The Rakes of Wrath: Urban Agricultural Workers and the Struggle Against Los Angeles's Ban on Gas-Powered Leaf Blowers

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If you really want to help the *campesino*, get rid of *el cortito* — the short-handled hoe.[1]

INTRODUCTION

A few years before he died, my *abuelo* came to live with us for the summer. Grandad, who was then eighty, was slowly succumbing to Parkinson's Disease, and he needed somebody to look after him while my grandmother packed up their retirement home in Tucson. They were returning to the Los Angeles area, where they had met and married and raised a big family. They were coming back because L.A. was where most of us still lived and could more easily help care for Grandad.

Grandad and I spent a lot of time together that summer. It was the sort of time that we had not shared since those hot summers when I was a kid and he used to pick up my brothers, Paul and Vince, and me to go swimming after he finished his shift at mid-

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[1] Susan Ferriss & Ricardo Sandoval, *The Death of the Short-Handled Hoe*, *in* SUSAN FERRISS & RICARDO SANDOVAL, THE FIGHT IN THE FIELDS: CESAR CHAVEZ AND THE FARMWORKERS MOVEMENT 206, 206 (1997) (quoting challenge put by farm workers in Soledad, California, to California Rural Legal Assistance lawyer Maurice "Mo" Jourdane).

afternoon. We looked forward to those summers because time with Grandad meant not only swimming, but also driving his 1953 Chevrolet — at about eight miles per hour — around an empty parking lot afterward. Then it was off to the *abuelos*' house for dinner. He was fifty and vigorous and worked two jobs and already had eleven grandchildren. I was barely ten and wondered what made him go.

This particular summer, however, we did more talking than swimming. By then, most of Grandad's vigor was gone. We spent a lot of time in the kitchen talking about his life and friends and how they both turned out. We also spent a lot of time trying to keep him from falling and breaking an arm or a hip. Parkinson's had made his leg muscles stiff, which sometimes caused him to trip. So he shuffled around the house. As I took care of the kids and chores, I tried to keep an eye on Grandad so that I could catch him if he fell.

One afternoon an elderly Anglo man came to the door. He had stopped by to promote his landscaping business. Like most folks in my neighborhood, I was paying a Latino man who worked for himself to mow the grass and trim the shrubs. But the Anglo man, who like Grandad was eighty — "eighty years young," according to his literature — was excited. In fact, he was a lot more energetic than Grandad, who was taking a nap. He was excited because he had looked over my front yard and was certain that his gardeners could do a better job for less money than I was now paying.

While the Anglo man was delivering his spiel, Grandad shuffled up behind me. I didn't hear him before he interrupted the Anglo man. "Will you do all the work yourself?" he asked. "Heavens no," came the reply. "I have a couple of Mexican fellas do it." I put my arm around Grandad and said, "You know, *we're* a couple of Mexican fellas." Without batting an eye, the Anglo man added: "They're very hard workers, the Mexican fellas, they just need some guidance. I show them how they can make more money working for me." After that, whenever I helped Grandad with some simple task, he would wink at me and say, "I just need some guidance."[2]

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[2] I have recounted part of this story elsewhere. *See* Christopher David Ruiz Cameron, *How the García Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, 85 CAL. L. REV. 1347, 1383 n.178 (1997), 10 LA RAZA L.J. 261, 297 n.178 (1998).

In this country, there is never a shortage of people in positions of power that are prepared to offer "guidance" to Latinas/os, especially Mexican Americans, who are thought to need or want it. Recently, the City of Los Angeles, where I work and study the employment problems of Latina/o workers, decided to codify some of this "guidance" into law. During a year and-a-half of contentious debate, the City Council adopted, then amended, an ordinance banning the use of any "gas powered blower" to remove grass and leaves from lawns and walkways.[3] Each violation of the ordinance is punishable by a fine not to exceed $100[4] — a sum that represents about ten percent of a gardener's average monthly income of $1000.[5] Other California cities and towns joined Los Angeles by enacting their own laws banning leaf blowers.[6]

In this Article, I argue that the leaf blower ban is to urban agriculture what the dreaded short hoe was to farm agriculture — namely, a way to enforce Latina/o invisibility and to subvert attempts by Latinas/os to assimilate into Anglo society. A farm worker using a short hoe must bend over to work. Stooping not only wrenches the back, but also ensures that the laborer, usually a Mexican immigrant, works without having to be seen, or heard, in the case of the leaf blower ban. And if he is not seen, then his wishes, to be accorded the privileges and immunities of full assimilation into our society that white immigrants tend to expect, do not have to be recognized. Indeed, like the short hoe, the leaf blower ban was sold to the public not as a means of racial oppression, but rather as benign guidance. Prominent advocates of the ban argued that, by foregoing gas-powered blowers in favor of rakes or brooms to ply their trade, Latina/o gardeners would pollute the environ-

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[3] The ordinance states:

> [N]o gas powered blower shall be used within 500 feet of a residence at any time. Both the user of such a blower as well as the individual who contracted for the services of the user, if any, shall be subject to the requirements of and penalty provisions for this ordinance. Violation of the provisions of this subsection shall be punishable as an infraction in an amount not to exceed One Hundred Dollars ($100.00) . . . .

Los Angeles, Cal., Ordinance No. 171,890 (Feb. 13, 1998), *codified at* LOS ANGELES, CAL., CODE § 112.04 (1998).

[4] *See id.*

[5] *See infra* note 18 and accompanying text (noting gardener's average monthly income).

[6] *See* Jodi Wilgoren, *City Council Deals a Blow to Leaf Blowers*, L.A. TIMES, May 15, 1996, at A1 (noting other municipal leaf blower bans).

ment less and actually lead healthier, more spiritually fulfilling lives.[7] What follows here is the story of how Latina/o gardeners were oppressed by, and how they eventually resisted, Los Angeles's ordinance outlawing the gas-powered blower.

I. SUBORDINATION OF LATINA/O GARDENERS

Tending the front and back yards of the landed gentry of Los Angeles is primarily the work of as many as 65,000 Latina/o immigrants, nearly all of whom are men.[8] By any measure, their work does not pay well. The average gardening crew, consisting of two to three men, charges $15 to $25 per yard and works ten to twenty yards per day. At these piecework rates, the average gardener earns $250 per week, $1000 per month, and $12,000 per year. He works eight to twelve hours a day, six days a week, and all without overtime, paid vacation, or health insurance. If he does not work, then he does not get paid.[9]

The compensation of the average Latino gardener places him at the forefront of the low-wage economy that has supported the boom of the 1990s in California, and especially, in Los Angeles County. In 1998, Latinos accounted for 28% of the state's workforce but earned only 19% of its aggregate income. By contrast, whites accounted for 53% of the state's workforce yet earned 62% of its aggregate income.[10] The fact that gardeners are often con-

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[7] *See infra* notes 41-47 and accompanying text (discussing proponents' view that ban was good for environment and gardeners' health, and gardeners' opposition to that view).

[8] Which is not to ignore the unique hardships that immigrant Latina workers face in other sectors of the U.S. economy. Recent scholarship has focused a long-overdue spotlight on these hardships. *See generally* MARY ROMERO, MAID IN THE U.S.A. (1992) (examining plight of immigrant Mexicana domestics); Elvia R. Arriola, *Foreword: March!*, 19 CHICANO-LATINO L. REV. 1, 19 (1998) (noting absence of Latina law professors in scholarly literature); Maria L. Ontiveros, *Rosa Lopez, David Letterman, Christopher Darden, and Me: Issues of Gender, Ethnicity, and Class in Evaluating Witness Credibility*, 6 HASTINGS WOMEN'S L.J. 135, 136 (1995) (discussing subordination of Latina housekeepers such as Rosa Lopez, who worked next door to O.J. Simpson); Laura M. Padilla, *Single-Parent Latinas on the Margin: Seeking a Room with a View, Meals, and Built-in Community*, 13 WIS. WOMEN'S L.J. 179, 197-206 (1998) (examining absence of "cohousing" resources for single-parent Latinas).

[9] *See, e.g.*, Hildy Medina, *Gardening Economics: Low-Tech, Labor Intensive Businesses Jeopardized by Leaf Blower Ban*, L.A. BUS. J., Jan. 12, 1998, at 1; *see also* Bettina Boxall, *Leaf Blower Issue a Clash of Expectations, Realities*, L.A. TIMES, Jan. 11, 1998, at A1 (reporting wages of San Fernando Valley gardener Ramon Reyes).

[10] *See* Nancy Cleeland, *Latinos' Economic Gap Persists Over Time*, L.A. TIMES, Aug. 19, 1999, at C2 (citing California Research Bureau Report). Low-wage Latino workers comprise half of the work force in manufacturing jobs, which makes Los Angeles County America's industrial heartland. *See* Christopher David Ruiz Cameron, *The Labyrinth of Solidarity: Why the*

sidered self-employed small business owners rather than wage earners, the name economists use is "micro-entrepreneurs"[11] — does not improve their take-home pay. A 1996 survey of 110,000 Latina/o-owned businesses in greater Los Angeles showed that half of these businesses post annual revenues under $10,000.[12] In a state where Latinas/os are projected to make up forty-three percent of the workforce by 2025,[13] these figures are cause for concern that most Latinas/os, whatever their occupation, are forming the key part of a burgeoning, and perhaps permanent, low-wage underclass.[14]

An important tool of the gardener's trade is the gasoline-powered blower, which is used primarily to remove grass and leaf trimmings from freshly mowed lawns, clipped hedges, and wind-blown walkways. The blower, a twelve-pound machine,[15] is strapped to the gardener's back. Working with a nozzle attached to a lead hose, the gardener blows the trimmings into piles that he can conveniently sweep up and dispose of before he loads his pickup truck and drives off to the next job.

Gardeners estimate that it takes two to three times longer to clean a yard using rakes and brooms than it does to use a single leaf blower.[16] Hiring more men for the crew might accomplish the task in less time, but many experienced gardeners believe that even long-time clients would balk at paying more money to boost the payroll.[17] One gardener estimated that having to give up the leaf

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Future of the American Labor Movement Depends on Latino Workers, 53 U. MIAMI L. REV. 1089, 1097-98 (1999).

[11] *See, e.g.*, Medina, *supra* note 9, at 1.

[12] *See* Tim W. Ferguson, *L.A. Existential*, FORBES, Feb. 9, 1998, at 46A (reporting results of U.S. Census Survey).

[13] *See id.*

[14] *See, e.g.*, Cameron, *supra* note 10, at 1099 (noting risks of creating permanent Latina/o underclass); *see also* Maria L. Ontiveros, *Forging Our Identity: Transformative Resistance in the Areas of Work, Class, and the Law*, 33 U.C. DAVIS L. REV. 1057 (2000) (noting that "the labor movement is finally beginning to understand the importance of organizing immigrant workers and of identity issues in organizing"). Mary Romero has studied this underclass among Chicanas who serve as domestic housekeepers in the Southwest. *See generally* ROMERO, *supra* note 8 (discussing Chicanas employed in domestic service and interaction of race, gender, and class).

[15] *See, e.g.*, Ferguson, *supra* note 12, at 46A.

[16] *See, e.g.*, Daniel Yi, *Leaf Blower Users Hail Loophole*, L.A. TIMES, Aug. 2, 1998, at B1 (quoting gardener Jose Perez, who stated, "The blower takes less time to get the job done, about 20 minutes. If I used a rake, it would take me three to four hours.").

[17] *See* Medina, *supra* note 9, at 1 (remarks of gardener Arnaldo Castillo); Boxall, *supra* note 9, at A1 (remarks of gardener Ramon Reyes).

blower would cost him about $250 per month, a sum equal to as much as one fourth of the average gardener's income.[18]

During the 1980s and 1990s, the sights and sounds of backpack-carrying Latino men using gas-powered blowers became familiar to Californians living in cities and suburbs the length of the state. Indeed, the notion of hiring professional hands to do work that dad, brother, or the neighbor's kid used to perform for pocket change was something new. Once a luxury confined to the enclaves of the rich and famous, hiring gardeners soon spread even to the homes and apartments of the middle class.[19] In metropolitan Los Angeles, the hired gardener became common not only in the affluent communities of Bel Air, Brentwood, and Pacific Palisades, but also in such working-class communities as Lakewood, a community developed during the 1950s to house aerospace and defense plant workers.[20] When the hired gardener arrived, so did his leaf blower.

Not everyone welcomed this transformation. By 1996, more than forty California cities and towns had passed ordinances banning or restricting the use of leaf blowers.[21] Many residents complained about the cacophony of noise and dust created by power mowers, motorized weed-whackers, and gas-powered leaf blowers. In Los Angeles, they made a well-publicized attempt to do something about it.

Since at least 1990, Council Member Marvin Braude, who represented Brentwood and other Westside communities, had unsuccessfully championed an outright ban on all uses of gas-powered blowers. Braude, a self-styled environmentalist, felt that the machines posed unacceptable noise and air pollution hazards. Six years later, however, Braude decided that he would accept substan-

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[18] *See* Medina, *supra* note 9, at 1 (remarks of gardener Solomon Sanchez).

[19] *See, e.g.*, DAVID RIEFF, LOS ANGELES: CAPITAL OF THE THIRD WORLD 105 (1991) ("Even an activity as recreational as gardening has been transformed, in L.A., into one that requires the services of a gardener. But that was no problem. Los Angeles is now a place where a middle-class person can live in a First World way for Third World prices, at least for domestic help.").

[20] *See* Boxall, *supra* note 9, at A1 (discussing experience of longtime Lakewood, California, resident and author Don Waldie).

[21] *See, e.g.*, Wilgoren, *supra* note 6, at A1. Among the mostly affluent communities of Southern California that adopted such restrictions were Beverly Hills, Claremont, Dana Point, Laguna Beach, Lomita, Palos Verdes Estates, Santa Monica, and South Pasadena. *See id.*

tial restrictions on the use of blowers rather than an outright ban on all uses.

In May 1996, Braude sponsored a measure prohibiting the use of gas-powered blowers within 500 feet of a residence. Braude's measure won approval from the City Council,[22] but the Council delayed enforcement for what would turn out to be another year and-a-half.[23] By then, Braude had retired, but his successor, Council Member Cindy Miscikowski, took up the cause. In December 1997, the Council agreed to reduce the penalty from the status of a "misdemeanor" punishable by a fine of up to $1000 and six months in jail to the status of an "infraction" punishable by a fine of up to $270.[24] On February 13, 1998, the ban took effect.

II. RESISTANCE BY LATINA/O GARDENERS

Faced with substantial support among Council members from the moment Braude's new measure was introduced, Los Angeles's Latina/o gardeners decided not to submit without a fight. Their resistance found voice in an organization called the Association of Latin American Gardeners of Los Angeles, a sort of unrecognized union of gardening contractors and wage-earning crew members who were the targets of the proposed ban. The association's energetic leaders, general secretary Alvaro Huerta[25] and president Adrian Alvarez,[26] were quoted frequently by the news media and became adept at offering sound bites that rallied gardeners to the cause. They also organized impressive, if not always successful, political, legal, and extralegal actions worthy of the United Farmworkers and other long-established unions.

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[22] *See id.* at A1.

[23] *See* Jesse Hiestand, *Judge Rejects Tickets for Leaf Blower Use*, L.A. DAILY NEWS, Aug. 1, 1998, at N1.

[24] *See* Henry Chu, *Council Lightens Leaf Blower Penalties*, L.A. TIMES, Dec. 18, 1997, at B1; Rick Orlov, *Council Softens Bans on Blowers*, L.A. DAILY NEWS, Dec. 18, 1997, at N1.

[25] *See, e.g.*, Hiestand, *supra* note 23, at N1 (discussing association's successful argument that ban on gas-powered blowers did not include methanol powered blowers). Hiestand quoted one gardener opposed to the ban as saying: "Finally, justice prevails. We feel this is going to be very problematic for the city because they don't know if we have one methanol leaf blower out there or 10,000." *Id.* (quoting remarks of Alvaro Huerta).

[26] *See, e.g.*, Jeff Leeds, *Possible Leaf Blower Ban Solution Offered*, L.A. TIMES, Aug. 18, 1998, at B3 (noting remarks of Adrian Alvarez on manufacturer's untested electric leaf blower alternative that; "If it's going to be battery-powered, if it's going to be solar-powered, we have no problem that. Just don't offer us a broom and a rake. That's a cruel joke.").

A. Political Action: Before the City Council

If having to face the fifteen members of the Los Angeles City Council was not enough of a challenge for Latino gardeners, then having to fight the battle in the Entertainment Capital of the World certainly had to be. Only in Hollywood can the involvement of a handful of celebrities garner attention for a cause that might otherwise be ignored by an indifferent municipal electorate. So the Association of Latin American Gardeners of Los Angeles had to prepare to respond to testimony from television stars who spoke not only in their roles as residents of Los Angeles's affluent Westside, but also in their capacity as "experts" on the deleterious effects of gas-powered leaf blowers.

With a flair all their own, the celebrities offered three arguments. First, they argued that the devices are bad for the environment. Peter Graves[27] worried about the noise and air pollution caused by gas-powered blowers. After stepping to the podium while lawmakers hummed the familiar theme to his TV show, he testified:

> Leaf blowers are bad. They call them leaf blowers, because, indeed, they do blow leaves around and around and around. But they also blow other things around [such as fungus]. Are we going to put masks on our kids? In some areas of the world, plants, flowers and trees, and their arrangements together, have deep religious and philosophical meanings.[28]

Graves did not explain why he had ad-libbed about religion, philosophy, and botany, nor did he explain what they had to do with the relationship between banning a tool of the gardeners' trade and environmental protection.

Second, the celebrities argued that gas-powered blowers are bad for the gardeners' physical health. Meredith Baxter[29] ticked off statistics about the dangers of using the devices, which she claimed expose gardeners to fire, smoke, and noise hazards. She testified: "It flies in the face of all rational thinking to continue using blow-

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[27] Peter Graves played a secret agent on the 1960s drama *Mission: Impossible.*

[28] Wilgoren, *supra* note 6, at A1 (quoting Peter Graves).

[29] Meredith Baxter played a suburban mom in the 1980s situation comedy *Family Ties.*

ers."[30] Baxter, who apparently read from her own unedited script, barely finished before she was followed by City Council President John Ferraro. "If we give everyone the same time we gave you," he said, "we'll be in here till tomorrow."[31]

Third, the celebrities argued that the machines are bad for the gardeners' *spiritual* health. Julie Newmar,[32] suggested not only that the gardeners were ignoring the threat to their own health, but also that manufacturers of blowers were exploiting gardeners' ignorance. She told one newspaper: "These men are shuffling to the tunes of their manipulator. Your souls are being bought. The corruption should be banned. This is destructive technology run amok. I can't work in my office at my job anymore. Millions of people work at home. Don't we count?"[33]

Newmar especially seemed to enjoy the spotlight and proved to be the quotable favorite among reporters. When the City Council was about to vote on reducing the penalty for violating the new ban from a misdemeanor to an infraction, she urged lawmakers to stand firm. "It isn't that you people don't have character and integrity," she purred. "It's just hard to see beyond the voting cards."[34] Later, after the Council had voted to reduce the penalty anyway, she hissed that TV viewers "will see this oppressive miscarriage of justice because of the sycophants at City Hall."[35]

Latino gardeners and their allies responded to each of these arguments. As to the argument that blowers are bad for the environment, Adrian Alvarez, president of the association, conceded the point.[36] But Alvarez contended that an outright ban was a smokescreen for discrimination against the Latino men who do physically demanding work of gardening. He said it was not a solution "when you deprive people of a fundamental tool" in earning a living.[37] Alvaro Huerta, general secretary of the association, added:

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[30] Wilgoren, *supra* note 6, at A1 (quoting Meredith Baxter); *see also* Patrick McGreevy, *Leaf-Blower Ban OK'd on 9-6 Vote*, L.A. DAILY NEWS, Jan. 7, 1998, at N1. McGreevy quoted a proponent of the ban: "We're all victims of this machine and most especially the gardeners who have to suffer from the use of it." *Id.* (quoting Peter Graves).

[31] Wilgoren, *supra* note 6, at A1 (quoting Council President John Ferraro).

[32] Julie Newmar played Catwoman in the 1960s TV spoof *Batman*.

[33] Orlov, *supra* note 24, at N1 (quoting Julie Newmar).

[34] Chu, *supra* note 24, at B1 (quoting Julie Newmar).

[35] Hugo Martin & Henry Chu, *Berman Waves Fist at Schuster on Ethics, Opens Palm on Transit*, L.A. TIMES, Dec. 19, 1997, at B5 (quoting Julie Newmar).

[36] Chu, *supra* note 24, at B1 ("We recognize that leaf-blowers make noise. We have never denied that.").

[37] *Id.*

"[The ban is part of a] series of attacks against the Latino immigrant. All they want to do is work, and [the City Council] is creating this hostility."[38]

Taking sides with the gardeners, a number of elected officials were more to the point. State Senator Richard Polanco compared the government's regulation of pollution by gardeners to its regulation of pollution by automobile manufacturers and concluded that Latinas/os were being singled out for disparate treatment. "We have not banned cars when we wanted them to be quieter or cleaner. . . . We simply force manufacturers to make quieter, cleaner cars. But when it comes to the tools of poor, immigrant gardeners, they just ban their tools. That is fundamentally unfair and wrong."[39]

An outright ban seemed particularly puzzling because the ordinance that eventually took effect did not apply to gas-powered lawn mowers and edgers, which are certainly as loud as gas-powered leaf blowers. These instruments continued to be regulated by a separate ordinance that restricts, rather than outlaws, the use of hand tools, construction equipment, and other power tools to the hours between 7:00 a.m. and 10:00 p.m.[40]

As to the argument that the machines are bad for gardeners' health, Alvarez rejected the notion that city officials should substitute their judgment for that of the workers themselves. "We're tired of the classism, the paternalism, the implication and assumption that gardeners can't think on their own," he said.[41]

Finally, as to the argument that gas-powered blowers are bad for gardeners' spiritual health, the gardeners responded with a public demonstration of their own high moral standards. Invoking the commitment to nonviolent civil disobedience of Cesar Chavez and the United Farm Workers, the association organized barefoot marches along downtown streets to City Hall to make the point

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[38] Jill Leovy, *Leaf Blower Ban Takes Effect Today*, L.A. TIMES, Feb. 13, 1998, at B1 (quoting Alvaro Huerta).

[39] Carolyne Zinko, *Leaf Blower Bill Sputters, Dies as Gavel Falls*, S.F. CHRON., Sept. 2, 1998, at A13 (quoting remarks of state Senator Polanco); *see also* Jill Leovy, *Leaf Blower Ban Backers Gird to Fight Bill*, L.A. TIMES, Feb. 21, 1998, at B1 (quoting remarks of Polanco aide Bill Mabie: "If the government wanted to regulate oil refineries, they would probably give them five years to comply with the new rules. But when you are talking about a poor gardener, they just ban their tools.").

[40] *See* Los Angeles, Cal. Ordinance 161,574 (Sept. 8, 1989), *codified at* LOS ANGELES, CAL., CODE § 112.05 (1986).

[41] Orlov, *supra* note 24, at N1 (quoting Adrian Alvarez).

that laws passed there had caused them suffering; they circled City Hall carrying brooms; they held a candlelight vigil for one of their own who died in an automobile accident while returning from a protest.[42] A particularly sobering moment came when a group of gardeners vowed to fast until death on the grounds of City Hall unless the mayor and the Council took action to address their grievances.[43] Disaster, not to mention a public relations nightmare, was averted when the association and city officials worked out a compromise under which the Council agreed to help the gardeners find replacement machines. Still, the ban remained in effect.[44]

After the ban had been enacted by the City Council over the objections of Latino gardeners, the association took the fight to the state capitol in Sacramento.[45] There they found an ally in state Senator Polanco, who carried a bill that would have preempted local leaf blower legislation throughout California except for municipalities where voters had adopted such laws by initiative.[46] Polanco's bill passed the state assembly, but was killed in committee in the state senate.[47]

Although the association did not succeed in derailing the ban, its efforts at resisting this form of subordination cannot be considered a failure. These efforts not only raised the public's awareness of the gardeners' plight, but also were the likely reason why the status of the offense, together with its concomitant penalties, was reduced from a misdemeanor to an infraction.

B. Legal and Extralegal Action: Before the Courts and in the Streets

Latino gardeners did not limit their resistance to lobbying lawmakers. Adopting a creative mixture of traditional and nontraditional political, legal, and extralegal tactics, they also took their case before both the courts and the court of public opinion.

As noted above, the gardeners' nontraditional tactics — the barefoot march, the broom sweep, the candlelight vigil for a fallen comrade, the hunger strike — set a high moral tone and probably

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[42] *See* Hector Tobar, *1998: The Year in Review, February*, L.A. TIMES, Dec. 30, 1998, at B3.

[43] *See, e.g.*, McGreevy, *supra* note 30, at N1; Beth Shuster, *Leaf Blower Ban Upheld by Council*, L.A. TIMES, Jan. 7, 1998, at B1.

[44] *See* Leovy, *supra* note 38, at B1.

[45] *See* Leeds, *supra* note 26, at B3.

[46] *See* Zinko, *supra* note 39, at A13 (citing Los Altos, Piedmont, and Santa Barbara as examples).

[47] *See id.*

had at least three positive effects. First, they delayed for about a year and-a-half implementation of the City Council's initial adoption of a leaf blower ban, which may have persuaded officials to reduce violations of the new law from misdemeanor to infraction status. Second, these tactics won a modest pledge by the Council to help gardeners search for alternative tools, such as the electric blower. Third, and perhaps most important, they brought together dispersed Latina/o workers, who otherwise would suffer the indignities of their collective oppression without even knowing each other. To the extent the gardeners had any latent political power, they learned that they could only exercise it by working together.

The results of using traditional legal tactics were more mixed. On the one hand, a challenge that the leaf blower ordinance lacked a rational basis under equal protection principles was rejected.[48] This was unfortunate, because the argument made eminent sense. Whereas in the past Los Angeles had merely limited the use of other noisy and smelly tools of the gardeners' trade, such as lawn mowers and weed whackers, to certain hours of the day, the city was now banning the use of gas-powered leaf blowers at all times within 500 feet of any residence.[49] Rejecting Los Angeles's reasons for regulating the use of leaf blowers differently from other equipment, at least one other city considered choosing time-of-day rather distance limits.[50]

On the other hand, a challenge that the ban on "gas-powered" leaf blowers did not affect equipment powered by *methanol*, a mixture of gasoline and alcohol, was sustained.[51] As a result, the tickets of two gardeners who each had been fined $270 for using methanol-powered leaf blowers were dismissed. The judge found the law to be indeterminate, a factor that, in this instance anyway, worked

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[48] *See, e.g., Judge Upholds Ban on Leaf Blowers*, L.A. TIMES, Mar. 17, 1998, at B4 (reporting denial of request for writ of mandate). According to Judge Robert H. O'Brien: "[T]he record indicates that the application of the regulation to gas-powered leaf blowers has a logical and reasonable basis. There is no denial of equal protection under the law." *Id.*

[49] *See* LOS ANGELES, CAL., CODE § 112.04(a) (1986) (banning use of "any lawn mower, backpack blower, lawn edger, riding tractor, or any other machinery" between hours of 10:00 p.m. and 7:00 a.m.).

[50] *See, e.g.*, Sylvia L. Oliande, *City Drafting Rules on Leaf-Blower Use*, L.A. TIMES, Feb. 23, 1998, at B2 (reporting deliberations of officials in Calabasas, California).

[51] *See* Hiestand, *supra* note 23, at N1.

in favor of Latino gardeners.[52] Association general secretary Huerta hailed the ruling not only as a victory, but also as an opportunity for further resistance. "Finally, justice prevails. We feel this is going to be very problematic for the city because they don't know if we have one methanol leaf blower out there or 10,000."[53]

By mixing nontraditional and traditional tactics, the gardeners were able to call attention to the equities of their cause. This, in turn, helped them persuade lawmakers to reduce the severity of the ban, and perhaps, helped persuade the courts to construe ambiguities in the ordinance in favor of the gardeners.

III. SOME OBSERVATIONS ABOUT THE RAKES OF WRATH

The story of subordination of and resistance by Latina/o gardeners facing Los Angeles's ban on gas-powered leaf blowers illustrates at least two themes that Latina/o Critical Theory [54] has developed to explain the effect of laws and legal institutions on Latinas/os, and vice versa: the historic invisibility of Latinas/os in American culture, politics, and society, and the notion that the white ethnic model of assimilation, which is so widely adhered to by whites, does not necessarily work for nonwhites including Latinas/os.

A. Latina/o Invisibility

The rule of law has played an important role in enforcing the historical invisibility of Latinas/os in the United States.[55] Particularly striking is a symbolic parallel between the struggles of the rural agricultural workers whose cause has been championed by the

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[52] *See id.* (quoting Municipal Court Judge Elizabeth Allen White, who ruled that, because law was open to interpretation, she was obligated to adopt interpretation "more favorable to the offender"); *see also* George A. Martínez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. DAVIS L. REV. 555 (1994) (analyzing how indeterminacy may be used either for or against Latinas/os at discretion of decision maker).

[53] *See* Hiestand, *supra* note 23, at N1 (quoting Alvaro Huerta).

[54] For an introduction to Latina/o Critical Theory, see Francisco Valdes, *Foreword: Under Construction — LatCrit Consciousness, Community, and Theory*, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L.J. 1 (1998). For leading essays developing themes in LatCrit theory, see THE LATINO/A CONDITION: A CRITICAL READER (Richard Delgado & Jean Stefancic eds., 1998).

[55] *See, e.g.*, Cameron, *supra* note 2, 85 CAL. L. REV. at 1372-84, 10 LA RAZA L.J. at 286-98 (analyzing how English-only rules and judicial decisions upholding them make Latinas/os invisible in workplace).

UFW and the urban agricultural workers whose cause was taken up by the Association of Latin American Gardeners of Los Angeles.

For years, the most prominent symbol of oppression for urban agricultural workers was *el cortito* — the short-handled hoe.[56] The short-handled hoe caused the farm worker who was assigned to use it to bend over at an unnatural angle, thereby wrenching his back and neck. Generations of mostly Latino farm workers were crippled from daily use of short-handled hoes to cultivate crops.[57] Of course, a laborer who is bending over finds it difficult, if not impossible, to plot conspiracies against management, or to do anything except till the soil. If he stands upright, then he must not be working, and can be readily identified and punished. Thus, the short-handled hoe makes the farm worker invisible.

Similarly, Los Angeles's ban on gas-powered leaf blowers makes urban agricultural workers invisible by silencing them. The ban forbids gardeners to work quickly and efficiently by forcing them to work silently. Substituted for the whirring of gas-powered motors is the scraping of rakes and brooms. These sounds tell us that those Latinos are working long and hard, and are too occupied to plot subversion or any other activities that might cause trouble. These sounds tell us that the men remain safely invisible.[58]

But why punish laborers simply for answering the call of the market place? One sociologist almost captured the sentiment when she observed: "There seems to be an element of hypocrisy here. It's sort of an unfair placing of blame on the gardeners. The gardeners are here working because there's a demand for their services. . . . [W]e like our beautiful lawns but we don't want to pay for them."[59]

In truth, it's not the paying we mind — after all, the price tag is a bargain — but rather, having to see and hear the people that are

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[56] An especially poignant moment during the Second Latino/a Critical Theory Conference, which was held in San Antonio, came when Professor Olga Moya of Texas Tech University School was introduced as a panelist. Professor Moya was presented with the gift of *un cortito*, which was intended as a symbol of her childhood as a farm worker and as a child a family of a family of farm workers. She was so moved by the unpleasant memory that she was momentarily unable to speak.

[57] *See, e.g.*, Ferriss & Sandoval, *supra* note 1, at 206.

[58] *See, e.g.*, Shuster, *supra* note 43, at B1 (quoting Peter Graves: "It [not using leaf blowers in New York] hasn't hurt [gardeners] — heavens no. Nary a leaf blower, just rakes and brooms. Wonderful. Wonderful.").

[59] Boxall, *supra* note 9, at A1 (quoting University of Southern California Sociology Professor Pierrette Hondagneu-Sotelo).

working to be paid. A democratic and multicultural society has little choice but to embrace all the people who constitute it. Attempts to make them invisible are bound to be resisted. Sometimes, as in the case of the gas-powered leaf blower ban, these attempts fail.

B. White Ethnic Assimilation Model

Discourse about laws affecting Latinas/os often devolves into the assertion that for an immigrant to give up the culture of her national origin and to become assimilated into mainstream American life is not only a good thing, but also a thing attainable by all immigrants, irrespective of background. But as Kevin Johnson, Sylvia Lazos, George Martínez, and others have argued, this adherence to the white ethnic assimilation model is misplaced. Wrote Professor Lazos:

> The White ethnic immigrant story portrays America as a classless and raceless society, and it hides that individuals from a lower class and with subordinated racial social identities have very different life chances from those who can claim Whiteness. . . . Racial minorities become the targets for all of America's ills. Not surprisingly, Whites have very little empathy for racial minorities and the poor which allows them to distance themselves from the problems of race and poverty.[60]

In the case of Los Angeles's leaf blower ban, the principles of assimilation that immigrant Latinas/os are charged with failing to adopt are health-consciousness and environmentalism, as evidenced by the comments of supporters of the ban. For example, even diehard liberals on the City Council bought the false dichotomy between preserving the environment and preserving the jobs of poor Latina/o gardeners. Council Member Jackie Goldberg, long a champion of the working class, threw up her hands:

> I am depressed that the hardships will fall on those on whom the hardships always fall on heaviest — those marginally em-

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[60] Sylvia R. Lazos Vargas, *Deconstructing Homo[geneous] Americanus: The White Ethnic Immigrant Narrative and Its Exclusionary Effect*, 72 TUL. L. REV. 1493, 1542-43 (1998).

> ployed. But I do believe there are major health issues involved in this, and I can't find a way around it.[61]

Sponsors of the ordinance, including Council Member Miscikowski, denied that their intent was to divide the city along race or class lines.[62] To them, the real issue was the quality of life, not discrimination against immigrant Latinas/os.[63]

Of course, some supporters were less kind. Standing outside City hall, a thirtysomething professional man, looking angry, interrupted a reporter who was interviewing a gardener: "Why don't you ask him why he doesn't use a rake and a broom? Is he too lazy? I use a rake and broom."[64]

This last cut may be the unkindest of all. The notion that immigrant Latinas/os have not adopted, or already brought with them, good old-fashioned American values such as hard work is an insult to every gardener who works ten to twenty yards per day for low wages and no vacation or benefits. In fact, it is an insult to working Latinas/os everywhere. And it puts to rest the idea that the white ethnic assimilation model always works for nonwhites too. The story of how industrious, low-wage workers fought back against an attempt to blame them for the side effects of something we all want vividly illustrates the folly of assuming that everyone in our society is equally served by the prevailing model of assimilation.

CONCLUSION

I began this Essay with a story about my *abuelo.* While Grandad was living with us, about two years before he passed away, he woke up early one morning from a nightmare. I found him disoriented and walking around his room. After I tucked him back into bed, with some help, he recalled that, in his nightmare, he had balled up his fists and was swinging wildly.

What was he trying to hit?

"I was at work," he said, closing his eyes and recalling his many years as a journeyman printer. There were long hours, and some

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[61] McGreevy, *supra* note 30, at N1 (quoting Council Member Goldberg).

[62] *See id.* (quoting Council Member Miscikowski).

[63] *See* Wilgoren, *supra* note 6, at A1 (quoting remarks of ban opponent and Council Member Rudy Svorinich: "While it's a qualify of life issue to some people in the city, it's a livelihood issue for other people in the city.").

[64] Boxall, *supra* note 9, at A1 (quoting unidentified professional man).

of his bosses didn't appreciate having a Mexican American working there. "I was swinging at them, trying to hit back."

"You were trying to hit your boss?" In real life, so far as I knew, Grandad was a quiet man who never took a poke at anyone.

"I was angry because there was so much work. And I didn't like it. But I was going to do it. I could take it. I could take whatever punches they were throwing." His eyes were still shut and he was still throwing simulated counter-punches.

"So you fought back?"

"Yes. I fought back. I fought back by never quitting, never saying I couldn't do it all, never walking away."

"And are you glad you stayed with it?"

"Well, it didn't make me a better person."[65] Then he opened his eyes. "Maybe that's why today I need so much guidance."

[65] For a similar sentiment, see Boxall, *supra* note 9, at A1 (quoting Lakewood, California, resident Don Waldie, commenting on mowing lawns as child).