in the name of reducing violence, to more immigration controls, in both that legislation and other arenas. For a criticism of this in the so-called “mail order bride” context, see Nora V. Demleitner, *In Good Times and In Bad: The Obligation to Protect “Mail-Order Brides,”* in 2 *WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW*, 513, 550–51 (Kelly D. Askin & Dorean M. Koenig eds., 2000) (describing how laws designed to counteract abuse have had the opposite impact).

For example, domestic violence is now a deportable offense. As many advocates have pointed out, as a remedy, this is woefully inadequate. Women and any children they may have are often economically or emotionally dependent on their batterers, and thus there is documentation that women have been less likely to report violence when they know it will result in removal of their partner from the country. Linda Kelly, *Stories From the Front: Seeking Refuge for Battered Immigrants in the Violence Against Women Act*, 92 *NW. U. L. REV.* 665, 678 (1998).

Thus, we should be wary of reform efforts that split off gender from culture or race or immigrant status, that assume that any woman’s primary concern is inevitably gendered, and that solely envision women as victims of male violence. Efforts that use immigration law as a tool to fight male violence forget that women potentially suffer from immigration controls themselves, and fail to recognize the importance of the fact of immigrant status or racial identity to women as well.

⁴¹ I borrow this logic from Wendy Brown. See WENDY BROWN, *STATES OF INJURY: POWER AND FREEDOM IN LATE MODERNITY* 27–28 (1995).

⁴² Brown calls these “wounded attachments,” which are constructed through remedies that calcify the injured in the space of the original harm. *Id.* at 52–76. While Brown is addressing a different context, that of legal claims premised in identity politics, from what I describe here, namely legal claims premised in advocates’ depictions of their clients’ identity, I think her work is instructive.

new possibilities. Otherwise, one is left with the notion that subordination results from cultural difference imported by immigrants, rather than from the uneven effects of transnational capitalism and the failure of the liberal state.⁴³

⁴³ For an analogous argument suggesting that the existence of the informal economy is incorrectly attributed to immigration from the Third World and the replication of strategies typical of the home countries of migrant workers, rather than perceived as the necessary outgrowth of advanced capitalism, see SASKIA SASSEN, *GLOBALIZATION AND ITS DISCONTENTS: ESSAYS ON THE NEW MOBILITY OF PEOPLE AND MONEY* 154–55 (1998).